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

Doc. 15158
05 October 2020

The impact of the Covid-19 pandemic on human rights and the rule of law

Committee Opinion[1]
Committee on Culture, Science, Education and Media
Rapporteur: Mr Bogusław SONIK, Poland, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Culture, Science, Education and Media (hereafter "the committee") welcomes the report by Mr Vladimir Vardanyan (Armenia, EPP/CD) on behalf of the Committee on Legal Affairs and Human Rights, and agrees with its analysis and conclusions.

2. Not only has the Covid-19 pandemic triggered a public health crisis, it also clearly represents an unprecedented challenge for human rights and the rule of law. Compelled by the gravity of the situation, governments in several countries declared states of emergency; this was their sovereign right. Nevertheless, as highlighted by the report of the Committee on Legal Affairs and Human Rights, even in times of state emergency, Council of Europe member States must not trample on rights, suppress freedoms, dismantle democracy or violate the rule of law. Any interference with individual rights and freedoms must be exceptional and is only permissible under the European Convention on Human Rights (ETS No. 5, the Convention) if it is lawful, necessary, proportionate to the public interest being pursued and non-discriminatory.

3. Freedom of expression and, by extension, freedom of the media are among the rights and freedoms that have frequently come under pressure during the Covid-19 crisis. The report on behalf of the Committee on Legal Affairs and Human Rights rightly argues that information is essential for the public to understand the danger and adopt personal measures to protect themselves, and therefore measures that restrict freedom of expression, access to information and media freedom are not readily justifiable.

4. In keeping with its role of committee referred to for opinion, the committee has focused its analysis on this aspect. However, it wishes to highlight that the consequences of the pandemic have had a severe impact on several other rights underpinning our democratic societies, including the right to education and the right to access culture. In these areas – as in others – the crisis has exacerbated inequalities and laid bare systemic shortcomings, revealing that educational and cultural systems are ill-equipped to deal with a crisis on this scale. The current opinion has no scope to examine these issues; nor is it the place to consider the protection of the rights of young people, also profoundly affected by the crisis. Such issues must be addressed in specific reports and this is what our committee wishes to do.

5. In its recent report on "Threats to media freedom and journalists' security in Europe", our committee noted a degradation of the media ecosystems in our member States. During the Covid-19 pandemic, threats to media freedom and journalists' security have perversely intensified and increased. In addition to emergency legislation introducing restrictions on the right to information, numerous verbal and physical attacks on

1. Reference to committee: Decision by the Bureau, Reference 4514 of 7 May 2020. Reporting committee: Committee on Legal Affairs and Human Rights. See Doc. 15139. Opinion approved by the committee on 25 September 2020.

journalists have been reported, the risk of disinformation has been cited as an excuse to silence media critical of governmental action and journalists have been arrested and ill-treated on accusations of breaking quarantine.

6. Mr Vardanyan's report rightly argues that during times of crisis like the Covid-19 pandemic, journalists, whistle-blowers and human rights defenders are key assets in preventing further damage in democratic societies by disclosing bad practices in good time for corrective measures to be taken. Public authorities should develop practices to protect these groups and even come to arrangements for cooperation on access to information.

7. The committee fully supports the draft resolution. At the same time, based on the analysis of its rapporteur for opinion, it proposes to strengthen the resolution by highlighting the urgent need for member States to fully ensure, even and especially in times of crisis, that the obligation to protect media freedom and journalists' safety is fulfilled.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 3, after the third sentence, insert the following sentence:

> *"Therefore, the Covid-19 pandemic – and other potential similar crises that may occur in future – should not be taken as a pretext for the adoption of emergency legislation introducing restrictions on freedom of information that go beyond what is lawful, necessary, proportionate and non-discriminatory."*

Amendment B (to the draft resolution)

After paragraph 12.5, insert the following two sub-paragraphs:

> *"fulfil their positive obligation to protect media freedom and the safety of journalists by using all necessary means to end physical and verbal attacks on media professionals;*
>
> *stop the practice of blocking websites and initiating criminal prosecution to intimidate and silence critics, on the pretext of fighting disinformation;"*

