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The protection of journalists' sources

Report[1]
Committee on Culture, Science and Education
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Summary

The protection of journalists' sources of information is a basic condition for both the full exercise of journalistic work and the right of the public to be informed on matters of public concern. In a large number of cases, public authorities have forced, or attempted to force, journalists to disclose their sources, despite the clear standards set by the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

The disclosure of information identifying a source should therefore be limited to exceptional circumstances where vital public or individual interests are at stake and can be convincingly established. The confidentiality of journalists' sources must not be compromised by the increasing technological possibilities for public authorities to control the use by journalists of mobile telecommunications and Internet media. Member states which do not have legislation specifying the right of journalists not to disclose their sources of information should pass such legislation in accordance with the case law of the European Court of Human Rights and the Committee of Ministers' recommendations.

1. 2011 - First part-session

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A. Draft recommendation[2]

1. The Parliamentary Assembly recalls that the free exercise of journalism is enshrined in the right to freedom of expression and information, which is guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5) ("the Convention"). This right constitutes the foundation of a democratic society and an indispensable requirement for its progress and the development of every individual. Free, independent and pluralist media are a precondition of any true democratic society. Democracy and good governance require accountability and transparency and, in this respect, media play an essential role for public scrutiny over public and private sectors in society.

2. Recalling Committee of Ministers' Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information, the Assembly reaffirms that the protection of journalists' sources of information is a basic condition for both the full exercise of journalistic work and the right of the public to be informed on matters of public concern, as expressed by the European Court of Human Rights in its case law under Article 10 of the Convention.

3. The Assembly notes with concern the large number of cases in which public authorities in Europe have forced, or attempted to force, journalists to disclose their sources, despite the clear standards set by the European Court of Human Rights and the Committee of Ministers. Violations are more frequent in member states without clear legislation. In cases of investigative journalism, the protection of sources is of even greater importance, as stated in the Committee of Ministers' Declaration of 26 September 2007 on the protection and promotion of investigative journalism.

4. Public authorities must not demand the disclosure of information identifying a source unless the requirements of Article 10, paragraph 2, of the Convention are met and unless it can be convincingly established that reasonable alternative measures to disclosure do not exist or have been exhausted, the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure and an overriding requirement of the need for disclosure is proved.

5. The disclosure of information identifying a source should therefore be limited to exceptional circumstances where vital public or individual interests are at stake and can be convincingly established. The competent authorities requesting exceptionally the disclosure of a source must specify the reasons why such vital interest outweighs the interest in the non-disclosure and whether alternative measures have been exhausted, such as alternative evidence. If sources are protected against their disclosure under national law, their disclosure must not be requested.

6. Recalling Recommendation Rec(2003)13 of the Committee of Ministers on the provision of information through the media in relation to criminal proceedings, the Assembly reaffirms that the public must be able to receive information through the media about the activities of police services and judicial authorities, including court proceedings of public interest, as far as this does not prejudice the presumption of innocence of the suspect or accused under Article 6 of the Convention, the right to privacy under Article 8 of the Convention or the secrecy of investigations and police inquiries.

7. The right of journalists not to disclose their sources applies also to sources from within the police or judicial authorities. Where such provision of information to journalists was illegal, police and judicial authorities must pursue internal investigations instead of asking journalists to disclose their sources.

8. Insofar as Article 10 of the Convention protects the right of the public to be informed on matters of public concern, anyone who has knowledge or information about facts of public concern should be able to either post it confidentially on third-party media, including Internet networks, or submit it confidentially to journalists.

9. With regard to the right of every person to disclose confidentially to the media, or by other means, information about unlawful acts and other wrongdoings of public concern, the Assembly recalls its Resolution 1729 (2010) and Recommendation 1916 (2010) on the protection of "whistle-blowers" and reaffirms that member states should review legislation in this respect to ensure consistency of domestic rules with the European standards enshrined in these texts.

10. In the same manner as the media landscape has changed through technological convergence, the professional profile of journalists has changed over the last decade. Modern media rely increasingly on mobile and Internet-based communication services. They use information and images originating from non-journalists

2. Draft recommendation adopted unanimously by the committee on 6 October 2010.

to a larger extent. Non-journalists publish their own or third-party information and images on their own or third-party Internet media, accessible to a wide and often undefined audience. Under these circumstances, it is necessary to clarify the application of the right of journalists not to disclose their sources of information.

