Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Doc. 14274**
20 March 2017

# Parliamentary scrutiny over corruption: parliamentary co-operation with the investigative media

**Report**[1]
Committee on Culture, Science, Education and Media
Rapporteur: Ms Gülsün BİLGEHAN, Turkey, Socialist Group

*Summary*

The Committee on Culture, Science, Education and Media considers investigative journalism to be a "public asset" that should be protected and that more should be done to include it in anti-corruption strategies; it recommends closer co-operation between parliaments and investigative journalists to strengthen the role of parliaments and citizens' confidence in democratic institutions and the media.

The committee not only believes that more must be done to ensure the safety of journalists and freedom of the media but also that the relevant legislation must be strengthened. To this end, it is necessary to enact laws to ensure the widest possible access to information, to put in place financial mechanisms to support investigative journalism without compromising its independence and to provide adequate protection to whistle-blowers.

To achieve the three aforementioned aims, the Council of Europe should provide stronger support for improvements in national legislation by assessing their conformity with Council of Europe standards, identifying the possible needs of member States and developing exchanges of experience and co-operation activities.

1. Reference to committee: Doc. 13560, Reference 4109 of 30 January 2015.

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## A. Draft resolution[2]

1. Corruption undermines States' democratic and economic systems. Combating this threat is essential in defending European values and must continue to be a priority for both the Council of Europe and its member States. The Parliamentary Assembly is firmly resolved to do its utmost to strengthen the parliamentary dimension of this fight, in particular through its Anti-Corruption Platform.

2. National parliaments have a vital role to play, not only through their lawmaking but also by encouraging integrity within their own ranks, by setting an example in terms of transparency and by strengthening co-operation with civil society and in particular with the media.

3. Investigative journalism is a key weapon in tackling corruption and, in some cases, it is perhaps the only really effective external method of prevention. Many cases of corruption would never have come to light if it hadn't been for the patient, difficult and dangerous work done by journalists and the courage of whistle-blowers. The Assembly therefore considers investigative journalism to be a "public asset", which should be given more recognition and support. The Assembly notes that financing investigative journalism through only private or only State-controlled sources could lead to lack of trust in the issues investigated.

4. National parliaments should actively seek synergies with investigative journalists and media in fighting corruption and financial misappropriation and more broadly speaking in promoting good governance. The Assembly firmly believes that closer co-operation between parliaments and investigative journalists would strengthen the role and credibility of parliaments in tackling corruption and increase citizens' confidence in democratic institutions and the media.

5. An environment that is conducive to investigative journalism – and more generally to freedom of information and of the media – requires firstly that journalists are given effective protection against any violation of their safety and their physical integrity, any unlawful detention, any attempt to intimidate them or any undue pressure on their independence. The Assembly constantly underlines this. However, other conditions are also necessary to ensure that investigative journalism can do more to contribute to the common cause of combating corruption.

6. The Assembly therefore recommends that member States of the Council of Europe do more to include the role of investigative journalism in their anti-corruption strategies and, to this end:

6.1. enact laws that ensure the widest possible access to information;

6.2. put in place financial mechanisms to support investigative journalism without compromising its independence;

6.3. provide adequate protection to whistle-blowers, including by limiting any risk they might face of criminal proceedings or retaliatory action;

7. In particular, the Assembly recommends that national parliaments:

7.1. as regards access to information:

7.1.1. ensure that the Council of Europe Convention on Access to Official Documents (CETS No. 205) is ratified as soon as possible, if their country has not already done so;

7.1.2. include the revision and improvement of laws on access to information on the parliamentary agenda; such laws should, *inter alia*:

7.1.2.1. also apply to parliaments and guarantee transparency with regard to the financial interests of all their members;

7.1.2.2. stipulate that data concerning the owners and the actual beneficiaries of companies are easily accessible to the public at large and to investigative journalists in particular;

7.2. as regards financial support for investigative journalism:

7.2.1. study, in close collaboration with national associations of journalists, the establishment of a national fund for investigative journalism, whose statutes should guarantee that they are non-profit and that its management is transparent and independent of politics; make provisions to ensure that this national fund could receive public subsidies and private donations whose transparency must be guaranteed;

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2. Draft resolution adopted unanimously by the committee on 8 December 2016.

7.2.2. include in the annual budget a subsidy for the funding of projects entailing enquiries, reporting or journalistic investigations, the amount of which should ensure the financial sustainability of the fund; the body responsible for managing the fund should be obliged to inform parliament and the public on how the fund is being used, without prejudice to enquiries already in progress or planned;

7.3. as regards improved protection of whistle-blowers:

7.3.1. give a precise but broad definition of "whistle-blowers" and ensure that they are given protection which is at least equal to that provided for in Committee of Ministers Recommendation CM/Rec(2014)7 on the protection of whistleblowers; in particular:

7.3.1.1. recognise a "right to blow the whistle" in all cases where information is disclosed in all good faith and is clearly in the public interest, for example where infringements of human rights or of criminal law including active or passive corruption, or facts that reveal a threat to safety, health or the environment are concerned;

7.3.1.2. define the exercise of the "right to blow the whistle" as an objective criterion for exemption from criminal liability; forbid and penalise retaliatory measures against or abusive pressure on whistle-blowers;

7.3.1.3. introduce a reporting line at national level (one that does not rule out the possibility of directly reporting any wrongdoing to the judicial authorities) to enable whistle-blowers, without fear of any negative consequences, to bring the matter before an independent authority which has the powers of enquiry and intervention required to follow up the alert, while guaranteeing as appropriate the confidentiality or anonymity of the whistle-blowers concerned;

7.3.1.4. in this respect, as an alternative to the establishment of specialised agencies, study as a priority two possible avenues of action, which are not mutually exclusive: firstly to bring such matters before parliamentary committees of enquiry and establish specific procedures in national parliaments; and secondly to bring such matters before the national ombudsperson, if such a body exists, and explicitly give the ombudsperson the legal authority to deal with such matters, if this is not already the case;

7.4. as regards collaboration between national parliaments and investigative journalists and recognition of their work:

7.4.1. promote the image of investigative journalism and the social recognition of the role it plays in a democratic society; do more to involve investigative media in discussions on legislative reforms and in the meetings of parliamentary committees of enquiry; bring this collaboration and its results to the attention of the public at large.

## B. Draft recommendation[3]

1. Referring to its Resolution … (2017) "Parliamentary scrutiny over corruption: parliamentary co-operation with investigative media", and its Resolution 2060 (2015) on improving the protection of whistle-blowers, the Parliamentary Assembly considers that the Council of Europe should provide stronger support for improvements in national legislation relating, on the one hand, to transparency and access to information and, on the other, to the protection of whistle-blowers.

2. Accordingly, the Assembly recommends that the Committee of Ministers task the Steering Committee on Media and Information Society and, possibly, the European Committee on Legal Co-operation with:

2.1. assessing the conformity of national legal provisions on transparency and the right of access to information with the standards set out in the Council of Europe Convention on Access to Official Documents (CETS No. 205), including in order to promote ratification of that convention;

2.2. assessing the conformity of national legal provisions on the protection of whistle-blowers with the principles laid down in Committee of Ministers Recommendation CM/Rec(2014)7 on the protection of whistleblowers;

2.3. identifying the possible needs of member States with a view to developing the exchanges of experience and co-operation activities required to support legislative reform in the fields of the right of access to information and the protection of whistle-blowers.

