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The status of journalists in Europe

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Thorhildur Sunna ÆVARSDÓTTIR, Iceland, Socialists, Democrats and Greens Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Culture, Science, Education and Media, Ms Elvira Drobinski-Weiss (Germany, SOC) on her report and broadly supports the proposed draft resolution.
2. The committee proposes a few amendments to further strengthen the draft resolution regarding some legal aspects, especially concerning the right to freedom of expression and freedom of association. It also wishes to put more emphasis on the protection of journalists' safety and the need to punish the perpetrators of journalists' killings, bearing in mind, in particular, the recent assassinations of Daphne Caruana Galizia in Malta and Ján Kuciak in the Slovak Republic. It also recalls that it has tackled some of the aspects of the work of journalists who might fall into the category of "human rights defenders" or "whistle-blowers", namely in its [Resolution 2095 \(2016\)](#) and [Recommendation 2085 \(2016\)](#) on strengthening the protection and role of human rights defenders in Council of Europe member States² and [Resolution 2060 \(2015\)](#) and [Recommendation 2073 \(2015\)](#) on improving the protection of whistle-blowers.³
3. Finally, the committee notes the restrictive approach to the definition of journalist taken by the report and the draft resolution. References in the resolution to protection of freedom of expression, including protection of sources, and prevention of impunity for threats and reprisals should take a wider, teleological approach reflecting contemporary realities in how information, analysis and comment are generated and publicly shared, following the approach already taken by the Committee of Ministers and the United Nations Human Rights Committee, among others.

B. Proposed amendments

Amendment A (to the draft resolution)

At the end of paragraph 2, add the following sentence:

"However, the Assembly notes that technological changes have also had a positive impact on journalists' work, in particular by facilitating research, communication and the creation of international networks and globally accessible databases with journalistic sources and works."

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1. Reference to committee: [Doc. 13970](#), Reference 4193 of 22 April 2016. Reporting committee: Committee on Culture, Science, Education and Media. See [Doc. 14505](#). Opinion approved by the committee on 23 April 2018.
 2. See also the report by Ms Mailis Reps (Estonia, ALDE), [Doc. 13943](#).
 3. See also the report by Mr Pieter Omtzigt (Netherlands, EPP/CD), [Doc. 13791](#).



Amendment B (to the draft resolution)

Replace paragraph 6.1 with the following paragraph:

“fully respect their obligations stemming from Article 10 of the European Convention on Human Rights as regards journalists and other media actors’ freedom of expression, and in particular their right not to reveal journalistic sources and their right to receive or impart information;”

Amendment C (to the draft resolution)

After paragraph 6.1, insert the following paragraph:

“take all necessary measures to strengthen the safety of journalists and other media actors, to stop any harassment (including of a judicial, administrative or financial nature) against them and put an end to impunity for attacks against them, notably by conducting effective investigations into killings and other offences against their physical integrity; in this respect, member States of the Council of Europe should implement the guidelines set out in the appendix to Committee of Ministers Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors;”

Amendment D (to the draft resolution)

Replace paragraph 6.2 with the following paragraph:

“6.2. review their domestic legislation on the status of journalists with a view to:

6.2.1. identifying any areas to be updated, taking recent technological and economic developments into account;

6.2.2. ensuring that such legislation protects journalists from arbitrary dismissal or reprisals and from precarious working conditions that may expose them to undue pressures obliging them to depart from accepted journalistic ethics and standards;

6.2.3. providing a legal definition of journalists wide enough to encompass all forms of contemporary journalistic work, including internet-based;

6.2.4. repealing disproportionately restrictive defamation laws and ensuring adequate procedural guarantees in libel proceedings brought against journalists;”

Amendment E (to the draft resolution)

In paragraph 6.5, replace the words “between workers and employees” with “between employees and freelancers, on one hand, and employers, on the other”.

Amendment F (to the draft resolution)

After paragraph 6.5, add the following paragraph:

“ensure that journalists’ right to freedom of association is respected, in particular as regards adhering to trade unions and journalists’ associations;”

Amendment G (to the draft resolution)

After paragraph 8, add the following paragraph:

“The Assembly calls on member States to support the Platform to promote the protection of journalism and safety of journalists with adequate financial contributions and by co-operating in its functioning, in particular by responding to alerts and by engaging in follow-up initiated by the Secretary General.”

Amendment H (to the draft resolution)

After paragraph 8, the following paragraph:

“The Assembly strongly condemns the assassinations of journalists Daphne Caruana Galizia in Malta, Ján Kuciak in the Slovak Republic and Maxim Borodin in the Russian Federation. It calls on the Maltese and Slovak authorities to conduct effective investigations into these deaths, in line with the procedural guarantees stemming from Article 2 of the European Convention on Human Rights.”