11. The Assembly reaffirms that the confidentiality of journalists' sources must not be compromised by the increasing technological possibilities for public authorities to control the use by journalists of mobile telecommunication and Internet media. The interception of correspondence, surveillance of journalists or search and seizure of information must not circumvent the protection of journalists' sources. Internet service providers and telecommunication companies should not be obliged to disclose information which may lead to the identification of journalists' sources in violation of Article 10 of the European Convention on Human Rights.

12. Referring to the European Union's Directive 2006/24/EC of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks, the Assembly insists on the need to ensure that legal provisions enacted by member states when transposing this Directive are consistent with the right of journalists not to disclose their sources under Article 10 of the European Convention on Human Rights and with the right to privacy under Article 8 of the Convention. The Assembly also stresses the importance of ensuring coherency of the domestic legislation with Articles 16 and 17 of the Convention on Cybercrime (ETS No. 185) ("the Budapest Convention").

13. The Assembly welcomes the fact that journalists have expressed in professional codes of conduct their obligation not to disclose their sources of information when they receive the information confidentially. This professional ethical standard ensures that sources may rely on confidentiality and decide to provide journalists with information which may be of public concern. The Assembly invites journalists and their organisations to ensure, through self-regulation, that sources are not disclosed.

14. The right of journalists not to disclose their sources of information is a professional privilege, intended to encourage sources to provide important information to journalists that they would not give without a commitment to confidentiality. The same relationship of trust does not exist with regard to non-journalists, such as individuals with their own website or web blog. Therefore, non-journalists cannot benefit from the right of journalists not to reveal their sources.

15. The Assembly welcomes the work on media freedom of the Council of Europe Commissioner for Human Rights and asks the Commissioner to pay particular attention, when visiting member states and meeting media ombudspersons, to the protection of the confidentiality of journalists' sources.

16. The Assembly recommends that the Committee of Ministers:

16.1. call on those member states which do not have legislation specifying the right of journalists not to disclose their sources of information, to pass such legislation in accordance with the case law of the European Court of Human Rights and the Committee of Ministers Recommendation No. R(2000)7;

16.2. assist member states in analysing and improving their legislation on the protection of the confidentiality of journalists' sources, in particular by supporting the review of their national laws on surveillance, anti-terrorism, data retention and access to telecommunications records;

16.3. ask its competent steering committee to draw up, in co-operation with journalists' and media freedom organisations, guidelines for prosecutors and the police, as well as training material for judges, on the right of journalists not to disclose their sources of information, in accordance with Committee of Ministers Recommendations Nos. R(2000)7 and R(2003)13 and the case law of the European Court of Human Rights;

16.4. ask its competent steering committee to draw up guidelines for public authorities and private service providers concerning the protection of the confidentiality of journalists' sources in the context of the interception or disclosure of computer data and traffic data of computer networks in accordance with Articles 16 and 17 of the Convention on Cybercrime and Articles 8 and 10 of the European Convention on Human Rights.

B. Explanatory memorandum by Mr Johansson, rapporteur

1. Introduction

1. Following the tabling of a motion for a recommendation by my Finnish colleague, Mrs Tuulikki Ukkola, and others, the Committee on Culture, Science and Education appointed me rapporteur on the protection of journalists' sources on 25 June 2009.

2. On 25 and 26 October 2009, the Sub-Committee on the Media held a hearing on respect for media freedom and the protection of journalists' sources, which was hosted by the Chamber of Deputies of Luxembourg. I am very grateful for the substantial contributions by the European Federation of Journalists, the Association of European Journalists, the European Newspaper Publishers Association, the International Press Institute/South East Europe Media Organisation, Reporters Without Borders and, last but not least, the organisation Article 19, all of which participated in the hearing.