3. Draft recommendation adopted unanimously by the committee on 8 December 2016.

## C. Explanatory memorandum by Ms Gülsün Bilgehan, rapporteur

### 1. Introduction

1. Combating corruption has been and remains a priority activity for the Council of Europe. Despite the major successes achieved in this area – including the adoption, as early as 1999, of the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174) – and the monitoring carried out by the Group of States against Corruption (GRECO), fraud and corruption are two matters of ever-growing concern in the Council of Europe member States and are undermining both our democratic systems and our economies, while strengthening and enriching organised crime by allowing it to infiltrate politics, even government institutions, and the business world.

2. The heads of State and government of the G20, who met in Antalya (Turkey) on 15 and 16 November 2015, underlined the need to create a global culture of intolerance of corruption by effectively implementing the 2015-2016 G20 Anti-Corruption Action Plan. They endorsed the G20 High-Level Principles on Private Sector Integrity and Transparency which should help companies to comply with global ethics and anti-corruption standards. They declared that they would continue to work to strengthen international co-operation in this area.

3. The Parliamentary Assembly recently highlighted the importance for European values of combating corruption and recommended a strengthening of the parliamentary dimension of the Council of Europe's mechanisms to counter this threat. This call led to the creation of the Assembly's Anti-Corruption Platform – a forum for dialogue and co-operation to promote honesty and transparency in public life.

4. Members of parliament have a vital role to play in combating all forms of corruption. They can act by taking preventive measures, by promoting integrity within their own ranks, by setting a good example and by boosting co-operation with civil society and especially the media.

5. With regard to this latter point, it must be noted that many cases of corruption have been uncovered by the media, and they probably would not have been disclosed without the patient, difficult and dangerous work done by courageous journalists, not to mention the role played by whistle-blowers.

6. Between May and July 2011, Transparency International surveyed approximately 3 000 businesses in 30 countries worldwide on the best ways of tackling corruption. In 21 of the 30 countries, a majority of the businesses surveyed said that investigative journalism is the most effective external method of prevention.[4]

7. Therefore, it is my firm belief that members of parliament must co-operate more with investigative journalists and whistle-blowers in rooting out corruption: we must support their quest for the truth, and it is entirely in our interests to do so if we are to stay true to democratic values and the concept of "service" as opposed to the exercise of authority.

8. On the one hand, it is important that parliaments be more proactive in promoting effective co-operation with the investigative media and more reactive, for example, in taking measures to remedy the problems that investigative journalism brings to light. On the other hand, thought can also be given to what changes the investigative media could make to improve their co-operation with national parliaments and support the existing anti-corruption mechanisms.

9. We need to create an environment conducive to investigative journalism and make better use of the potential it offers in terms of added democratic legitimacy, while strengthening the role of parliaments and their credibility in the fight against corruption.

10. Our committee held a hearing on these issues on 3 December 2015 in Paris;[5] other interesting factors came to light during an exchange of views which I organised on 21 April 2016 before the Sub-Committee on Media and Information Society.[6] Wide-ranging debates again took place during the hearings that the

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4. This is the "Putting corruption out of business" survey. Businesses could choose from among six different approaches: international conventions on bribery and corruption; national anti-bribery laws; multi-stakeholder initiatives involving businesses, government and civil society; due diligence, for example by business partners, governments and banks; inclusion of corruption risks in investors' valuation models; and investigative journalism. For more information, see: www.transparency.org/research/bps2011/.

5. The participants in this hearing included: Ms Helen Darbishire, Executive Director of Access Info Europe, Madrid; Ms Margo Smit, Ombudsman at the Dutch public broadcaster NOS and teacher of journalism at Groningen State University; Mr Drew Sullivan, Editor of the Organized Crime and Corruption Reporting Project (OCCRP), Sarajevo; Mr Ricardo Gutiérrez, General Secretary of the European Federation of Journalists (EFJ), Brussels.

committee held in Paris on 1 June 2016 on "Defending the independence of the media, investigative journalism and editorial integrity"[7] and in Kiev on 19 September 2016 on the theme of the present report and on young people's role in combating corruption.[8] In section 2 of the report, drawing on contributions by the experts and colleagues on the committee, I propose some pointers for consideration, which the discussions brought to the fore.

11. The political arena is a favoured "target" for journalistic investigations. We may sometimes be irritated by actions which we believe to be contrary to our legitimate right to respect for our private lives. I do not necessarily support a press whose sole apparent aim is to publish scandalmongering news items in order to boost sales.

12. Nonetheless, the truth only displeases and scares those who may be ashamed of it and the right to freedom of information can undergo no restrictions other than those which are strictly necessary in a democratic society, within the meaning of Article 10 of the European Convention on Human Rights (ETS No. 5) as interpreted by the European Court of Human Rights. The purpose of this report is not to reopen the discussion about such restrictions in general. However, we cannot get away completely from the issue of the "red lines" that must not be crossed, that I address in section 3.

## 2. Aspects to be considered

### *2.1. Access to information*

13. An initial point which Ms Darbishire, and also other experts, strongly underlined is that steps should be taken to facilitate the work of investigative journalists, in particular by guaranteeing the broadest possible access to information. Europe is lagging behind in what is called data journalism, a new method of journalistic investigation which has been developed in the United States and English-speaking countries.

14. Guaranteeing broad access to information is a matter of common interest for members of parliament and journalists; it is also in the interest of members of parliament to be able to access public data and call governments to account for what such data may reveal.

15. In Europe, Sweden has been a pioneer in this regard: its system is based on constitutional recognition of the principle of transparency.[9] It is interesting to note that, over the past 20-25 years, there has been a trend towards acknowledgment by governments and lawmakers of the importance of transparency. In 1992, there were 14 laws on freedom of information (or freedom of access to it); today, there are 105 such laws worldwide. Of the 47 member States of the Council of Europe, 42 have a law on access to information or freedom of information,[10] but many of these laws suffer from weaknesses[11] and parliaments must commit themselves more fully to the process of improving them.

16. The information that is important to investigative journalists includes information concerning the owners and beneficial owners of companies. It is clear that access to this information can make it easier to identify interconnections between the economic and political realms. In this field, in addition to national legislation,

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6. Exchange of views with Mr Alberto Spampinato, Director of the NGO *Ossigeno per l'informazione*, Italy.

7. The participants in this hearing included: Mr Jérôme Bouvier, Advisor with Responsibility for Press and Information Occupations, Media Education and Diversity, Ministry of Culture and Communication, France; Mr Ricardo Gutiérrez, General Secretary of the European Federation of Journalists (EFJ), Brussels; Ms Eloïse Lebourg, investigative journalist, manager of Mediacoop, France; and Ms Jane Whyatt, Executive Director, European Centre for Press and Media Freedom (ECPMF), Leipzig. Ms Margo Smit, Ombudsman at the Dutch public broadcaster NOS and teacher of journalism at Groningen State University followed this hearing by means of a video conference link.