C. Explanatory memorandum by Mr Bogusław Sonik, rapporteur for opinion

1. Introduction

1.1. Scope of this opinion

1. The Covid-19 crisis affects all the fields of the committee's terms of reference and therefore has an impact on a number of fundamental rights. Several members have underlined the undesirable consequences of this crisis for cultural institutions and hence its impact on the right to access culture. We are also aware of the exceptional difficulties facing our schools and academic institutions. Although the situation may be gradually returning to normal, the crisis has adversely affected the right to education – in particular for vulnerable groups – and lessons must be learned from this, especially given that the risk of a "second wave" of the pandemic still cannot be ruled out. The situation of young people, which was already an issue of concern, has suddenly worsened and this is not to forget the burden left to be shouldered by future generations in the form of the considerable debt that States are taking on in order to meet their most pressing needs and prevent our societies from collapsing.

2. It is clearly impossible to address all these issues in the current opinion. I am therefore delighted that the initiative was taken to set in motion a new report on the impact of the Covid-19 pandemic on education and culture.

3. The scope of my opinion will therefore deliberately be limited to a specific issue: violations of the freedom of the media as safeguarded by Article 10 of the European Convention on Human Rights.[2]

1.2. Overview of threats to media freedom in the context of the current crisis

4. The Covid-19 crisis has seriously affected the press and journalists. Even before, the economic model of conventional media was already badly hit by the loss of most advertisers, who had deserted print media and moved online. Advertising revenues are now dropping even more quickly during the public health crisis because newspaper sales have slumped and companies are preparing for an economic downturn, leaving journalism endangered on a global scale.[3] As for journalists, their situation has become particularly precarious since the start of the pandemic: some are starting to face redundancies or are being forced to accept a wage cut and/or a shift to less secure and poorly paid freelance work.

5. Furthermore, the Covid-19 crisis has clearly had a direct impact on the working conditions of journalists in all Council of Europe member States. Like other key workers, their occupation leaves them exposed to increased health risks and as the crisis is undermining the financial stability of the media sector, particularly that of old media, job safety and rates of pay are also put at risk. In addition, the media have been operating during the pandemic in difficult conditions that considerably impede access to reliable information and increase the risk of spreading information that has not been verified to normal standards.

6. As quality information is of vital importance for democratic processes and for effectively fighting the virus and its consequences, public authorities should have made a commitment to preserving free and independent media, supported the media ecosystem and facilitated journalists' work. Yet since the start of the current crisis, media freedom has faced new threats in several member States.

7. Some governments have used the pandemic as a pretext for adopting emergency legislation restricting fundamental freedoms – including the freedom of information – leaving societies exposed to a two-fold risk: such restrictions go beyond what is actually required to deal with the crisis and they could remain in force longer than strictly necessary. Such an approach could have severe consequences for press freedom.

8. Furthermore, in several countries, freedom of information is under mounting pressure and the threats and attacks on the media and journalists have become even more alarming. Several governments seem to want to exploit the crisis to strengthen their hold over communication with the general public: they filter the information to which citizens have access and try to shape media coverage to avoid criticism of their actions on the ground that it undermines public order. Journalists who continue to criticise – by asking difficult questions and demanding the authorities justify their actions – run the risk of physical aggression, online harassment, police investigations, fines and legal harassment; foreign correspondents are deported.

2. State of emergency, derogations from Article 10 of the European Convention on Human Rights and changes to the legal framework which adversely impact media freedom[4]

9. Under Article 15 of the Convention, in exceptional circumstances any member State may take measures derogating from its obligations under the Convention, provided that such measures are not inconsistent with its other obligations under international law. Several Council of Europe member States have declared a state of emergency during the Covid-19 public health crisis. On 23 April 2020, 10 countries informed the Council of Europe of human rights derogations: Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, the Republic of Moldova, Romania, San Marino and Serbia.[5]

10. In general, the derogations concern certain obligations under Articles 5, 8 and 11 of the Convention, and Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention.

11. No derogations to Article 10 of the Convention were declared. However, in the many documents accompanying the declarations of derogation, two member States – Armenia and the Republic of Moldova – specifically referred to media operations, although it must be noted that there is no legal obligation to specify which rights or freedoms may be affected.