3. Mr Hans-Martin Tillack, Brussels correspondent of *Stern* magazine who had been asked by the Belgian authorities to reveal his sources and later took the case before the European Court of Human Rights[3] ("the Court"), also attended this hearing and handed an original copy of the European Charter on Freedom of the Press to the chairperson of the sub-committee, Mr Andrew McIntosh, and the Chairperson of the Committee of Ministers and Minister for Foreign Affairs of Slovenia, Mr Samuel Žbogar. This charter was drawn up by many journalists and editors in order to remind states of their obligation to respect media freedom and the confidentiality of journalists' sources.

4. Following a first reading of a draft report by the Committee on Culture, Science and Education on 24 June 2010, I contacted the European Federation of Journalists (Brussels) and Article 19 (London) asking for their views on this subject. I appreciate the supportive comments received. On 21 September 2010, I participated in the seminar on the protection of journalists' sources organised by the European Federation of Journalists in London.

2. Legal standards under the European Convention on Human Rights

5. The Council of Europe has taken a leading role in acknowledging that the right of journalists not to disclose their sources of information is an essential element of freedom of expression under Article 10 of the European Convention on Human Rights ("the Convention"), because the ability of journalists to provide accurate and reliable information on matters of public interest is compromised and adversely affected when they are forced to reveal confidential sources of information.

6. In its judgment in *Goodwin v. the United Kingdom*, the European Court of Human Rights recognised that Article 10 of the Convention includes the right of journalists not to disclose their sources of information. The Court also stressed that the "protection of journalistic sources is one of the basic conditions for press freedom, as is reflected in the laws and the professional codes of conduct in a number of Contracting States …".[4]

7. The Court further stated that "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 may be adversely affected. Having regard for the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest".[5]

8. Four years later, Committee of Ministers Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information established a number of principles which flow from this right under Article 10 of the Convention. In addition, both Assembly Resolution 1438 (2005) on freedom of the press and the working conditions of journalists in conflict zones and Resolution 1636 (2008) on indicators for media in a democracy call on member states to respect the confidentiality of journalists' sources.

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3. *Tillack v. Belgium*, Application No. 20477/05, judgment of 27 November 2007.
4. *Goodwin v. the United Kingdom*, Application No. 17488/90, judgment of 27 March 1996, paragraph 39.
5. Ibid.

9. Most recently, in the case of *Sanoma Uitgevers BV v. the Netherlands,*[6]the Grand Chamber of the European Court of Human Rights held that the quality of the national law in question was deficient in that there was no procedure with adequate legal safeguards available to the media company to enable an independent assessment as to whether the interest of the ongoing criminal investigation overrode the public interest in the protection of journalistic sources. The Court therefore emphasised that states must have proper legal safeguards for the protection of journalist sources.

10. Article 8 of the Convention guarantees the right to the protection of private life, home and correspondence. In its judgment in *S. and Marper v. the United Kingdom*,[7] the Court ruled that it is essential in the context of telephone tapping, secret surveillance and covert intelligence gathering to have "clear, detailed rules governing the scope and application of measures, as well as minimum safeguards concerning, *inter alia*, duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data and procedures for its destruction, thus providing sufficient guarantees against the risk of abuse and arbitrariness".

11. The European Union Directive 2006/24/EC on data retention requires telecommunications companies to store data about all of their customers' communications. Journalists' organisations fear that this directive could violate the secrecy of their sources. Therefore, on 22 June 2010, 106 NGO representatives signed a letter to the European Commissioners Cecilia Malmström, Viviane Reding and Neelie Kroes urging them "to propose the repeal of the European Union requirements regarding data retention in favour of a system of expedited preservation and targeted collection of traffic data as agreed in the Council of Europe's Convention on Cybercrime." On 2 March 2010, the Federal Constitutional Court of Germany ruled that the German law transposing Directive 2006/24/EC would violate the right to privacy and correspondence under the German Constitution. In addition, the Romanian Constitutional Court ruled, on 8 October 2009, that the Romanian law transposing this European Union directive emptied de facto the constitutional principle of the protection of privacy and private data.