8. The participants in this hearing included: Mr Yuriy Lutsenko, General Prosecutor of Ukraine; Mr Ricardo Gutiérrez, Secretary General of the European Federation of Journalists (EFJ), Brussels; Ms Galyna Petrenko, Detector.media, Kyiv; and Ms Margo Smit, Ombudsman at the Dutch public broadcaster NOS, teacher of journalism at the Groningen State University.

9. In 2016, Sweden celebrated the 250th anniversary of its law on transparency, the world's first law on media freedom. Other countries have also long had mechanisms to ensure transparent governance and have managed to strike a good balance.

10. Only Luxembourg, Cyprus, San Marino, Andorra and Monaco lack such legislation.

11. According to the *Global Right to Information Rating* (https://www.rti-rating.org/), certain European countries, such as Austria, Germany, Italy and Belgium, are at the bottom of the world rankings. For example, the Austrian Constitution provides for the protection of secrecy and requires officials not to disclose information; however, a draft law which should reform the framework governing freedom of information is currently under consideration. Serbia holds the top position in these rankings with 135 points out of 150, followed by Slovenia (129 points), with Croatia in fourth place (126).

consideration should probably also be given to European Union law: the Fourth Anti-Money Laundering Directive provides for the keeping of registers of the beneficial owners of companies. Journalists need to be able to access the information contained in them.

17. In the area of financial transparency, we parliamentarians have a duty to set an example; in this connection, one might ask why certain laws governing access to information do not apply to parliaments and their members. A Declaration on Parliamentary Openness exists,[12] and we could perhaps draw more inspiration from it.

18. In this regard, we must not forget that, in 2009 in Tromsø, the Council of Europe adopted the Convention on Access to Official Documents (CETS No. 205). This treaty is not yet in force as it has not yet been ratified by the requisite 10 countries.[13] Parliaments could act to speed up the process of ratification by their respective countries. When this convention enters into force, a Group of Specialists on Access to Official Documents will be established to monitor its implementation by the Parties and may scrutinise the quality of the legislation enacted.

19. Moreover, in the appendix to Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors (adopted on 13 April 2016), the Committee of Ministers points out that an environment favourable to freedom of expression also includes the right to access information and the right for the public to receive information. It also states that: "The gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom. The participation of journalists and other media actors in public debate on matters of legitimate public concern must not be discouraged, for example by measures that make access to information more cumbersome or by arbitrary restrictions, which may become a form of indirect censorship."

### *2.2. Financial support for investigative journalism*

20. Another way in which legislators can assist investigative journalism is by providing a level economic playing field for the investigative media.[14]

21. Mr Sullivan underlined that investigative reporting has changed a great deal throughout the world over the past decade. The traditional commercial model is dead, and the prevailing model today is a non-profit model whose emergence has transformed the investigative journalism landscape in a very positive way. There was only one investigative reporting centre in 1975, but now there are over a hundred non-profit centres around the world, many of which have considerable influence. Several of these media organisations are neither newspapers nor public broadcasting corporations; they are on the internet. They are small non-profit media organisations which are very important for the investigative reporting ecosystem in Europe.

22. Mr Gutiérrez spoke of the erosion of the investigative capacity of journalists in the traditional media. The first reason for this erosion is that the traditional media funding model is being challenged, and this is creating very difficult conditions in media organisations. The number of journalists is today decreasing but their workload is increasing, and investigative work, which takes time and requires human resources, is particularly affected by this loss of capacity. The other reason is the legal and regulatory environment, which is becoming increasingly restrictive.

23. In many countries, the main media organisations are close to political parties, or there are large media groups which are owned by oligarchs. It is therefore very difficult for small investigative media organisations to survive without financial support.

24. In this difficult context, given the formidable effectiveness of investigative journalism, Mr Sullivan denounced the "open war against civil society organisations" which is being waged by a large number of countries in several regions of the world; he underlined that, over the past three years (2012-2015) alone,

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12. This declaration can be consulted and downloaded from this web page: www.openingparliament.org/declaration. The Declaration on Parliamentary Openness was officially launched by the World e-Parliament Conference on 15 September 2012 in Rome, Italy. Since it was launched, this declaration has been formally approved by, among others, the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE) and the Commonwealth Parliamentary Association (CPA), and also by a number of national and international parliaments.

13. To date, this treaty has been ratified by nine countries: Bosnia and Herzegovina, Estonia, Finland, Hungary, Lithuania, Republic of Moldova, Montenegro, Norway and Sweden.

14. It is of course necessary, in general, to have good support schemes aimed at promoting the pluralism and independence of the media. Nevertheless, the issue of public mechanisms for the financial support of the media is covered by another report under preparation. Here, I will confine myself to a few considerations directly relevant to the public financing of investigative journalism.

120 laws were passed around the world, including in many European countries, specifically in order to greatly restrict the work of civil society organisations and investigative reporting. Many of them attack financing mechanisms, namely financial aid from foreign institutions.

25. This trend must not just be countered, it must also be reversed: a solution which must be considered is public financing of investigative journalism. This solution would be consistent with the idea that investigative reporting is fundamentally a "public good", a check, a watchdog, which is vital to the operation of democracy and also delivers amazingly good value for money.[15]

26. In rare cases, press funds financed by the public authorities have been established at the instigation of parliament. Mr Gutiérrez pointed out that Belgium and the Netherlands are at the forefront in this area. In both these countries, institutions which are totally independent politically and non-profit-making receive public subsidies for funding investigative journalism projects and investigative reports:

– the Fonds Bijzondere Journalistieke Projecten, set up in the Netherlands in 1990, which is financed by the Netherlands Ministry of Education;

– the Pascal Decroos Fund, set up in 1998, which is funded by the Government of the Flemish Community in Belgium; since 2013 this fund has been a programme run by Journalismfund.eu vzw, an organisation created to encourage cross-border investigative journalism in Europe and on a transcontinental scale;[16]

– the Fonds pour le journalisme in the French-speaking part of Belgium (Brussels and Wallonia), set up in 2009, which is funded by the Wallonia-Brussels Federation Government in Belgium.[17]

27. I am aware of only three other national foundations which support investigative journalism, set up in Norway[18] (1990), Hungary (2001) and Poland (2010). This means that such funds exist in five of the 47 member States of the Council of Europe. We could obviously do better than this!

28. It is possible that associations supporting investigative journalism[19] or investigative journalism centres,[20] or even individual journalist's projects, receive public funding in other countries. However, it must not be forgotten that direct funding could increase the risk of a certain degree of dependence and, therefore, become a way of exerting pressure or a reason for self-censorship.

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15. To illustrate this, Mr Sullivan referred to the experience of his organisation, the OCCRP, a network of 22 investigative reporting organisations which work across an area stretching from Europe to the borders of China. Since this network began publishing its stories (in 2006), 2.5 billion dollars have been returned to public coffers through fines and seizures made by the authorities, such as the fine of 775 million dollars which was paid at the end of November 2015 by VimpelCom, the Russo-Norwegian telecommunications operator, to settle bribery charges brought by the United States Government as a result of one of the organisation's investigations. Given the funding that OCCRP receives, these figures amount to a return on investment of 50 000%. OCCRP's work has also led to the arrest of 80 prominent organised crime figures and corrupt officials, the closure of 1 300 companies, the amendment of 20 laws and the removal from office of 10 corrupt politicians.