C. Explanatory memorandum by Ms Thorhildur Sunna Æversdóttir, rapporteur for opinion

1. I can only congratulate Ms Drobinski-Weiss on her report, which rightly pinpoints the existing differences in the status of journalists in various Council of Europe member States. The report analyses the legal situation of journalists (including freelancers) in selected countries and proposes avenues on how to improve their working conditions.

2. However, I should like to propose a few amendments to the draft resolution in order to enhance, from the legal point of view, certain proposals concerning the improvement of the status of journalists and their right to freedom of expression and association. Moreover, although the report focuses on the working conditions of journalists, I consider that some aspects concerning the safety of journalists should also be mentioned here. In view of the above-mentioned work of the Committee on Legal Affairs and Human Rights on this subject,⁴ I should like to propose to put more emphasis on the protection of journalists' life and physical integrity and the need to prevent any harassment of them and to identify and punish the perpetrators of journalists' killings (in particular, in view of the recent assassinations of journalists Daphne Caruana Galizia in Malta and Ján Kuciak in the Slovak Republic). According to the Council of Europe's Platform for the Protection of Journalism and Safety, there are currently 128 journalists in detention and 14 deaths of journalists have not been elucidated so far.⁵ Concerns with respect to the safety of journalists were also expressed by the Secretary General of the Council of Europe in his 2017 report "[State of Democracy, Human Rights and the Rule of Law. Populism – How strong are Europe's checks and balances?](#)" ("2017 report by the Secretary General"). According to this report, journalists are often exposed to threats, violence or other restrictions on freedom of expression and the number of imprisoned representatives of this profession "has reached unprecedented numbers".⁶ Therefore, it is also important to call on member States to give more support to the Platform for the Protection of Journalism and Safety.

3. Moreover, I note the restrictive approach to the definition of journalist taken by the report and the draft resolution. In this respect, I would recall the United Nations Human Rights Committee's General Comment No. 34 on Article 19 (Freedom of opinion and expression) of the International Covenant on Civil and Political Rights, paragraph 44, which states that "[j]ournalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere"; in the same vein, in 2016, the Committee of Ministers adopted a Declaration and a Recommendation⁷ on the protection of journalism and the safety of journalists and other media actors. Given that bloggers, for example, enjoy the same basic right to freedom of expression as "traditional" journalists and that in many countries where control of the largest mass media outlets is dominated by the State and/or a narrow range of powerful, politically-aligned private interests, bloggers are an essential source of independent reporting and comment, the protection of such "other media actors" is crucial for the preservation of the free exchange of ideas and the political and cultural pluralism that underpin genuine democracy. Furthermore, any distinction between "professional journalists", bloggers and other media actors is neither clear-cut nor permanent: Daphne Caruana Galizia, for example, published investigative journalism on her private blog. References in the resolution to protection of freedom of expression, including protection of sources,⁸ and prevention of impunity for reprisals should take a wider, teleological approach that reflects these contemporary realities. Likewise, whistle-blowers (such as Edward Snowden and Chelsea Manning), whose legal status is rather weak and who are often subject to persecution, should also benefit from the same considerations as journalists themselves, since they are important journalistic sources.

4. Besides that, there are also a couple of issues which are not raised in the draft resolution and which could be developed in the report. I hope that the Committee on Culture, Science, Education and Media will examine them in detail on another occasion. One of them is the issue anonymity of outside contributors, mentioned in paragraphs 41 and 85 of the report. In particular, it is not clear who should "look into the anonymity of certain contributors to establish their identity as far as possible; to clearly draw the line between journalistic information and public relations or propaganda" (paragraph 41). Whilst it is important to combat the spread of false information and propaganda, this should not be done at the cost of individuals' right to private

4. *Supra* notes 3 and 4.

5. As at 19 April 2018, see <https://www.coe.int/en/web/media-freedom>.

6. Page 35 of the report.

7. Recommendation CM/Rec(2016)4; see also Committee of Ministers Recommendation CM/Rec(2011)7 on a new notion of media.

8. Several jurisdictions have recognised bloggers' right to protection of their sources, including the Irish High Court (*Cornec v. Morrice and Others* [2012] IEHC 387, the New Zealand High Court (*Slater v. Blomfield* [2014] NZHC 2221) and the California Court of Appeals (*O'Grady v. Superior Court (Apple)*, 139 Cal.App. 4th 1423). The NGO Article 19 believes that bloggers "should be able to invoke the right to protect sources in the same way as professional journalists"; see "The Right to Blog: Policy Brief", 2013.

life. The Assembly should not encourage Council of Europe member States to start revealing the identity of every anonymous contributor under the pretext of saving the credibility of the press. Another issue is that of diversification of training provided by professional organisations of journalists (paragraph 95). In this context, the security of data should also be examined. Thus, journalists' organisations could focus on issues such as: what journalists should do to keep their data secure? How should they protect their sources, including whistle-blowers? What could they do themselves to protect their own safety?