3. Examples of cases in Council of Europe member states concerning the right of journalists' not to disclose their sources of information

12. The European Federation of Journalists reported last year that nearly 100 countries worldwide had adopted specific legal protection for journalists' sources, either in laws or constitutions.[8] Privacy International published in 2007 its report "Silencing sources: an international survey of protections and threats to journalists' sources", which contains extensive research on national laws and practice.[9] In their submission to the European Court of Human Rights in the case of *Sanoma Uitgevers B.V. v. the Netherlands,* Article 19 and other leading media NGOs produced an overview of national legislation recognising the right of journalists not to disclose their sources.[10] Nevertheless, there have been attempts throughout Europe to undermine the principle of the confidentiality of sources. Journalists have been arrested and questioned, their offices and homes searched and equipment seized, to obtain information on their sources. The following list is not exhaustive, but shall serve as a list of typical examples where the secrecy of journalists' sources is at stake.

13. *Belgium*: On 19 March 2004, police searched the home and workplace of Hans-Martin Tillack, a reporter from the German weekly magazine *Stern*, and seized his working papers and tools after he wrote a story based on internal documents from the European Union's Anti-Fraud Agency (OLAF). Tillack was accused of bribing a European Union official in return for secret files. No evidence was found to justify the complaints. On 27 November 2007, the European Court of Human Rights held that there had been a violation of Article 10 of the European Convention on Human Rights as a result of searches carried out at Tillack's home and office in Brussels.

14. The mobile phone of journalist Anne de Graaf from the newspaper *De Morgen* was monitored for two months in 2004 to identify her sources after she wrote a story about a report on police fears of a terrorist attack in Antwerp. The Court of First Instance ruled in 2007 that the interception was illegal because there had been insufficient grounds to conduct such surveillance to identify her source. She was awarded €500 in damages.

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6. *Sanoma Uitgevers BV v. the Netherlands*, Application No. 38224/03, judgment of 14 September 2010.
7. *S. and Marper v. the United Kingdom*, Applications Nos. 30562/04 and 30566/04, judgment of 4 December 2008.
8. EFJ Policy Document on Protection of Sources: http://europe.ifj.org/en/articles/efj-policy-document-on-protection-of-sources.
9. www.privacyinternational.org/foi/silencingsources.pdf.
10. www.article19.org/pdfs/letters/sanoma-uitgevers-b.v.-v-the-netherlands.pdf.

15. *Denmark*: In 2002, the police wiretapped Stig Mathiessen, a journalist working for the newspaper *Jyllands-Posten*, after he wrote a story about a death list of names of Danish Jews supposedly circulating among Islamic fundamentalists. The police obtained a court order to tap his telephone and he was ordered to divulge the name of his source for the rumour to the police. This he refused to do, arguing that he would have contacted the police if he had received concrete evidence that could have prevented a serious crime. A high court in Denmark ruled in September 2002 that Mathiessen was not under an obligation to disclose his source.

16. Two journalists, Michael Bjerre and Jesper Larsen, and the editor, Niels Lunde, of *Berlingske Tidende* were prosecuted under the Criminal Code in November 2006 after publishing material leaked from the Defence Ministry exposing the government's lack of credible evidence for its decision to back the invasion of Iraq. A Danish court found that the journalists had acted in the public interest in publishing the information and acquitted them.

17. *France*: On 13 January 2005, police searched the offices of the weekly *Le Point* and the sports daily *L'Equipe* and seized computers after stories were published about investigations into doping in cycle racing. Police carried out the raids as part of an investigation into a supposed violation of the confidentiality of an investigation.

18. In December 2007, a journalist with *Le Monde*, Guillaume Dasquié, was detained for two days and intelligence services searched his home and interrogated him after he had published, on 17 April 2007, an article revealing classified reports showing that French intelligence services knew of some Al Qaeda plans and claiming that they had warned the American authorities about a plot to highjack an aeroplane as early as January 2001. Dasquié was accused of compromising national defence secrets. The authorities demanded that he disclose the identity of his sources or face charges of violating state secret law. He was released some days later. According to him, his freedom was obtained in exchange for naming his source, who could have been part of the French intelligence services.

19. In September 2010, *Le Monde* filed a lawsuit against the French Government for allegedly having broken the secrecy of their sources by secretly searching their files concerning their recent reports about government wrongdoings in connection with tax evasions by the French industrialist Liliane Bettencourt.