16. The website of the organisation explains well the rational of this initiative: "Business and trade take place across borders, political decisions are made on an international level, criminal networks operate transnationally. … More than ever in journalism teamwork is paramount. Transnational stories cannot be told without local journalists who are willing to collaborate. However, cross-border investigative journalism does not fit into any traditional business model. … Journalismfund.eu makes it possible for journalists to investigate stories thoroughly and independently, by operating as a firewall between donors and journalists." To this aim, the organisation allocates grants to journalists through different programmes, such as the European Cross-Border Grants, the Flemish Pascal Decroos Fund Grants and the Intercontinental Connecting Continents Grants (pilot project). These working grants are independent from commercial or political interests: they are given under complete editorial independence. In addition, the organisation provides networking opportunities for the investigative journalism community to share ideas and methods. Its total budget for 2016 is €817 350. The organisation relies on financial support from multiple funders. Recent funders include, in addition to the Flemish Government: Adessium Foundation, Open Society Foundations, Oxfam Novib and the Fritt Ord Foundation.

17. A first Decree of the Government of the French Community of 27 May 2009 granted a subsidy of €250 000 to the AJP (Association of Professional Journalists) to set up a support system for investigative journalism in the French Community. In 2011, the fund was made permanent by the Government of the Wallonia-Brussels Federation with the adoption of a multi-annual agreement guaranteeing an annual subsidy of €250 000 for three years (2011, 2012 and 2013). In 2014, this commitment was confirmed until 2017.

18. Stiftelsen for en Kritisk og Undersøkende Presse (SKUP).

19. According to the information available on the website of *Journalismfund.eu vzw*, there are apparently seven investigative journalism associations in Europe, with the oldest having been set up in Denmark (1989), Sweden (1990) and Finland (1992). Other more recent additions include those in Flanders-Netherlands (2001), Germany (2001) and two in Switzerland (in 2003 and 2010 respectively).

### *2.3. Protection of sources and of journalists who publish information disclosed by sources*

29. Ms Lebourg criticised the fact that whistle-blowers and investigative journalists have no effective legal or financial protection.

30. The Parliamentary Assembly has done a great deal of work on the subject of the protection of whistle-blowers. In its Resolution 1729 (2010) on the protection of "whistle-blowers", after giving a broad definition of whistle-blower – namely "concerned individuals who sound an alarm in order to stop wrongdoings that place fellow human beings at risk" (paragraph 1) – the Assembly invited member States to review their legislation concerning the protection of whistle-blowers, bearing in mind certain guiding principles (paragraph 6), including, *inter alia*, the need to:

– protect "both public and private sector whistle-blowers, including members of the armed forces and special services" (paragraph 6.1.2);

– provide a definition of protected disclosures which "shall include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals …" (paragraph 6.1.1);

– presume that the whistle-blower "acted in good faith", "provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives" (paragraph 6.2.4);

– "afford bona fide whistle-blowers reliable protection against any form of retaliation".

31. More recently, in its Resolution 2060 (2015) on improving the protection of whistle-blowers, the Assembly again called on the member and observer States of the Council of Europe to "enact whistle-blower protection laws also covering employees of national security or intelligence services and of private firms working in this field" and invited them to "agree on a binding legal instrument (convention) on whistle-blower protection on the basis of Committee of Ministers Recommendation CM/Rec(2014)7".

32. This latter recommendation, which the Committee of Ministers adopted on 30 April 2014, requires the member States to implement a legal, institutional and judicial framework to protect whistle-blowers, i.e. (as defined by the appendix to the recommendation) "any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector".

33. The recommendation states that "freedom of expression and the right to seek and receive information are fundamental for the functioning of a genuine democracy" and that whistle-blowers "can contribute to strengthening transparency and democratic accountability". The recommendation advocates: access to several channels for reporting and disclosure of public interest concerns; mechanisms for ensuring that cases of reporting and disclosing information are quickly followed by action; a ban on any kind of reprisals when the whistle-blower has reasonable grounds for believing that the information is true; recognition of whistle-blowers' right to have the confidentiality of their identity maintained. A guide has been published by the Council of Europe for implementing a national framework for protecting whistle-blowers,[21] which also describes some good national practices. However, the situation has not really changed.

34. A recent study shows that some 60 countries in the world allegedly have laws affording protection to whistle-blowers. In Europe, apart from Sweden and its 1766 Law, laws protecting whistle-blowers have been enacted in the United Kingdom (1998), Romania (2004), Slovenia (2010), Luxembourg (2011), Italy (2012), Belgium (2013), Hungary (2013), Ireland (2014), the Slovak Republic (2014) and Serbia (2014). It is interesting to note that in some cases (Slovenia, Luxembourg and Italy), such protection is provided for in laws directly concerning the fight against corruption. In France, the protection of whistle-blowers derives from several provisions in different laws (concerning corruption, the prevention of serious risks to public health and the environment, conflicts of interest, tax fraud or even intelligence). Although there are provisions scattered across the legislation of other countries, for example the Netherlands or Austria, the laws in question are often fragmentary and incomplete, as they only cover certain categories of persons (public sector staff or

20. According to information available on the website of *Journalismfund.eu vzw*, there are apparently 16 investigative journalism centres or offices in 13 countries (Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Germany, Hungary, Iceland, Italy, Latvia, Romania, Serbia, Slovenia and the United Kingdom).

21. See: Protection of whistle-blowers: a brief guide for implementing a national framework. This guide also contains the text of Recommendation CM/Rec(2014)7 and its appendix.

employees in the private sector), or only concern the disclosure of certain types of information; they also afford very uneven protection, whereas the effectiveness of such protection also depends on the way in which the laws in question are applied.[22]

35. Mr Bouvier informed us about the draft law on "transparency, the fight against corruption and modernisation of the economy" (known as the "Sapin II" Law), which was tabled in the National Assembly on 6 June 2016. This draft law is intended to strengthen the protection given by the State to whistle-blowers. This protection would be afforded to "any person who knows of serious infringements of the law or regulations, or circumstances which carry serious risks". This person, who must act "in good faith, without any expectation of receiving any personal advantage or desire to harm others", would have "the right to communicate, in the public interest, the information relating to it". The draft law is also intended to strengthen the secrecy of sources through measures which should: extend protection to all those who contribute to the production of the information; eliminate the offence of receiving and holding information disclosed in this way; introduce judicial scrutiny of cases where breaches of the secrecy of sources can be permitted; and impose stiffer penalties for those who violate the secrecy of sources. These are all good ideas which can serve as models for other lawmakers.[23] The current law, moreover, provides that the secrecy of sources must give way to "the prevailing imperative of public interest". As this concept was deemed to be too vague and allowed for interpretations which were far too broad, it was worded in the bill in such a way as to provide a better definition of the cases where this infringement might be permitted.