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2. Another issue I choose not to address here is the "role of the media in times of crisis", which merits further analysis in a separate report.
3. For example, the advertising revenues of several US online media have dropped by around 50%. The News Corp publishing group has suspended the print editions of 60 newspapers in Australia. In the United Kingdom, the publication of certain local and regional newspapers could be discontinued owing to revenue loss caused by the crisis.
4. For further details, see Appendix 2 in the information document AS/Cult/Inf (2020) 02.
5. See the Council of Europe Treaty Office website: https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354.

12. In **Armenia**, as part of the temporary restrictions on rights and freedoms introduced in mid-March, it was declared that any publication of information about the pandemic (public dissemination, transfer of publications, information material or reports on the current or new cases of infection from the virus in Armenia or abroad, on the state of health of persons, sources of infection, etc.) should be carried out by legal and natural persons, including the media, exclusively by making reference to the information provided by the Commandant's Office (referred to as "official information"). These reports were not to contradict official information and should reproduce it as far as possible. On 13 April 2020, the government announced that the restrictions previously imposed on media coverage would not be extended, but that the authorities would continue to monitor the situation regarding false information and reserved the right to reintroduce the previous measures if necessary.

13. In the **Republic of Moldova**, during the state of emergency, the Commission for exceptional xituations was responsible for coordinating media activities as regards: a) informing the population about the causes and extent of the exceptional situation, the risk-prevention measures undertaken, how the consequences of the situation were being dealt with and the protection of the population; b) notifying the population about the rules of conduct during the exceptional situation; c) introducing special rules for the use of telecommunications.

14. In other States, laws, decrees and decisions restricting media activity were adopted or proposed for adoption. Under Article 10 of the Convention, such restrictions must be prescribed by law, necessary and proportionate to the legitimate purpose, i.e. the response to an exceptional threat to public health and security.

15. In **Hungary**, on 30 March 2020, a draft law was adopted allowing Prime Minister Viktor Orbán to rule by decree by indefinitely extending the state of emergency because of the Covid-19 pandemic. This law also changed the Criminal Code to clamp down on spreading "false information" with jail terms of up to five years. The risk is that the Hungarian Government will use these new powers to tighten its control and its hold over the country's news system and to silence all critics by threatening independent journalists with criminal prosecution and jail terms. Rights groups have warned that the new law gives the prime minister more powers to introduce draconian restrictions without a "sunset clause" that would allow the measures to be lifted at the end of the public health crisis. The law could also have devastating consequences for the remnants of Hungary's independent media, which is already weakened. On 17 June 2020, the government announced the end of the state of emergency that allowed the prime minister to rule by decree.

16. In **Turkey**, on 24 March 2020, the governing coalition submitted draft amendments to the Law on Criminal Enforcement. These propose to release around a third of Turkey's 300 000 prison inmates, by accelerating plans for early or conditional release in order to ease capacity in the overcrowded prisons and reduce the risk to inmates' health caused by the current Covid-19 crisis and the increased risk of infection in incarceration. While efforts to reduce overcrowding in Turkish prisons should be welcomed, the draft law excludes prisoners being prosecuted for terror-related charges. Yet the majority of the 95 journalists in jail are there on terrorism charges as a result of the political targeting of journalists for critical reporting. It should be noted that during the current public health crisis, journalists have also been targeted for publishing information that the authorities regard as dangerous.

17. Furthermore, Human Rights Watch has warned that since the start of the pandemic, the Turkish Government has been using the crisis in a bid to expand control and censorship over social media platforms.[6] Under a draft law on new economic measures to deal with Covid-19, social media platforms must put forward legal representatives to deal with Turkish courts. The representatives would have 72 hours to manage requests to remove content and block access to accounts and would have to provide a quarterly report on content removal. Platforms would also be required to store user data in Turkey, implying that the authorities could demand access. Failure to comply with the law could lead to fines of up to 5 million Turkish lira ($746 000). Since the start of the pandemic, people have already been briefly detained then subjected to criminal investigation and prosecution for social media posts that prosecutors deem a threat to public health, sowing fear and panic among the population.