20. *Germany*: A parliamentary report released in 2006 revealed that the Federal Intelligence Agency (BND) had been illegally spying on journalists for over a decade, including placing spies in newsrooms to identify sources and to monitor newspapers' work. In 2007, the Federal Intelligence Agency was again accused of spying on journalists who had written stories about Afghanistan.

21. *Hungary*: Rita Csik, a journalist at the *Nepszava* newspaper, was charged on 6 November 2004 under the Hungarian Penal Code for writing an article in 2004 citing a police memorandum which had gathered criminal evidence about a member of parliament. She was acquitted in November 2005 by the Budapest municipal court, which said that the document was not legally classified.

22. *Ireland*: In February 2006, freelance reporter Mick McCaffrey was arrested under the Criminal Justice Act in connection with an article about the police arresting and imprisoning an innocent man on murder charges. In the article, McCaffrey cited a confidential police report. The police demanded that McCaffrey reveal his sources and seized his telephone records. McCaffrey refused to reveal his source and was released the next day.

23. On 23 October 2007, Colm Keena from the *Irish Times*, author of an article on corruption by the former Irish Prime Minister, was ordered by the High Court to hand over his documentation; but instead he destroyed it. In August 2010, the mobile phone and SIM card of the Irish freelance journalist Eamonn MacDermott was seized by the Irish police in order to gain access to his phone records.

24. *Italy*: On 4 February 2004, police searched the homes and offices of Massimo Martinelli, a journalist with the daily *Il Messaggero*, and of Fiorenza Sarzanini, a reporter from the *Corriere della Sera*. The two journalists were accused of breaking legal confidentiality rules relating to an article about an investigation into the death of a doctor suspected of having ordered another person to commit a series of murders between 1968 and 1985.

25. On 11 August 2006, police searched the offices of the daily newspapers *La Repubblica* and the *Piccolo* and two journalists' homes and seized files following stories about Italy's role in the 2003 kidnapping of the Egyptian imam Osama Moustafa Hassan Nasr. The offices and homes of journalists Cristina Zagaria and

Claudio Ernè were searched particularly thoroughly and police took away papers, notes and copied material from their computers. Zagaria and Ernè were accused of violating legal confidentiality rules and handling secret documents in breach of the Criminal Code.

26. *Latvia*: The financial police wiretapped the telephones of television reporter Ilze Jaunalksne in December 2005 and then leaked the tapes to a newspaper close to government parties, claiming that the tapes proved Jaunalksne was actively plotting with opposition parties. Jaunalksne had written a report about a vote-buying scandal that apparently involved the leaders of several governing political parties. In February 2007, the Latvian Court awarded Jaunalksne €42 000 in damages and ordered the suspension of the judge who had authorised the taps.

27. *Lithuania*: Police raided the offices of the *Laisvas Laikrastis* newspaper in September 2006, detained the editor, seized 15 000 copies of the newspaper and confiscated computers from the office and the editor's home. The newspaper had published a story about a political corruption investigation and was therefore accused of disclosing information classified as a state secret.

28. *Netherlands*: The government monitored the telephones of Bart Mos and Joost de Haas, two journalists from the daily *De Telegraaf* who were then placed in custody on 27 November 2006 by a court in The Hague. They had published classified information revealing that a criminal had been obtaining confidential information from police and intelligence agencies while in prison. The tap was approved by the Supreme Court in September 2006. Mos and De Haas were called to testify in the trial to reveal their sources. The judge ordered them to be detained for forty-eight hours after they had refused to reveal their sources, but they were released on 30 November. Subsequently, the court ruled that the journalists had the right to be exempted from the obligation of giving evidence, because state security had not been at risk.

29. *Russia*: The offices of the weekly newspaper *Permsky Obozrevatel* and the homes of some of its journalists in the Perm region were searched by police on 2 August 2006, after a court had accused the paper of disclosing state secrets and thereby violating the state secrets law. The police seized nearly all the office computers, CDs, other equipment and the journalists' notebooks.