36. I note that the protection of whistle-blowers often depends not only on their good faith and the existence of a general interest in the disclosed information but also on whether the information concerns breaches of the law or facts which give rise to serious risks. Although I think it is evident that in such cases whistle-blowers must be protected, I wonder if it is not necessary to envisage even broader protection. In this area, we must also consider the case law of the European Court of Human Rights. Given the number and complexity of the cases in this field, it is not possible to make a comprehensive presentation; I will mention here only some key elements.[24]

37. Since the Goodwin judgment, it has been recognised that the protection of journalistic sources is one of the cornerstones of freedom of the press and that the absence of such protection might deter journalistic sources from assisting the press in informing the public about public interest issues, which would undermine the vital role of the press as a watchdog.[25]

38. In the Tillack judgment, the Court stated that "the right of journalists not to disclose their sources cannot be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but is part and parcel of the right to information, to be treated with the utmost caution".[26]

39. This latter principle does not mean that journalists are discharged from every obligation. The Court stated that journalists could not, in principle, be released from their duty to respect ordinary criminal laws as a result of the protection they are afforded by Article 10.[27] Nevertheless (as finally happened in this case), the interest in informing the public may take precedence over the "duties and responsibilities" incumbent upon journalists on account of a document's dubious origin.

40. In a recent judgment, Görmüş and others,[28] concerning my country, the Court again ruled on the fair balance between, on the one hand, freedom of expression and freedom of the press and, on the other hand, the protection of confidential data belonging to State bodies, in this case the Turkish army. The Court acknowledged (based on its previous case law) that the duties and responsibilities assumed by journalists

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22. Danièle Lochak, "Les lanceurs d'alerte et les droits de l'Homme: réflexions conclusives", *La Revue des droits de l'homme* [online], 30 June 2016: http://revdh.revues.org/2362. See paragraphs 36 to 40.

23. PowerFoule, Transparency International France and the NGO consortium supporting the whistle-blowers have recently launched an online petition calling for other improvements and the adoption (in France) of a general statute and better protection for whistle-blowers. The proposals made have been published (in French) at: https://www.powerfoule.org/campaigns/panamapapers/lanceurs-dalerte/prot%C3%A9geons-nos-lanceurs-dalerte.

24. I would like to express my sincere gratitude to Mr Lawrence Early, Jurisconsult, Registry of the European Court of Human Rights, for his invaluable co-operation.

25. *Goodwin v. United Kingdom*, Application No. 17488/90, judgment of 27 March 1996 [Grand Chamber]; see paragraph 39 in particular.

26. *Tillack v. Belgium*, Application No. 20477/05, judgment of 27 November 2007, paragraph 65.

27. See, for instance, *Ressiot and others v. France*, Applications Nos. 15054/07 and 15066/07, judgment of 28 June 2012, paragraph 120. This case related to journalists who were prosecuted for concealing a breach of confidentiality of a judicial investigation.

28. *Görmüş and others v. Turkey*, Application No. 49085/07, judgment of 19 January 2016.

could include the duty not to publish information provided by whistle-blowing State officials until such time as those officials had made use of the administrative procedures provided to inform their superiors of their concerns (paragraph 61).

41. The Guja judgment directly concerns protection of the actual source, who was a civil servant. After reiterating the particular importance of civil servants' duty of loyalty and discretion, the Court observed that the disclosure by such officials "of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work" (paragraph 72).

42. In the case of Guja, the Court laid down six principles for determining whether interference with the right to freedom of expression is "necessary in a democratic society"; it reaffirmed these principles in Heinisch and then more recently in its judgment of 8 January 2013 in Bucur and Toma.[29] I shall quote them below as they appear in the Bucur and Toma judgment:

i. whether or not the person who disclosed the information had other means of imparting the information;

ii. the public interest value of the information divulged (in the Court's view, the public interest value of a certain piece of information can sometimes be so great that it can even override a confidentiality obligation laid down by law);

iii. the accuracy of the information made public (in this regard, the exercise of freedom of expression brings with it certain duties and responsibilities, and anyone who chooses to disclose information must carefully check, insofar as the circumstances allow, that it is accurate and worthy of belief);[30]

iv. the damage caused to the employer;

v. the good faith of the whistle-blower;

vi. the severity of the penalty imposed on the person who disclosed the information and its consequences.

### *2.4. Contribution to investigations and building on journalists' investigative work*

43. In many countries, the authorities who are responsible for enforcing the law – because they are politicised, or for other reasons – do not react when there is a scandal, or do not react with enough vigour. Given the risks that investigative journalists take, this lack of response can only be frustrating for these journalists. Parliaments have a role to play here: opening an inquiry or a parliamentary investigation, conducting hearings and promoting public debate about problems uncovered by the media are measures that can build on the work of investigative journalists.

44. Members of parliament could also use parliamentary questions to help information enter the public domain, where documents have been leaked or where access to documents has been denied.[31] This appears to be an area where co-operation can easily be strengthened by making use of the typical tools of parliamentary work; all that is needed is the will to do this.

45. An interesting way of building on journalists' investigative work is to call them to appear as witnesses before parliamentary committees and/or involve them in the consideration of legislative reforms concerning media freedom. Mr Spampinato cited the interesting example of the work that is being done by the "Antimafia Commission" of the Italian Parliament,[32] which opened a special inquiry into threats made against journalists by organised crime and held 35 hearings attended by journalists and media chiefs before finalising (in August 2015) concrete proposals for legislative reform, which are now being considered.

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29. *Guja v. Moldova*, Application No. 14277/04, judgment of 12 February 2008 [Grand Chamber]; *Heinisch v. Germany*, Application No. 28274/08, judgment of 21 July 2011; *Bucur and Toma v. Romania*, Application No. 40238/02, judgment of 8 January 2013.

30. The Court had regard to Assembly Resolution 1729 (2010) and the need to protect the whistle-blower, provided that there were "reasonable grounds" to believe that the disclosed information was accurate.

31. By way of example, Ms Darbishire mentioned a case in Spain prior to the enactment of the transparency law: Access Info Europe had asked the Spanish Government for a copy of the reports submitted to GRECO and the mechanism for reviewing the implementation of the United Nations Convention Against Corruption, a request which was refused. A member of parliament then resorted to parliamentary questions in order to acquire them and support the investigative work.

32. *Commissione parlamentare di inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali, anche straniere*; this is a bicameral committee of inquiry of the Italian Parliament made up of 25 deputies and 25 senators.

### *2.5. Synergies with other institutions responsible for promoting transparency and tackling corruption*

46. It emerged from the discussions that another component of the investigative journalism ecosystem is the presence of independent institutions whose action can foster transparency and freedom of information, such as the Supreme Authority for Transparency in Public Life in France, the ombudsman in Sweden or the Netherlands, or the Information Commissioner and the Anti-Corruption Council in Serbia.

47. Firstly, the presence of such institutions can facilitate greater freedom of access to information for journalists, and secondly, journalists' investigations can provide these institutions with important material on which they can base their investigations and thus confirm the truth of the facts reported by journalists.

48. These institutions can also act as facilitators: for example, the experts said that in the Netherlands, the national ombudsman, after a dialogue with the various stakeholders, drew up a list of recommendations to improve relations between members of parliament, journalists and officials within ministries who are responsible for responding to requests for information.

49. Mr Sullivan noted that a frustrating aspect of such bodies is that they have no real power to act, especially if the government decides to ignore them; they are a moral voice, but often have little authority. The experts believe they should be able to disclose information about a matter that they are pursuing and perhaps make recommendations to the law-enforcement authorities to investigate certain matters.

50. In the context of this report, it is not possible to exhaustively examine these institutions, their relationships with the media, the role that they can play alongside parliaments and investigative journalists and how we could strengthen them; my suggestion, therefore, would be to consider producing a specific report on this aspect, if necessary.

