



Resolution 1577 (2007)¹

Towards decriminalisation of defamation

Parliamentary Assembly

1. The Parliamentary Assembly, recalling its [Recommendation 1589 \(2003\)](#) on freedom of expression in the media in Europe and its [Resolution 1535 \(2007\)](#) on threats to the lives and freedom of expression of journalists, unequivocally reiterates that freedom of expression is a cornerstone of democracy. Where there is no real freedom of expression, there can be no real democracy.
2. The Assembly states from the outset that the press plays a fundamental role in promoting debates on issues of public concern; and debates of that kind – as open as possible – are vital to democracy.
3. The Assembly draws attention to its [Resolution 1003 \(1993\)](#) on the ethics of journalism and emphasises that those who exercise the right to freedom of expression also have duties and obligations. They must act in good faith and provide accurate, trustworthy information in compliance with journalistic ethics.
4. As established in the case law of the European Court of Human Rights (the Court), Article 10 of the European Convention on Human Rights (ETS No. 5) guarantees freedom of expression in respect not only of “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also of those that offend, shock or disturb.
5. The Assembly notes that freedom of expression is not unlimited and that it may prove necessary for the state to intervene in a democratic society, provided that there is a solid legal basis and that it is clearly in the public interest, in accordance with Article 10, paragraph 2, of the European Convention on Human Rights.
6. Anti-defamation laws pursue the legitimate aim of protecting the reputation and rights of others. The Assembly nonetheless urges member states to apply these laws with the utmost restraint since they can seriously infringe freedom of expression. For this reason, the Assembly insists that there be procedural safeguards enabling anyone charged with defamation to substantiate their statements in order to absolve themselves of possible criminal responsibility.
7. In addition, statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence.
8. The Assembly deplores the fact that in a number of member states prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism. Such abuse – leading to a genuine media self-censorship and causing progressive shrinkage of democratic debate and of the circulation of general information – has been denounced by civil society, notably in Albania, Azerbaijan and the Russian Federation.
9. The Assembly concurs with the clear position adopted by the Secretary General of the Council of Europe, who has denounced threats of prosecution for libel as “a particularly insidious form of intimidation”. The Assembly views such aberrant use of anti-defamation laws as unacceptable.

1. Assembly debate on 4 October 2007 (34th Sitting) (see [Doc. 11305](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany). Text adopted by the Assembly on 4 October 2007 (34th Sitting).



10. The Assembly also welcomes the efforts of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) in favour of decriminalising defamation, and his unfaltering commitment to media freedom.
11. It notes with great concern that in many member states the law provides for prison sentences for defamation and that some still impose them in practice – for example, Azerbaijan and Turkey.
12. Every case of imprisonment of a media professional is an unacceptable hindrance to freedom of expression and entails that, despite the fact that their work is in the public interest, journalists have a sword of Damocles hanging over them. The whole of society suffers the consequences when journalists are gagged by pressure of this kind.
13. The Assembly consequently takes the view that prison sentences for defamation should be abolished without further delay. In particular it exhorts states whose laws still provide for prison sentences – although prison sentences are not actually imposed – to abolish them without delay so as not to give any excuse, however unjustified, to those countries which continue to impose them, thus provoking a corrosion of fundamental freedoms.
14. The Assembly likewise condemns abusive recourse to unreasonably large awards for damages and interest in defamation cases and points out that a compensation award of a disproportionate amount may also contravene Article 10 of the European Convention on Human Rights.
15. The Assembly is aware that abuse of freedom of expression can be dangerous, as history shows. As recently acknowledged in a framework decision applicable to member countries of the European Union, it must be possible to prosecute those who incite violence, promote negationism or racial hatred, conduct inimical to the values of pluralism, tolerance and open-mindedness which the Council of Europe and the European Convention on Human Rights promote.
16. Lastly, the Assembly would reaffirm that protection of journalists' sources is of paramount public interest. Journalists prosecuted for defamation must be allowed to protect their sources or to produce a document in their own defence without having to show that they obtained it through lawful channels.
17. The Assembly accordingly calls on the member states to:
 - 17.1. abolish prison sentences for defamation without delay;
 - 17.2. guarantee that there is no misuse of criminal prosecutions for defamation and safeguard the independence of prosecutors in these cases;
 - 17.3. define the concept of defamation more precisely in their legislation so as to avoid an arbitrary application of the law and to ensure that civil law provides effective protection of the dignity of persons affected by defamation;
 - 17.4. in accordance with General Policy [Recommendation No. 7](#) of the European Commission against Racism and Intolerance (ECRI), make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate;
 - 17.5. make only incitement to violence, hate speech and promotion of negationism punishable by imprisonment;
 - 17.6. remove from their defamation legislation any increased protection for public figures, in accordance with the Court's case law, and in particular calls on:
 - 17.6.1. Turkey to amend Article 125.3 of its Criminal Code accordingly;
 - 17.6.2. France to revise its law of 29 July 1881 in the light of the Court's case law;
 - 17.7. ensure that under their legislation persons pursued for defamation have appropriate means of defending themselves, in particular means based on establishing the truth of their assertions and on the general interest, and calls in particular on France to amend or repeal Article 35 of its law of 29 July 1881 which provides for unjustified exceptions preventing the defendant from establishing the truth of the alleged defamation;
 - 17.8. set reasonable and proportionate maxima for awards for damages and interest in defamation cases so that the viability of a defendant media organ is not placed at risk;
 - 17.9. provide appropriate legal guarantees against awards for damages and interest that are disproportionate to the actual injury;

17.10. bring their laws into line with the case law of the Court as regards the protection of journalists' sources.

18. The Assembly calls on journalists' professional organisations to draw up codes of journalistic ethics if they have not already done so.

19. Furthermore, it welcomes the moves by the Turkish authorities to amend Article 301 of the Turkish Criminal Code concerning "denigration of Turkishness" and strongly encourages these authorities to pursue that course of action without delay.