

SAFETY OF **JOURNALISTS**

Guidebook

3rd Edition

The views, findings, interpretations, recommendations and conclusions expressed herein are those of the author and do not necessarily represent the official position of the OSCE and/or its participating States.

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Preface to the 3rd edition

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Since the publication of the second edition of the Safety of Journalists Guidebook in 2014,¹ the environment for journalists and other media actors in the OSCE area remains difficult and dangerous. According to the OSCE Annual Report, as of the end of 2018, more than 150 journalists were still in prison, compared to 170 in 2017.²

In 2019, the OSCE Representative on Freedom of the Media responded to numerous attacks and threats against journalists. Two journalists were killed in the OSCE region in 2019: Lyra McKee, who was shot while covering riots in Northern Ireland, the United Kingdom; and Vadim Komarov, who died after being attacked in Cherkasy, Ukraine. Many other journalists were attacked, wounded or threatened because of their investigations, reports or critical views. The fight for the protection of journalists' safety and against impunity is a priority of the Office.

The Office organized, in Vienna in April 2019, the conference “Journalists Under Attack: A Threat to Media Freedom”, which aimed to assist OSCE participating States in implementing the 2018 Ministerial Council Decision on the Safety of Journalists and to provide safe working conditions for journalists. Over 200 participants from over 30 countries discussed the safety of media workers and listened to the testimonies of journalists who had suffered attacks and those of the relatives, colleagues and friends of killed journalists.³

¹ Safety of journalists Guidebook (2nd edition). Vienna: Organization for Security and Co-operation in Europe, 2014. Available at: <https://www.osce.org/fom/i18052>.

² See: OSCE 2018 Annual Report, Vienna 2019. P. 52. https://www.osce.org/files/f/documents/6/c/416624_o.pdf.

³ See OSCE 2019 Annual Report, Vienna 2020. https://www.osce.org/files/f/documents/o/9/449104_o.pdf.

The Office's Safety of Female Journalists Online (#SOFJO) project continued to raise awareness of the threats and harassment specifically faced by female journalists online.⁴

The third edition of the Safety of Journalists Guidebook is authored, like the previous ones, by William Horsley, co-founder and international director of the Centre for Freedom of the Media at the University of Sheffield's Department of Journalism Studies (U.K.), to whom our Office is sincerely grateful.⁵ I would like to thank the staff of the Office who contributed to the editing and publishing of his manuscript, in particular Lusine Apresyan, Aidar Botagarov, Ton Van Den Brandt, Sebastian Denton, Olesia Fesenko, Julia Haas, Ana Karlsreiter, Andrey Rikhter (who made final editing), and Deniz Yazici.

I would like to use this opportunity and thank the governments of Austria, Lithuania and the Netherlands for their generous contributions that made this publication possible.

Jürgen Heissel

Director

*Office of the Representative on Freedom of the Media
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⁴ See: <https://www.osce.org/fom/safety-female-journalists-online>.

⁵ See: <https://www.sheffield.ac.uk/journalism/people/academic/william-horsley>.

Part One.

Safety of journalists: The essentials

Part One.

Safety of journalists: The essentials

› An “unacceptable” scale of threats and violence

In May 2012, the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media (RFoM), the Organization of American States Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples Rights Special Rapporteur on Freedom of Expression and Access to Information emphasized that incidences of killings, death threats, disappearances, abductions, prosecutions, imprisonments, torture, harassment and other crimes against those exercising their right to freedom of expression are unacceptable.⁶

The Joint Declaration stressed that crimes against freedom of expression, if committed by State authorities, are particularly serious, and expressed concern about the particular challenges and dangers faced by women journalists. The Joint Declaration lays out a set of principles for State authorities to observe threats; and its Guidelines relate to States’ obligations to prevent and prohibit crimes against freedom of expression, to protect international standards, to conduct effective investigations to bring perpetrators and instigators to justice, and to provide redress for victims. It also underlines the role of other stakeholders.

The crisis for journalists’ right to report was recognized again in 2018 in a ground-breaking Ministerial Council Decision adopted by all

⁶ Available at: <https://www.osce.org/files/f/documents/c/2/91595.pdf>.

OSCE participating States through consensus.⁷ The Decision calls on participating States:

- To fully implement their OSCE commitments and international obligations related to freedom of expression and media freedom;
- To bring their laws, policies and practices pertaining to media freedom fully in compliance with their international obligations;
- To review and repeal or amend those laws that limit the ability of journalists to perform their work independently and without undue interference;
- To condemn publically and unequivocally all attacks and violence against journalists, such as killing, torture, enforced disappearance, arbitrary arrest, arbitrary detention and arbitrary expulsion, intimidation, harassment, and threats of all forms, such as physical, legal, political, technological or economic, used to suppress their work and/or unduly force closure of their offices, including in conflict situations;
- To condemn attacks on women journalists, including threats and violence through digital technologies;
- To urge the immediate and unconditional release of all journalists arbitrarily arrested or detained, taken hostage, or who have become victims of enforced disappearance;

⁷ Available at: <https://www.osce.org/chairmanship/406538>. For analysis, see: Andrei Richter and Deniz Yazici, "Pioneer Decision on Safety of Journalists in the Preceding Context", in P. Czech, L. Heschl, K. Lukas, M. Nowak, & G. Oberleitner (Eds.), *European Yearbook on Human Rights* 2019, pp. 339-368.

- To take effective measures to end impunity for crimes committed against journalists, by ensuring accountability, by carrying out swift, effective, and impartial investigations into acts of violence against journalists;
- To bring all those responsible to justice, and have access to appropriate remedies;
- To urge political leaders, public officials and/or authorities to refrain from intimidating, threatening or condoning violence against journalists;
- To avoid undermining trust in the credibility of journalists and to respect the importance of independent journalism;
- To refrain from arbitrary or unlawful interference with journalists' use of encryption and anonymity technologies, and to refrain from employing unlawful or arbitrary surveillance techniques;
- To encourage State bodies and law enforcement agencies to engage in awareness-raising and training activities on ensuring safety of journalists, and to involve civil society in such activities;
- To establish or strengthen national data collection, analysis and reporting on attacks and violence against journalists;
- To ensure that defamation laws do not carry excessive sanctions or penalties;
- To implement more effectively the applicable legal framework for the protection of journalists; and finally,

- To co-operate fully with the OSCE Representative on Freedom of the Media, including on the issue of safety of journalists.

The deaths of investigative journalists Pavel Sheremet, murdered in a car explosion in July 2016 in Ukraine; Daphne Caruana Galizia in October 2017, murdered in a remote-controlled car bomb explosion in Malta; and Ján Kuciak, shot dead with his fiancée Martina Kušnírová in Slovakia in February 2018, are among the targeted killings of journalists that exemplify the dangers faced by investigative journalists and the failure by the authorities to effectively resolve violent crimes against journalists. The acute threat to media freedom caused by these and many other targeted murders of journalists stem not only from the cold-blooded, pre-meditated nature of the crimes, but also from the absence of prompt progress in the ensuing investigations to identify and prosecute those who instigated or commissioned them.

Journalists and human rights organizations expressed their concerns in a letter to the President of the European Commission about what they called a “climate of impunity” surrounding the killings in Slovakia and Malta. They questioned whether the police investigations were genuinely “full, thorough and independent”, and underlined that “a climate in which impunity prevails and in which journalists are only respected when they serve the interests of those in power, paves the way for violence”.⁸

In view of the international attention paid to the problems with the investigatory and judicial follow-ups after previous killings of journalists – including, for example, those of Elmar Huseynov in Azerbaijan in 2005, Anna Politkovskaya in Russia in 2006, and Hrant Dink in Turkey in

⁸ “On heels of Slovakia and Malta murders, European Commission urged to take the lead to protect journalists”, see: https://www.ifex.org/europe_central_asia/2018/03/06/daphne-caruana-jan-kuciak/.

2007 – states should be fully aware of their domestic and international obligations. The standards of investigations and prosecutions must be consistent with OSCE principles, commitments made in OSCE decisions and United Nations resolutions, and obligations under international law, such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

The persistence of high rates of impunity – over 85 per cent in cases when journalists have been the victims of murder in OSCE participating States⁹ – has an additional chilling effect on journalists and undermines public trust in the judicial systems and other institutions of government. Impunity undermines commitment to journalists’ safety as well as the rule of law in the state concerned.

The emergence of such “climates of impunity” in parts of the OSCE region was also a factor behind the issuing by the Committee of Ministers of the Council of Europe of their April 2016 Recommendation, which urged Council of Europe member States to strengthen the protection of journalism and the safety of journalists by far-reaching measures, including independent and thorough reviews of their domestic laws and practices.¹⁰ Such reviews are intended to lead to the amendment or repeal of laws and practices, as necessary, to make them consistent with their obligations under the European Convention on Human Rights. Although ten OSCE participating States are not Council of Europe member States, Council of Europe “soft law” texts may be cited by other national or international courts, and rulings by the European Court of Human Rights (ECtHR) are seen as having persuasive authority in international law.

⁹ Impunity for Murders of Journalists: A Challenge to Freedom of the Media, 11.12.2017 Conference report. Available at: <https://www.osce.org/fom/368491>.

¹⁰ CM/Rec(2016)4, available at: https://search.coe.int/cm/Pages/result_details.aspx?Objec-tid=09000016806415d9#_ftn1.

› **Monitoring and response**

The mandate of the RFoM includes an early warning function and rapid responses to serious threats to journalists' safety and freedom of the media.¹¹ The Representative's interventions take the form of public statements and warnings, country visits and reports, silent diplomacy, and providing assistance in implementing the OSCE media freedom commitments, for example by analysing and thereby assisting in drafting and reforming legislation, by organizing conferences and roundtables for training sessions, discussions and the exchange of best practices, or by publishing topical publications, reports and guidebooks. The Representative also uses its good offices for constructive dialogue among journalists caught up in political confrontations – such as relations between Russian and Ukrainian journalists, or between Cypriot journalists from the Greek and Turkish communities.

The Office of the Representative maintains close contacts with government authorities, and works with relevant actors in the field of media freedom, especially OSCE field operations, other international and professional organizations, international media associations, as well as regional and local NGOs specialized in press freedom advocacy.

The importance that journalists and non-governmental organizations attach to the Office of the Representative is reflected in two joint statements published in February and June 2017 by eight international organizations.¹² The signatories underlined that successive mandate-holders have made a considerable contribution to press freedom initiatives through their determination and vision in promoting compliance with

¹¹ Available at: <https://www.osce.org/fom/mandate>.

¹² "Freedom of expression and journalists' organisations want OSCE states to show commitment to Media Freedom Representative's Office". Available at: http://www.aej.org/page.asp?p_id=574.

OSCE commitments and principles. The work of the Representative was more important than ever before, they said, because journalists were facing unprecedented pressures.

The increased dangers to the safety of journalists and to their freedom to do their work independently are closely documented in reports and statements published by the OSCE RFoM, the Council of Europe and United Nations agencies and bodies, as well as journalistic, non-governmental organizations and academic institutions. A Council of Europe publication in 2017 revealed first-hand evidence from a survey conducted among male and female journalists across Europe. It said that self-censorship resulting from threats or acts of violence or intimidation has become commonplace and an unpleasant fact of life for a large proportion of them.¹³

The safety of female journalists is of particular concern. Women journalists face a double-burden: being attacked as journalists and as women. Attacks against female journalists often take place online and often include threats of rape and other kinds of sexual violence, and threats of physical violence including murder or disturbing graphic images being sent to them. In a significant number of cases, attacks against female journalists have led to self-censorship or even to women retreating from the public sphere.

Misogynistic, racist and other kinds of smear campaigns and character assassinations create a chilling effect that sometimes silence female journalists, minority groups and other critical voices, creating a general deterrent to freedom of expression and having a negative effect on

¹³ Council of Europe “Journalists under pressure: Unwarranted interference, fear and self-censorship in Europe”, Marilyn Clark and Anna Grech. Available at: https://www.coe.int/en/web/freedom-expression/home/-/asset_publisher/RAupmF2S6voG/content/journalists-are-under-threat-in-europe-

democratic processes. Through targeted research completed in 2015, the OSCE identified the need for comprehensive monitoring research and the collection of consolidated data, followed by firm action to protect female journalists. In order to assist the participating States in achieving better protection for journalists, including female journalists, in 2015, the Office launched a comprehensive project on safety of female journalists online.¹⁴

As many cases cited in this Guidebook show, the actions by governments to counter known threats to journalists and their work have often been inadequate. The scale of the threats require the application of a gender-sensitive, comprehensive and group-specific approach. In order for states to meet their OSCE commitments and obligations under national and international law, some national laws and practices should be reformed and stronger safeguards need to be enacted. Governments across the OSCE region face an unprecedented level of demands from media, civil society organizations and public bodies to remedy the shortcomings and provide a safe environment for journalists to carry out their work. Among those most at risk are journalists who are critical towards the government or who belong to a discriminated or marginalized group.

In its Freedom of the Press 2019 report, the US-based global monitoring organization Freedom House recorded the 13th consecutive year of decline in global freedom.¹⁵ It assessed 11 of the 57 OSCE participating States as having a “Not Free” press and 15 others as having a press described as “Partly Free” – meaning that just 31 of the participating States are assessed as being in the “Free Press” category. Freedom House described Eurasia as being one of the worst performing regions in the world for press freedom, citing the “iron grip on major news media” maintained

¹⁴ See: <https://www.osce.org/fom/safety-female-journalists-online>.

¹⁵ “Freedom in the World 2019: Democracy in Retreat”, Freedom House Report, available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2019/democracy-in-retreat>.

by some governments in the region, as well as assaults on journalists, the forced closure of operations of media such as Radio Free Europe/Radio Liberty, and frequent blocking of critical websites.

The erosion of legal and regulatory protections for free, independent and pluralistic media has been observed not only in former Soviet bloc countries, where in past times news media officially served the interest of state authorities, but also in many states which have historically valued free speech and free, independent and plural media as core democratic values.

In recent years, however, the international standards and norms related to the safety of journalists and their right to report have been progressively raised and strengthened. This was done through an unprecedented focus on the safety of journalists and the protection of journalism in international bodies, including the OSCE, with a wide-ranging list of newly-agreed commitments pertaining to the physical, legal, political, technological and economic safety of journalists, and with a particular focus on countering threats faced by female journalists and marginalized groups. The necessity of giving the broadest scope of protection for media freedom has often been recognized in rulings by the ECtHR and other international human rights courts. The urgency of these issues has also been reinforced by the adoption of a series of United Nations resolutions on journalists' safety and the issue of impunity since 2012, including the United Nations' Inter-Agency Plan of Action of the Safety of Journalists and the issue of Impunity.¹⁶

Some OSCE participating States have adopted a number of positive reforms, such as the repeal of criminal defamation laws

¹⁶ UN Plan of Action on the Safety of Journalists and the Issue of Impunity. Available at: https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf.

and the enactment of freedom of information legislation.¹⁷ Public demonstrations and movements in support of free speech, media freedom and democratic rights are evidence of people's strong desire for those freedoms, and have sometimes helped to create conditions in which state authorities have strengthened frameworks for protecting fundamental rights. Practical measures of protection for journalism and the safety of journalists, such as 24-hour police protection and early warning systems, have been successfully put in place in some cases. Additionally, in the 2018 Ministerial Council Decision, participating States of the OSCE agreed to "establish or strengthen, where possible, national data collection, analysis and reporting on attacks and violence against journalists."¹⁸ This data collection and reporting exercise would significantly enhance the capacity to ensure accountability for such crimes committed against journalists.

Since 2015, the Council of Europe's online platform to promote the protection of journalism and safety of journalists has registered over 800 alerts about serious threats to media freedom.¹⁹ The collaborative exercise, involving leading journalistic and civil society organizations, has focused the attention of governments on the need to provide remedies and take further steps to establish a safe and enabling environment for journalists to do their work without interference.

› **Wanted: Protection in reality, not just in theory**

Why are the conditions to secure the safety of journalists not improving?
Promises of protection, even when they are enshrined in constitutions

¹⁷ "Defamation and Insult Laws in the OSCE Region: A Comparative Study" (Commissioned by the OSCE Representative on Freedom of the Media), 2017, available at: <https://www.osce.org/fom/303181?download=true>.

¹⁸ Available at: <https://www.osce.org/chairmanship/406538>.

¹⁹ Available at: <https://www.coe.int/en/web/media-freedom>.

and laws, cannot be effective in practice unless they are safeguarded and enforced by firm and consistent action by the authorities.

In recent years, parts of the OSCE region have experienced situations of crisis, high political tension and even conflict, which present specific threats for journalists and journalism. The ongoing conflict in and around Ukraine has resulted in the deaths of journalists of Ukrainian, Russian and other nationalities. A number of journalists and other media actors were arbitrarily detained in rebel-held parts of Ukraine, sometimes for weeks or months. Since the conflict began, the authorities of Russia and Ukraine have resorted on numerous occasions to refusing entry to foreign journalists or expelling them.

Following a series of terrorist attacks in the Paris area in November 2015, the French government imposed a state of emergency for a period of two years. The emergency laws granted law enforcement agencies extraordinary powers to search properties, make arrests, and restrict the movement of individuals without the usual safeguards, thereby weakening judicial oversight of these actions. The government refrained from taking specific powers to censor the media, but human rights lawyers and NGOs voiced concerns at the weakening of protections against abuse. Critics argued that the enhanced anti-terrorism law that replaced the state of emergency would normalize some of the emergency provisions by enshrining them in the traditional criminal and administrative law.

In Turkey, following the attempted coup in July 2016, in which over 200 people tragically lost their lives, the government imposed a state of emergency, which included sweeping discretionary powers to close down media outlets and arrest or detain journalists as well as academics, civil servants and others without the usual democratic safeguards. As of 2018, over 150 journalists and writers were in prison and more than

180 media outlets and publishing houses had been closed down. Many of the journalists were charged with terrorism-related and other serious offences, without being properly informed of the charges against them or being able to exercise their basic judicial rights.

In November 2016, following a visit to Turkey, the then UN Special Rapporteur on Freedom of Expression, David Kaye, took note of the government's concerns about national security but expressed grave concerns about the state of freedom of expression, and called on the government to immediately release all those held in prison for exercising their rights to freedom of opinion and expression. He reported that anti-terrorism laws were regularly used as a basis to criminalize reporting, repress critical voices and shut down all forms of media.²⁰

Fundamental legal guarantees for freedom of expression have been widely threatened or undermined in the wider international landscape. The OSCE participating States recognized this worrisome fact in the Ministerial Council Decision of 2018 on Safety of Journalists by:

Noting with concern that the use of undue restrictive measures against journalists can affect their safety, and prevents them from providing information to the public, and thus negatively affects the exercise of the right to freedom of expression, [participating States were called on to] bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference.²¹

²⁰ OHCHR, "UN expert urges Turkey to release detainees amid 'grave concern' about free speech", November 18 2016. See: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20892&LangID=E>.

²¹ Available at: <https://www.osce.org/chairsteamship/406538>.

Governments have also expanded their powers and use of digital surveillance, interception and prosecution in the name of protecting public safety and combating terrorism. In the Decision on Safety of Journalists, the OSCE participating States emphasized these particular risks in the digital age – of journalists becoming targets of hacking or unlawful or arbitrary surveillance or interception of communications, referring also to the importance of encryption and anonymity technologies for journalists to be able to work effectively. Journalists have often become the targets of those enhanced powers, making the protection of journalists' sources more difficult, or even impossible, because of secret or automatic electronic collection of data by state authorities or private actors.²²

Government-ordered shutdowns, and blocking and filtering of the internet give rise to concerns about censorship by state authorities, as well as about the discretionary powers and non-transparent criteria used by social media companies and other internet intermediaries and of state-appointed regulators to block or remove content online. In this regard, the OSCE RFoM issued a comprehensive outcome report of a conference, with concrete recommendations to participating States and other stakeholders on the role and responsibilities of internet intermediaries. The key recommendations include the need to:

- Ensure that the internet remains an open network for the free flow of information and ideas, regardless of frontiers, and that any proposals to regulate the internet respect human rights and fundamental freedoms, both online and offline, including the right to freedom of expression;

²² *Ibid.*

- Urgently consider the scope of the intermediaries' duties and responsibilities and how they can be reflected in laws that both protect citizens and enable a dynamic internet environment;
- Strive towards greater transparency, including in relation to the kind of content that is removed, the criteria that are applied, and the procedures in place in order to challenge over-removals;
- Put in place due process safeguards when intermediaries remove content, including through requirements to substantiate [takedown] notices, the introduction of counter-notices and effective complaint mechanisms.²³

The working environment for journalists in the OSCE area has been negatively impacted by a sharp increase in anti-media rhetoric, including verbal attacks, insults and accusations by public figures of disseminating “fake news”, as well as online threats and hate speech. A Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda deplored such manipulation of information as intended to mislead populations and interfere with the public’s right to know.²⁴

The Joint Declaration voiced alarm that “instances in which public authorities denigrate, intimidate and threaten the media, including by stating that the media is ‘the opposition’ or is ‘lying’ and has a hidden agenda, increase the risk of threats and violence against journalists and undermines public trust and confidence in journalism as a public watchdog.”

²³ See: <https://www.osce.org/fom/371846?download=true>.

²⁴ Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017. Available at: <https://www.osce.org/fom/302796?download=true>.