## 3. "Red lines": seeking a balance between the right of access to information and the right to distribute it and other important interests

51. The counterpart to the principle that access to information must be guaranteed is the principle that any restriction of access to certain kinds of information and data and any ban making it an offence to disseminate them must be regarded as exceptions.

52. There are four areas where there is particularly fierce debate over the balance between, on the one hand, freedom of information – and hence access to information and freedom to publish – and on the other hand, the protection of other important interests, namely:

– respect for the privacy and honour of the persons to whom the information relates;

– protecting the confidentiality of certain information items of economic value (business secrecy; protection of business or economic interests);

– protection of the secrecy of a pending judicial investigation, which is also linked to the presumption of innocence, the effectiveness of the investigative procedures prior to prosecution and trial and the proper administration of justice;

– protection of information which could jeopardise national security and public order.

53. Without claiming to be extensive in this respect, I think that it would be useful to examine below some examples of the problems caused due to conflicts between, on the one hand, media freedom and, on the other, respect for privacy, for a person's reputation and for data confidentiality and, above all, in the current climate, protection of public safety. It goes without saying that the principles laid down by the European Court of Human Rights (including those referred to in the previous section) must guide national authorities in their search for balanced solutions. I will then briefly address the sensitive issue of abuse of freedom of information with the aim of manipulating public opinion.

### *3.1. Protecting a person's privacy and honour and the confidentiality of certain information*

54. Where journalists use information to reveal not necessarily corruption, but relationships between political and economic authorities, the protection of privacy is often used as a means of shutting the issue down.[33]

55. A question that is continuing to pose serious problems, notwithstanding our Assembly's appeals, is that of defamation laws. It must be ensured that these laws comply with Council of Europe standards and are not such as to facilitate abuses intended to prevent journalists from reporting corruption.[34]

56. Another delicate question concerns the tensions between freedom of information and protection of the confidentiality of certain pieces of information, as covered, for example, by trade secrecy or by the secrecy of a pending judicial investigation. Another issue which was raised is the distribution of information that has been illegally acquired.

57. This question was raised before the Luxembourg *Tribunal d'arrondissement*, which gave judgment on 29 June 2016 in the *Luxleaks* case concerning the disclosure of more than 400 secret tax agreements between the Luxembourg tax authorities and multinational companies.[35] It is worth noting, from the outset, that this court explicitly acknowledged that the two main defendants – Antoine Deltour and Raphaël Halet, two former employees of the audit firm PricewaterhouseCoopers – contributed by means of their disclosures to "greater fiscal transparency and fairness", that they "acted in the public interest and against morally dubious tax optimisation practices" and that they should therefore be considered as whistle-blowers. Nevertheless, the court found them guilty of theft, of breaching professional and commercial secrecy, as well as of IT fraud, money laundering and disclosing business secrets. The two defendants were therefore given respectively a suspended 12-month prison sentence with a fine of €1 500 and a suspended nine-month prison sentence with a fine of €1 000. However, the court acquitted Edouard Perrin, the journalist from the France 2 channel programme "Cash investigation", who had in 2012 revealed that these tax agreements existed, of the charge of complicity in breaching business secrets and professional secrecy, considering him to have simply done his job as a journalist.

58. The French Court of Cassation appears prepared to go further: in a judgment of 30 June 2016,[36] on the basis of the case law of the European Court of Human Rights in the Guja case, the Court of Cassation for the first time held that the dismissal of an employee for having, in all good faith, reported or borne witness to facts which he had discovered in the exercise of his duties and which, if established, could be considered a criminal offence, was null and void as it undermined the right to freedom of expression and in particular the right for employees to report unlawful conduct or activities that come to their notice at their place of work. Such immunity is applicable to whistle-blowers not only when wrongful acts are reported to the prosecuting authorities but also more generally when they are reported to third parties.

59. In this area, attention should be paid to legislation by the European Union, especially the EU directive on trade secrets.[37] There is a need to prevent legitimate concerns to protect private economic interests (although sometimes these interests may be significant at the level of a national economy) from leading to a situation where safeguarding such interests adversely affects the right to freedom of information. Thus, I welcome the fact that Article 1 of this directive states that it shall not affect "the exercise of the right to freedom of expression and information as set out in the [Charter for Fundamental Rights of the European Union], including respect for the freedom and pluralism of the media"; and that according to Article 5, "Member States

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33. Ms Darbishire mentioned a case concerning the Slovak Republic where journalists used public information appearing in contracts entered into by the State to identify persons sitting on the boards of directors of companies which won the most contracts. Attempts were made to prevent the publication of this information on the basis of legislation on the protection of privacy. In the case mentioned, these attempts were unsuccessful and sparked a scandal, but they highlight a real problem. Another example of tension between freedom of information and respect for privacy is a national directive in Germany which now prohibits disclosure of the names of the recipients of agricultural subsidies: how can one debate the way in which these subsidies are used if journalists do not have the right to reveal the names of companies or persons?

34. I will do no more here than draw attention to this issue, which is addressed in a report on "Attacks against journalists and media freedom in Europe", Doc. 14229 (rapporteur: Mr Volodymyr Ariev, Ukraine, EPP/CD); see also Recommendation 2097 (2017) and Resolution 2141 (2017).

35. The existence of these "Advance Tax Agreements", drawn up by the audit firm PricewaterhouseCoopers for its clients and entered into with the Luxembourg tax authorities, was disclosed in 2012 during a programme called "Cash investigation" broadcast by France 2. In 2014, the International Consortium of Investigative Journalists (ICJI) published the documents corresponding to these agreements. Their disclosure triggered a major scandal, which also involved Jean-Claude Juncker, Luxembourg's former prime minister and current President of the European Commission. In 2015, an EU directive was adopted, requiring the member States of the European Union to exchange tax information of this kind.

36. Court of Cassation – Social Division, Judgment No. 1309 of 30 June 2016 (15-10.557). The explanatory memorandum of this judgment is published online at: https://www.courdecassation.fr/jurisprudence_2/notes_explicatives_7002/protection_lanceurs_alerte_30.06.16_34751.html.

37. Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

shall ensure that an application for the measures, procedures and remedies provided for in this Directive is dismissed where the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases: (a) for exercising the right to freedom of expression and information as set out in the Charter, including respect for the freedom and pluralism of the media; (b) for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest; …".

60. I would like to also mention the specific case of information that has allegedly been obtained by methods which, by their very nature, are unlawful, for example by means of illegal phone tapping (including the unfortunate cases where such practices are used by national authorities). When the media get wind of information obtained in this manner, I wonder if the rules that apply, at least where professional ethical standards are concerned, should not be stricter than those concerning the protection of trade secrets.

