

# **Protection of journalists and media actors in the practices of the Council of Europe Human Rights**

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## **Abstract**

At the heart of the high value of democracy and human rights is the right of every individual to receive and impart information. Freedom of expression is one of the basic conditions for the progress of society and the progress of every individual. This is especially true of the practice of transmitting information and ideas in the public interest. Journalism guarantees the survival of the free flow of information and the access of all people to different ideas and opinions. Currently, we continue to see a significant increase in various forms of violence and abuse against journalists and media activists, including physical attacks, intimidation, targeted surveillance, and cyberbullying. Around the world, we now see a wide range of political and governmental tools and actions aimed at silencing critical voices and freedom of expression, and the free flow of information and ideas in an environment where media professionals are physically attacked, intimidated and retaliated against. They get pressured. In the meantime, the Council of Europe supports the freedom of expression of the media, journalists and other media activists through the European Convention on Human Rights, the jurisprudence of the European Court of Human Rights, as well as the setting of standards by various bodies, in particular the Committee of Ministers. It has done something special that is not comparable in its kind to other regional human rights systems. It is hoped that the member states of the Council of Europe, and in particular those that do not have a brilliant

track record of respecting this fundamental right in their political record, will make significant progress in the coming years.

**Keywords:** Free speech, Journalists, Council of Europe Human Rights

## **Introduction**

Journalism is a precondition for the realization of democracy because a journalist informs the society about the society itself; Journalists and all media activists provide the opportunity for public debate, and in fulfilling their responsibilities as public watchdogs, provide information on issues of public interest, and also involve managers, politicians, and rulers in power. Question; This is to ensure that citizens are informed and have access to the governance process. In order for journalists and other media activists, including whistle blowers, to be able to play their full role in a democratic society, they must be able to examine the structure of power in society without interference or intimidation, and without fear, Violence, threats, arbitrary detention without proper reason. In short, there would be no free media without protecting the safety of journalists. As the Secretary-General of the Council of Europe emphasizes in his 2016 Annual Report on the State of Democracy, Human Rights and the Rule of Law, a Security Necessity for Europe (Third Annual Report of the Secretary-General): No real freedom of expression and no Completely free and independent media, there is no effective protection against incompetence or abuse of power. The fact is that journalism can be a dangerous profession, and journalists may experience unwarranted interference through various sources. As a result, they may have high levels of fear in the workplace (Chapel et al., 2006). Their working conditions and the issues they have to deal with may expose them to physical, economic, judicial and psychological threats. This worrying element is explicitly stated in the introduction to Recommendation CM / Rec (2016) 4 of the Committee of Ministers adopted in 2016<sup>1</sup>

<sup>1</sup> - Committee of Ministers Recommendation CM/Rec(2016)4 on the protection of journalism

and safety of journalists and other media actors, 13 April 2016.

(Council of Europe, 2016), on "Protection of journalism and the safety of journalists and other media actors": This is a matter of concern. It is unacceptable that journalists and other media activists in Europe are increasingly threatened, harassed, arbitrarily deprived of their liberty, physically assaulted for their research work, opinions or reports. And be tortured and even killed; these risks increase, especially when their work is focused on exposing abuse of power, corruption, human rights violations, criminal activities, terrorism and fundamentalism.

Journalists in any society face special political and social conditions that require special flexibility in dealing properly in any situation. A sense of mission to achieve the goals of journalism and to function properly as a public watchdog and to properly inform the public through investigative and independent journalism is the motivation for journalists to overcome the daunting challenges they face.

In the definition of a journalist, it should be said that a journalist is a person who is regularly involved in collecting or disseminating information to the public for the purpose of journalism and in the public interest. The Committee of Ministers of the Council of Europe in 2000 defined a journalist as "any natural or legal person who is regularly or professionally involved in the collection and dissemination of information through the mass media tools" (Appendix to Recommendation No. R 2000 7, the right of journalists not to disclose their sources of information).

Recommendation CM / Rec (2011) 7 Regarding the new notion of media, it has also noted that with the new media created by technological and social changes, we have witnessed the entry of a new scene of reporters, including bloggers, citizens as whistle blowers, and other users who produce content. Adopting this new notion of media necessitates the acceptance that "the

range of media actors and, consequently, new forms of media has increased in the digital age."<sup>2</sup>

It is now widely accepted that "other media actors" - including Bloggers, online reporters, or other public debate participants who may not have legal definitions of traditional journalism- are increasingly playing an important role in public debates and have legal and procedural protections.