Elected officials in parts of the OSCE have displayed patterns of behaviour, including verbal insults, stigmatization and sometimes barely veiled threats against the media or individual journalists. The head of the international non-governmental organization Reporters Without Borders has said that “the unleashing of hatred towards journalists is one of the worst threats to democracies.”²⁵

Public attention has focused especially on the fact that the US President declared a “war on the media” shortly after assuming office. The President, as well as some of his staff and supporters, has publicly directed derisive rhetoric against the media, popularizing the notion of “fake news” to discredit the media and even labelling certain media as “the enemy of the American people”. The then UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, openly criticized the US leader, saying “To call these news organizations ‘fake’ does tremendous damage and to refer to individuals in this way, I have to ask the question is this not an incitement for others to attack journalists?”²⁶ Freedom House has argued that such repeated disparagements of specific journalists and outlets by figures that hold high political office have undermined public trust in fact-based journalism.²⁷

To this end, the OSCE participating States have called, in the 2018 Ministerial Council Decision on Safety of Journalists, for “political leaders, public officials and/or authorities to refrain from intimidating, threatening or condoning – and to unequivocally condemn – violence against journalists, in order to reduce the risks or threats that journalists

²⁵ RSF Index 2018: Hatred of journalism threatens democracies. Available at: <https://rsf.org/en/rsf-index-2018-hatred-journalism-threatens-democracies>.

²⁶ “Trump attacking freedom of the press: U.N. rights boss” / Reuters, 30 August 2017. See: <https://www.reuters.com/article/us-usa-trump-un-rights-idUSKCNiBAiB6>.

²⁷ “Freedom of the Press 2017: Press Freedom’s Dark Horizon”, Freedom House. Available at: <https://freedomhouse.org/report/freedom-press/freedom-press-2017>.

may face and avoid undermining trust in the credibility of journalists as well as respect for the importance of independent journalism.²⁸

While any direct links between verbal assaults and physical violence against journalists are difficult to prove, it is known that in most of the recorded cases of attacks and killings of journalists, such crimes were preceded by threats of violence. The survey-based study published by the Council of Europe found that many journalists in Europe, especially those reporting on politics, crime and corruption, see harassment and even intimidation as a commonplace experience of their work.²⁹ The surveyed journalists report that self-censorship is common or even routine as a result, and that a majority of journalists who had experienced unwarranted interference, such as violence or threats, refrained from reporting it to the police because of their lack of confidence in official institutions.

› **Challenges to safety in the new digital media landscape**

The internet and data sharing revolution has created tremendous opportunities for everyone to express themselves online. It has also ended the privileged status that many traditional media organizations enjoyed in the 20th century, undermining established economic models of newspapers and broadcasting, and opening the way for a multitude of voices to compete in an infinitely expanding marketplace. The business of journalism has been transformed. New media enterprises and collaborations are constantly springing up. However, in the short term, the changes have greatly depleted the resources necessary for media

²⁸ Available at: <https://www.osce.org/chairmanship/406538>.

²⁹ Council of Europe “Journalists under pressure: Unwarranted interference, fear and self-censorship in Europe”, Marilyn Clark and Anna Grech, p. 33. Available at: https://www.coe.int/en/web/freedom-expression/home/-/asset_publisher/RAupmF2S6voG/content/journalists-are-under-threat-in-europe-.

organizations to remain viable and to support complex newsgathering operations, especially with investigative journalism.

A few privately owned internet companies have secured a commanding position and taken over the dominant share of online advertising revenue. Traditional mainstream media have lost much of their former income from sales and subscriptions, and become dependent on the platforms to distribute their content to readers and viewers. This has led to economic fragility, which has made many media outlets vulnerable to political pressure, or to takeover and capture by political or commercial interests with huge financial resources and a variety of agendas.

In this environment, news media organizations and journalists face a decline in public trust, which opinion polls reflect. The loss of trust is attributed to perceptions of partisanship or lack of editorial independence and a relative decline in the capacity to generate first-hand reliable news, as well as the attractiveness to news consumers of sensational and often highly personal material on online platforms, video-sharing sites and the like.

Online, journalists, and especially women journalists and voices of other marginalized groups, are particularly at risk. Female journalists are often singled out and severely attacked on social media via tweets or Facebook posts, in online comments on news platforms and through backchannel messaging platforms. The project of the RFoM on Safety of Female Journalists Online underlines that a systematic gender-sensitive approach needs to be adopted within a wider legal framework for the safety of journalists to counter online threats and abuses against women journalists. The 2018 Ministerial Council Decision on Safety of Journalists recognized this urgent necessity, whereby OSCE participating States specifically emphasized “the distinct risks faced by women journalists

in relation to their work, including through digital technologies.” The participating States further recognized that specific attacks come in many forms, “such as sexual harassment, abuse, intimidation, threats and violence” and underlined the importance of ensuring that these are effectively addressed. This marked an important step forward by OSCE participating States.

In 2016, the UN Human Rights Council adopted a Resolution on Safety of Journalists³⁰ with gender-specific provisions, while the Council of Europe adopted a recommendation on the protection of journalism and safety of journalists and other media actors calling for a systematic gender-sensitive approach to combat the specific risks faced by women journalists as well as underlying stereotypes and discrimination.³¹

At the same time, state authorities should not use mistakes by the media to impose arbitrary or unnecessary regulations or controls on the media. Attempts by state authorities to displace the role of independent media by judging the validity of media content themselves, or even censoring or ordering the deletion of content as “falsehoods” or “fake news”, represent an unacceptable violation of freedom of expression. Governments should work to establish a safe and enabling environment for the online media. This means promoting media independence, plurality and diversity by, among other things, removing state controls of news media; ensuring the independence and impartiality of media and telecommunications regulators; promoting and ensuring the reflection of pluralistic voices; upholding safeguards against excessive concentration of media ownership; and applying equitable rules on the allocation of state resources, such as the placement of advertisements in the media by public bodies.

³⁰ A/HRC/33/L.6, available at: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Pages/ResDecStat.aspx>.

³¹ CM Rec(2016)4, para 2. Available at: CM/Rec(2016)4, see: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftnl.

› Freedom of expression: A universal right

Free speech and media freedom give effect to a range of other rights. When patterns of interference, obstruction and harassment of independent journalism become persistent, they are also associated with wider failings in systems of justice, the rule of law and the conduct of free and fair elections, and with excessive restrictions on other fundamental rights that are also essential for the development of free and open societies.

Freedom of expression is a universal right, and the activities and functions of the OSCE RFoM serve the vital interests of all the OSCE participating States and their whole populations. The right to freedom of opinion and freedom of expression includes the right of everyone not only to impart, but also to seek and receive information and ideas, regardless of borders and in all forms of media.

Therefore, any attack on press freedom is also an attack on the public's right to free speech and right to be informed. The issues examined in this Guidebook concern the fundamental social, civil and political rights of everyone, including the right to vote, to protest peacefully, and to form associations and trade unions without undue constraints.

Journalists' ability to work is impeded or prevented by any acts of violence, killing, torture, enforced disappearance, arbitrary detention or imprisonment, arbitrary expulsion, intimidation, harassment and threats of all forms, such as physical, legal, political, technological or economic, as well as the routine lack of adequate responses by national law-enforcement and justice systems. All forms of attacks on journalism represent breaches of OSCE principles and commitments, as well as of international norms and standards concerning freedom of expression and media freedom.

This Guidebook recommends actions and strategies to OSCE participating States on meeting their OSCE commitments and adopting international best practices to counter all major threats to the safety of journalists and media freedom and to ensure free, independent and pluralistic media.

Part Two.

**OSCE region:
Issues and
recommendations**

Part Two.

OSCE region: Issues and recommendations

OSCE participating States are responsible for upholding their voluntarily adopted OSCE principles and commitments on the safety of journalists, media freedom and the free flow of information. They have agreed to safeguard the right to freedom of expression, to hold to account those responsible for attacks and harassment against journalists, and to regard the commitments undertaken in the field of the human dimension, including media freedom, as matters of legitimate concern to *all* participating States.

The commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.³² They have declared that they value the important role played by civil society and free media in helping to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law. Most recently, in 2018, they have recognized the evolving nature of journalism and technology and that this contributes to the public debate, while it may also expand the range of risks that undermine the safety of journalists.

The foundations on which state authorities may fulfil their commitments include the constitutional separation of powers; the independence of judicial authorities and open justice; and an acceptance that the effective exercise of freedom of expression places “positive obligations” on State authorities, including the obligation to put in place effective measures of protection for journalists and others when they face an evident threat of attack, and to carry out a prompt, independent and effective investigation in cases when a journalist is threatened, assaulted or killed.

³² Helsinki Final Act and 2010 Astana Summit.

Freedom of expression and freedom of the press are essential pillars of democratic societies, and they give effect to a wide range of other fundamental rights, such as the freedom of assembly, and the right to take part in free and fair elections. Laws protecting these various rights must be not merely theoretical but also practical and effective. It is essential that those who exercise the powers of the State be seen to do so with neutrality and without conflating the interests of the State with the personal interests of office-holders or public officials.

The same rights enjoyed by everyone offline also apply online, as recognized by the UN Human Rights Resolution on the promotion, protection and enjoyment of human rights on the internet.³³ In 2004, at the Sofia Ministerial Council, the OSCE participating States declared that the freedoms of opinion and expression, which include the freedom to seek, receive and impart information, are vital to democracy and are strengthened by the internet.³⁴ OSCE commitments reflect the principle of democratic consent and require that governments engage in good faith with media and civil society on matters concerning media freedom, journalists' safety and the free flow of information. The RFoM published a guidebook, in 2016, on media freedom on the internet.³⁵

› **Recommended actions and measures to prevent attacks and threats against journalists**

Establish or strengthen, where possible, national data collection, analysis and reporting on attacks and violence against journalists;

³³ See: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/L.10/Rev.1 (2012).

³⁴ Permanent Council Decision No. 633 (2004). Available at: <https://www.osce.org/mc/23133?download=true>.

³⁵ Available at: <https://www.osce.org/netfreedom-guidebook?download=true>.

Establish an effective framework of laws and safeguards at national, regional and local level to protect the universal right to freedom of expression and the safety of journalists, so that free, independent and plural media can inform the public and provide a forum for open public debate.

Create and maintain independent mechanisms to review domestic laws and practices concerning the safety of journalists and their right to report, including protections for other fundamental rights, and ensure their consistency with OSCE commitments and domestic and international obligations by amending or repealing them as necessary.

Put in place effective measures of protection for journalists and other media actors who are threatened, whether in person or online. This may include 24-hour police protection and specialized protection programmes tailored to the circumstances and wishes of the person at risk. Measures to guard against all forms of threats, intimidation and suppression of dissenting voices should be implemented based on a human rights approach, taking account of the specific risks faced by some groups of journalists and media actors, such as female journalists and marginalized groups, and the particular challenges for freelance journalists.

Legislators, law enforcement and public bodies should take careful account of the specific risks faced by women journalists in the exercise of their work, including sexual harassment, abuse, intimidation, and threats and acts of violence, including through digital technologies, and adopt a gender-sensitive approach to measures to protect the safety of all journalists.

Designate crimes involving attacks against journalists as offences that attract aggravated penalties. No statute of limitations should apply.

Set up, or strengthen, the office of an independent Human Rights Commissioner, Ombudsperson or similar institution with a mandate to monitor attacks on the media and to make recommendations to legislators and government departments for necessary changes in laws and practices to protect journalists and independent journalism. The mandate should have adequate resources and authority to be effective in countering attacks and threats against journalists.

Develop and apply guidelines and operational manuals for law enforcement personnel, the judiciary, and security and other public officials. Expert training programmes should back these up, particularly on the measures necessary for the protection of journalism and the safety of journalists.

Ensure prompt, independent and effective investigations into attacks against journalists to identify, prosecute and bring to justice all those responsible, including perpetrators and instigators of attacks; and re-open or reinforce investigations into unsolved cases of killings of journalists, other assaults and forced disappearances as a matter of priority.

Set up inter-ministerial task forces to implement the above measures based on an “all-government approach”, which may also be tasked with ensuring that adequate and prompt responses are made to international alerts or communications to relevant international organizations, for example the UN Human Rights Committee, Office of the OSCE RFoM, and the Council of Europe’s Platform for protection of journalism and the safety of journalists.

Establish a mechanism for meaningful consultation with civil society and independent media and journalists’ organizations, by means of a standing Freedom of Expression Panel or similar entity, to gather and exchange information and views on government policies, laws and matters of

concern. Such consultations can improve the quality of laws and practices affecting the safety of journalists and the protection of journalism.

Ensure that employment and labour laws are consistent with international standards. They should guarantee the right to freely form trade unions and other associations and include robust safeguards against arbitrary dismissal and exploitative conditions of work. Effective labour inspectorates and independent judiciaries should enforce the laws.

› **Examples of existing policies**

In 2017, the Italian Ministry of the Interior set up a Coordination Centre for Combating Acts of Intimidation against Journalists and announced that 19 journalists were under close police protection because of death threats from organised crime or far right-wing extremist groups. Police maintained “vigilance measures” for the protection of 167 others. The monitoring organisation “Ossigeno per l’Informazione” registered as many as 423 cases in 2017 of journalists, bloggers and media actors who experienced intimidation, threats or reprisals because of their reporting. Ossigeno, like other journalistic and human rights organizations, has called for practical and legal measures, including far-reaching reform of Italy’s defamation laws, to strengthen protections for journalists at risk of attack or harm because of their journalistic work.

In December 2016, the Government of Serbia signed a Memorandum of Understanding on measures to improve the working environment for journalists’ safety, with several journalists’ and media organizations, including the Independent Journalists’ Association of Serbia. A special Commission, made up of representative journalists as well as government officials and security and intelligence officials, was set up as a non-judicial body with a mandate to uncover the facts concerning the long-unsolved

killings of journalists who were murdered between 1994 and 2001.³⁶ It had the authority to seek and assess materials related to the murder investigations but lacked independent enforcement powers. Early results were seen as encouraging. In 2019, several former state security officers were convicted in the case of the killing in 1999 of independent journalist Slavko Ćuruvija. However, after several years, the rest of the murder cases had not been satisfactorily resolved and the identities of the instigators, in what are widely seen as politically motivated killings, remain unproven. The lack of progress has led to fresh questions about the credibility of the Commission and the political will of the relevant national authorities.

In Sweden, the Government has expressed concern about an increase in threats made against media organizations. In 2018, it announced an Action Plan: Defending Free Speech – a set of measures to protect journalists, elected representatives and artists against threats and hatred. Police are to receive specialist training and operate under new guidelines to implement the plan and provide support to journalists, including freelancers, as well as editorial offices when required. Procedures related to the reporting and investigation into incidents are to be refined to take account of the policy of strengthening protections for those participants in democratic discourse.³⁷

In the Netherlands in 2018, following a spate of violent assaults against journalists and media houses reporting on organized crime, an agreement was reached between journalists and law enforcement authorities to set up new channels of communication and co-ordination mechanisms to counter threats and violence against journalists. Also, in 2017, academic

³⁶ See more: https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=08&dd=03&nav_id=104779.

³⁷ See “Government of Sweden Action Plan: Defending free speech – measures to protect journalists, elected representatives and artists from exposure to threat and hatred”. Available at: <https://www.government.se/4990f9/contentassets/bd181f7b0f4640e7920807d110b3c001/action-plan-defending-free-speech.pdf>.

experts at the University of Amsterdam began a wide-ranging “audit” of the country’s laws, policies and practices affecting freedom of expression and participation, with the aim of identifying good practices and shortcomings in the nation’s laws and administrative practices. The project’s expert advisory group includes government officials and figures from civil society, journalism, the media, law and academia. A detailed study with concrete recommendations is to follow. This project is intended to be a pilot for similar projects elsewhere.³⁸

As in Italy and Serbia, in many other OSCE participating States,³⁹ media and dedicated non-governmental organizations monitor and publish detailed records of physical attacks and threats, as well as legal challenges to journalists’ safety and other perceived threats to media freedom. States should take account of such records and address the issues raised by the data such records contain in good faith to provide remedies and redress as necessary.

› **Protecting journalists in situations of armed conflict**

In situations of armed conflict, state authorities, armed forces and other security personnel should protect journalists, media professionals and associated personnel and respect their professional independence and rights, in accordance with the 1977 Additional Protocols I and II to the four 1949 Geneva Conventions.

Under international humanitarian law, journalists must be recognized as civilians and protected as such, provided that they take no action adversely affecting their status as civilians. UN Security Council Resolution 1738

³⁸ See Audit of freedom of expression in the Netherlands, Institute for Information Law, University of Amsterdam: <https://www.ivir.nl/projects/auditoffreedomofexpression/>.

³⁹ Including, for example, Armenia, Bosnia and Herzegovina, Bulgaria, Russia, Turkey and Ukraine.

(2006) on the protection of civilians in armed conflict focuses on the issue of the safety and security of journalists, media professionals and associated personnel, and sets out the responsibilities of states. It reminds the Member States that attacks intentionally directed against civilians, including journalists, in situations of armed conflict constitute war crimes.

The OSCE Ministerial Council Decision on Safety of Journalists recalls this, clearly stating that journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and protected as such. The Decision condemns all violations and abuses committed against journalists, media professionals and associated personnel in situations of armed conflict.⁴⁰

All parties to armed conflict should fulfil their obligations to do their utmost to prosecute those responsible for serious violations of international humanitarian law and end impunity. To that end, military and all security forces present in conflict zones should be trained in international humanitarian law (the “laws of war”). The principles and rules of good practice should be clearly set out in a manual for armed forces that is readily accessible to all.

UN Security Council Resolution 2222 of 2015 urges the unconditional release of journalists who have been kidnapped or taken as hostages in situations of armed conflict; and calls on Member States to create and maintain, in law and in practice, a safe and enabling environment for journalists, media professionals and associated personnel to perform their work independently and without undue interference in situations of armed conflict.

⁴⁰ Available at: <https://www.osce.org/chairmanship/406538>.

› Observing legal constraints on the use of states of emergency, emergency laws and constitutional revisions

Under international human rights law, states may derogate from some of their obligations in cases of war or “a public emergency threatening the life of the nation”. However, the scope of the derogation may be only to the extent strictly required by “the exigencies of the situation” and it is never allowed to derogate from certain fundamental rights, including the right to life, and the prohibition against torture.

In a statement before the OSCE Parliamentary Assembly in 2019, the OSCE RFoM said:

Throughout history, when States have been faced with serious challenges – such as civil war or unrest, armed conflict or natural disasters – ideas of ‘emergency’ – or related concepts such as ‘calamity’ and ‘crisis’ – have provided the rationale for suspending the fundamental rights and freedoms guaranteed under law, particularly constitutional law [...]. More recently, especially in the OSCE region, states of emergency have been implemented in response to terrorist attacks, such as that which France declared after the November 2015 Paris attacks, or after the coup attempt in Turkey in 2016. However, I note a contemporary phenomenon: the overuse in many countries of the term ‘emergency’ through political rhetoric, conveying the impression that we are in a permanent ‘state of emergency’, even without formally or legally declaring it [...] the rights and freedoms of journalists and media organisations have to be protected even during times of emergency and crisis, in accordance with international law.⁴¹

⁴¹ Full speech available at <https://www.osce.org/representative-on-freedom-of-media/412277?download=true>.

Example

In March 2017, the Venice Commission (the European Commission for Democracy through Law) adopted an Opinion on the measures in Turkey’s Emergency Decree laws with respect to freedom of the media. It concluded that the mass liquidation of media outlets “appears to have been unnecessary and unjustified by the exigencies of the situation”; and it drew attention to the chilling effect which the emergency laws may have on the media in general.⁴²

With regard to the referendum on constitutional changes that was due to take place in April 2017, the Venice Commission stated: “In the run-up to a crucial referendum it is particularly important to have a healthy and pluralistic media scene where opposite points of view can be discussed without fear of reprisals... [T]he current situation with the freedom of media has seriously deteriorated, largely due to the effect of various emergency measures, and does not allow for a proper public debate on the future constitutional design of Turkey”.⁴³ When the state of emergency in Turkey ended in July 2018, the OSCE Parliamentary Assembly warmly welcomed this development.⁴⁴

In a statement ahead of World Press Freedom Day on 3 May 2020, the Council of Europe Secretary General, Marija Pejčinović Burić, called on governments to avoid unduly restricting media freedom during the COVID-19 crisis. She said:

Governments are facing unprecedented challenges during the COVID-19 crisis, but the situation must not be used to silence or hinder journalists.

⁴² See: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)007-e)

⁴³ See: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)007-e).

⁴⁴ See: <https://www.osce.org/parliamentary-assembly/388739>.

*Media must be free to report on all aspects of the crisis. Journalists have a key role and a special responsibility for providing timely, accurate and reliable information to the public. They must be able to scrutinise the decisions of authorities in response to the pandemic.*⁴⁵

The Council of Europe published an authoritative “toolkit” with guidelines for state authorities on respecting democracy, rule of law and human rights in the framework of the COVID-19 health crisis. It stated that in times of crisis media and professional journalists, in particular public broadcasters, play a key role and special responsibility for providing accurate and reliable information to the public. Official communications cannot be the only information channel about the pandemic to the public, because this would lead to censorship and suppression of legitimate concerns. Journalists, media, medical professionals, civil society activists and the public at large must be able to criticise the authorities and scrutinise their response to the crisis. Any prior restrictions on certain topics, closure of media outlets or outright blocking of access to online communication platforms are only justified in the most exceptional circumstances. In addition, the pandemic should not be used to silence whistleblowers or political opponents.⁴⁶

On 1 May 2020, the International Press Institute (IPI) published a report presenting data showing that COVID-19 had accelerated a decline in media freedom affecting Europe and North America as well as other regions of the world. IPI found that arrests, physical attacks and regressive “fake news” regulations had exacerbated an already challenging environment for media.⁴⁷ The report drew particular attention to the proliferation in

⁴⁵ See: <https://www.coe.int/en/web/media-freedom/-/secretary-general-governments-must-protect-essential-role-of-journalists-in-democracy-especially-in-times-of-crisis>.