61. Lastly, I would like to mention a particular case which occurred recently in Portugal. Following the serious financial difficulties suffered by the Caixa Geral de Depósitos (the largest banking corporation in Portugal) as a result of "toxic loans", the Portuguese Parliament set up a parliamentary committee of inquiry. An initial problem arose when the Bank of Portugal and the Caixa Geral de Depósitos refused to hand over certain documents to the parliamentary committee of inquiry, citing banking confidentiality. The committee asked the competent court (the Lisbon Tribunal da Relação) to order confidentiality to be waived. A second problem arose following the initiation by the Portuguese Principal State Prosecutor of a criminal investigation into maladministration (*administração danosa*) by the Caixa Geral de Depósitos; there is a danger that the work of the parliamentary committee of inquiry could be hampered by the obligation for the parties in question to uphold the secrecy of criminal investigations. This example gives a clear illustration of how the need for transparency – which is an essential precondition for combating effectively corruption and financial malpractice – comes into conflict with other legitimate concerns, even in the context of relations between parliaments and other institutions.

### *3.2. Conflicts between security requirements and the right to freedom of information*

62. During the discussions with the experts, some members highlighted the importance of not underestimating the consequences that careless use of information can cause when our security is seriously threatened. Moreover, the issue of security and the fear of attacks can sometimes be used by governments as an excuse to step up pressure on the media. This trend is to be condemned.

63. Is it possible to devise a freedom of information law which also guarantees appropriate protection of national security? The experts we heard answered without hesitation: "Yes, definitely." And ultimately, this would not be very complicated. In fact, in Europe, we already have a lot of experience in this regard.

64. Ms Darbishire reminded us that the North Atlantic Treaty Organization (NATO) has recommended to its members that they avoid over-classifying information as this makes it difficult to keep real secrets, namely information that really could damage national security.

65. It should also be noted that the Council of Europe Convention on Access to Official Documents clearly sets out (in Article 3, "Possible limitations to access to official documents") a number of exceptions to the right of access to information, chief among them national security.[38] However, the convention asks very clearly that limitations be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting the stated legitimate interests. Exceptions can be permitted only where it has been demonstrated that disclosure of the information may be detrimental to the protected interest. It is not, therefore, necessary to protect all information that relates to national security. Rather, the principle is that access to information which really could be dangerous if disclosed or which could pose a threat to national security – a threat to be balanced against the general interest – should be limited: the convention lays down a requirement to consider whether the interest that the public may have in knowing the information outweighs its potential danger.

66. In the United Kingdom, the Freedom of Information Act 2000 has these characteristics, even if the criterion of the public interest is not applied to all exceptions. The United Kingdom provides, at least on paper,[39] a good example of oversight mechanisms for the Freedom of Information Act. There is an Information Commissioner, as also exists in a number of countries across the region: Germany, Slovenia and Croatia. If a request to provide information is refused, the person who made the request can approach this

38. Among other interests mentioned in Article 3.1, the protection of which can justify restriction of the right of access to official documents, I would mention here: public safety; the prevention, investigation and prosecution of criminal activities; private life and other legitimate private interests; business interests and other economic interests; the equality of parties in court proceedings; and the effective administration of justice.

39. Regard must also be had to the impact that the slowness of procedures can have in practice.

body to have the refusal reviewed. The United Kingdom also has an Information Tribunal, a specialist body which provides a second tier of appeal and whose decisions can themselves be appealed to the courts, all the way up to the Supreme Court.

67. Finally, I believe that the debate on damages which could result from the dissemination of sensitive information is too focused on the extreme cases of whistle-blowers such as Bradley Manning, Edward Snowden or Julian Assange. I concur with Mr Sullivan that, in order to strike a fair balance between conflicting interests – and namely between the right to security and the right to know the truth on given facts – it is better to start from less problematic cases.

68. For example, we can agree on the fact that finding out how public money is spent, revealing the owners of offshore companies or obliging offshore companies to declare their beneficial owners when they are registered in a country does not help terrorists. We can provide a great deal of transparency in the service of the public interest without this causing any harm or damage.

69. To sum up, a law on transparency and freedom of information must recognise that transparency is not an absolute right and that it is not possible for a person to disclose whatever they like whenever they like. However, these laws need to include the criterion of the public interest as an overriding criterion so that exceptions are not misused, and appropriate judicial oversight needs to be put in place. Time limits should also be placed on secrets.

70. The security concerns of our governments and parliaments, which are obviously legitimate, lead to another type of legislation – laws on anti-terrorism measures, states of emergency, mass surveillance and intelligence services – which interferes with the right to freedom of information and, in particular, makes it more difficult, directly or indirectly, for investigative journalists to do their job. A number of recent laws have been flagged on the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists. Indeed, with the legitimate aim of strengthening the investigative powers of the police and intelligence services, these laws, if they fail to provide the safeguards necessary in a democratic society, jeopardise not only the rights of citizens (in terms of protection of personal data and privacy), but also the protection of journalists' sources, and act as an obvious deterrent to whistle-blowers.

71. For example, in France, in the wake of the new Law No. 2015-912 on intelligence, which came into force on 3 October 2015, 180 journalists from the Association confraternelle de la presse judiciaire (APJ) lodged an application with the European Court of Human Rights, maintaining that this law legalises the intrusive mass surveillance of the French population exercised by the intelligence services under the prime minister's authority and without any prior judicial scrutiny,[40] including for purposes unrelated to terrorism. Moreover, a number of French journalists' trade unions have condemned the provisions of the law of 20 November 2015 promulgating the state of emergency in France, which allow prefects to impose targeted residence restrictions, which may possibly be aimed at journalists, preventing them from covering certain public events.

72. Similarly, in Poland, the new law of 15 January 2016 amending the Police Act and certain other acts, which came into force on 3 February 2016, grants the secret services and police authorities rapid access to citizens' internet and telecommunications usage data. The European Commission for Democracy through Law (Venice Commission), in reply to a request by the Assembly's Monitoring Committee, delivered in June 2016 its Opinion No. 839/2016, stating that "procedural safeguards and material conditions set in the Police Act for implementing secret surveillance are still insufficient to prevent its excessive use and unjustified interference with the privacy of individuals" (see paragraph 132).

73. Spain's public security law, which was adopted in March 2015 and came into force on 1 July 2015, is a different case. This law, known as the *ley mordaza* (the "gag" law), introduced administrative fines for the unauthorised use of images and personal data of police personnel if this information could endanger the personal safety of the officer or his/her family. The underlying principle is perfectly understandable, but what about journalists' work during demonstrations and protests in public areas? Here too, a group of Spanish lawyers and journalists have lodged an application with the European Court of Human Rights.

### *3.3. The danger of manipulation*

74. What one might term the intrinsic requirement inherent in the right to freedom of information – that this information is accurate and that public opinion is not manipulated – is of a different and more general nature.

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40. However, the law establishes an independent administrative authority comprising judges, experts and members of parliament, responsible for prior authorisation of intelligence activities.

75. The issue of manipulation is closely linked to that of media pluralism and true independence of the media. Pluralism and independence are the conditions that make the media instruments of robust democracy. The experts we heard acknowledged that there are also bad media organisations which serve interests other than the public interest in reliable information. Some media organisations become servants of political authorities and their interests; others are controlled by criminal groups.

76. However, there must be no confusing the legitimate political commitment that all journalists and all media organisations have the right to express themselves transparently and in an unbiased manner, so as to uphold the truth, with manipulation, which consists in seeking to shape public opinion by communicating untrue information or by presenting facts in a manner that is deliberately incomplete and deceptive.