30. *Switzerland*: Two *SonntagsBlick* reporters, ChristophGrenacher and SandroBrotz, as well as the editor, BeatJost, were prosecuted under the military penal code for publishing a document on 8 January 2006 dealing with supposed places of detention and interrogation methods used by the American Intelligence Service (CIA). The *SonntagsBlick* article confirmed the existence of secret detention centres run by the American Government in Europe. The document, a fax from the Egyptian Foreign Ministry, had been intercepted by Swiss military intelligence and then leaked to the three journalists. The journalists and the editor were accused of violating defence secrecy. On 17 April 2007, the three journalists were acquitted by a military court.

31. *Turkey*: The offices of Ahmet Alper Görmüs, the editor of the weekly magazine *Nokta*, were raided, equipment searched and journalists interrogated in 2007, after it had published stories about the military blacklisting of journalists based on a leaked report prepared by the Office of the Chief of General Staff. The owners of the newspaper and the editor were prosecuted for libel, while two others were charged with inciting disrespect against the military. The magazine closed under military pressure.

32. *United Kingdom*: Police arrested ITV News producer Neil Garrett in October 2005 and searched his flat after he published internal police information on the mistaken shooting of Jean Charles de Menezes in August that year. The story revealed crucial facts of the case which proved that there had been a catalogue of errors on the part of the police, which had led to de Menezes' death. He revealed that the police had misled the public about de Menezes' actions before he was shot. Garrett was cleared in May 2006 after several periods of detention.

33. In 2006, police in Suffolk seized the confidential mobile phone records of Mark Bulstrode, a journalist from the *East Anglian Daily Times*, to discover his sources. Bulstrode had approached the police to inquire about the reopening of an old case. The police asked him not to publish the story because it could jeopardise the investigation. Despite his agreeing, the police subsequently obtained Bulstrode's private phone records to find out his sources.

34. Suzanne Breen, the *Sunday Tribune*'s Northern Ireland editor, wrote a number of stories about the Real IRA, including a report of the group's claim to be responsible for the killing of two British soldiers. The Police Service of Northern Ireland arrived at Breen's home on May 2009 and ordered her to hand over all the material (phones, computers, disks, notes) relating to two articles she had written on the subject. The High Court in Belfast ruled in June 2009 that a court decision forcing her to hand over her notes compromised the

concept of confidentiality of journalists' sources recognised under the Terrorism Act of 2000 and Article 10 of the European Convention on Human Rights, and that it would have threatened her life and the lives of her family to disclose her source.

4. Analysis of the situation

35. In order to evaluate whether the right of journalists not to disclose their sources is adequately respected in Europe, it is necessary to identify existing and possibly new challenges to this right. The following questions shall guide this analysis.

– *How far should the right of journalists to keep their sources secret be recognised in law in Council of Europe member states? How can the Assembly encourage member states to adopt explicit and comprehensive laws on the protection of journalists' sources and ensure that these laws are implemented?*

36. Almost all European countries recognise in law the importance of protecting the confidential sources of journalists. However, many European countries show significant weaknesses in implementing such laws, as well as the standards set by the Council of Europe. Several of the national laws are limited in scope, namely as regards journalists or certain types of media.

37. Consequently, it appears necessary to draft more precise legislation to facilitate the implementation of these laws and standards in practical terms. In addition, training and assistance measures may be helpful for police, prosecutors and judges.

– *Who is a journalist? Should the protection of journalists' sources be extended to anyone who collects and disseminates news, regardless of whether or not this person is regularly or professionally engaged in the collection and dissemination of information?*

38. It was once easy to answer the first question, but today the profession of journalist is undergoing major changes. The Internet has challenged the definition of who is a journalist and thus the people who should be protected. In the Internet age, almost anyone can post information on the Internet, set up a blog, send mass e-mails and present themselves as someone who collects and disseminates information to the public.

39. The Council of Europe guidelines recommend that the law should protect "any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication".[11] With regard to the increasing importance of the Internet as a means of mass communication, there should be a debate on whether the protection of journalists' sources should be enlarged to other persons engaged in the dissemination of information. Bloggers, podcasters or citizen journalists who publish news on the Internet are generally not doing so on a regular or professional basis and are therefore not protected by the right of journalists not to disclose their sources. Nevertheless, their action may serve the right of the public to receive information of public concern.