⁴⁶ See: https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1d91_p_6-7_.

⁴⁷ See: <https://ipi.media/wpfd-2020-covid-19-accelerating-a-global-decline-in-media-freedom/>.

the number of states adopting laws against disinformation or “fake news” that it said could be abused to stifle criticism.

Example

On 23 March 2020, the OSCE RfOM expressed his concerns about provisions of the coronavirus response draft bill in Hungary that could negatively impact the work of the media reporting on the pandemic. The concerns related especially to the fact that the provisions of the bill were to be introduced for an indefinite period, and would make it punishable by a term of imprisonment between one to five years to distribute false facts in such a way that it obstructs or frustrates the effectiveness of the government’s response to the pandemic.⁴⁸ The European Parliament adopted a statement saying that Hungary’s measures were “totally incompatible with European values.”⁴⁹ In June 2020, the government repealed the emergency legislation. However, human rights groups said that the emergency powers had intensified concerns for press freedom by raising media fears of severe penalties for “scaremongering” over the pandemic.

› **Respecting the rights of journalists covering demonstrations and protests**

The high number of attacks and acts of violence against journalists carried out by police or other law enforcement personnel represents a serious threat

⁴⁸ “Coronavirus response bill should not impede the work of the media in Hungary, says OSCE Media Freedom Representative”. Available at: <https://www.osce.org/representative-on-freedom-of-media/449062>.

⁴⁹ See: <https://www.euronews.com/2020/04/20/analysis-how-should-the-eu-deal-with-totally-incompatible-hungary>.

to the safety and work of journalists. Many attacks result in physical injury, and many take place in connection with public demonstrations and protests.

Police should not detain or use violent force against members of the media who report on protests and other events in public places. The media plays a crucial role in providing information on the authorities' handling of public demonstrations. The presence of the media is important as a guarantee that the authorities can be held to account for their conduct towards demonstrators and the public at large.

Police should respect forms of media identification such as press cards and armbands, and maintain channels of dialogue with media and journalists' organizations to reduce the risk of disputes.

Professional training programmes should be provided to assist police and other law enforcement officials to understand and comply with internationally accepted standards concerning respect for the role of journalists and other members of the media at protests and demonstrations.⁵⁰

Example

During the Euromaidan protests in Ukraine between November 2013 and February 2014, at least one journalist was killed and reportedly more than 200 journalists suffered serious injuries, including gunshot wounds, as security detachments used force to suppress the demonstrations.⁵¹ Journalists' organizations reported that press

⁵⁰ See: Council of Europe Thematic Factsheet on "Media coverage of protests and demonstrations". Available at: <https://rm.coe.int/factsheets-demonstrations-final-rev1-august2017/1680735d83>

⁵¹ See: <https://www.osce.org/fom/111478>.

identifications, including vests marked “Press”, provided little or no protection, but that instead in some cases made them targets. The subsequent failure to bring to justice those responsible for the brutal uses of force gave rise to concerns about systematic impunity.

Example

In Armenia, at least 15 media workers were reportedly assaulted in April 2018 while covering street protests and displays of civil disobedience in Yerevan that were followed by the resignation of the prime minister and a change of government.⁵² Media and civil rights organizations had earlier protested many times about police violence against journalists during demonstrations and a lack of responsiveness to journalists’ complaints against use of unreasonable force by police and plain-clothes security agents. After a new government was formed in May 2018 criminal investigations were opened into some of past cases of violence against journalists.

Example

The killing by an armed intruder of five employees of the Capital Gazette newspaper in Annapolis, Maryland (USA), in June 2018, represented the heaviest death toll of any attack against media workers in the OSCE region since the massacre of 12 people in the offices of the satirical magazine Charlie Hebdo in Paris in January 2015.

⁵² See: <https://rsf.org/en/news/violence-against-reporters-during-11-days-protests-armenia>.

In 2017, the media in the USA recorded 34 arrests of journalists that year, mostly at protests, and a rise in the number of physical attacks suffered by journalists compared with previous years. The US Press Freedom Tracker, a coalition of media, human rights and other expert organizations, reported 45 such attacks in 2017, most of them during public protests.⁵³ Police were reported to be responsible for the assaults in 31 cases, including some at public protests at St. Louis, Missouri, in autumn 2017, over the case of an African American man who was shot and killed by a former police officer. In several cases, politicians assaulted journalists in anger in public venues. One Republican congressional candidate in Montana “body-slammed” a Guardian reporter, breaking his glasses, when the reporter attempted to question him. The politician later apologized and made a donation to an American press freedom organization. The increase in acts of violence against the media is said to have occurred against the background of frequent expressions of hostility and scorn for the press by the US President himself, as well as by some of his senior officials and followers. US media organizations have called for law enforcement to receive training about the dangers faced by journalists and the obligation of state agencies to protect them.

Example

In February 2019, the authorities detained several journalists and bloggers who were covering rallies in the cities of Almaty, Zhanaozen and Uralsk in Kazakhstan. One of the detained journalists, Radio Free Europe’s Azattyq service correspondent Saniya Toiken, was later charged with disobeying police and fined 20 times the legal minimum wage. The police detained and questioned correspondents

⁵³ See: <https://pressfreedomtracker.us/>

of the newspaper Ural'skaya Nedelya, who were covering a planned unauthorized rally in Uralsk on 23 June 2018. Additionally, the authorities briefly detained correspondents of the RFE/RL and the newspaper Diapazon, in Astana and Aktobe.⁵⁴

› **Prevent judicial and administrative harassment and ensure access to justice for targeted journalists**

The OSCE participating States have agreed to:

Take effective measures to end impunity for crimes committed against journalists, by ensuring accountability as a key element in preventing future attacks, including by ensuring that law enforcement agencies carry out swift, effective and impartial investigations into acts of violence and threats against journalists, in order to bring all those responsible to justice, and ensure that victims have access to appropriate remedies;

Encourage State bodies and law enforcement agencies to engage in awareness-raising and training activities related to the need to ensure safety of journalists, and to promote the involvement of civil society in such activities, where appropriate;

Implement more effectively the applicable legal framework for the protection of journalists and all relevant OSCE commitments.⁵⁵

The misuse of judicial or legal means to suppress journalists is a serious threat to the security and liberty of journalists in the OSCE area. Intimidation through the misuse of the law includes malicious, vexatious,

⁵⁴ See: <https://www.osce.org/representative-on-freedom-of-media/412628>.

⁵⁵ <https://www.osce.org/chairmanship/406538?download=true>.

or politically motivated criminal investigations and charges brought against journalists on trumped-up accusations with the intention of deterring them from reporting.

Judicial harassment or persecution also occurs when there is shown to be a lack of effective safeguards in legislation, for example because of high damages for defamation claims; arbitrary use of criminal law in defamation or anti-terrorism cases; or inadequate legal safeguards against political control of a broadcasting outlet.

States should amend relevant laws and practices and put in place effective safeguards to ensure that the threshold of evidence used by police or prosecutors before starting a criminal investigation or bringing charges against a journalists is consistent with international legal standards.

The case law of the European Court of Human Rights calls for the “broadest scope of protection” for freedom of expression, for example, where measures taken or sanctions imposed by State authorities may discourage the participation of the press in debates over matters of legitimate public concern.

Media organizations and journalists should not be harassed by being targeted with arbitrary, deliberately disruptive or punitive tax or other administrative inquiries and inspections, or with licensing requirements or other administrative demands that impede their work or undermine their viability.

The Venice Commission’s Rule of Law Checklist identifies clear indicators of a lack of independence of judicial processes.⁵⁶ They include selective

⁵⁶ Available at: <https://book.coe.int/en/constitutional-law/7019-pdf-the-rule-of-law-checklist.html>.

enforcement of the law, politically motivated prosecutions, and executive influence over the actions of prosecutors.

Example

Before she was murdered in October 2017, Maltese investigative journalist and blogger Daphne Caruana Galizia was the target of 47 civil and criminal defamation lawsuit charges by Maltese public and business figures, including a government minister. The cases related to her reporting of alleged high-level corruption and secret financial transactions revealed in the Panama Papers. Malta's defamation laws were criticized for allowing multiple lawsuits to be brought concerning a single published blog, and for allowing excessively high levels of damages. A son of the murdered journalist spoke about "three decades of relentless harassment" against his mother.⁵⁷ In an interview recorded shortly before her death, Daphne Caruana Galizia spoke of a "climate of fear" in Malta arising from sustained attempts by powerful people to silence her by means of legal threats and acts of violence including an arson attack against her home. On 15 May 2019, the OSCE RFoM welcomed amendments to Malta's defamation law, including the removal of criminal penalties and a lowering of the maximum amount of damages. However, he described it as "outrageous" that 34 plaintiffs in civil proceedings against the killed journalist were continuing to seek damages from members of her family after her death. The Representative called on public officials in Malta to accept a higher threshold of criticism and to drop the outstanding lawsuits.⁵⁸

⁵⁷ See: <https://www.standard.co.uk/news/london/son-of-murdered-journalist-daphne-caruana-galizia-speaks-out-about-threats-six-months-on-from-a3815246.html>.

⁵⁸ See: <https://www.osce.org/representative-on-freedom-of-media/381355>.

Example

In Armenia, 89 civil court cases for insult and slander were brought against journalists and media outlets in 2019.⁵⁹ The Armenian NGO Committee to Protect Freedom of Expression and other stakeholders complained that legislation made it too easy to bring defamation cases against the media.

› Detention and imprisonment of journalists

States should unconditionally release any journalists or media workers who have been arbitrarily arrested, detained, or taken hostage. In the 2018 Ministerial Council Decision on Safety of Journalists the participating States explicitly committed themselves to:

Urge the immediate and unconditional release of all journalists who have been arbitrarily arrested or detained, taken hostage or who have become victims of enforced disappearance;

Bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference;

Ensure that defamation laws do not carry excessive sanctions or penalties that could undermine the safety of journalists and/or effectively censor journalists and interfere with their mission of informing the public

⁵⁹ <https://khosq.am/en/reports/annual-report-of-cpfe-on-the-situation-with-freedom-of-expression-and-violations-of-rights-of-journalists-and-media-in-armenia-2019/>.

*and, where necessary, to revise and repeal such laws, in compliance with participating States' obligations under international human rights law.*⁶⁰

Journalists should not face administrative or criminal charges for their reporting, but in many OSCE participating States they face a risk of criminal prosecution and even prison for writing critical stories about public officials or institutions. The existence of such sanctions has a chilling effect on the exercise of journalistic freedom of expression.

Detention and prison sentences should never be considered for any press-related offence; the only exception that can arise is if other fundamental rights have been seriously impaired, such as incitement to violence.

Example

In March 2018, the European Court of Human Rights (ECtHR) ruled that Turkey had violated the rights to security, liberty and freedom of expression of columnist and economist Mehmet Altan and veteran journalist Sahin Alpay, who had been in detention since September 2016. The two men were accused on terrorism charges for allegedly using “coded language” in a television broadcast to support the coup attempt in July 2016. In January, Turkey’s Constitutional Court ruled that the pre-trial detention of Mr. Altan and Mr. Alpay violated their rights and that they should be released.⁶¹ However, a lower court refused to execute that order. Mr. Alpay was released from jail but he continued to be held under house arrest. The ECtHR criticized the fact that Alpay had been kept in pre-trial detention after the Constitutional Court’s ruling. Mehmet Altan is one of

⁶⁰ See: <https://www.osce.org/chairmanship/406538?download=true>.

⁶¹ See: <https://www.osce.org/fom/366066>.

six journalists whose life sentences for anti-state offences brought strong international condemnation. The ECtHR ruling and Turkey's response to it were seen as a test of Turkey's commitment to Article 46 of the European Convention which concerns the obligation of a member state to execute judgements of the ECtHR. It led to calls for Turkish courts to apply the principles of the March 2018 ruling by releasing dozens of other imprisoned journalists. On 27 June 2018, a court in Istanbul ordered the release of Mehmet Altan. On 3 October 2018, the Istanbul 26th Heavy Penal Court confirmed aggravated life sentences against six defendants, including Altan.⁶²

Example

In December 2014, Azerbaijani investigative journalist Khadija Ismayilova was imprisoned and later charged and sentenced to seven-and-a-half-years in jail on what were widely described as false and politically motivated charges in retaliation for her reporting on high-level corruption. The charges included embezzlement and "abuse of power". In May 2016, following sustained international protests, the Azerbaijan Supreme Court commuted her sentence to three-and-a-half-years, suspended.⁶³ In February 2020, the ECtHR found Azerbaijan had violated Ismayilova's right to liberty and the presumption of innocence, and concluded that the authorities acted in order to silence and punish her for her work as a journalist.⁶⁴ The OSCE RFoM has called on the Azerbaijani authorities to lift ongoing restrictions on her movement and to release other journalists who remain in jail.⁶⁵

⁶² See: <https://www.osce.org/representative-on-freedom-of-media/372571>.

⁶³ See: <https://www.osce.org/fom/242746>.

⁶⁴ Available at: <http://hudoc.echr.coe.int/spa?i=001-201340>.

⁶⁵ See: <https://www.osce.org/fom/363206>.

Example

In Uzbekistan, Dilmurod Saiid was detained on charges of forgery and extortion in February 2009 and released in February 2018.⁶⁶ Jusuf Ruzimuradov was sentenced in 1999 on charges that included attempting to overthrow the government, and was released only in March 2018.⁶⁷ Bobomurod Abdullaev and Khayot (Khan) Nasreddinov were charged with “appeals to violently overthrow of the constitutional order” and were released in May 2018 in Uzbekistan.⁶⁸

› **Strict safeguards concerning the use of anti-terrorism and national security laws**

Anti-terrorism and national security laws should not be used to prosecute journalists or others exercising the right to freedom of expression. The criminalization of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism directly responsible for increasing the likelihood of a terrorist act occurring.⁶⁹

Anti-terrorism laws should be narrowly defined. They should set clear and predictable limits to authorities’ interference and contain sufficient procedural guarantees to prevent abuse.

Factual reporting and comment on terrorism-related matters should not be equated with support for terrorism.

⁶⁶ See: <https://www.osce.org/fom/369916>; and <https://www.hrw.org/report/2018/03/28/you-cant-see-them-theyre-always-there/censorship-and-freedom-media-uzbekistan>.

⁶⁷ See: <https://www.osce.org/representative-on-freedom-of-media/374122>.

⁶⁸ See: <https://www.osce.org/representative-on-freedom-of-media/380086>.

⁶⁹ See: Communiqué on free expression and the fight against terrorism: <https://www.osce.org/fom/261951>; Communiqué on the impact of laws countering extremism on freedom of expression and freedom of the media <https://www.osce.org/fom/125186>.

Vague notions such as the promotion or glorification of terrorism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalized.

States should conduct regular, independent and far-reaching reviews of laws and practices related to anti-terrorism, national security and state secrecy in order to ascertain whether they infringe European and international standards of protection for human rights, freedom of expression and freedom of the press. The laws and practices should be amended or repealed as necessary to ensure that they are consistent with those standards.

States should not adopt or maintain laws and policies which involve blanket prohibitions on encryption and anonymity as part of their responses to terrorism and other forms of violence.

States should not use, or take advantage of, measures that weaken available digital security tools, such as backdoors, which disproportionately restrict freedom of expression and privacy and render communications networks more vulnerable to attack.

Particularly in the digital sphere, the very serious and legitimate aim to prevent and counter radicalization, violent-extremism, and terrorist propaganda also continues to be misused to infringe on the rights to freedom of expression and privacy. Effective safeguards should be established against such infringements.

The OSCE participating States must honour their commitments to “refrain from arbitrary or unlawful interference with journalists’ use of encryption and anonymity technologies and refrain from employing unlawful or arbitrary surveillance techniques” in accordance with

their acceptance that such acts “infringe on the journalists’ enjoyment of human rights, and could put them at potential risk of violence and threats to their safety.”⁷⁰

› **Libel and defamation laws and other restrictions on free opinion and expression: Compliance with freedom of expression and other fundamental rights**

Criminal defamation and insult laws remain on the statute books in most OSCE participating States and imprisonment is a possible sanction in most cases; other sanctions include fines and the loss of certain political rights.⁷¹ Criminal defamation laws have been used against the media across the OSCE region, including in Azerbaijan, Denmark, Germany, Greece, Hungary, Italy, Kazakhstan, Portugal, Switzerland and Turkey.

The OSCE RFoM advocates for the full decriminalization of defamation and the fair consideration of such cases in dispute-resolution bodies or civil courts. States should repeal legislation that provides for prison sanctions for insult and defamation, and abolish criminal liability for insult and defamation in all but certain cases where exceptional circumstances apply.⁷²

It is particularly welcome that, in the Ministerial Council Decision on Safety of Journalists adopted in 2018, the participating States have been called to “ensure that defamation laws do not carry excessive sanctions or penalties that could undermine the safety of journalists and/or effectively censor journalists and interfere with their mission of informing the public and, where necessary, to revise and repeal such laws, in compliance with participating States’ obligations under international human rights law.”

⁷⁰ See: MC Decision No. 3/18.

⁷¹ See: <https://www.osce.org/fom/35360>.

⁷² See communiqué on criminal defamation laws protecting foreign heads of state: <https://www.osce.org/fom/246521>.

States should remove all provisions in law for more severe penalties to be imposed in cases related to the reputations of those holding political or public office, and abolish the offence of insulting public institutions such as the office of the president or the armed forces, or symbols such as the national flag or anthem.

Blacklists that seek to exclude certain persons or categories of people from participating in public debates are not consistent with OSCE principles and international standards on the right to freedom of expression; nor are any arbitrary or politically motivated limitations on free expression and open debate, such as overly restrictive bans on certain interpretations of history.

In civil cases, a reasonable ceiling should be set to prevent the award of excessive costs and damages. A timetable for proceedings should be set, and the period for filing a defamation suit should be limited, e.g., to no more than one year from the date of publication. The defences of truth, expression of opinion and reasonable publication in the public interest should be recognized in libel law.

A study concluded that 15 OSCE participating States have repealed criminal insult and defamation laws: Armenia, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Ireland, Kyrgyzstan, Moldova, Montenegro, North Macedonia, Norway, Romania, Tajikistan, the United Kingdom and Ukraine. The United States has no criminal defamation laws at the federal level, but such laws continue to exist at the state level.⁷³

⁷³ See: Defamation and Insult Laws in the OSCE Region: A Comparative Study, OSCE, 2017; by Scott Griffen and Barbara Trionfi: <https://www.osce.org/fom/303181?download=true>.

Example

By early 2020, Italy had still failed to enact reforms to the country's defamation laws that it first promised to make in 2013 so as to abolish the provision for a maximum prison term of six years for defamation.

According to the Ossigeno per L'Informazione organization, under that law several hundred people, most of them journalists, have been sentenced to jail terms for libel in the past five years. In practice, only two journalists have actually served time in prison, Francesco Gangemi in 2015 and Antonio Cipriani in 2016. Most of the others had their sentences suspended and instead were placed under house arrest or the supervision of social services. However, the chilling effect is considered huge, as many thousands of libel cases have been brought in total during those five years; and although the great majority resulted in acquittals, the defendants in such cases ran a significant risk of being forced to pay the legal costs of the trials themselves.⁷⁴

Example

In Azerbaijan, harsh laws and formal and informal government pressure have largely eliminated independent broadcasting and print media. In 2017, new legislation was adopted that increased penalties for online defamation and insult, including prison terms for certain offences. The offence of criticizing the president online is punishable by a prison term of up to two years or a heavy fine. The ECtHR has repeatedly found

⁷⁴ See: "OSCE Legal Analysis of Law No. 925 of 17 October 2013 concerning the Defamation Legislation in Italy", by Boyko Boev, Senior legal officer, Article 19: <http://www.osce.org/fo-m/108108?download=true>.

Azerbaijan to be in breach of its obligation to protect journalists.⁷⁵ In 2014-2015, the RFoM issued statements, which spoke of systematic and wide-scale persecution of independent voices in Azerbaijan.

› **Thorough investigation of crimes against journalists to eradicate impunity**

In December 2017, the Office of the OSCE RFoM, in co-operation with the Media Governance and Industries Research Lab at the Department of Communication of the University of Vienna, organized a joint conference on the challenges to media freedom caused by the impunity for murders of journalists. In the meeting consisting of approximately 100 participants, experts from across the OSCE region discussed the practical, methodological and ethical aspects of monitoring the deaths of journalists and collecting information on such cases. The panel discussion and subsequent roundtable discussed ways to improve and amend current practices in the OSCE region.⁷⁶

The 2018 OSCE Ministerial Council Decision on Safety of Journalists calls on all participating States to “take effective measures to end impunity for crimes committed against journalists, by ensuring accountability as a key element in preventing future attacks, including by ensuring that law enforcement agencies carry out swift, effective and impartial investigations into acts of violence and threats against journalists, in order to bring all those responsible to justice, and ensure that victims have access to appropriate remedies.”⁷⁷

⁷⁵ See: e.g., Tofiq Yagublu v Azerbaijan App. No. 31709/13, Rasul Jafarov v Azerbaijan App. No. 69981/14.