77. We must also be careful not to confuse the discussion about investigative journalism with the discussion about opinion journalism, which is a completely different thing. Finally, we must be careful not to punish good journalism on the pretext that there is also bad journalism. In this regard, the experts invited us to have faith that good media organisations generally prevail over bad media organisations, which only exist because they receive large amounts of funds from organised crime players or other persons with political interests.

78. The transparency of media ownership is one of the pillars that need to be strengthened so that the general public can know who is behind the media and thus understand whether the message it receives is biased or filtered. I believe that this issue is of fundamental importance, but I will not dwell on it here because it was the subject of my previous report on "Increasing transparency of media ownership".[41]

79. It is also necessary to guarantee the transparency of subsidies and advertising revenues received by the media and, in general, to ensure that the economic model for the media protects the media's independence. This issue is being considered from different angles by our committee in the preparation of other reports.[42]

## 4. Conclusions

80. The analysis of the arguments presented above leads me to make some proposals with regard to the specific action which we could recommend to our member States and, in particular, to our national parliaments. These proposals, which I have included in the draft resolution, concern only the specific issues dealt with in this report, with the intention of avoiding any encroachment on other reports currently being prepared.

81. Nonetheless, it is obvious that an ecosystem conducive to investigative journalism (and more generally to media freedom) cannot exist without effective protection being afforded to journalists against any form of attack on their safety and physical integrity, against any measure involving unlawful detention, against any attempt at intimidation and against any undue pressure running counter to their independence.

### *4.1. Access to information*

82. The widest possible access to information is a key element in tackling corruption. With this in mind, we should encourage the ratification of the Council of Europe Convention on Access to Official Documents and, in particular, call on our parliaments to adopt specific initiatives aimed at accelerating the ratification process.

83. In this connection, we also need our parliaments to put on their agenda work to improve the laws governing access to information, in line with two specific recommendations:

– ensure that the laws governing access to information duly apply to parliament and its members, especially so as to guarantee transparency regarding financial interests, since we have a duty to lead by example;

– ensure that data about the real beneficial owners of companies are easily accessible to the public in general and to investigative journalists in particular.

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41. Doc. 13747, report by the Committee on Culture, Science, Education and Media. See also Resolution 2065 (2015).
42. First and foremost the report on "Political influence over independent media and journalists", but the question of independence will also be addressed in the reports that are currently being prepared on "The protection of editorial integrity" and "The status of journalists in Europe".

### *4.2. Financial support for investigative journalism*

84. We should promote unreservedly, not only through the statements we make, but also through tangible action, the notion that investigative journalism is a "public good". As a result, financial mechanisms must exist so that adequate funding can be provided without calling into doubt the journalist's independence.

85. Our parliaments should, in close collaboration with the national associations of journalists, explore the creation in each country of a national fund for investigative journalism, whose statutes should guarantee both that the fund is non-profit making and that its management is transparent and independent of the political authorities. These institutions should be able to receive public subsidies, as well as private donations (whose transparency should be guaranteed) to finance investigative journalism projects.

86. Along with the establishment of a national fund for investigative journalism, provision should be made for a grant to this fund to be included in the annual budget, with the fund being required to inform parliament and the public as to how it is used, naturally without detriment to investigations already in progress or planned.

### *4.3. Improved protection for whistle-blowers*

87. I mentioned the work of our Assembly in this area, as well as Committee of Ministers Recommendation CM/Rec(2014)7 on the protection of whistleblowers. Member States should be reminded of the need to implement these instruments; but I also propose that we underline three points:

– the need to have a sufficiently precise and broad definition of "whistle-blower" in national law;

– the importance of limiting the risk of criminal proceedings against whistle-blowers;

– the advisability of introducing a reporting mechanism at national level.

88. With regard to the definition of "whistle-blower", where there is no definition or it is too narrow, we could suggest that national legislation be brought into line with the definition contained in Recommendation CM/Rec(2014)7.

89. With regard to the risk of prosecution, we could suggest – subject to compliance with certain conditions – that exercise of the "right to blow the whistle" should be an objective ground for excluding criminal responsibility. I believe that this exclusion should be applied in every case of "legitimate disclosure of information" (referred to as a "qualifying disclosure" in United Kingdom law).

90. Without presuming to provide a legal definition here, I feel that it should cover all cases where the disclosure of information is in all good faith and clearly in the public interest. This is undoubtedly the case where violations of fundamental rights or of criminal law (including active or passive corruption) are concerned, or with regard to facts which reveal a security, health or environmental threat. In such cases, it is, of course, also necessary to penalise any undue pressure or retaliatory measures against the whistle-blower.

91. The right to freedom of information may conflict with other fundamental values and there may be grounds justifying a restriction on the right to freedom of information within the stringent framework established by Article 10.2 of the European Convention on Human Rights. In this context, offering the whistle-blower the chance to refer the matter, without fear of any harm, to an independent authority, granted the necessary powers of investigation and intervention, could help reconcile the differing requirements.

92. I therefore propose that we encourage the setting up in each country of a whistle-blowing mechanism at national level, with a reporting procedure which guarantees, as need be, confidentiality or the whistle-blower's anonymity.[43]

93. The establishment of specialist bodies could be envisaged, but, as a priority, I think it would be preferable to look into two main courses of action, which are not mutually exclusive:

– referral to parliamentary investigation committees, which would involve introducing specific procedures for this at national parliament level;

– referral to the national ombudsman, where this body exists, ensuring that this power is conferred on it by law, if this is not already the case.

43. Whistle-blowing is "confidential" when the identity of the whistle-blower is known to the person or body which has received the information. However, the identity is not revealed without the consent of the whistle-blower, unless required by law. Whistle-blowing is "anonymous" if the identity of the source of information is unknown.

94. The presence of a whistle-blowing mechanism would of course not exclude the possibility of reporting any illegal action directly to the judicial authorities. Furthermore, they could also be called upon to intervene by the body to which the matter has been referred.

95. I am, however, aware of the limitations of this proposal when the State authorities are themselves involved in the actions which the whistle-blower wishes to report and when the true independence of the body which he/she ought to contact and the effectiveness of its action are questionable. Going to the media or making a public disclosure might then appear to be the only effective course of action.

### *4.4. Building on the work of investigative journalists, particularly through better co-operation with national parliaments*

96. A trigger for the initiative that led to the drafting of this report was the firm belief that, apart from their role, as legislators, in guaranteeing legal protection of media freedom in general and investigative journalism in particular, parliaments also have a major political role to play in promoting the image of investigative journalism and in the social recognition of its function within a democratic society.

97. In order to establish their credibility in this latter role, I feel that it is vital for parliaments to make a greater effort to seek possible areas of synergy with investigative journalists and media agencies in tackling corruption and financial wrongdoing and, more broadly, in pursuing action to promote good governance.

98. In this connection, we could propose that our parliaments examine how to get investigative media agencies involved more extensively and more effectively in the debate on legislative reforms affecting them, on the one hand, and in the work of parliamentary investigation committees, on the other hand. The referral of cases by whistle-blowers to these committees, which I am proposing for consideration, would then be part of a broader framework also aimed at consolidating mutual trust.

99. It should also be ensured that any form of co-operation and any ensuing successful results are brought to the attention of the general public. In conclusion, I am convinced that visible changes in this respect would have a positive impact both on citizens' confidence in democratic institutions and on their confidence in the media.