18. In the **Russian Federation**, President Vladimir Putin enacted legislation on 1 April 2020 imposing harsh new penalties on media organisations and individuals for spreading "false information" about the Covid-19 crisis. The new laws amend the Administrative Code, introducing new penalties for legal entities, and the Criminal Code, introducing a new offence and harsher penalties on individuals. The application of the new laws will not be time-limited to the duration of the pandemic. They are broadly worded to cover "false information" about any events that pose a potential threat to people's lives or safety, and the government's responses to such events. Media organisations will face fines of up to 5 million roubles (€62 000), that may

6. https://ahvalnews.com/social-media/turkish-govt-using-pandemic-exert-further-control-over-social-media-platforms-hrw.

rise to 10 million roubles (€124 000) for repeated offences. Individuals will face criminal prosecution that may lead to severe financial penalties (for example fines equivalent to the person's total income over the last 18 months) and prison sentences of up to 5 years.

19. Besides hefty fines, Russia media organisations that call into question official figures or the State response to the virus risk having their licence revoked. Russia's official media regulator, Roskomnadzor, warned against publishing false information that it said could lead to the risk of severe disruption to public order and health. Several media organisations were instructed to delete information suggesting that the number of cases of the virus could be higher than official figures.

20. In **Azerbaijan**, the parliament has changed the Law on Information so that website owners are required to prevent the publication of "[false] information which can harm" on a vast list of subjects ranging from the healthcare system to transport networks; this goes against freedom of expression. Sir Roger Gale (United Kingdom, EC/DA), co-rapporteur on the honouring of obligations and commitments by Azerbaijan, condemned the government's measures as a "shameful exploitation" of the pandemic. Members of the Azerbaijani opposition have been arrested for criticising the government's handling of the crisis.

21. In **Armenia**, since the government declared a state of emergency on 16 March 2020, more than 20 media organisations have had to change or delete information that the authorities considered dangerous on grounds of scaremongering. Strict rules prohibit the publication of information about the Covid-19 pandemic in Armenia and abroad, including infection and death rates which are not fully consistent with official press releases and information published by the Armenian Unified Information Centre. In mid-April, the government announced that the restrictions previously imposed on media coverage had not been extended (see above).

22. In **Bosnia and Herzegovina**, decrees and legislative proposals aimed at blocking the circulation of information that is liable to cause panic run the risk of limiting the work of journalists and freedom of expression on social media platforms.

23. In **Romania**, a decree allows the authorities to demand the removal of content containing "false information" regarding the evolution of Covid-19 and prevention measures, and block websites featuring this content, without any opportunity to appeal the decision. Another decree provides for a doubling of the time limit the public authorities have to respond to a request for information.

3. Attacks and pressure on the media and journalists in Europe[7]

3.1. Police action

24. Since the pandemic began, police in several member States have interfered with the work of journalists and resorted to methods and actions that endanger media freedom. For the purposes of intimidation, journalists are being arrested and detained, only to be subsequently released. They are ill-treated at the police station, their work equipment (computers, cameras and mobile telephones) is seized and pictures and recordings are deleted. Persons in civilian clothing sometimes act on behalf of the police. There have been cases where journalists have been accused of "spreading fear and panic among the population". Arbitrary arrests have been made after interviews about the economic repercussions of lockdown measures and journalists have been detained for "violating quarantine rules", even when they had official documents authorising them to conduct their work. According to the Council of Europe Platform to Promote the Protection of Journalism and the Safety of Journalists (hereafter: "the Platform"), at least six cases of police action of this kind have been reported in Turkey, five in Azerbaijan and one in Serbia.

3.2. Threats and pressure from public authorities and politicians

25. The intimidation of journalists by authorities and political representatives is part of a worrying trend that is on the rise. Reports of three threats of this kind have been recorded in the Russian Federation, one in Turkey and another in Slovenia.

7. The main source of information concerning threats and attacks against media organisations and journalists is the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists. Other sources of information concerning pressure on media organisations and journalists are also cited in this report – see Appendices 1 and 2 in the information document AS/Cult/Inf (2020) 02.