⁷⁶ See: conference report: <https://www.osce.org/fom/368491>.

⁷⁷ Available at: <https://www.osce.org/chairsteamship/406538>.

The Decision calls the States to do their utmost to prevent violence against journalists and ensure accountability through impartial, speedy and effective investigations into all alleged violence against journalists and media workers, with the aim of bringing the perpetrators of such crimes to justice and ensuring that victims have access to appropriate remedies.⁷⁸

States should implement strategies for combating impunity for attacks and violence against journalists, including by creating specialized investigative units, appointing a specialized prosecutor, adopting specific protocols and methods of investigating and prosecuting such crimes, and training prosecutors and the judiciary in international norms and standards concerning the safety of journalists.⁷⁹

The law should provide for aggravated penalties to apply to public officials who seek to prevent or obstruct the investigation or prosecution of such crimes.

States should share information on the status of investigations into killings of journalists and other violent attacks on them in response to requests made by UNESCO, which records States' replies concerning the judicial follow-up to every recorded killing of a journalist. The UNESCO Director-General on the Safety of Journalists and the Danger of Impunity publishes the data based on States' replies in the biennial report.⁸⁰

Governments should adopt the principle that there is no statute of limitations for crimes against persons when these are perpetrated to prevent the exercise of freedom of information and expression, or when their purpose is the obstruction of justice. Civil or ordinary courts should

⁷⁸ Ibid.

⁷⁹ See: UN Human Rights Council Resolution HRC/RES/33/2 on the safety of journalists, 2016.

⁸⁰ See: UNESCO Director-General's Report of October 2016. Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/ipdc_council_30_4_en_02.pdf.

judge legal proceedings against those suspected of offenses against journalists discharging their professional duties.⁸¹

When follow-up actions by the State's investigative and judicial authorities do not result in bringing to justice the perpetrators of serious crimes against journalists, including killings, States may consider establishing special judicial or non-judicial inquiries into cases, or independent specialized bodies to conduct such inquiries, in consultation with independent media and civil society organizations and other experts, as in the case of the Serbian Commission for the Investigation of Murders of Journalists, see above.

Example

Following the murder of Daphne Caruana Galizia in Malta in October 2017, police arrested three suspects in connection with the crime, but the lack of progress by investigative authorities in identifying or arresting any suspected instigator or mastermind led to concerns about the effectiveness of the judicial response. The Parliamentary Assembly of the Council of Europe appointed a Rapporteur to monitor the ongoing murder investigation and the rule of law in Malta. In January 2018, eight partner organizations of the Council of Europe's Platform for the safety of journalists issued a joint statement which made reference to the Committee of Ministers' Recommendation (2016)4. The statement said:

⁸¹ See: UNESCO "Resolution 29 Condemnation of violence against journalists", November 1997. Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Brussels/pdf/ipdc_resolution_29.pdf

Investigations must be effective to maintain public confidence in the authorities' maintenance of the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts." The Guidelines to the Recommendation also recommend that "investigations should be subject to public oversight, and that the victim's next of kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests."⁸²

The son of the killed journalist, Paul Caruana Galizia, characterized the Government of Malta's response as "weak" and "ineffective". He questioned whether a conflict of interest might be hindering the progress of the investigation, saying "We are in this difficult situation now where the people our mother investigated – the police, the government, anti-money-laundering authorities – are now in charge of the investigation into her own assassination." The Government of Malta has said that all actions taken in the course of the investigation were in accordance with the law and respected all procedural guarantees including the rights of defence.⁸³

› **Protect journalists' confidential sources in the age of digital surveillance and mass data retention**

In emphasizing "the particular risks with regard to the safety of journalists in the digital age, including the particular vulnerability of journalists to becoming targets of hacking or unlawful or arbitrary surveillance or interception of communications, undermining enjoyment of their

⁸² See: <https://rsf.org/en/news/rsf-joins-calls-council-europe-ensure-justice-murdered-maltese-journalist-daphne-caruana-galizia>.

⁸³ See: https://www.coe.int/en/web/media-freedom/attacks-on-physical-safety-and-integrity-of-journalists/-/asset_publisher/TCvU5BkienuW/content/platform-partner-organisations-raise-alarm-after-grim-record-in-2017-and-urge-close-international-scrutiny-over-the-investigation-into-daphne-caruana-?_101_INSTANCE_TcVU5BkienuW_viewMode=view/.

right to freedom of expression and their right to be free from arbitrary or unlawful interference with privacy,” the 2018 OSCE Ministerial Council Decision on Safety of Journalists calls on all participating States to “refrain from arbitrary or unlawful interference with journalists’ use of encryption and anonymity technologies and refrain from employing unlawful or arbitrary surveillance techniques, noting that such acts infringe on the journalists’ enjoyment of human rights, and could put them at potential risk of violence and threats to their safety.”

Journalists’ right not to disclose their sources is an essential pillar of press freedom and should be strictly protected. The ability of the press to provide accurate and reliable reporting depends on this protection. Otherwise, sources may be deterred from assisting the press in informing the public on matters of public interest and the vital “public watchdog” role of the press may be undermined.

Disclosure may only be justified, in exceptional circumstances, where an overriding requirement in the public interest has been shown to exist following adjudication by an independent and competent judicial authority.

Searches at journalists’ workplace or home, seizure of journalistic material, or disclosure orders that could lead to the identification of sources of information must be backed up by strict legal safeguards, including a decision by an independent and competent judicial authority.

Governments’ greatly expanded use of surveillance and interception has undermined and put in question the ability of journalists to protect confidential sources. This includes the indiscriminate collection of meta-data, such as phone numbers and locations of users, and the use of online and mobile communications.

Laws expanding State' powers related to mass surveillance, targeted surveillance and data retention should include provisions to ensure that they protect the necessary protections for the security of the activities of journalists and whistleblowers as well as others who in confidence provide the media with information of public interest. The rights of whistleblowers should be protected through safe channels for people to report wrongdoing, and effective protections against dismissal, demotion and other forms of retaliation.

Safeguards should be established in law to ensure that confidentiality clauses in employment contracts are not abused to prevent whistleblowers from exposing criminality or serious wrongdoing to the media. Such orders can amount to an unjustified restriction on access to information, or censorship.

Example

In the UK, the Interception of Communications Commissioner, an independent authority appointed by the government, revealed in 2014 that the police in London had secretly accessed the telephone records of journalists many times to identify police officers who had leaked information to a newspaper. In all, it emerged that police in the UK had made over 600 applications to uncover confidential sources over three years. The Interception of Communications Commissioner said police forces did not give due consideration to freedom of speech and that government guidelines did not sufficiently protect journalists' sources. Following the revelations, the government accepted that police forces should require judicial approval to access journalistic records to discover the sources of their information.

Since 2015, legislation adopted in France, Germany, Poland, the UK and other European countries has expanded States' powers to carry out electronic surveillance with reduced levels of judicial oversight. The laws are challenged by media organizations and others who say they represent new and additional threats to the protection of confidential journalistic sources and the media's right to report.⁸⁴

› **Safeguarding the media's role in elections**

In order to ensure that everyone can enjoy one's basic democratic rights, independent and diverse media that provides reliable information is essential. This is particularly true in times of elections. Only an informed society, where public space for open and free debates is ensured, can fully make use of their right to vote. At times of elections, referenda and important public events, journalists should be protected from any increased risk of being attacked, arrested, or prosecuted because of their journalistic activities.

Law enforcement authorities should respect the role and responsibility of journalists to report all aspects of the electoral process, and take special measures of protection where necessary to ensure the safety of journalists at election times, including at voting places.

During election campaigns, regulatory frameworks for public broadcasters should encourage and facilitate the pluralistic expression of opinions. Public broadcasters should cover election campaigns in a fair, balanced and impartial manner.

In electoral campaigns, state authorities should uphold their obligations to ensure equitable access to the media, including to state television

⁸⁴ See: "Protecting Journalism Sources in the Digital Age", Julie Posetti, 2017, published by UNESCO: <https://unesdoc.unesco.org/ark:/48223/pfo000248054>.

channels, for the candidates and parties, and ensure the neutrality of state authorities with regard to coverage by the media and the use of state resources in the campaign.⁸⁵

In jurisdictions where national or regional state authorities have control or influence over media, or powerful media owners act in the interests of elected politicians, the editorial independence of journalists should be protected from improper pressure from media owners or managers to provide partisan or biased coverage.

The OSCE participating States have adopted a new commitment on “recognizing the crucial role of journalists in covering elections, in particular in informing the public about candidates, their platforms and ongoing debates, and expressing serious concern about threats and violent attacks that journalists can face in this regard” in their 2018 OSCE Ministerial Council Decision on Safety of Journalists.⁸⁶

Example

The preliminary conclusions of the OSCE Election Observer mission for the 24 June 2018 presidential and parliamentary elections in Turkey reported that the restrictive legal framework and powers under the state of emergency limited fundamental freedoms of assembly and expression, including in the media. It referred to the multiple statements by the OSCE RFoM calling on the Turkish authorities to reform the laws that criminalize journalistic work, including the Press Law, provisions of the Criminal Code and the Anti-Terror Law.⁸⁷

⁸⁵ See: the Venice Commission “Code of Good Practice in Electoral Matters”, 2002.

⁸⁶ See also Joint Declaration on Freedom of Expression and Elections in the Digital Age, available at: https://www.osce.org/files/f/documents/9/8/451150_o.pdf

⁸⁷ See: <https://www.osce.org/odihr/elections/turkey/384600?download=true>.

Example

The International Election Observation Mission to the Russian Presidential election on 18 March 2018 reported that the extensive and uncritical media coverage of the incumbent president during the campaign resulted in an uneven playing field. The mission reported, in particular, that a restrictive legislative and regulatory framework, including broad anti-extremist legislation, challenges media freedom and induces self-censorship. Libel and insulting public officials remain criminal offences. The media environment was also restricted by the power exercised by the media regulator, Roskomnadzor, to block entire websites without a prior court order – a sweeping power, which the OSCE RFoM described as a disproportionate restriction to freedom of expression.⁸⁸ The media environment was also limited by Russian legal regulations on foreign ownership of the media and the “foreign agents” law. Some activists who questioned the legitimacy of the election were detained.⁸⁹

Example

The International Election Observation Mission for the early presidential election of 11 April 2018 in Azerbaijan found that highly restrictive laws related to the media challenge freedom of expression and freedom of the press and extend to website and social media content. The Mission concluded that the election took place within a restrictive

⁸⁸ <https://www.osce.org/representative-on-freedom-of-media/410726>; <https://www.osce.org/representative-on-freedom-of-media/451324>.

⁸⁹ See: Statement of Preliminary Findings and Conclusions, ODIHR/OSCE: <https://www.osce.org/odihr/elections/russia/375670?download=true>.

political environment and under laws that curtail fundamental rights and freedoms that are prerequisites for genuine democratic elections. The Observers noted that defamation is a criminal offence punishable by imprisonment and with additional penalties for defamation of the president. The observers found that, as there are no broadcast or print media that critically analyse government policies, dissenting opinions regarding authorities' performance were absent from newscasts. The election took place in conditions dominated by the party that nominated the incumbent president. It was the first presidential election since constitutional amendments in 2016 had further increased the powers of the president.⁹⁰

Example

The Limited Election Observation Mission to Hungary's Parliamentary elections on 8 April 2018 concluded in a report that the election process was marred by the politicization of media ownership and a restrictive legal framework, which had a chilling effect on editorial freedom and hindered voters' access to pluralistic information. Defamation is a criminal offence in Hungary, punishable by up to three years in prison. The public broadcaster MI showed clear bias in favour of the ruling coalition and the government, in breach of OSCE commitments and international standards on the independence public broadcasters. The newspaper coverage monitored by the Mission devoted much more coverage to the ruling coalition (54 per cent) than to the opposition (around 10 per cent), although the lack of critical media coverage was partly offset, the report said, by lively coverage and debates on

⁹⁰ See: <https://www.osce.org/odihr/elections/azerbaijan/388580?download=true>.

the internet and social media. The report by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) said that the campaign was marked by intimidating rhetoric. It cited the leader of the ruling party and Hungary's prime minister since 2010, Viktor Orbán, as making veiled threats against civil society activists in the campaign, including by labelling them as "an army of mercenaries".⁹¹

Example

International observers from the Special Election Assessment Mission of the OSCE ODIHR said after the second round of the presidential election in Poland was held on 12 July 2020 that political polarization, as well as the lack of impartiality in the public media coverage, detracted from a well-run election. The observers reported that negative campaigning and mutual vilification abounded, while reports of threats against politicians and journalists were of serious concern. As in the first round, the incumbent's campaign and coverage by the public broadcaster were marked by homophobic, xenophobic and anti-Semitic rhetoric.⁹²

⁹¹ See: Limited Election Observation Mission Hungary – Parliamentary Elections, 8 April 2018, Statement of Preliminary Findings and Conclusions, ODIHR/OSCE: <https://www.osce.org/odihr/elections/hungary/377410?download=true>.

⁹² See: <https://www.osce.org/odihr/elections/poland/457204>.

› **Promotion of freedom of information and open government**

The right to receive information and ideas, as well as to seek and impart them, implies a right of access to information which is held by State authorities and which should be made public without undue restrictions.

The right of the public to be informed about all issues of public interest is closely interlinked with the positive obligation of States to ensure free and pluralistic media, where all voices of society are heard. It is also interlinked with the need for public service broadcasting that reports in an objective and fair manner and covers all issues of public interest, free from commercial or financial imperative.

States should place government-held information into the public domain with minimum restrictions and enact right to information legislation, taking into account European and international norms. Transparency is needed to ensure that those in power can be held to account.

The legislation should be backed up by a freedom of information commission or similar oversight body, which is independent of the government and which should promote unhindered and practical access to such information without unnecessary delay.

The grounds on which exemptions may be granted should be narrowly drawn; and on matters of national security, such exemptions should be limited to questions of overriding sensitivity and refusals should be subject to transparent and independent appeals procedures.

State security and intelligence services are also subject to the principle that there is a public interest in the disclosure of information revealing illegal activities within a state agency or public body.

In this regard, the OSCE participating States have also recognized the crucial importance of a free flow of information across the entire OSCE region, by reaffirming that “the media in their territory should enjoy unrestricted access to foreign news and information services, that the public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts...” in the 2018 OSCE Ministerial Council Decision on the Safety of Journalists.

Example

In Spain, in recent years some public figures, including government ministers, adopted a habitual practice of presenting statements to the media at press events without giving any opportunity to journalists to ask questions. In 2011, the Federation of Press Associations of Spain, the country’s leading professional journalists’ organization, started a public campaign of protest against such “press conferences without questions”. In 2013, at a time when the government faced public criticism over financial scandals, the then Prime Minister, Mariano Rajoy, introduced a new way of evading journalists’ questions by delivering his statements about government policies by video from a room apart from where the journalists were gathered. The practice was strongly criticized in 2015 by members of an international press freedom mission to Spain as a failure of government transparency and a barrier to the free flow of official information.⁹³

⁹³ See: “The State of Press Freedom in Spain: 2015 – International Mission Report”, March 2015, International Press Institute: https://www.access-info.org/wp-content/uploads/IPISpainReport_ENG.pdf.

› **Protection against online harassment and intimidation, arbitrary interference, internet shutdowns, and the spread of disinformation and propaganda**

An open, free and safe internet is essential for public debate and free flow of information, and should be protected. The digitalization of media has made journalists and other online voices more vulnerable to threats and intimidation.

Internet shutdowns represent a severe interference with freedom of expression. States should refrain from intentionally disrupting or preventing access to, or dissemination of, information online in violation of international human rights law.

Laws banning dissemination of deliberately false information based on vague and ambiguous descriptions, including “false news”, are incompatible with international standards and liable to be misused arbitrarily to censor or prohibit content which is unfavourable to those who exercise power. Any laws or provisions regarding content regulation should be narrowly defined so that they do not interfere with the right to freedom of expression, including the right to report controversial facts and to criticize government and other powerful social actors.⁹⁴

States should not make, sponsor, encourage or further disseminate statements which they know, or reasonably should know, to be false or which demonstrate a reckless disregard for verifiable information.⁹⁵

⁹⁴ Joint Declaration on “Fake News”, Disinformation and Propaganda. Available at: <https://www.osce.org/fom/302796?download=true>; Communiqué on propaganda in times of conflict. Available at: <https://www.osce.org/fom/117701>

⁹⁵ See: Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017. Available at: <https://www.osce.org/fom/302796?download=true>.

Women journalists should be protected from the additional risks of threats and harm they face because of harassment, abuse, explicit threats of sexual violence and other acts of violence, as well as graphic imagery they receive online.

States should strengthen the capacity of law enforcement agencies to identify threats to safety and protect individuals in danger, including providing tools and training on legal and technical matters.

Criminal and administrative prosecution for “secondary” social media activities such as sharing, re-posting, uploading or commenting on social media platforms pose a threat to freedom of expression and media freedom. Application of the criminal law against those activities can contribute to an atmosphere of fear and should be avoided.

No one should be penalized for activities such as posting and direct messaging unless they can be directly connected to violent actions and satisfy the test of an “imminent lawless action”. Any imposition of sanctions regarding social media activities should conform strictly with the principle of proportionality.

Example

In April 2018, the OSCE RFoM expressed concern about the policy of the federal media regulator, Roskomnadzor, to block the popular Telegram messaging service and social network application in Russia, after its owners refused to provide the security services with decryption keys to its service. The Representative said the move could represent an unjustified limitation of free speech and freedom of the media, and the proposed legislation risked compromising the

anonymity of users and the takedown of content based on vague procedural requirements. Roskomnadzor has exercised sweeping powers to block a large number of websites and to exclude the independent TV station Dozhd from distributing its services on cable and satellite networks inside Russia. Russian legislation restricting foreign media ownership and extending the potential designation as “foreign agent” to several foreign TV channels has been criticized as being incompatible with the country’s commitment to freedom of expression, and media freedom and pluralism.⁹⁶

Example

In 2012, the ECtHR ruled in *Yildirim v Turkey* that the Turkish authorities were in violation of their freedom of expression obligations by blocking access to an entire online platform. Any measure to restrict access to internet content must be prescribed in law, for a necessary democratic purpose, and proportionate. It should be precisely targeted to influence only the specific content to be removed.⁹⁷

› **Safety of female journalists**

Democracies can only thrive when a plurality of voices are heard, offline as well as online. Yet, one particular group of voices, that of female journalists, has been regularly and systematically targeted. Female journalists and other media actors are disproportionately experiencing threats, harassment and intimidation. The increase and prevalence of these gender-related

⁹⁶ See: <https://www.osce.org/representative-on-freedom-of-media/377767>.

⁹⁷ See: <https://www.osce.org/fom/104157>.

threats, particularly present on the internet, not only directly influence the safety of female journalists and their future work and online activities, but also directly affects the plurality of media. Female journalists face a double burden: being attacked as journalists and as women. Threats of rape, physical violence and graphic imagery show up in their inboxes and on their social media platforms as they go about their workday.

The Office of the OSCE RFoM has become alarmed by a growing number of reports in recent years, from across the OSCE region, of female journalists and bloggers being singled out and fiercely attacked online. In 2015, the RFoM launched its Safety of Female Journalists Online (#SOFJO) project. It includes several activities to raise awareness and develop appropriate responses to the problem. The goal of the campaign is to raise awareness of the prevalence of this type of harassment and to share the stories of women journalists who have been targeted. In turn, the campaign seeks to develop strategies to negate the effects that online harassment has on the lives of female journalists, their work, and also the serious threat that this type of gendered abuse poses to media plurality.

In December 2018, the RFoM, together with the International Press Institute, launched a full-length documentary, “A Dark Place”, to highlight the experiences of female journalists who have been affected by online harassment, in a bid to raise awareness of the problem and inspire change. “A Dark Place” focuses on the stories of women journalists as well as experts on gender and media from a number of OSCE participating States. The documentary, the first of its kind, explores how the issue of online harassment of female journalists goes beyond gender equality by directly impacting the freedom of the media and the fundamental human right of members of society to access a plurality of information. The issue requires the attention of everyone, of international organizations, governments and media companies – now more than ever.

The RFoM has developed a set of recommendations for participating States, media organizations, and intermediaries and social media platforms.⁹⁸

The specific risks faced by women journalists have been acknowledged various times since the start of the #SOFJO project. For example, in 2007, the Vienna Conclusions on Journalists and Media Ethics “acknowledge the specific risks faced by female journalists and its direct impact on media pluralism. To this extent, underline the importance of a gender-sensitive approach when considering measures to address the safety of journalists.”⁹⁹

Most importantly, in the Ministerial Council Decision on Safety of Journalists in 2018, participating States expressed their concern “by the distinct risks faced by women journalists in relation to their work, including through digital technologies, and underlining the importance to ensure their greatest possible safety and that the experiences and concerns of women journalists are effectively addressed”; and participating States committed themselves 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.”

An effective system for the protection of journalists is of the utmost importance. However, a different approach, with the engagement of all stakeholders, is necessary to ensure safety online, especially for women journalists who are targeted both as journalists and as women. A holistic approach, that considers all facets of online abuse and the resulting impact on women, is of key importance in identifying and developing effective and sustainable solutions to counter online harassment, ensure digital safety and ultimately, pluralistic and diverse media.

98 “Recommendations following the Expert Meeting New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists”, Vienna, 17 September 2015. Available at: <https://www.osce.org/fom/193556?download=true>.