40. However, the right of journalists not to disclose their source of information is a professional privilege, based on the fact that a source might not provide important information to journalists if the latter were not respecting the confidentiality of that source. The same trust relationship does not exist with regard to non-journalists and should not, therefore, be subject to a requirement of confidentiality.

– *Should all persons who by their professional relations with journalists acquire knowledge of information identifying a source be granted the same right to protection of their sources?*

41. Editors, distributors and printers involved in collecting, processing and disseminating news, as well as third parties such as service companies which provide Internet access, security and equipment, have access to information coming from a source. In the course of their business with journalists, they may collect details about persons with whom the journalists are communicating or knowledge of their whereabouts at a particular time.

42. Only a few European countries specifically recognise the need to protect people who have professional relations with journalists. Clear legislation would facilitate the work of law enforcement authorities and better protect the confidentiality of sources.

– *In order to protect journalists' sources, should legislation prohibit authorities and companies from identifying "whistle-blowers"?*

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11. Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information.

43. Whistle-blowers very often denounce wrongdoings, corruption and mismanagement in the public and private sectors. For journalists, they represent an important source of information. Most member states of the Council of Europe have no comprehensive laws for the protection of whistle-blowers, and often agencies track them down through investigations. Potential whistle-blowers are therefore discouraged by the fear of reprisals.

44. The Assembly recently adopted Resolution 1729 (2010) and Recommendation 1916 (2010) on the protection of "whistle-blowers", which contain a number of important guidelines for member states in this respect. In the case of *Guja v. Moldova,*[12] the Grand Chamber of the European Court of Human Rights confirmed that Article 10 of the Convention protected whistle-blowing or the disclosure of secret internal information by an employee in the public interest.

45. Sweden has for many decades had a very positive experience with the legal protection of sources of information. Under Swedish law, sources who communicate to the public information held by public authorities, via the media or by other means, must not be disclosed. This is a fundamental legal principle in Sweden which is regarded by the legislator as a "safety valve which in many cases makes it possible for words to be pronounced that should be pronounced and for facts to be brought out in the open that should be brought out in the open".

– *Should the law restrict the use of electronic surveillance and anti-terrorism laws in order not to identify journalists' sources of information?*

46. Laws and technologies relating to the interception of communications and surveillance have undergone major changes in recent years. Countries have increasingly adopted laws which give them broad powers to conduct surveillance. Modern technologies have been used by authorities to circumvent the protection of sources and to track the movements of journalists. As part of the security response to terrorism, European countries have undermined the protection of sources by giving broad powers to search and seize information and to conduct electronic surveillance of journalists and media.

47. The confidentiality of journalists' sources must not be compromised by the increasing technological possibilities for public authorities to control the use of mobile telecommunication and Internet media by journalists. Internet service providers and telecommunication companies should not be obliged to disclose information that may lead to the identification of journalists' sources in violation of Article 10 of the European Convention on Human Rights.

48. On 26 September 2007, the Committee of Ministers adopted "Guidelines on protecting freedom of expression and information in times of crisis", which may serve as a reference with regard to anti-terrorism measures. The declaration by the Committee of Ministers on the protection and promotion of investigative journalism, adopted on the same day, likewise stresses the importance of respecting the confidentiality of journalists' sources.

5. Conclusion

49. Member states and the Council of Europe must do more in order to ensure that the standards set by the European Convention on Human Rights are fully respected. This is particularly important with respect to freedom of expression and information of the media, because this right is a necessary requirement for any democracy. The right of journalists not to disclose their sources is still violated quite frequently in Europe. This calls for specific legislative action and training of law enforcement authorities.

50. In addition, the fundamental changes in communication technologies and services over the last decade have changed the profiles of journalism and the media. This development has generated new uncertainties with regard to the confidentiality of journalists' sources. Modern legislation must specifically take account of this.

51. Finally, the protection of the confidentiality of journalists' sources should ideally be reinforced. This could be done by recognising the right of sources not to be revealed, for instance in legislation on whistle-blowing in accordance with Assembly Resolution 1729 (2010).

12. *Guja v. Moldova*, Application No. 14277/04, judgment of 12 February 2008.