1. Explanatory notes

Amendment A (to the draft resolution)

This amendment aims at focusing on the positive developments of the digital era for journalists. New technologies do not only pose a threat to the freedom of expression and the profession of journalism, but they also provide new opportunities. For example, journalistic research has become much easier, as a vast amount of information has become easily and immediately accessible. Moreover, journalists can communicate more easily with each other as well as with their sources. International networks for journalists and globally accessible databases with journalistic sources and works have become a reality and allow collective journalism on a whole new level (like, for example, the [International Consortium of Investigative Journalists](#), which has worked on the “Panama” and “Paradise Papers” and the [Organised Crime and Corruption Reporting Project](#), which disclosed the “Laundromat Affair”).

Amendment B (to the draft resolution)

This amendment aims at slightly rephrasing paragraph 6.1 and at separating the issue of the protection of journalistic sources⁹ from that of journalists and other media actors' safety (it is proposed to consider the latter in a separate amendment, see Amendment C). On numerous occasions, the European Court of Human Rights has stressed that the protection of journalistic sources is one of the basic conditions for press freedom. The amendment also proposes to mention the “right to receive or impart information”, which is crucial for journalists' work.¹⁰ Moreover, it is also proposed to replace the word “media professionals” by “journalists and other media actors”, as the draft resolution and the report by Ms Drobinski-Weiss (see, in particular, its Section 2.1) are about “the status of journalists” and the proposed protections should extend also to other relevant media actors, as is the case under Committee of Ministers' Recommendation CM/Rec(2016)4.

Amendment C (to the draft resolution)

This amendment aims at considering the issue of journalists and other media actors' safety in a separate paragraph. Furthermore, it is proposed to stress the necessity of preventing any form of harassment against journalists (of a judicial, administrative or financial nature) and of conducting effective investigations into killings and other offences committed against their physical integrity. In this context, it is also worth recalling Committee of Ministers Recommendation [CM/Rec\(2016\)4](#). The appendix to this recommendation contains guidelines on what member States of the Council of Europe could do to ensure the safety of journalists and other media actors. The guidelines focus on four pillars: prevention, protection, prosecution (including a focus on fighting impunity) and promotion of information, education, and awareness-raising, and they offer detailed recommendations to member States on how to fulfil their relevant obligations within each pillar.

Amendment D (to the draft resolution)

This amendment aims at adding additional considerations for member States when they review domestic legislation on the status of journalists. Therefore, it is proposed to keep the words “with a view to identifying any areas to be updated, taking recent technological and economic developments into account” and to insert them into a new paragraph.

Furthermore, in paragraph 6.2.2, it would be useful to stress that when reviewing their legislation, member States should also take into account the issue of protecting journalists from “arbitrary dismissals or reprisals and from precarious working conditions that may expose them to undue pressures obliging them to depart

9. See, for example, *Goodwin v. the United Kingdom*, Application No. 28957/95, judgment of 27 March 1996; *Voskuil v. the Netherlands*, Application No. 64752/01, judgment of 22 November 2007, or *Becker v. Norway*, Application No. 21272/12, judgment of 5 October 2017, in which the European Court of Human Rights found violations of Article 10 of the European Convention on Human Rights.

10. See, for instance, *Görmüş and Others v. Turkey*, judgment of 19 January 2016, paragraphs 40-45.

from accepted journalistic ethics and standards”, as stressed in the guidelines attached to Recommendation CM/Rec(2016)4.¹¹ The issue of providing a stable legal framework for journalists’ work has been examined at length in Ms Drobinski-Weiss’s report (see Section 3.3) and deserves to be mentioned in the resolution. As stressed in the above-mentioned 2017 report by the Secretary General, arbitrary interference in the work of media professionals, licensing restrictions, censorship or self-censorship also restrict media freedom.¹²

As regards paragraph 6.2.3, the issue of defining the profession of journalist constitutes the main subject matter of the report (see in particular Sections 2.1 and 5.1). Although the rapporteur does not strongly insist on this idea and stresses that the essence of the profession lies in the tasks and not in the definition of the profession, she considers that “... a legal definition of journalists may be useful for protecting their rights (including the right to keep their information sources secret) as well as for drawing a clear distinction between a professional journalist and a blogger. In countries where there is no legal definition of a journalist it might be advisable for legislators to consider this matter”.¹³ Therefore, in light of this proposal by the rapporteur, it would be useful to mention it in the resolution and to recommend to certain member States to give thought to a definition of “journalist”, which should be wide enough to encompass all forms of journalistic work, including internet-based (such as certain categories of bloggers, who often have more readers than many traditional media, Ms Caruana Galizia¹⁴ being a tragic example).