99 See: <https://www.osce.org/representative-on-freedom-of-media/306836?download=true>.

Example

Starting in 2014, Arzu Geybullayeva has been the target of a years-long extensive online defamation campaign because of her work as an independent journalist, including numerous death and rape threats. While the authorities of Azerbaijan did not investigate the threats effectively, she speaks openly and loudly against online and physical intimidation of journalists throughout the OSCE region and beyond. Her story is among the ones displayed in the documentary “A Dark Place”.

› **Impartial, independent and consistent media regulation, in line with international standards**

State authorities should refrain from damaging media freedom and independence by denying accreditation to journalists, seeking to exclude critical voices, abusing state resources including advertising to influence or manipulate reporting, or seeking to control or capture media outlets and media regulators.

States should establish media plurality and competition rules that are effective in preventing over-concentration of media ownership; and transparency of media ownership should be assured by strict oversight of registration, including disclosure of the identities of shareholders and beneficial owners.

Media ownership, editorial control or management by any State or political body interferes with the responsibility to uphold media freedom, independence and plurality. Overt or persistent editorial bias resulting from political influence can amount to censorship.

Media that are owned or managed by national or regional State bodies or agencies should be reformed and, where practical, should be transformed into public service media that are subject to the standards of independence for public service media governance as outlined by the Committee of Ministers of the Council of Europe.

Conflict of interest laws should preclude elected politicians or officeholders from exercising influence over media content.

State and public advertising budgets should be allocated equitably among newspaper and broadcasting outlets without discrimination in favour of media outlets that support the government or any political party.

A body independent of government or political influence should determine the licensing and distribution of broadcasting frequencies, and should make allocations fairly as opposed to arbitrarily.

The governance and editorial management of public broadcasting media should ensure its editorial and operational independence from political or other vested interests, so that it may provide populations with access to credible and trustworthy news sources reflecting a broad variety of viewpoints. The State should not be involved in appointments at executive or editorial level.

Public service media should actively promote a culture of responsible, tough journalism that seeks the truth. There should be a culture of rigorous enquiry and debate, characterized by even-handed treatment of conflicting views and an appetite for internal challenge and review.¹⁰⁰

100 See: Recommendation of the Committee of Ministers of the Council of Europe to member States on public service media governance. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4.

Example

In an opinion published in 2015, the Venice Commission expressed criticism regarding several aspects of Hungary's laws and regulations concerning the media, including the independence of the Media Council and appointments to it; the determination of what constitutes illegal media content; the dominant market position and openness to political influence of the National News Agency; the provisions concerning the disclosure of journalistic sources; the procedures in place for enforcing heavy fines or other sanctions; and the procurement system for allocating State advertising budgets.¹⁰¹

Example

With respect to media pluralism and media freedom in the United States of America, the OSCE RFoM identified in June 2018 increasing concentration of telecom and media ownership as a source of concern, especially when companies own both the infrastructure and the media. The Representative also said, following the Federal Communications Commission's decision to repeal net neutrality rules, that doing so could limit the plurality of online information sources.¹⁰²

¹⁰¹ See: "Venice Commission Opinion on Media Legislation in Hungary", 2015: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)015-e).

¹⁰² See: "Concluding visit to USA, OSCE Representative stresses need for US leading role in promoting free media as journalists are increasingly under threat", 22 June 2018: <https://www.osce.org/representative-on-freedom-of-media/385575>.

Part Three.

Protection and prosecution

Part Three. **Protection and prosecution**

We have to protect journalists, only if journalists are safe, a free flow of information, and thereby, an informed public debate, can be ensured – a precondition for democracy and healthy societies.

Linas Linkevičius,
Foreign Minister of Lithuania
speaking at the OSCE conference on
“The Safety of Journalists – New Challenges and Responses” in
Vilnius, July 2017

› Safety of journalists: The first priority

The main priority of the Office of the OSCE Representative on Freedom of the Media (RFoM) is the safety and protection of journalists and the fight to end impunity for crimes committed against them. This part focuses on what participating States should be doing to meet their commitments on protection and prosecution to end impunity. The acute risks to journalists' lives is clear from the publication by the Office of the RFoM of the names of 392 journalists who have been killed in the course of their work in the OSCE region in 1992-2017.¹⁰³

Among the names on the RFoM's list of killed journalists are:

- Georgiy Gongadze, abducted in Kyiv, killed and beheaded in 2000;
- Elmar Huseynov, shot dead in his home in Baku in 2005;
- Anna Politkovskaya, shot outside her apartment in Moscow in 2007;
- Hrant Dink, shot outside his office in Istanbul in 2008;
- Natalya Estemirova, forced into a car in Grozny, Chechnya, and shot in 2009;
- Stéphane Charbonnier, killed alongside seven editorial colleagues by two gunmen at the offices of the Charlie Hebdo satirical magazine in Paris in 2015;
- Pavel Sheremet, murdered in a car bombing in Kyiv in 2016;

¹⁰³ <https://www.osce.org/fom/363446>

- Daphne Caruana Galizia, killed in a car bombing in Malta in 2017; and
- Ján Kuciak, shot dead with his fiancée Martina Kušnírová in Slovakia in February 2018.

It is clear from the circumstances of these and other killings that journalists who dare to expose corruption, crime and abuses of power are extremely vulnerable to being attacked or even killed for their work. Some of the murders are thought to be contract killings, carried out by hired hitmen on the orders of powerful figures to eliminate journalists and stop them from publishing incriminating or embarrassing facts. Some, like the Charlie Hebdo massacre, were perpetrated by terrorist groups, or by criminal gangs.

Journalists in a number of OSCE participating States have been ambushed and shot or brutally beaten by unknown attackers, attacked at or near their office and homes or in the street, and in some cases kidnapped and abducted before being killed or “disappeared”. In many cases, journalists have been maimed and suffered other life-changing injuries, either of a physical or psychological nature. Threats, intimidation, harassment and sexual aggression have serious short- and long-term consequences; they create fear that leads to self-censorship and ultimately the impoverishment of public debate. Such abuses are increasingly taking place online, and are increasingly targeting female journalists, thus requiring gender-specific responses.¹⁰⁴

All states have obligations to **prevent** crimes against journalists and others exercising their right to freedom of expression by creating a free

¹⁰⁴ See also the 2019 report on “Legal Responses to Online Harassment and Abuse of Journalists: Perspectives from Finland, France and Ireland”. Available at: <https://www.osce.org/representative-on-freedom-of-media/413552>.

and enabling environment (see Part IV); to **protect** journalists from harm by putting in place effective measures of protection; and to investigate and **prosecute** those responsible for killings and other attacks against journalists and bring them to justice.

In the 2018 OSCE Ministerial Council Decision on Safety of Journalists, the participating States committed themselves to:

Condemn publicly and unequivocally all attacks and violence against journalists such as killing, torture, enforced disappearance, arbitrary arrest, arbitrary detention and arbitrary expulsion, intimidation, harassment, and threats of all forms, such as physical, legal, political, technological or economic, used to suppress their work and/or unduly force closure of their offices, including in conflict situations;

Take effective measures to end impunity for crimes committed against journalists, by ensuring accountability as a key element in preventing future attacks, including by ensuring that law enforcement agencies carry out swift, effective and impartial investigations into acts of violence and threats against journalists, in order to bring all those responsible to justice, and ensure that victims have access to appropriate remedies.¹⁰⁵

An examination of cases concerning the killings of journalists and impunity demonstrates typical and recurring elements which states may take account of in order to implement effective strategies and actions to improve the safety of journalists and eradicate impunity.

¹⁰⁵ <https://www.osce.org/chairmanship/406538?download=true>.

› Failures in protection and prosecution show the need for reforms and remedies

The following cases exemplify the range of threats and forms of violence against journalists that demonstrates the need for state authorities to respond with effective law enforcement and judicial reforms, to save lives, ensure the rule of law and the administration of justice, and maintain a functioning democracy.

Example

Nikolai Andruschenko, a 73-year-old journalist and former city parliament deputy, the editor of Novy Petersburg newspaper in Russia died in hospital, in April 2017, from injuries sustained in a brutal attack six weeks earlier.¹⁰⁶ He was reportedly killed for his reporting about corruption and human rights abuses, including allegations against local police. No one was charged in connection with his death. The Committee to Protect Journalists reported that Andruschenko had been attacked earlier, in November 2016, by assailants who beat him up on the doorstep of his home.

He had also been attacked and beaten in 2007, a few weeks before police raided the newspaper. He was then sentenced to two months of pre-trial detention on charges related to his reporting of a murder investigation. Andruschenko reportedly lost his sight in one eye during his time in detention. Glasnost Defence Foundation (GDF) publicly challenged the official accusations of extremism and slander against the journalist as “selective justice”. It claimed that other media

¹⁰⁶ See: <https://www.osce.org/files/f/documents/9/b/356511.pdf>, Annex, p.26.

were intimidated into remaining silent about the case. Subsequently, GDF reported that the extremism charge was dropped and in 2009 Andruschenko was also cleared of slander.

Example

In August 2010, a Ukrainian journalist, Vasil Klymentyev, disappeared while investigating a case of alleged corruption involving members of Ukraine's security service. Klymentyev was the editor of Kharkiv Novy Stil, a local newspaper known for exposing scandals about corrupt officials in Kharkiv, Ukraine's second largest city. A murder investigation was opened and the journalist's mobile phone and other belongings were found at a reservoir where he had last been seen, but the investigation yielded no results and no remains were found. No one was ever arrested in connection with his suspected murder.¹⁰⁷

Example

In 2008, Pavol Rypal, an investigative journalist working in Slovakia, vanished suddenly without trace. He was known for his reports about cybercrime and the Slovak criminal underworld. Members of his family expressed their belief that he was killed because of his work. In March 2015, another investigative journalist in Slovakia, Miroslav Pejko, who worked for the business daily Hospodarske Noviny, also disappeared. In both cases, the official investigative authorities said

¹⁰⁷ See: <https://www.osce.org/fom/72159>.

they had failed to make progress in resolving the facts behind those disappearances. Following the mafia-style killing of Ján Kuciak and his fiancée in February 2018, media and human rights groups renewed demands for information and for the re-opening of investigations into the disappearances of Pavol Rypal and Miroslav Pejko.

› **Protection of journalists as civilians in situations of crisis or armed conflict**

International humanitarian law requires that states and all parties to armed conflict treat journalists in conflict zones as civilians, provided that they do not act in ways adversely affecting their status as civilians. Any attack on civilians may constitute a war crime or crime against humanity. The principle is spelled out in the 1949 Geneva Conventions and 1977 Additional Protocol I, reiterated by UN Security Council Resolution 1738, adopted in 2006, and in the 2018 OSCE Ministerial Council Decision.

States must also fulfil their obligations under other international instruments and treaties, as well as international customary law, concerning the protection of their civilians, including journalists. This includes, inter alia, the International Convention for the Protection of All Persons from Enforced Disappearance, the European Convention for the Prevention of Torture and the UN Convention against Torture, and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

In 2017, Reporters Without Borders (RSF) reported that two journalists were held hostage in the non-government-controlled areas of the Donetsk and Luhansk regions. In 2014, more than 30 journalists were recorded as being kidnapped and detained there, in some cases for an extended time.

The risk of being captured, or injured or killed, has discouraged many reporters from entering the Donetsk and Luhansk regions.

In all, RSF estimated in 2017 that 54 journalists were being held hostage around the world. That number included seven foreign journalists held captive by armed Islamist groups in Syria. Among the hostages were an unspecified number who were based in OSCE participating States or otherwise working for media organizations there.

› **Effects of attacks and intimidation against journalists: Self-censorship or silence**

The Council of Europe's 2017 publication "Journalists under pressure: Unwarranted interference, fear and self-censorship in Europe" gathered evidence of journalists' experience of threats and attacks in Europe.¹⁰⁸ The study publicised the results of a detailed questionnaire of 940 journalists in the 47 member States of the Council of Europe and Belarus. It found that in the previous three years, 31 per cent had suffered physical assault at least once. The percentage was 60 per cent in the South Caucasus, 52 per cent in Turkey, and 45 per cent in Eastern Europe. It was 26 per cent in South-East European countries and 25 per cent in Western European countries.

The survey showed that intimidation and violence have become increasingly common experiences for journalists across Europe. Forty-six per cent of respondents said they had been threatened with violence, and 40 per cent reported that the pressures or threats they had experienced had altered or materially affected their lives. Thirty-seven per cent of them reported exercising self-censorship by suppressing or downplaying information for fear of violence or other reprisals.

¹⁰⁸ See: <http://www.europarl.europa.eu/cmsdata/124026/marilyn-clarke.pdf>.

In a number of countries, journalists in the survey identified the police as a major source of intimidation. In Turkey, police accounted for 72 per cent of cases, in South Caucasus 55 per cent and in Eastern Europe 43 per cent. Other agents of intimidation were political, business, media and lobby interests.

The survey revealed a widespread mistrust in the police and other state institutions. Fifty-seven per cent of journalists who had been assaulted chose not to report it to the police. Overall, over one third of respondents reported that they felt there was no mechanism they could use to report an incident of intimidation or unwarranted interference.

› **Impunity indicates serious failings of the rule of law**

The high rate of impunity, which shields perpetrators after committing murders and other serious crimes against journalists, is a warning sign that the foundations of the rule of law and judicial independence are at serious risk.

The OSCE's findings show that the impunity rate in such cases is very high. In most OSCE participating States, the overall rate of successful prosecution for murders is high, but the rate is consistently lower in cases where the victim is a journalist.¹⁰⁹

The RFoM, speaking at the OSCE's Human Dimension Implementation Meeting in Warsaw in September 2017, remarked that it is his responsibility to alert authorities when commitments may not be respected, and it remains the responsibility of the authorities to hear this alarm, and whenever needed, to revise their approach. Combating and eradicating impunity stands out as one of the most urgent and important issues

¹⁰⁹ See: <https://www.osce.org/fom/363586:%20and%20> <https://www.osce.org/representative-on-freedom-of-media/401738>.

where policies of zero tolerance, and fresh approaches as outlined below, are urgently needed.

Example

Hrant Dink, a prominent Armenian Turkish journalist and editor, was shot dead outside the offices of his newspaper, Agos, in Istanbul in January 2007. The gunman and an accomplice were quickly arrested. Dink had received death threats after Turkish ultranationalists objected to his writings about issues related to the mass killings of Armenians in Ottoman Empire in World War I. In 2010, the European Court of Human Rights (ECtHR) ruled that the authorities had failed in their duty to protect Hrant Dink's life and freedom of expression. The court also ruled that "no effective investigation had been carried out into the failures which occurred in protecting the life of Firat [Hrant] Dink." A significant factor was that Dink had been convicted in 2006 in a Turkish court under article 301 of the country's Penal Code for denigrating Turkish identity in his writings. The ECtHR found that the Turkish court's ruling had "made Dink a target for extreme nationalists and the Turkish authorities, who had been informed of the plot to kill him, [and] had not taken steps to protect him."¹¹⁰

Example

Georgiy Gongadze, an investigative reporter and editor of the independent online news website Ukrainska Pravda, was abducted

¹¹⁰ See: <https://www.osce.org/fom/48142>; <https://www.osce.org/fom/110385>; <https://www.osce.org/fom/294641>; <https://www.osce.org/fom/87053>.

and murdered in 2000. His decapitated body was discovered later that year, but his widow, Myroslava Gongadze, was not given confirmation that the body was her husband's until 2003, and the investigation into the murder was marked by delays and contradictory official information. In 2005, the ECtHR ruled that the Ukrainian authorities had failed in their duty to protect the journalist's life. It also ruled that the authorities had failed to conduct an effective investigation of the murder because, it said, they had "seemed to limit the case to prosecution of the direct offenders, and not those who ordered and organised it". Eventually a former police general, Aleksei Pukach, as well as three accomplices, were convicted of killing Gongadze and they were sentenced to lengthy jail terms. However, evidence that appeared to implicate a former president of Ukraine in ordering the killing because of Gongadze's reports about high-level government corruption was set aside and was never heard in court.¹¹¹ The Gongadze ruling drew attention to the failure by the Ukrainian authorities to provide Myroslava Gongadze, the widow of the murdered journalist, full access to information related to the investigation until August 2005. The Court concluded that the authorities' behaviour towards Muroslava Gongadze amounted to degrading treatment.

The Georgiy Gongadze and Hrant Dink cases are landmarks in the ECtHR's case law concerning the positive obligations on States to take effective measures to protect those who face threats of violence for exercising their right to free speech and to carry out effective investigations to bring to justice the perpetrators of such killings.

¹¹¹ See: <https://www.osce.org/fom/53283>; <https://www.osce.org/fom/54659>; <https://www.osce.org/fom/83631>; <https://www.osce.org/fom/182411>.

› **The positive obligations of states related to protection and prosecution**

The principle of States' "positive obligations" requires States to protect journalists, and to investigate and prosecute attacks against them and to fight impunity. Elected politicians, public officials and members of the judiciary in OSCE participating States should understand the application of the principle, which has been developed through cases at the ECtHR. A leading legal expert elaborated on this in a paper published by the Council of Europe:

It is fundamental to the European system of human rights protection that although the primary object of many provisions of the European Convention on Human Rights is to protect the individual against arbitrary interference by public authorities, there may also be additional positive obligations which are considered to be inherent to the effective respect of the rights concerned. This means that in certain circumstances the state is under an obligation to prevent Convention violations being committed by individuals (or other non-state entities) against other individuals.¹¹²

The ECtHR explained its reasoning in a ruling in 2000:

The Court recalls the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.¹¹³

112 See: "The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism", Philip Leach, 2013. Available at: <https://rm.coe.int/1680484e7d>.

113 Özgür Gündem v Turkey, No. 23144/93, 16.3.00, paras. 43 & 46.

Positive obligations apply in particular in the field of freedom of expression and the protection of journalists. The ECtHR's ruling stated:

*...while setting up an efficient system to protect authors and journalists, States should create an environment which allows full participation in open debates, enabling everyone to express their opinions and ideas without fear, even if they are contrary to those defended by authorities or by an important share of public opinion or even if they shock or offend them.*¹¹⁴

The positive obligation to take preventive measures will arise if it is established that:

*...the authorities knew or should have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonable, might have been expected to avoid that risk.*¹¹⁵

The Court notes that, in assessing the knowledge by the authorities of any risk to life, it may also take account of the possibility that a risk to life arose from the activities of persons who have a connection with the security forces. The failure of a State to protect the life of a threatened journalist and the failure to conduct a prompt, impartial effective investigation can amount to a culture of impunity which is liable to lead to further attacks on journalists, including killings.

The Council of Europe's Committee of Ministers spelled out the harmful effects on society:

¹¹⁴ Dink v Turkey, Nos. 2668/07, 6102/08, 30079/08, 7072/09 & 7124/09, 14.9.10, para. 137.

¹¹⁵ See, e.g., Kilic v Turkey No. 22492/93, 28.3.00, paras. 63; Dink v Turkey, Nos. 2668/07, 6102/08, 30079/08, 7072/09 & 7124/09, 14.9.10, para. 65.4.

*The absence of such effective measures gives rise to the existence of a culture of impunity, which leads to the tolerance of abuses and crimes against journalists and other media actors. When there is little or no prospect of prosecution, perpetrators of such abuses and crimes do not fear punishment. This inflicts additional suffering on victims and can lead to the repetition of abuses and crimes.*¹¹⁶

The OSCE participating States in Ministerial Council Decision No. 3/18 took note with concern of the climate of impunity and committed themselves to

*take effective measures to end impunity for crimes committed against journalists by ensuring accountability as a key element in preventing future attacks, including by ensuring that law enforcement agencies carry out swift, effective and impartial investigations into acts of violence and threats against journalists, in order to bring all those responsible to justice, and ensure that victims have access to appropriate remedies.*¹¹⁷

A climate of impunity is a major factor fueling the killings of journalists and other violent crimes against them, because it sends a signal to others who may seek to silence journalists or other critical voices that to murder a journalist is not likely to result in punishment.

The chilling effect of attacks on journalists is already far-reaching. Letting those who attack or even kill journalists get away without being brought to justice constitutes a second crime against the victims. Impunity leads to an additional chilling effect. A significant number of journalists have been driven into exile outside their home countries. Many have been driven to

116 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.

117 See also: <https://www.osce.org/fom/368491>.

abandon journalism altogether. Others have succumbed to pressures or inducements to give up independent journalism, and instead act as media mouthpieces for governments or political and business interests that may seek to use control of media organizations to disseminate deliberately partisan information, denigrate the reputations of opponents and limit open public debate. Examples appear routinely in the regular reports of the RFoM to the Permanent Council of the OSCE, and in published reports by national and international monitoring organizations.

It is of paramount importance that those who commission or order the killings of journalists are identified and punished, as well as those who commit such crimes under the direction of others, and those who aid and abet any murder of a journalist. All too often in the past, the person or persons ultimately responsible for the crime have remained unknown or unpunished, even if in some cases the persons who actually carried out the crime have been prosecuted or convicted.

High rates of impunity cast doubt on the independence and effectiveness of the administration of justice and the rule of law, and undermine public confidence in state authorities. In order to stamp out impunity, the authorities must establish genuinely independent institutions and safeguards, and root out political and other corrupt influences from law enforcement and judicial systems.

› **Crimes against freedom of expression**

Key principles concerning states' responsibilities to protect journalists from attacks and effectively investigate and prosecute should an attack occur were set out in the "Joint Declaration on Crimes against Freedom of Expression" issued in 2012 by the UN Rapporteur on Freedom of Opinion and Expression, the OSCE RFoM, the Organization of American States

Special Rapporteur on Freedom of Expression and the African Commission
Special Rapporteur on Freedom of Expression and Access to Information.