26. In the Russian Federation, the President of the Republic of Chechnya made death threats against a journalist who was investigating human rights violations in Chechnya that were perpetrated under the pretext of fighting the Covid-19 pandemic. In fear of her life, the journalist lodged a complaint with the General Prosecutor's Office but received no response: instead of offering her protection, it ordered her to delete the article from the newspaper's website.

27. A high-ranking official at the Russian Ministry of Defence threatened an Italian journalist who had been investigating Russian support of the coronavirus response in a region of Italy. The journalist had cast doubts over whether the Russian military presence was solely for medical assistance, arguing that Russia's assistance was really an intelligence and propaganda operation. In response, the high-ranking military official accused the journalist of inciting "Russophobia" and openly threatened him.

28. Also in the Russian Federation, a regional governor directly threatened journalists by declaring that spreading "fake news" during the coronavirus pandemic was akin to extremism.

29. Sometimes, high-ranking officials refrain from making overt threats but disparage and stir up hatred against the media and journalists in order to sow distrust in news outlets.

30. For example, Turkey's President declared after a Cabinet meeting that the country had to be rescued not only from the coronavirus but from all media and political viruses, too. He said that instead of contributing to the fight against the pandemic, journalists were publishing false information and untruths and were thus more dangerous than the virus itself.

31. In Slovenia, the prime minister recently made vitriolic attacks on critical journalists, accusing public television of spreading lies about the pandemic and claiming that one of the journalists was an escaped psychiatric patient suffering from "COVID-Marx/Lenin".

3.3. Fake news: a pretext for muzzling media

32. False information obviously has the potential to do considerable harm, particularly in times of crisis like the current pandemic: it can lead the public to behave irrationally, be overwhelmed by panic or disobey the lockdown rules or public health measures. Fake news must be fought as soon as it emerges in order to contain it. Nevertheless, some member States use the fight against false information as a pretext to curb media freedoms and increase their control over the media environment.

33. For example, at a government meeting, the Russian President claimed that false information about the coronavirus was being organised from abroad and disseminated in the country to sow panic. These remarks hold great significance in light of the country's new legislation imposing harsh new penalties on media organisations and individuals for spreading "false information" about the Covid-19 crisis. At the same time, according to a report by the European External Action Service's East StratCom Task Force, official Russian outlets backed by the Kremlin have been targeting the general public in the European Union and its neighbouring regions with false information and conspiracy theories about the Covid-19 pandemic.

34. In Turkey, the Radio and Television Supreme Council sanctioned a television channel for critical remarks made during its coverage of State measures dealing with the Covid-19 crisis that in particular referred to moves to block fundraising campaigns organised by opposition mayors. It also objected that a programme had allegedly spread "false information" when the channel reported on the difficulties people had faced when buying bread during lockdown.

35. As an interim measure during the state of emergency, on 20 March 2020, the Moldovan Intelligence and Security Service blocked 52 websites that were "disseminating false information about the coronavirus with the aim of generating panic". It also published a list of websites to which access must be limited.

36. Journalists are not the only ones to be deterred by laws on "false information". For fear of becoming liable under the new laws, doctors and other healthcare professionals are hesitant to disclose facts and figures about the Covid-19 public health crisis. This is particularly the case in the Russian Federation and Hungary where long prison sentences may be handed down for such behaviour. Self-censorship follows by necessity.

37. In a letter to the Minister of Health, the People's Advocate of the Republic of Moldova asked for an immediate end to all forms of pressure on healthcare workers and pointed out that persons making public disclosures were protected by the Law on Whistle-blowers and should benefit from all its legal safeguards.

3.4. Restrictions on access to information

38. In exceptional situations like the current pandemic, it is vital to keep the public correctly informed about the virus. However, limits or delays in providing access to information have been observed in several member States.

39. For example, in the Czech Republic, Italy and Serbia, journalists were prevented from attending press conferences, obtaining information from public health authorities or reporting on law-enforcement operations. In the Russian Federation, foreign journalists were refused entry to the parliament, and courts have started to prevent the media from attending public hearings. Lastly, journalists and press photographers were denied entry to the Gare du Nord in Paris and to other French railway stations where they had been planning to report on the conditions for taking public transport after lockdown had been lifted.