Concerning paragraph 6.2.4, it is also proposed to repeal disproportionately restrictive defamation legislation. In some member States, including Azerbaijan and Iceland, criminal laws foresee prison sentences as a criminal sanction against defamation. Even if such laws are not always applied, they curtail freedom of expression. Moreover, in the event of libel proceedings, there should be sufficient procedural guarantees ensuring that journalists enjoy their right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights (ETS No. 5).

Amendment E (to the draft resolution)

This amendment aims mainly at replacing the words “workers” (which is not appropriate in the context of journalists) by “employees and freelancers”. As explained in Ms Drobinski-Weiss’s report, due to the outsourcing of work contracts, the number of journalists who are forced to practise their profession as so-called “freelancers” has considerably increased. Despite the fact that their legal status differs from that of journalists employed under the provisions of labour law, they often work under the same conditions as full-time employees. This category of journalist should also be included in the dialogue with their “employers”.

Amendment F (to the draft resolution)

This amendment is aimed at adding a new paragraph to put emphasis on journalists’ right to association, as enshrined in Article 11 of the European Convention on Human Rights. Any attempt to try to define the status of this profession should take into account the existence of this right and the report by Drobinski-Weiss rightly focuses on the role of trade unions and/or professional organisations.

Amendment G (to the draft resolution)

This amendment aims at recalling the existence of the Council of Europe’s Platform to promote the protection of journalism and safety of journalists, launched in April 2015. The Assembly should call on member States to further support the Platform by providing financial contributions and co-operating with respect to its functioning, in particular by responding to alerts and by engaging in follow-up initiated by the Secretary General.

11. See paragraph 2 of the Appendix to Recommendation CM/Rec(2016)4 (under “Prevention”).

12. Page 46 of the report. See also cases of the European Court of Human Rights in which the Court has found violations of Article 10 due to sanctions imposed on journalists by their employers (respectively dismissal and reprimand): *Fuentes Bobo v. Spain*, Application No. 39293/98, judgment of 29 February 2000, and *Wojtas-Kaleta v. Poland*, Application No. 20436/02, judgment of 16 July 2009.

13. Doc. 14505, paragraph 79.

14. Numerous members of the Assembly, including myself, have lodged a motion for a resolution calling for the elucidation of this assassination; see Doc. 14479, “Daphne Caruana Galizia’s assassination and the rule of law, in Malta and beyond: ensuring that the whole truth emerges”.

Amendment H (to the draft resolution)

This amendment aims at condemning the recent assassination of Daphne Caruana Galizia in Malta, Ján Kuciak in the Slovak Republic and Maxim Borodin in the Russian Federation and at calling on the competent national authorities to conduct effective investigations into their deaths. Recently, the Committee of Ministers has replied to a written question by our colleague Mr Pieter Omtzigt (Netherlands, EPP/CD) concerning the assassination of Ms Caruana Galizia. The Committee of Ministers had twice received information on the ongoing judicial investigations in Malta and it did not see “any reason for taking additional measures”. It is “confident that the Maltese authorities will continue to make appropriate use of all the means and mechanisms in place both in the Council of Europe and at domestic level and in full respect of the fundamental values and standards of the Council of Europe”.¹⁵ In the meantime, a large number of members of the Assembly, including myself, lodged a motion for a resolution calling for the elucidation of the assassination of Ms Caruana Galizia¹⁶ and the Bureau decided to seize our committee for report.¹⁷ As the drafting of this report might take some time, it is important to call again on the Maltese authorities to ensure an effective investigation into the journalist’s death. Moreover, it is also necessary to condemn the assassination of Ján Kuciak, which took place on 21 February 2018, and the recent assassination of Maxim Borodin and to call on the authorities to conduct an effective investigation into these tragic events.

15. Reply by the Committee of Ministers to Written Question No. 727 ([Doc. 14469](#)), [Doc. 14515](#) of 22 March 2018.

16. “Daphne Caruana Galizia’s assassination and the rule of law, in Malta and beyond: ensuring that the whole truth emerges”, [Doc. 14479](#).

17. Reference 4366 of 16 March 2018.