The Joint Declaration put forward these principles for the attention of states:

General Principles

- a. State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.*
- b. States should reflect in their legal systems and practical arrangements, as outlined below, the fact that crimes against freedom of expression are particularly serious inasmuch as they represent a direct attack on all fundamental rights.*
- c. The above implies, in particular, that States should:*
 - i. put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem;*
 - ii. ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions;*
 - iii. ensure that victims of crimes against freedom of expression have access to appropriate remedies.*

The Joint Declaration outlines the **obligations to protect** as follows:

- a. *States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression.*
- b. *Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression.*

These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.

The Joint Declaration also sets out states' responsibilities, when a crime against freedom of expression takes place, to launch an '*independent, speedy and effective investigation*' to **prosecute** and bring to trial both perpetrators and instigators of the crimes:

Where there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of inquiry related to the victim's expressive activities have been exhausted.

It states that "*crimes against freedom of expression, if committed by State authorities, represent a particularly serious breach of the right to freedom of expression*".

In addition, it emphasizes the necessity of the institutional and practical independence of the investigation as well as of the tribunal:

When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.

Law enforcement officials should put an effective and operationally independent system in place for processing complaints regarding investigations. Consideration should be given in particular to establishing “specialized and dedicated units” to investigate such crimes “where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression”.

Among other important points presented in the Joint Declaration are effective access to the procedure by victims and relatives:

The victims, or in case of death, abduction or disappearance the next-of-kin, should be afforded effective access to the procedure. At the very least the victim or next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests. In most instances, this will require giving access to certain parts of the proceedings and also to the relevant documents to ensure participation is effective.

Open justice is necessary so that justice may be seen to be done:

Restrictions on reporting on court cases involving prosecutions of crimes against freedom of expression should be limited to highly exceptional cases where clearly overriding interests prevail over the particularly strong need for openness in such cases.

› **United Nations urge far-reaching measures to combat impunity**

UN General Assembly Resolution 68/163 on the safety of journalists and the issue of impunity, adopted on 18 December 2013, proclaimed 2 November as the annual International Day to End Impunity for Crimes against Journalists. The date marks the day, in 2013, when armed rebels in Mali killed two French radio journalists, Ghislaine Dupont and Claude Verlon. It urged all States:

...to do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies.

In 2016, the UN Human Rights Council adopted Resolution 33/2 on the safety of journalists. It urged States to adopt further specific measures and mechanisms to combat impunity, in particular by improving the knowledge, skills and compliance with international standards of law-enforcement agencies and judiciaries:

- a. The creation of special investigative units or independent commissions;*
- b. The appointment of a specialized prosecutor;*
- c. The adoption of specific protocols and methods of investigation and prosecution;*
- d. The training of prosecutors and the judiciary on the safety of journalists;*

- e. *The establishment of information-gathering mechanisms, such as databases, to permit the gathering of verified information about threats and attacks against journalists;*
- f. *The establishment of an early warning and rapid response mechanism to give journalists, when threatened, immediate access to the authorities and protective measures;*

› **The UN Human Rights Committee: Obligations under the International Covenant on Civil and Political Rights**

The necessity of effective measures of protection is emphasized in the authoritative General Comment by the UN Human Rights Committee, the body of independent legal experts who advise states about their international obligations under the International Covenant on Civil and Political Rights. Its 2011 “General comment No. 34, Article 19: Freedoms of opinion and expression” says: “States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.”¹¹⁸

The General Comment addresses the issue of the role and function of journalism in modern societies, where effective participation in public debate has been greatly expanded:

Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers.

¹¹⁸ Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

The UN Human Rights Committee makes clear that States' responsibilities to protect journalists, and those who perform the function of journalism, are not restricted to full-time professional journalists or to those to whom officials have granted recognition or favour:

Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.

› Council of Europe

The Council of Europe acts as the guardian of the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) in Strasbourg rules on alleged violations of the civil and political rights set out in the ECHR. Its judgements are legally binding on member States and are considered to be authoritative in other jurisdictions.

The Committee of Ministers of the Council of Europe has acknowledged on behalf of member States that the scale and intensity of attacks and threats against journalists and a media freedom are “alarming and unacceptable”. In April 2016, ministers adopted far-reaching Recommendation containing guidelines concerning States' obligations on the **prevention, protection and prosecution** of crimes against journalists and other media actors.¹¹⁹

On the duty to **protect**, the document urged States to take measures including police protection or voluntary evacuation to a safe place:

¹¹⁹ 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, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9.

State authorities have a duty to prevent or suppress offences against individuals when they know, or should have known, of the existence of a real and immediate risk to the life or physical integrity of these individuals from the criminal acts of a third party and to take measures within the scope of their powers which, judged reasonably, might be expected to avoid that risk.

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

The Recommendation also calls for guarantees against misuse of authority, by law enforcement officials or others, to detain or arrest journalists or other media actors:

In all cases of deprivation of liberty of journalists or other media actors by the police or other law-enforcement officials, adequate procedural guarantees must be adhered to, in order to prevent unlawful detention or ill-treatment.

Such procedural guarantees, it says, must include access to basic rights including the right of access to a lawyer, the right of access to a medical doctor, and the right, if charged, not be held for an unreasonable length of time in pre-trial detention.

The Council of Europe Recommendation also urges member States to encourage and support early-warning and rapid-response mechanisms established by media organizations or civil society, such as hotlines,

online platforms or 24-hour emergency contact points, to ensure that journalists and other media actors have “immediate access to protective measures when they are threatened”.

Sometimes journalists and media organizations lack trust in the good faith or the capacity of State authorities to provide effective protection. Considering this, the Council of Europe Recommendation urges:

If established and run by the State, such [protection] mechanisms should be subject to meaningful civil society oversight and guarantee protection for whistle-blowers and sources who wish to remain anonymous.

The Recommendation urges that investigations must collect and analyse all the evidence to establish whether there is a connection between the threats and violence against journalists and the exercise of journalistic activities or “contributing in similar ways to public debate”.

Particular care should be taken to ensure that public officials are not accorded any special protections by virtue of their positions and are treated equally with others under the law:

Investigations must be effective in order to ensure to maintain public confidence in the authorities’ maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.

The Recommendation calls for aggravated penalties in case public officials are found to obstruct an investigation:

The law should provide for additional or aggravated penalties to be applicable to public officials who, by neglect, complicity or design, act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for crimes against journalists or other media actors.

› **Global mechanisms for monitoring, reporting and tackling impunity**

At the United Nations the issues of journalists' safety and the fight against impunity have become the focus of intense international attention and co-ordinated actions since 2012, when the multi-agency UN Plan of Action on the Safety of Journalists and the Issue of Impunity was adopted.¹²⁰ The UN Plan covers more than 100 concrete action lines, and calls for active participation by a range of UN agencies and bodies, regional organizations such as the OSCE and Council of Europe, Member States, non-governmental organizations, the media, and the academic community. The UN Action Plan underlines that *“without freedom of expression, and particularly freedom of the press, an informed, active and engaged citizenry is impossible”*.

Due to the increasing dangers that female journalists face, and in order to ensure plurality and that citizens are well informed and actively participate in society, the UN Action Plan highlights the need for a gender-sensitive approach.

UNESCO, the lead agency for implementing the UN Plan of Action, operates a global inter-governmental mechanism for monitoring and reporting on the results of investigations and judicial follow-up following the killings of journalists. Every two years the UNESCO Director-General

¹²⁰ https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf.

publishes and presents a “Report on the safety of journalists and the danger of impunity”, based on information provided voluntarily by the States concerned.¹²¹ It lists all the journalists’ killings from the previous periods, and records which of the cases have or have not been resolved through the prosecution and conviction of those responsible.

In 2017, UNESCO’s Executive Board publicly urged Member States to ensure voluntary implementation of the UN Plan of Action at national level. It strongly urged them to provide information in response to requests from UNESCO on judicial investigations into the killings of journalists. It also called for priority to be given to activities addressing the specific threats to the safety of women journalists.

In the same year, UNESCO and the UN Office of the High Commissioner for Human Rights held a multi-stakeholder consultation on the implementation of the UN Plan of Action with the participation of States, media representatives and others. The outcome document contained further specific suggestions for UN Member States to demonstrate their commitment to the goals of the Action Plan – including by adopting protocols and operating procedures for law enforcement officials to ensure effective protection for journalists and prosecution of violations against them; improving national reporting on journalist safety issues; and stepping up peer pressure (“support and accountability”) to influence non-responsive Member States to respond fully to UNESCO’s requests for information regarding judicial follow-up when journalists are killed.¹²²

¹²¹ See: <https://unesdoc.unesco.org/ark:/48223/pf0000265828>.

¹²² “Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity: Consultation outcome document, August 16, 2017”. Available at: https://en.unesco.org/sites/default/files/options_geneva_consultation.pdf.

Part Four.

**Prevention:
A safe and enabling
environment for
unhindered press
freedom**

Part Four.

Prevention: A safe and enabling environment for unhindered press freedom

A free, uncensored press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other rights.

*General Comment No. 34: Article 19: Freedoms of opinion and expression,
UN Human Rights Committee,*

September 2011

Part Three is focused on international standards and best practices on *protection* for journalists as well as *prosecution* of crimes against journalists and ending impunity. This part describes the general measures and practical policies states should adopt for the *prevention* of attacks against journalists and freedom of expression. Prevention requires that States create and maintain a safe and enabling environment so that media freedom, independence and plurality can flourish and journalists can work without fear or undue interference.

An effective prevention strategy must include a legislative and regulatory framework consistent with international standards and good practice, particularly with respect to legislation on national security matters and the criminalization of defamation or other forms of expression; an independent judiciary backed by safeguards that protect press freedom and freedom of expression as a fundamental pillar of democratic society; effective mechanisms and safeguards to ensure the accountability of law enforcement and other agencies of the State, and non-legal measures including training of public officials in human rights standards and a political culture that encourages civic freedoms and a vigorous, pluralistic public debate in which all voices of society are heard.

Considering that the UN Human Rights Committee has underlined that a free press is essential to ensure freedom of expression and the enjoyment of other rights, States should ensure a favourable environment for freedom of expression by maintaining independent and accountable oversight bodies free from political and commercial interference, such as Information Commissions, Human Rights Commissions, Election Commissions, Independent Broadcasting Authorities, Telecommunications Regulators, Ombudsperson's offices and appeals procedures in accordance with international norms and domestic legislation.

States should also co-operate fully with international mechanisms, such as UN and regional rapporteurs, the UN Human Rights Council's Universal Periodic Review and UN agencies, including the UNESCO-led interagency UN Plan of Action on the Safety of Journalists and the Issue of Impunity and UNESCO's requests for information about judicial follow-up after the killing of journalists as part of the international strategy to eradicate impunity.

In 1975 and 1989, the OSCE participating States committed themselves to "improve the working conditions for journalists".

› **Mechanisms for review and reform of legislation**

States need to have agreed mechanisms for carrying out independent reviews of domestic laws and practices affecting the protection of journalism and the safety of journalists and other media actors, including those related to State secrecy, national security, regulatory and investigative powers, and surveillance and interception.

States may also establish permanent or standing mechanisms to conduct impact assessments of new or draft laws and practices to ensure their conformity with those standards. Provision should be made for procedures for judicial reviews by judges and independent legal experts with powers to scrutinize and propose revisions or repeals of legislation.

The requirement that States shall establish and maintain a favourable environment for the safety of journalists and freedom of expression relates closely to the obligation that any restriction on the right to freedom of expression must be prescribed by law; necessary to achieve a legitimate purpose in a democratic society (for example national security, public order or the protection of health); and applied in a way

which is proportionate to the pursuit of the declared purpose. Any limitation, such as the imposition of a sanction against a journalist or a media outlet, or an order to take down harmful or illegal content from a website, must be the least intrusive action consistent with the law to achieve that purpose.

The protection of rights means protecting everyone from violations, whether the violations are carried out by State actors such as public officials or by non-State actors, including organized crime or terrorist groups or any private persons.

In this context, it is essential to note that journalism in the modern age is a function shared by a wide variety of actors, including not only professional, full-time reporters but also others who engage in the collection and dissemination of information to the public through any media, regardless of whether or not they are recognized as a journalist by any government. This is also recognized in the 2018 OSCE Ministerial Council Decision on Safety of Journalists by “acknowledging that journalism and technology are evolving”.

› **The OSCE Ministerial Council Decision on Safety of Journalists**

A consensus-based decision on Safety of Journalists was voluntarily adopted to strengthen their OSCE commitments in the area of media freedom in December 2018, and is of a politically binding nature. In the area of legal frameworks for a safe and enabling environment, the Decision calls on participating States to:

Fully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting,

promoting and protecting the freedom to seek, receive and impart information regardless of frontiers;

Bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference;

Encourage State bodies and law enforcement agencies to engage in awareness-raising and training activities related to the need to ensure safety of journalists, and to promote the involvement of civil society in such activities, where appropriate;

Ensure that defamation laws do not carry excessive sanctions or penalties that could undermine the safety of journalists and/or effectively censor journalists and interfere with their mission of informing the public and, where necessary, to revise and repeal such laws, in compliance with participating States' obligations under international human rights law;

Implement more effectively the applicable legal framework for the protection of journalists and all relevant OSCE commitments.

› **Other international frameworks for creating a safe and enabling environment**

A universal guide for States about the measures required to create a safe and enabling environment for journalists is provided by UN Human Rights Council Resolution 33/2 on the safety of journalists, which was adopted in September 2016.¹²³

¹²³ Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/33/2.

The Resolution represents a political commitment on behalf of the international community. It calls on States to “create and maintain” a safe and enabling environment for journalists in law and practice by establishing these fundamental conditions:

National legal frameworks that are consistent with States’ international obligations and commitments; and safeguards against the misuse of national laws, policies and practices to hinder the ability of journalists to do their work independently and without due interference;

Support for the judiciary, law enforcement and military personnel, as well as journalists and civil society, in training in international human rights and humanitarian law obligations relating to the safety of journalists;

Regular monitoring and reporting of attacks against journalists and publicly condemning violence and attacks;

Dedicating the resources necessary to investigate and prosecute such attacks and to develop and implement strategies for combating impunity for attacks and violence against journalists.

The Resolution draws particular attention to the importance of the following measures:

A gender-sensitive approach to measures to address the safety of journalists because of the specific risks faced by women journalists;

Measures to mitigate the risks to the safety of journalists in the digital age, including their vulnerability to unlawful or arbitrary surveillance and/or interception of communications, in violation of their rights to privacy and freedom of expression;

Recognising the crucial role of journalists and media workers in the context of elections, including to inform the public about candidates, their platforms and ongoing debates;

Ensuring that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not arbitrarily hinder the work and safety of journalists;

Protecting the confidentiality of journalists' sources in acknowledgement of the essential role of journalists in fostering government accountability, subject only to limited and clearly defined exceptions;

The Resolution stresses the need for better co-operation and co-ordination at international level with regard to the safety of journalists, and encourages national, sub-regional and international human rights mechanisms and bodies to address relevant aspects of the safety of journalists in their work.

The later UN General Assembly Resolution 72/175 on the safety of journalists and the issue of impunity, adopted on 19 December 2017, expressed “deep concern about the misuse of national laws, policies and practices to hinder or limit the ability of journalists to perform their work independently and without undue interference.”¹²⁴

The General Assembly Resolution recognized the efforts by States to review and, where necessary, amend laws, policies and practices that limit the ability of journalists to perform their work independently. It also called on States to ensure in particular that measures to combat terrorism and preserve national security “do not arbitrarily or unduly

¹²⁴ Available at: <https://digitallibrary.un.org/record/1467885>.

hinder the work and safety of journalists, including through arbitrary arrest or detention or the threat thereof”.

In these documents, the international community explicitly recognizes that the safety of journalists is endangered by both threats and acts of physical violence, and by a lack of safeguards to protect them from judicial harassment, or the misuse or arbitrary application of law. The resolutions also emphasize the additional risks faced by female journalists and other marginalized voices.

The 2018 annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and rule of law in its 47 member States exposed the scale of the dangers to the safety of journalists across Europe, referring to physical attacks, harassment, intimidation and arbitrary or selective prosecution and imprisonment.¹²⁵ It found that the safety of journalists and other media actors was “stable” in only 23 of those States and that the safety is “deteriorating” in 17 member States.

› **National security and terrorism**

Acts of terrorism and all forms of extremist violence endanger and violate the human rights of all. States have a duty to preserve public safety and national security against all forms of terrorism. However, in many cases governmental authorities have enacted laws and practices without the safeguards required by international law. Often, they have been accused of using the threat or fear of terrorism as a pretext to restrict freedom of expression and to stifle criticism, including by journalists, human rights defenders and civil society activists as well as political opponents.

¹²⁵ Council of Europe Secretary General’s 2018 Report. Available at: <https://rm.coe.int/state-of-democracy-human-rights-and-the-rule-of-law-role-of-institutio/t68o86coc5>.

When terrorist attacks or other crises occur, it is particularly important that the media is able to provide the public with the best available information. State authorities should ensure access by journalists to information that is regularly updated, and should refrain from putting pressure on journalists or placing unnecessary obstacles in the way of them having access to relevant locations. The media should be seen as an ally in combating terrorism.

While States have a positive obligation to protect journalists, media houses – in the framework of the duty of care to their employees – should also protect them from risks related to the growth of terrorism to the best of their ability. On the other hand, journalists should do their utmost not to jeopardize the safety of persons through the information they disseminate.¹²⁶

The growth of extremist or terrorist movements and their use of the internet has resulted in a flood of violent or hateful material and terrorist propaganda in video, text and other forms of media, particularly online. Its targets have frequently included legitimate media outlets and individual journalists as well as public institutions and commercial organizations.

The most far-reaching impact of terrorism on the work and lives of journalists, however, has arisen through States' curtailment of fundamental civil and political rights in the name of combating terrorism and extremism. Sweeping anti-terrorist legislation has been adopted widely across the Euro-Atlantic area, leading to increased government secrecy and a large number of criminal prosecutions and cases of imprisonment of journalists. In some cases, it has also led to the undermining of judicial independence and threats to the rule of law and democratic standards.

126 See: the Council of Europe Committee of Ministers Declaration on freedom of expression and information in the media in the context of the fight against terrorism, 2005, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016805dac48..

The resulting setbacks and barriers to respect for freedom of expression and media freedom were outlined in the 2016 “Joint Declaration on Freedom of Expression and countering violent extremism” by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE RFoM, and their counterparts in the Organization of American States (OAS) and the African Commission on Human and Peoples Rights.¹²⁷

That Joint Declaration condemns the criminalization of expression through vague or sweeping laws, which have led to the prosecution of journalists for offences such as glorification of terrorism, propaganda or support for terrorism, extremism, and “hooliganism”. In the name of national security, States have sometimes enacted legislation without adequate scrutiny or consultation with stakeholders and the public. The four international Rapporteurs insist that States should not restrict reporting on terrorism unless the intention of the reporting is to incite imminent violence and there is an immediate connection between the reporting and the occurrence of the violence. States should continue to respect the right of journalists not to reveal their confidential sources. Independent legal and oversight mechanisms should be used to prevent abuse of surveillance powers; and all State initiatives and programmes aimed at countering and preventing violent extremism should be independently reviewed on a regular basis to determine their impact on human rights.

The Council of Europe has urged member States to carry out substantive reviews of relevant laws and practices, including with regards to anti-terrorism laws, to ensure the protection of journalism and the safety of journalists, with one or more independent bodies conducting the reviews

¹²⁷2016 Joint Declaration on Freedom of Expression and countering violent extremism. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19915&LangID=E>.

and making recommendations for necessary reforms. The Committee of Ministers' Recommendation 2016(4) specifies that those reviews should include the areas of national security and counter-terrorism:

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.

Example

The case law of the European Court of Human Rights (ECtHR) makes clear that State security and intelligence agencies are not above the law. In 2013, for example, the ECtHR ruled in the case *Bucur and Thoma v. Romania*, involving the intelligence services of Romania that the public interest in disclosing illegal activities by the intelligence services outweighs the interest in preserving public confidence in those services.¹²⁸ The ECtHR considered that the general interest in the disclosure of information revealing illegal activities within intelligence services was so important in a democratic society that it prevailed over the interest in maintaining public confidence in the security and intelligence services. The ECtHR emphasized that the information about the illegal telecommunication surveillance of journalists, politicians and business people that had been disclosed to the press affected the democratic foundations of the State. Hence, such a disclosure concerned very important issues for the political debate in a democratic society, in which public opinion had a legitimate interest.

¹²⁸ <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-7395&file-name=002-7395.pdf>.

Therefore, the Court found that the sanction against the whistleblower who informed the media about the illegal activities by the intelligence services in his country amounted to a violation of Article 10 of the European Convention on Human Rights.¹²⁹

› Protection of journalists' confidential sources

The protection of journalistic sources is a basic condition for press freedom. In a landmark judgement, *Goodwin v. the United Kingdom*, the ECtHR ruled that the ability of the press to inform the public on matters of public interest depends on respecting that protection, unless an overriding public interest can justify an order of source disclosure:

*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.*¹³⁰

The ability of journalists and news media to protect the confidentiality of sources and the identities of whistleblowers has been undermined by governments' expanded use of surveillance and interception, largely justified in the name of the fight against crime and terrorism.