40. In Serbia, the government extended the time limit for responding to public information requests to 30 days. In the Republic of Moldova, the authorities tripled the authorities' permitted response time for public information requests, which before the state of emergency was 15 days. Representatives from 25 media outlets complained about the lack of transparency and access to information of public interest since the introduction of the state of the emergency and asked the Minister of Health to organise online press conferences during which journalists would be allowed to ask live questions.

41. In Romania, a decree on the state of emergency contained a measure doubling the public authorities' authorised response time for information access requests, the time limit prior to the state of emergency having been 10 days (and 30 days in certain special cases). Several local agencies of the Romanian Ministry of Health cited the fight against Covid-19 as a reason for refusing to provide journalists with information or for directing them to the Communications Office created by the Ministry of the Interior to centralise crisis information.

3.5. Non-state attacks and pressure

42. Journalists are also subject to hostile acts by non-state perpetrators. For example, some investigative journalists have been targeted by smear and hate campaigns, even receiving death threats from extremist individuals or groups which accuse media professionals of unreasonably questioning government measures responding to the public health emergency. Other journalists have been physically assaulted when they were on the point of uncovering unwelcome truths about the operations of various companies involved in the supply of products that are indispensable in the current crisis and sometimes lacking, like masks, rubber gloves or hand sanitiser products. Slovenia and Ukraine have both had a case that is representative of this concerning trend.[8]

43. Furthermore, some businesses are also using the fight against fake news as a pretext for intimidating media outlets, by initiating legal proceedings against publishers and seeking substantial damages, as was the case with the Polish clothing company LLP.

44. Since the beginning of the Covid-19 crisis, there have been reports from several countries of violent attacks during demonstrations on media professionals which were conducted by law-enforcement officers and sometimes by demonstrators themselves. There has been a recent spate of such attacks during demonstrations in Germany. There have also been similar cases in Italy, Poland and Slovenia. This worrying trend helps impair the media's ability to provide coverage of demonstrations and keep the public up to date with correct information.

4. Conclusions

45. The exceptional circumstances arising from the public health crisis must not be used as a pretext by member States to restrict freedom of expression and media freedom. On the contrary, in the light of the need to keep the public correctly, reliably and quickly informed of all developments concerning the pandemic and governmental responses to the crisis, it is vital to ensure freedom of expression in general and freedom of the media in particular. In this respect, it is indeed worrying to note the proliferation of restrictive laws and threats against journalists and independent media outlets.

46. Verbal attacks are becoming more widespread and it is unacceptable that government members or other high-ranking representatives of institutions and ruling political parties express contempt or hatred for the media and journalists in order to sow distrust in journalists and independent news outlets.

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8. See Appendix 1 in the document AS/Cult/Inf (2020) 02, "Non-State Attacks and pressure".

47. It is disgraceful that the police, who should protect journalists against any form of assault or harassment, is itself responsible for attacks on them. Training plays a vital role in combating such abuse: police officers must understand that acts to intimidate journalists like arrests and detention, ill-treatment and the seizure of work equipment, are wholly unacceptable in democratic society.

48. Media outlets ought to have free access to information about the pandemic. Spokespersons or other official bodies should ensure continuous communication with the media and press agencies and, if necessary, facilitate media access to government members or experts. Public authorities should respond without delay to requests for information and cease the practice of interviews with advance screening of questions and no further opportunity for additional questions.

49. Any “vetting” of information about the pandemic by public authorities should be ruled out on principle. Governments should adopt a transparent approach and facilitate public access that is as broad as possible to information regarding the pandemic because it affects the health and lives of their people. Restrictions on access to information should remain the exception and respect the limits set out under Article 10 of the Convention.

50. The public has more limited access to print media during a period of lockdown, which means that television, radio and particularly the Internet become very important sources of information. Access to the Internet is vital in times of crisis. The fact that false information circulates online should not be used as a pretext for blocking websites. Disinformation is obviously particularly dangerous during a crisis and must be dealt with firmly and effectively, including through the provision of high-quality information. Nevertheless, such efforts must be conducted in full respect of the freedom of expression and without silencing independent media.