The UNESCO report on [Protecting Journalism Sources in the Digital Age](#), published in 2017, found that the ability of journalists around the

¹²⁹ See also: "The Right to Freedom of Expression and Information under the European Human Rights System : Towards a more Transparent Democratic Society – Dirk Voorhoof". 14 February 2014: <https://inform.org/2014/02/14/the-right-to-freedom-of-expression-and-information-under-the-european-human-rights-system-towards-a-more-transparent-democratic-society-dirk-voorhoof/>.

¹³⁰ *Goodwin v. the United Kingdom*, 27 March 1996, Para 39, available at: <http://hudoc.echr.coe.int/eng?i=001-4027>.

world to report without fear is under threat from mass surveillance, indiscriminate data collection and data retention.¹³¹ Where source protection is compromised, the report says, the negative impacts can include pre-publication exposure of journalistic investigations that may trigger cover-ups, intimidation, or destruction of information; revelation of sources' identities with legal or extra-legal repercussions on them; sources of information running dry; and self-censorship by journalists and citizens more broadly.

The UNESCO report advises journalists to radically strengthen their skills and the technologies they use to secure data and communications in order to protect sources. It acknowledges that women journalists face additional risks in the course of their work – on- and offline – and that female sources face increased risks when acting as whistleblowers or confidential informants. In addition, freelance journalists are considered especially vulnerable to legal and technological threats.

› Protection of whistleblowers

Whistleblowers who provide information to members of the media play a vital part in exposing corruption and other kinds of wrongdoing, and informing the public on matters of genuine public interest. They should have basic protections in law, but in practice, those protections are often inadequate or lacking.¹³²

In the UK, more than 30 public officials who acted as whistleblowers by passing information to news media about failures and abuses in British prisons were convicted after two newspapers gave up information about

131 UNESCO, “Protecting Journalism Sources in the Digital Age”, by Julie Posetti. Available at: <http://unesdoc.unesco.org/images/0024/002480/248054E.pdf>.

132 See, e.g.: Joint Declaration on Media Independence and Diversity in the Digital Age. Available at: <https://www.osce.org/representative-on-freedom-of-media/379351?download=true>.

payments they had made to the officials.¹³³ Many of the journalists involved in the coverage of the prison system over several years were acquitted on the basis that their actions were in the public interest and were therefore not unlawful.

In the case of Antoine Deltour and Raphaël Halet, who in 2015 exposed details of the LuxLeaks scandal concerning secret agreements made by Luxembourg with international private companies to enable them to avoid paying taxes; they were tried and convicted in July 2016.¹³⁴ The two men worked for the accountancy firm PWC and were given fines and suspended sentences of 12 months and nine months respectively (later sentences were reduced as a result of their respective appeals). Eventually, the Luxembourg authorities recognized the whistleblower status of Antoine Deltour and the ECtHR is still to examine the compatibility of Luxembourg's criteria regarding the whistleblower status of Raphaël Halet. Edouard Perrin, the French journalist who revealed the scandal through the International Consortium of Investigative Journalists (ICIJ), stood trial on charges of violating trade secrecy and breach of confidentiality but was later acquitted.

Practical examples of confidential online platforms for whistleblowers to publish revelations anonymously include the anti-corruption site Magyarleaks, which is managed by Atlaszo.hu in Hungary; Neuwleaks in Belgium; and Publeaks in the Netherlands. In 2016, the Government of the Netherlands enabled the setting up of a "House for Whistleblowers" under the auspices of the national Ombudsman. The House provides legal advice to whistleblowers and has powers to request documents from relevant organizations. The Netherlands has also made it a legal requirement for large companies to create safe internal channels for whistleblowers.

¹³³ See: <https://www.theguardian.com/uk-news/2017/feb/12/uk-government-ac-cused-full-frontal-attack-prison-whistleblowers-media-journalists>.

¹³⁴ See: <https://www.osce.org/fom/154056>.

In 2013, Transparency International published its International Principles for Whistleblower Legislation.¹³⁵ They call for legislation and policies that provide accessible disclosure channels for whistleblowers, meaningfully protect whistleblowers from all forms of retaliation, and ensure that the information they disclose can be used to advance needed reforms. States should ensure that State secrecy and trade secrets laws are not used to silence whistleblowers or journalists. Relevant laws should provide robustly for a public interest defence and eliminate any disproportionate penalties.

› Defamation and insult laws

Criminal defamation laws have been used in some OSCE participating States to silence dissent, inhibit critical media coverage and protect individual or vested interests. They represent a major barrier to media freedom and freedom of expression. The threat of criminal prosecution leads to self-censorship and deprives the public of its right to receive information from independent sources.

At the end of 2017, the great majority of OSCE participating States still maintained laws criminalizing defamation. Many also apply them regularly, in spite of a wide international consensus that criminal defamation for the protection of reputation is not justified except in very exceptional circumstances. The ECtHR has repeatedly criticized the imposition of criminal sanctions for defamation, stating that such penalties are bound to have a chilling effect on free expression.¹³⁶

The OSCE Ministerial Council called on participating States to “ensure that defamation laws do not carry excessive sanctions or penalties that

¹³⁵ Available at: https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

¹³⁶ See: “Defamation and Insult Laws in the OSCE Region: A Comparative Study” (Commissioned by the OSCE RFoM), 2017, available at: <https://www.osce.org/fom/303181?download=true>

could undermine the safety of journalists and/or effectively censor journalists and interfere with their mission of informing the public and, where necessary, to revise and repeal such laws, in compliance with participating States' obligations under international human rights law.¹³⁷

In defamation cases, the ECtHR weighs the protection of a person's reputation against the wider public interest in securing a robust public debate. It has ruled that politicians, public figures, and heads of State are required to demonstrate a greater degree of tolerance to criticism than ordinary citizens do. *Lingens v. Austria* established that principle in 1986.¹³⁸ The case concerned a journalist's criticism in 1975 of the then Chancellor of Austria, Bruno Kreisky.

Unreasonably high damages for civil defamation claims also have a chilling effect on freedom of expression. Clear, transparent and strict safeguards should be in place against them.

The UN Human Rights Committee, the UN treaty body that oversees the crucially important International Covenant on Civil and Political Rights, has said that all States "should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

Representatives of regional inter-governmental bodies have been outspoken in opposing criminal defamation laws. In 2002, the OSCE RFoM, together with the UN and OAS Special Rapporteurs on Freedom of Expression, said in a Joint Declaration covering the issue of criminal

¹³⁷ See: <https://www.osce.org/chairstanship/406538?download=true>.

¹³⁸ *Lingens v. Austria*, Application No. 9815/82, Judgement of 8 July 1986, available at: <http://hudoc.echr.coe.int/eng?i=001-57523>.

defamation: “*Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.*”¹³⁹

In 2010, the same group, now joined by the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People’s Rights, declared criminal defamation to be one of the ten key threats to freedom of expression in the coming decade.¹⁴⁰ The OSCE RFoM has frequently called on OSCE participating States to repeal all remaining criminal defamation laws.

› **Reviewing and reforming legislation: A vital safeguard**

In 2016, the governments of the Council of Europe for the first time agreed to recommend that all the member States should arrange to carry out thorough and independent periodic reviews of their domestic laws and practices of States to bring them into line with obligations under the European Convention. *The Recommendation (2016)4 on the protection of journalism and the safety of journalists and other media actors* adopted by the Committee of Ministers of the Council of Europe calls on States to “*review relevant domestic laws and practice and revise them, as necessary, to ensure their conformity with States’ obligations under the European Convention on Human Rights*”.¹⁴¹

The Recommendation calls for an initial, expeditious review to be conducted by an appropriate independent body, to ensure that safeguards for the exercise of the right to freedom of expression are “robust and effective in practice” and that legislation is backed up by effective

¹³⁹ Available at: <https://www.osce.org/files/f/documents/8/f/39838.pdf>

¹⁴⁰ Tenth Anniversary Joint Declaration: Ten key challenges to freedom of expression in the next decade (2010). Available at: <https://www.osce.org/fom/41439?download=true>.

¹⁴¹ Recommendation CM/Rec (2016) 4, adopted by the Committee of Ministers on 13 April 2016.

enforcement machinery. State authorities are to submit review reports, and they are urged to respond by revising legislation as appropriate and to take other corrective actions. The Recommendation urges State authorities to create the necessary conditions for this process to take place. It also calls for further follow-up reviews to be carried out at regular periodic intervals thereafter:

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 independent body, or bodies, may be a national human rights commission, ombudsperson, or similar. The reviews should have substantial powers to access documents and question officials and others holding public office. They should ensure the fullest possible participation of journalists, independent media and civil society organizations. Moreover, their recommendations should lead to the repeal or reform of legislation and practices that are found to be inconsistent with European and international norms and standards.

› **Strengthening the role of national human rights institutions**

Many OSCE participating States have recognized national human rights institutions (NHRIs), whose role is to provide oversight over the actions of State authorities and provide assurance to the public that domestic and international safeguards are effective. The mandates, legal or advisory

powers, structures, funding sources and relationships with governments of such institutions vary widely. Typically, NHRIs have mandates that refer to the protection and promotion of human rights in general, including the rights of minorities and other vulnerable communities, the prevention of torture and the rights of children and disabled people.

In practice, the powers of NHRIs to provide remedies and to change legislation and the behaviour of governments significantly are weak or strictly limited.¹⁴² Few of them have until now been granted a specific mandate to address matters related to freedom of expression or the protection of journalists and journalism, although some have the authority to oversee the operation of laws on access to information.

States may, however, consider expanding – and if necessary reinforcing – the independent mandate, powers and resources of an NHRI to enable them to effectively assist with the task of creating a safe and enabling environment for free and independent journalism.

It is noted that the current limitations of NHRIs also point to structural weaknesses in the political culture of some States with regard to the separation of powers and the effective independence of institutions which make up the body politic. NHRIs may be regarded as:

...part of a governance model that needs some time and preparation in order to be properly implemented, particularly in countries where the idea of separation of powers and the existence of a diversity of checks and balances is not well understood and accepted. In other words, NHRI need to build their own strong legitimacy through a good performance, but at the same time they also need to operate within a proper political and institutional environment.

¹⁴² See the Council of Europe paper “How to strengthen soft powers for press freedom: national human rights institutions”, by Joan Barata Mir, 2016: <https://rm.coe.int/168066do7a>.

› Freedom of information

OSCE commitments and principles include facilitating and promoting the free dissemination of information as well as the role of journalists in fostering freedom of expression and freedom of opinion, and the sharing by governments of information of public interest.

A right of access to information is implicit in international instruments such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights, which guarantee to everyone the right to seek, receive and impart information and ideas without interference and regardless of frontiers. Freedom of information laws are essential to the public interest or ‘watchdog’ role of journalists and other media actors. Those laws should be founded on the principle of accepting a general right of access and must not be unduly restrictive. The UN Human Rights Committee says in its authoritative comment on the right to freedom of opinion and expression:

To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.¹⁴³

A number of conditions should be fulfilled to ensure “easy, prompt, effective and practical” access. The procedures should provide for the timely processing of requests for information according to clear rules

143 UN Human Rights Committee General Comment No. 34. Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.

The Council of Europe has acknowledged the link between adequate right to information laws and the protection of the rights and safety of journalists. The Committee of Ministers has declared that the absence of such laws is likely to make journalists vulnerable to formal or informal measures to stop them from obtaining and publishing information in the public interest, which the State may have kept secret unnecessarily or to protect public officials from the scrutiny expected in a democracy.

Journalists and others who perform public watchdog functions through the media are often in a vulnerable position vis-à-vis the public authorities or powerful interests groups because of their role in informing the public and provoking debate on issues of public interest. Obstacles created in order to hinder access to information of public interest may not only discourage journalists and other media actors from fulfilling their public watchdog role, but may also have negative effects on their safety and security.¹⁴⁴

In 2009, the ECtHR recognized a fundamental right of access to information held by public bodies. The Court said that the right to information is especially protected when these bodies are the only ones that hold this information (an “information monopoly”) and when the information is needed by media or by civil society organizations

¹⁴⁴ Declaration of the Committee of Ministers on the protection of journalism and the safety of journalists and other media actors, 30 April 2014, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c5e9d.

that are using the information to facilitate public debate and to hold governments accountable.¹⁴⁵

The great majority of the OSCE participating States now have access to information laws. Most countries have an oversight mechanism, which adjudicates appeals, such as an Ombudsman or Information Commissioner, but in at least a dozen participating States an appeal or complaint may only be made through a court.

The practical effectiveness of national right to information laws for journalists and others varies greatly. Journalists frequently encounter arbitrary denials of requests, excessive delays, bureaucratic obstacles and high costs. A culture of secrecy is said to persist in many States. Laws related to State secrets as well as terrorism laws that do not meet international standards are often cited to justify non-disclosure, while systems of appeal are often seen as inadequate.

› **Journalists crossing borders: Obstacles and forced removals**

OSCE commitments call for the free movement of journalists across the borders of any OSCE participating State. However, several States, including Russia and Ukraine, have imposed travel bans on a number of journalists and media houses and prevented them from entering their territories. A number of journalists travelling outside their own countries have also faced criminal charges. In several cases, the OSCE RFoM has written to the Ukrainian and Russian authorities urging them to refrain from imposing unnecessary restrictions on the work and movements of foreign journalists which affect the free flow of information and freedom of the media.¹⁴⁶

145 See: *Társaság a Szabadságjogokért v Hungary* (2011).

146 See: OSCE RFoM communiqué on the accreditation of foreign journalists for implementing the right to freedom of information: <https://www.osce.org/fom/245466>.

Example

In May 2017, Afgan Mukhtarli, a journalist known for his writing about government corruption in Azerbaijan, was abducted and taken by force from self-imposed exile in Georgia to Azerbaijan. The Georgian authorities later announced an investigation into the journalist's unlawful forced detention. In January 2018, Mukhtarli was convicted, despite a lack of convincing evidence, on smuggling and other charges, and sentenced to six years in jail. Press freedom organizations have accused the authorities of Azerbaijan of kidnapping the journalist and convicting him on trumped up charges.¹⁴⁷ In March 2020, a court ruled to replace the remainder of the term with a fine and released the journalist.

Serious concerns have been expressed by the OSCE RFoM office and by stakeholders about the threat to journalists' freedom and safety resulting from the issuing of Interpol "red notices" against journalists abroad by Azerbaijan, Kazakhstan, Turkey and Uzbekistan. A red notice is a request to locate and provisionally arrest an individual pending extradition. Interpol issues it at the request of a member country or an international tribunal based on a valid national arrest warrant. In August 2017, for example, the OSCE RFoM asked Interpol to review the arrest warrants issued by Turkey, stating that Interpol must not be misused by any State to stifle freedom of expression.¹⁴⁸ In the case of Dogan Akhanli, a German writer of Turkish origin, Interpol decided to lift the red notice against him in line with Interpol's duty to protect individuals against persecution.

¹⁴⁷ See: <https://www.osce.org/fom/366346>; <https://www.osce.org/fom/363206>; <https://www.osce.org/fom/347741>.

¹⁴⁸ See, e.g.: <https://www.osce.org/representative-on-freedom-of-media/384561>; <https://www.osce.org/fom/362881>; <https://www.osce.org/fom/264751>; <https://www.osce.org/fom/165661>; <https://www.osce.org/fom/336406>.

Part Five.

**Journalists
and media
organizations:
Self-help and
good practices for
journalists' safety**

Part Five.

Journalists and media organizations: Self-help and good practices for journalists' safety

› **In the field, the newsroom and the editor's office**

The risks to journalists' personal safety and security have risen sharply in conflict and non-conflict areas alike in recent years. Organizations representing journalists and news media organizations have to focus more intensively on ensuring the necessary professional skills and defences to minimise the risks. Many have also engaged in national, regional and global efforts to achieve stronger protections in law and practice for journalists and their work.

The development of highly sophisticated surveillance and tracking and monitoring technologies pose a new kind of systemic risk to journalists. Journalists should maximise their protections against cyberattacks, cybercrime, surveillance and interception of their communications. Faced with these risks, journalists, editors, managers and owners of media houses are well advised to take all possible precautions to reduce the risks to the safety of media workers in conflict zones and other situations of difficulty or danger. That means the best possible preparation in terms of hostile environment and first aid training, personal protection and safety equipment, logistical backup, data and communications security, and insurance.

Journalists and employers also need to be well informed, more than ever, about their rights under domestic and international laws, and how to defend and assert those rights in practice.

Journalists have a close interest in working to ensure a high level of public trust in news media, especially following revelations about media taking part in partisan smear campaigns, paid-for news, and illegal phone-hacking and other forms of unjustified intrusion. All journalists should understand that the public interest is often the best defence if they face libel suits or other legal challenges to their work.

Journalists should also understand that the category of unprotected speech includes incitement to terrorism or violence as well as the exploitation or abuse of children.

The OSCE Representative on Freedom of the Media (RFoM), together with the Special Rapporteurs on freedom of expression of the United Nations as well as Africa and the Americas, summarised the persuasive arguments for media self-regulation in the 2017 Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda:

The media and journalists should, as appropriate, support effective systems of self-regulation, whether at the level of specific media sectors (such as press complaints bodies) or at the level of individual media outlets (ombudsmen or public editors) which include standards on striving for accuracy in the news, including by offering a right of correction and/or reply to address inaccurate statements in the media.¹⁴⁹

The International Press Institute (IPI), together with Al Jazeera, the International News Safety Institute and the African Media Initiative, has led a global effort to promote a culture of safety within the media industry by raising awareness among journalists about international standards and encouraging best practices in the newsroom for protecting

¹⁴⁹ See: <https://www.osce.org/fom/302796?download=true>.

journalists and media staff on dangerous assignments or working in hostile environments. As a result, the 2015 “International Declaration on the Protection of Journalists” was adopted.¹⁵⁰ It is accompanied by a voluntary code of “Media Organisations’ Best Practices”, which media houses, news media industry bodies and journalists’ organizations are urged to endorse voluntarily. It encourages media employers to be proactive in all matters related to the safety of their own staff and media workers generally, as well as matters concerning governments’ compliance with international norms and standards.

Among the important points of “Media Organisations’ Best Practices” are:

- *Journalists should not be obliged against their will to cover dangerous assignments that involve serious recognisable risk.*
- *Media institutions are to spare no effort in adopting the best safety protocols for their journalists... the lack of financial resources does not justify the failure of news organisations to do everything in their power to protect journalists and their rights.*
- *General safety training for all journalists, including elements related to digital safety, emotional and psychological well-being and environmental hazards, as well as specific training for journalists who cover dangerous assignments or operate in a dangerous environment greatly increases safety awareness and reduces risk.*
- *Media companies should do everything possible to provide a high standard of training in all aspects of personal safety, as well as safety and security equipment and practical support during assignments.*

¹⁵⁰ Available at: <http://www.freemedia.at/international-declaration-on-the-protection-of-journalists/>.

- *Journalists should be informed about their rights and duties under international laws as well as the national laws of the countries in which they operate. They should also be aware of international human rights standards and principles, as well as international humanitarian law, so as to strengthen their ability to cover and expose human rights violations and breaches of international humanitarian law.*
- *In addition to the safety hazards affecting all journalists, women journalists are confronted with gender-specific safety concerns, which require dedicated attention and appropriate measures.*
- *Public support for journalism and journalists contributes to the latter's safety... Credibility and independence of the media and the practice of ethical journalistic standards contribute to attracting public support and should be valued. Occasional breaches in the professional behaviour of journalists should never be used to justify attacks.*
- *Solidarity among journalists is vital when members of the profession are confronted with threats and attacks. Cooperation among media organisations in exposing crimes against journalists and creating a global campaign against attacks on journalists can be effective tools. An attack on a journalist anywhere is an attack on journalism everywhere. Moreover, an attack on journalists or journalism is an attack on the public's right to be informed and to govern itself democratically.*
- *Media organisations in all regions should consider signing on to the Global Safety Principles and Practices related to the protection of freelance journalists, which are complementary to this Declaration, and give these principles and practices effect.*

› **Freelance journalists: Facing great risks and in need of special support and protection**

A coalition of major news companies and journalism organizations endorsed a set of Freelance Journalists Safety Principles in 2015 to establish worldwide freelance protection standards.¹⁵¹ They are guidelines intended for news organizations that engage freelance journalists, including reporters, photographers and others who face particular issues in the field. The Freelance Journalist Safety Principles have gained broad support from journalists' groups and news organizations, including the Frontline Freelance Register and the Dart Centre for Journalists and Trauma. Its main points include:

- *Freelance journalists require the necessary basic skills and training, including in first aid and working in hostile environments, as well as appropriate insurance, before setting out on any assignment.*
- *They should work closely with the news organisation that commissioned them and other sources of support to understand and prepare for all eventualities; they should take care to secure mobile and online communications from intrusion and tracking.*
- *Editors and news organisations making assignments in dangerous places should recognise that freelancers and local journalists, including photographers and videographers, play an increasing role in international coverage. They should treat freelancers whom they use on a regular basis in a similar way as staffers when it comes to safety training and safety equipment.*

¹⁵¹ Available at: <https://dartcenter.org/content/global-safety-principles-and-practices#.VN4UpC6sXIN>.

- *They should not make an assignment with a freelancer in a conflict zone unless the news organisation is prepared to take the same responsibility for the freelancer's well-being in the event of kidnap or injury as it would a staffers.*

› **The ethics of journalism**

The quality of our democracies depends on the quality of our information. For quality information, we need to ensure the existence of pluralistic, independent and ethical journalism.

Editorial integrity in the media calls for accuracy, honesty and fairness, and for sound and independent judgement by editors and journalists. However, quality must never be a pre-requisite for safety of journalists or media freedom. Only a fully free press can be fully responsible. Media must be free to investigate, report and publish without undue constraints and without fear of violence or arbitrary treatment at the hands of State authorities.

States should not intervene directly in the media sphere, whether by means of direct ownership of media, partisan appointments in broadcasting media, or allocation of broadcasting licences. The misuse of state-directed media to act as propaganda tools, transmit false news or incite hatred, represents an abandonment of editorial independence and reduces the ethical standards, which leads to a loss of public trust.

International norms and standards on media freedom acknowledge that the ethical and professional standards of journalists' output and issues to do with editorial decision-making by members of the media are matters for the practitioners of journalism and not for State authorities to determine. Journalists' unions and associations must strictly maintain

their independence from State authorities in order to uphold the ethics of journalism and earn the public's trust.

Journalists from Russia and Ukraine who took part in a series of meetings in 2014-2017 in the context of the conflict in and around Ukraine demonstrated their intense concern about state-sponsored manipulation of the media. In an Appeal issued in December 2014, the roundtable participants warned their colleagues against participating in information wars and incitement to hatred, and called on them "to resist attempts to provoke journalists and set them against each other".¹⁵²

The issue of "media capture" by state authorities acting together with pro-government business allies to manipulate media narratives, using coercive means to subdue critical journalists' voices and undermining the credibility of journalism, was closely analysed in UNESCO's World Trends in freedom of expression and media development: regional overview of Central and Eastern Europe (2017/2018).

The Council of Europe's 2016 ministerial Recommendation on the protection of journalism and the safety of journalists and other media actors urges member states not to "require, coerce or pressurize... journalists and other media actors to derogate from accepted journalistic standards and professional ethics."

The necessary safeguards against media capture include enacting restraints on media ownership by persons holding public office, preventing excessive media ownership concentration, and ensuring transparency of media ownership. Finland is among the OSCE participating States that have granted journalists the legal right to make use of a "conscience

152 OSCE RFoM publication "Two Countries – One Profession", page 3. Available at: <https://www.osce.org/files/f/documents/o/8/226351.pdf>.

clause”, which gives them the right to refuse to act in ways which violate the ethical codes of journalism and which are also designed to protect them from reprisals when they invoke their right to resort to the conscience clause.

By promoting self-regulation and standards, and thereby minimizing State interference, editorial freedom and media independence can be enhanced. It can help ensure that the media is only judged for their professional behaviour, not by those in power. Codes of conduct, ethical standards and other forms of self-regulation can also help ensure the plurality of the media, amplifying the sharing of reliable information that reflects the plurality and diversity of voices, issues and opinions. A plurality of voices also requires media organizations to create a company culture of gender equality and non-tolerance to threats and harassment against staff, especially if they are representing marginalized voices.

Public service media are subject to specific editorial standards designed to ensure fairness, impartiality and accuracy, and to reflect a wide range of opinion and comment in the public interest. The main role of public service media is to ensure that a plurality of voices is heard, avoiding that solely commercially remunerative majority issues are covered. One of the most important reforms to be carried out in some OSCE participating States is the transformation of State broadcasting organizations, with strong links to governments, to become public broadcasters whose editorial independence and public accountability are secured.

The OSCE RFoM helps the media create and develop self-regulation mechanisms, which can take the form of ethics codes, press and media councils, or complaints commissions and in-house ombudspersons, and are a tool to enhance quality media while preserving their editorial autonomy and independence by setting up voluntary editorial guidelines

and abiding by them. The RFoM encourages the further development of media self-regulation, which is essential to boost quality journalism, and thereby, helping to improve the overall media freedom situation in the OSCE area, through training sessions, expert advice and international roundtable meetings. The Office has also published a media self-regulation guidebook. While the first edition¹⁵³ (2008) covers a wide range of practical concerns and models on how to establish or enhance existing self-regulatory mechanisms, the second edition¹⁵⁴ (2013) tackles the issue of self-regulation mechanisms in the digital age.

In 2006, the OSCE participating States encouraged “the adoption of voluntary professional standards by journalists, media self-regulation and other appropriate mechanisms for ensuring increased professionalism, accuracy and adherence to ethical standards among journalists.”¹⁵⁵ In 2007, the participating States reiterated their support for the “adoption of voluntary professional standards by journalists, media self-regulation and other appropriate mechanisms for ensuring increased professionalism, accuracy and adherence to ethical standards among journalists.”¹⁵⁶

The European Broadcasting Union promotes its Editorial Principles and Guidelines so that public broadcasters may represent a source of unbiased and accurate information and diverse political opinions. The BBC’s Editorial Guidelines, for example, state that “*News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument*”. The BBC’s guidelines address the

¹⁵³ See: <https://www.osce.org/fom/31497?download=true>.

¹⁵⁴ See: <https://www.osce.org/fom/99560?download=true>. See also Vienna Conclusions on Safety of Journalists and Media Ethics, available at: <https://www.osce.org/representative-on-freedom-of-media/306836?download=true>.

¹⁵⁵ MC Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding. Available at: <https://www.osce.org/mc/23114?download=true>.

¹⁵⁶ MC Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding. Available at: <https://www.osce.org/mc/29452?download=true>.

responsibility of journalists and editors to eschew prejudice, malice or incitement to discrimination, stating: *“We must be fair and open-minded when examining the evidence and weighing material facts. We must give due weight to the many and diverse areas of an argument.”*

Indications of bias and other lapses in editorial integrity on the part of journalists may be evident when output selectively excludes certain views or relevant materials, or when the content or tone of the output displays gratuitous disrespect, prejudice or hostility in news bulletins, commentaries or public debates. Media and digital literacy is essential in the modern media age to equip people to recognize and identify sources of propaganda and disinformation.

The International Federation of Journalists (IFJ) has published a Declaration of Principles on the Conduct of Journalists, which sets out the standards of professional conduct expected of journalists.¹⁵⁷ IFJ and other major journalist organizations favour self-regulation affirm that responsibility for ethical conduct and maintenance of the highest standards in journalism rests with media professionals. However, journalistic ethics call for high standards of integrity and for journalism that is in the public interest. The IFJ Declaration:

- Promotes self-regulation of journalists’ work and rejects all forms of interference by State authorities in matters of editorial or professional integrity and ethics. It states: *“...Within the general law of each country the journalist shall recognize in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others.*

¹⁵⁷ “IFJ Declaration of Principles on the Conduct of Journalists”, available at: <http://www.ifj.org/about-ifj/ifj-code-of-principles/>

- Describes the key elements of the ethics of journalism, including respect for truth and the public's right to truth, and for professional secrecy regarding confidential sources of information
- Emphasises that journalists and the media should do their utmost to avoid facilitating discrimination based on, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.
- Considers the following as grave professional offences: plagiarism, malicious misrepresentation; calumny, slander, libel, unfounded accusation, and acceptance of a bribe in any form in consideration of either publication or suppression.

Reporters Without Borders (RSF) and UNESCO produced the “Safety Guide for Journalists: A handbook for reporters in high-risk environments”, which covers all practical aspects of reporting from conflict zones and other dangerous places, including pre-planning, advice on logistics and equipment, the laws of war, first aid and hostile environment techniques, as well as modern munitions, personal and digital safety and communications. The Safety Guide contains a full list of Useful Contacts including Inter-governmental Organizations and relevant Non-Governmental Organizations.¹⁵⁸

The Committee to Protect Journalists has its own “Journalists Safety Guide: Covering the news in a Dangerous and Changing World.”¹⁵⁹ It covers ten important aspects of safety, including basic preparedness, field safety, sexual violence, contingency planning, technological and data

¹⁵⁸ See: https://rsf.org/sites/default/files/guide_journaliste_rsf_2015_en_o.pdf.

¹⁵⁹ See: <https://cpj.org/reports/2012/04/journalist-security-guide.php>.

security, and captive situations, and includes a helpful list of Resources for training, equipment and relevant expertise.

IFJ and UNESCO published the “Model Course on Safety of journalists: A Guide for journalism Teachers in the Arab states.”¹⁶⁰ It is tailored to the high-risk environments of the Arab world but has information relevant for journalists anywhere; covers travel and digital security, gender and safe reporting, reporting on demonstrations and civil unrest, and human rights and humanitarian law.

› **International civil society organizations concerned with journalists’ safety**

Access Now operates a Digital Security Helpline for journalists and civil society around the world, including real-time technical assistance in eight languages.¹⁶¹

Article 19 is a non-governmental organization that defends global freedom of expression and works to strengthen the protection of journalists and human rights defenders through legal reforms, establishing protection mechanisms and efforts to end impunity.¹⁶²

The Association of European Journalists is an independent journalists’ network across Europe. It contributed to the drafting of the 2016 “Recommendation of the Committee of Ministers of the Council of Europe on the protection of journalism and the safety of journalists and

160 “Model Course on Safety of journalists: A Guide for journalism Teachers in the Arab States”, UNESCO and IFJ, 2017. Available at: <http://unesdoc.unesco.org/images/0024/002482/248297e.pdf>.

161 <https://www.accessnow.org/help/>.

162 www.article19.org.

other media actors”, and is a founding partner of the Council of Europe’s Platform to promote the safety of journalists.¹⁶³

The Centre for Freedom of the Media at the University of Sheffield, UK, advises policymakers and stakeholders about threats to media freedom, and promotes international legal frameworks of protection for free and independent journalism. Its Journalism Safety Research Network assists academics and others to build a strong knowledge base for practical, relevant research on issues related to journalists’ safety and ending impunity.¹⁶⁴

The Centre for Media Pluralism and Media Freedom is a research and training centre that aims to develop innovative and relevant research and to provide knowledge support to the international, European and national policy and rulemaking processes. It developed the Media Pluralism Monitor to assess the risks for media pluralism in a given country.¹⁶⁵

The Dart Centre for Journalists and Trauma raises awareness in news organizations about the impact on journalists of covering wars, human rights abuses and other traumatic events. It also seeks to improve the quality and sensitivity of that coverage.¹⁶⁶

The Electronic Frontier Foundation specializes in digital security and offers a Surveillance Self-Defence toolkit of advanced Tips, Tools and How-to’s for safer online communications, including how to be protect yourself against malware, circumvent online censorship and use encryption effectively.¹⁶⁷

163 www.aej.org.

164 www.cfom.org.uk.

165 <http://cmpf.eui.eu/media-pluralism-monitor/>

166 <https://dartcenter.org/>.

167 <https://ssd EFF.org/>

The European Centre for Press & Media Freedom in Leipzig is funded by the European Commission to promote the implementation of the *European Charter on Freedom of the Press* in all of Europe. Through a range of activities, it seeks to unite media, press organizations and academia to counter attacks on press and media freedom.¹⁶⁸

The European Federation of Journalists is the largest organization of journalists in Europe. Together with IFJ, it advances the welfare and the social and professional rights of journalists, and monitors and campaigns against threats and attacks on press freedom and journalists' safety.¹⁶⁹

The Frontline Freelance Register is a membership organization for freelancers who face significant risks while working in foreign environments and who commit to its Code of Conduct. Its core aim is to support the physical and mental well-being of freelance journalists.¹⁷⁰

Index on Censorship defends and campaigns for freedom of expression worldwide and supports individuals and groups facing censorship. Since 2014, its Mapping Media Freedom project has identified and recorded threats to media freedom in more than 40 countries in Eastern and Western Europe.¹⁷¹

The International Committee of the Red Cross operates a hotline enabling media professionals, their families, co-workers, or the media organizations they work for, to request assistance when a media professional is detained, missing, wounded or killed.¹⁷²

168 <https://ecpmf.eu/>.

169 <https://europeanjournalists.org/>; <http://www.ifj.org/>.

170 <https://www.frontlinefreelance.org/>.

171 www.indexoncensorship.org.

172 <https://www.icrc.org/en/document/hotline-assistance-journalists-dangerous-assignments-o>.

The International News Safety Institute is a member-based organization dedicated to journalists' safety. It provides leading news organisations with alerts and advisories and holds workshops, regional meetings and webinar discussions.¹⁷³

The International Press Institute is a global network of journalists, editors and media executives devoted to media freedom and the free flow of news and the improvement of journalism practices. It campaigns for media laws that protect journalism's watchdog role, and conducts missions to countries where media freedom is threatened.¹⁷⁴

The Media Legal Defence Initiative provides legal help for journalists, bloggers and independent media across the world. It takes on strategic cases in national and international courts to improve laws that affect media freedom.¹⁷⁵

PEN International documents and campaigns against human rights violations of journalists and writers. Its Writers in Prison Committee monitors hundreds of cases of imprisoned writers around the globe each year.¹⁷⁶

¹⁷³ <https://newssafety.org/home/>.

¹⁷⁴ <https://ipi.media/>.

¹⁷⁵ <http://www.mediadefence.org/>.

¹⁷⁶ <http://www.pen-international.org/>.

**Annex:
The evolution of
OSCE principles
and commitments
concerning the safety
of journalists**

Annex: The evolution of OSCE principles and commitments concerning the safety of journalists

Over more than 40 years, the Conference on Security and Co-operation in Europe (CSCE) and its successor the Organization for Security and Co-operation in Europe (OSCE) developed a set of principles and commitments as a framework for the safety of journalists and freedom of the media. Their importance within the OSCE's comprehensive approach to security is beyond doubt. The work has progressed within the context that all 57 participating States enjoy equal status, and decisions are taken by consensus on a politically, but not legally binding basis.

The major stages of the development include:

In the **Helsinki Final Act** of 1975 the leaders of the then Soviet Union, the USA, Canada and the States of Eastern and Western Europe jointly recognized the importance of freedom of expression, freedom of opinion and the role of journalists in fostering those freedoms:

- *The participating States,*
- *Conscious of the need for an ever wider knowledge and understanding of the various aspects of life in other participating States,*
- *Acknowledging the contribution of this process to the growth of confidence between peoples,*
- *Desiring, with the development of mutual understanding between the participating States and with the further improvement of their relations, to continue further efforts towards progress in this field,*

- *Recognizing the importance of the dissemination of information from the other participating States and of a better acquaintance with such information,*
- *Emphasizing therefore the essential and influential role of the press, radio, television, cinema and news agencies and of the journalists working in these fields,*
- *Make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State.¹⁷⁷*

In 1990, in the midst of a major transformation of the political landscape of Europe, the Heads of State or Government of what were then the CSCE participating States signed the **Charter of Paris**, which expressed the determination of all States to forge a new level of co-operation based on a common commitment to democratic values, with the free flow of information as an essential element:

We undertake to build, consolidate and strengthen democracy as the only system of government of our nations. ...Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. ... In accordance with our CSCE commitments, we stress that free movement and contacts among our citizens as well as the free flow of information and ideas are crucial for the maintenance and development of free societies and flourishing cultures.

¹⁷⁷ Section IV, Chapter II.

At the time of the CSCE Summit in Budapest in 1994, the former Yugoslavia was breaking apart through armed conflict. Media workers had in some cases become targets in the war, and rival warring parties had exploited media as a propaganda tool. The concerns of participating States were reflected in the **Summit Declaration**, including on freedom of expression and free media:

(36) The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principles that they will safeguard this right.

(37) They condemn all attacks on and harassment of journalists and will endeavor to hold those directly responsible for such attacks and harassment accountable.

At the **Lisbon Summit in 1996**, the participating States decided that the implementation of commitments in the field of the media and freedom of expression needed to be strengthened. They decided to elaborate a mandate for the appointment of an OSCE Representative on Freedom of the Media. The Office of the OSCE Representative on Freedom of the Media was established in 1997. The **Mandate of the Representative on Freedom of the Media** would be to:

(3) concentrate on rapid response to serious non-compliance with OSCE principles and commitments by participating states in respect of freedom of expression and free media.

At the Maastricht Ministerial Council in 2003, the participating States gave additional weight to the central role of free and pluralistic media in

strengthening good governance, promoting transparency and combating corruption. The participating States resolved:

(2.2.5) we will make our governments more transparent by further developing processes and institutions for providing timely information, including reliable statistics, about issues of public interest in the economic and environmental fields to the media, the business community, civil society and citizens, with a view to promoting a well-informed and responsive dialogue. This is essential for decision-making which is responsive to changing conditions and to the needs and wishes of the population.

In the succeeding years, the issues of media plurality, media freedom and the safety of journalists continued to occupy the attention of OSCE participating States.

The most comprehensive document adopted by the OSCE participating States through consensus is the 2018 **Ministerial Decision on Safety of Journalists**. At a time when attacks, threats and killings of journalists are on the rise, this Decision was a major step forward and a strong signal of support to all journalists exposed to difficult and often dangerous conditions in the OSCE region. The participating States committed themselves to:

- 1. Fully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers;*
- 2. Bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do*

not limit the ability of journalists to perform their work independently and without undue interference;

3. Condemn publicly and unequivocally all attacks and violence against journalists such as killing, torture, enforced disappearance, arbitrary arrest, arbitrary detention and arbitrary expulsion, intimidation, harassment, and threats of all forms, such as physical, legal, political, technological or economic, used to suppress their work and/or unduly force closure of their offices, including in conflict situations;

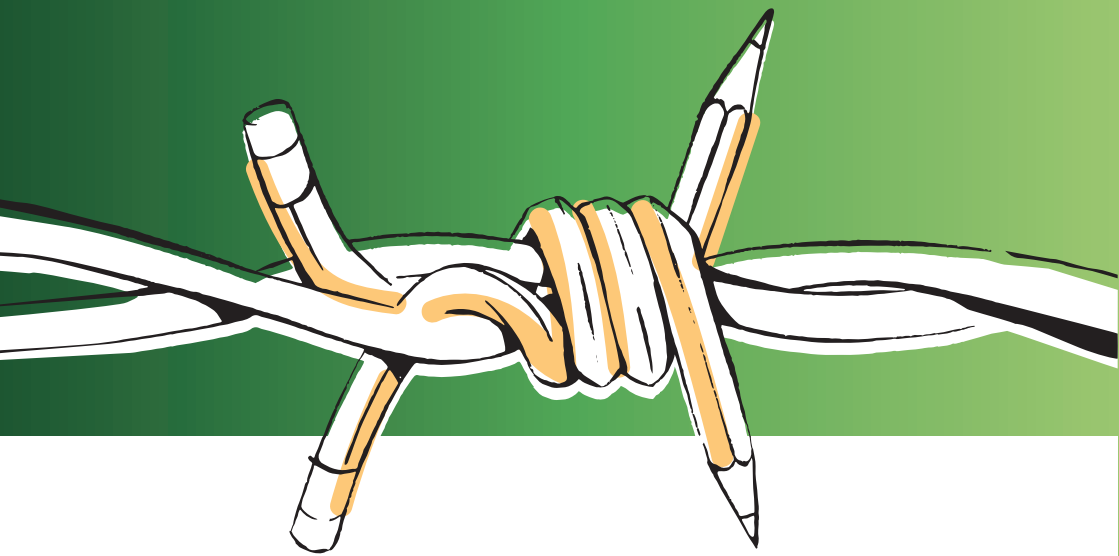
4. Also condemn publicly and unequivocally attacks on women journalists in relation to their work, such as sexual harassment, abuse, intimidation, threats and violence, including through digital technologies;

5. Urge the immediate and unconditional release of all journalists who have been arbitrarily arrested or detained, taken hostage or who have become victims of enforced disappearance;

6. Take effective measures to end impunity for crimes committed against journalists, by ensuring accountability as a key element in preventing future attacks, including by ensuring that law enforcement agencies carry out swift, effective and impartial investigations into acts of violence and threats against journalists, in order to bring all those responsible to justice, and ensure that victims have access to appropriate remedies;

7. Urge political leaders, public officials and/or authorities to refrain from intimidating, threatening or condoning – and to unequivocally condemn – violence against journalists, in order to reduce the risks or threats that journalists may face and avoid undermining trust in the credibility of journalists as well as respect for the importance of independent journalism;

8. *Refrain from arbitrary or unlawful interference with journalists' use of encryption and anonymity technologies and refrain from employing unlawful or arbitrary surveillance techniques, noting that such acts infringe on the journalists' enjoyment of human rights, and could put them at potential risk of violence and threats to their safety;*
9. *Encourage State bodies and law enforcement agencies to engage in awareness-raising and training activities related to the need to ensure safety of journalists, and to promote the involvement of civil society in such activities, where appropriate;*
10. *Establish or strengthen, where possible, national data collection, analysis and reporting on attacks and violence against journalists;*
11. *Ensure that defamation laws do not carry excessive sanctions or penalties that could undermine the safety of journalists and/or effectively censor journalists and interfere with their mission of informing the public and, where necessary, to revise and repeal such laws, in compliance with participating States' obligations under international human rights law;*
12. *Implement more effectively the applicable legal framework for the protection of journalists and all relevant OSCE commitments;*
13. *Co-operate fully with the OSCE Representative on Freedom of the Media, including on the issue of safety of journalists;*
14. *Encourage the OSCE Representative on Freedom of the Media's continued advocacy and promotion of safety of journalists in all OSCE participating States, in line with his/her mandate.*



We defend media freedom because we know that without journalists, the world turns into a grim place, where the powerful are not held to account, and where citizens are neither informed nor safe. Therefore, we need to work relentlessly and ambitiously, and without ever giving up, towards building societies based on the rights of people, and on sustainable and peaceful development. – In short, we have to make a living reality out of the OSCE principles.

Harlem Désir,
OSCE Representative on Freedom of the Media
Human Dimension Implementation Meeting in Warsaw

11 September 2017