### **Freedom of the media and press under Article 10 of the European Convention on Human Rights**

Article 10 of the Convention is wide-ranging and protects various aspects of freedom of expression; Among other things, it imposes a duty on member states to protect the right of individuals to express their views freely, against repression by government actors or by private individuals. This requires providing a strong legal framework and ensuring effective investigation and prosecution of crimes that violate freedom of expression. Article 10 of the Convention states: "(a) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. <sup>3</sup>" Although Article 10 does not explicitly mention freedom of the press, the European Court of Human Rights recognized the principles and rules for granting a special place to the press in the enjoyment of the freedoms set forth in Article 10. In addition, the Court has repeatedly emphasized that an NGO can play as important a role as the press in a democratic society. "When an NGO draws attention to the public interest, it has the role of a public watchdog of

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<sup>2</sup> - Council of Europe Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 30 April 2014 at the 1198<sup>th</sup> meeting of the Ministers' Deputies, paragraph 2:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c5e9d](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c5e9d), accessed 30 June 2020.

<sup>3</sup> - Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950

equal importance to the press,"<sup>4</sup>Court said. It should also be noted that in the protection and safeguarding of journalists, Article 10 of the Convention is deeply linked to other articles of the Convention, including Article 2 and Article 3.

### **Support measures and standardization of the Council of Europe through the approvals of various pillars**

The Council of Europe set of measures has played an important role in explaining the dimensions of freedom of expression of media actors, and the aim of these standardizations is to enable people to make effective use of their rights. The Council of Europe's standardization activities in relation to media freedom and the protection of media activists are inspired by the Convention itself, which is also interpreted in the Court's case law. The Council of Europe's soft law, in turn, has been incorporated into the Court's case law, using a more precise policy framework with guidelines for decision-making. Among the many documents of the Committee of Ministers in this regard, some of them can be mentioned as the most important guidelines for strengthening and protecting the role of journalists and members of the media and their rights and freedoms; Recommendation CM / Rec (2016) 4 on the protection of journalism and the safety of journalists and other media actors, Recommendation CM / Rec (2014) 7 on the protection of whistle blowers, recommendation CM / Rec (2013) 1 on gender equality and Media, Recommendation CM / Rec (2011) 7 on the New notion of Media, Recommendation CM / Rec (2007) 15 on measures related to media coverage of election campaigns, Recommendation Rec (2004) 16 on the Right of Reply in the New Media Environment, Recommendation Rec (2003) 13 on providing information through the media in relation to criminal proceedings, Recommendation Rec (2002) 2 on access to official documents, Recommendation No. R (2000) 7 on the right of journalists not to disclose their information sources; Recommendation No. R (97) 19 on portrayal

violence in the electronic media; Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, Recommendation No. R (96) 4 on protect of journalists in conflict and tension, Recommendation No. R (94) 13 on Measures to Promote Media Transparency, Declaration Decl-26.09.2007 Committee of Ministers on support and promotion investigative journalism, Declaration Decl-27.09.2006 Committee of Ministers on guarantee the independence of public service broadcasting in the member states, Guidelines of the Committee of Ministers (2011) on the Elimination of Immunity from Serious Violations of Human Rights, Guidelines of the Committee of Ministers (2007) on the Protection of Freedom of Expression and Information in times of crisis; These documents are among the most important documents that have paid special attention to supporting the role of journalists.

Recommendation on the protection of journalism and the safety of journalists and other media actors (2016), in line with the Court's claim that the Convention is a living instrument to be interpreted in the light of current circumstances, has had the greatest impact on the Court's case law. It focuses on supporting journalists and other media actors (including political bloggers and whistle blowers), and thus these actors are widely supported. According to the Recommendation, the principle of freedom of expression, as well as the notion of media and journalism, must be understood and weighed in the light of current communication practices. New developments in communication technologies enable a wide and diverse range of people and organizations to participate in public debates. Individuals, civil society organizations, academics and whistle blowers, along with professional journalists, can make a valuable contribution to the public debate and thus play a similar or equivalent role, traditionally it was played only by the press and professional journalists. In fact, these considerations have been endorsed as a general concept of the Recommendation.

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<sup>4</sup> - Animal Defenders International v. the United Kingdom, 22 April 2013 (G C), paragraph 103.

Paragraph one of the resolutions of the Parliamentary Assembly<sup>5</sup>, states: "The right to freedom of expression and information through the media is an essential need for any democratic society. Therefore, the Parliamentary Assembly welcomes the establishment of software platforms to promote the protection of journalism and the safety of journalists, and notes with concern that "The issue of serious threats to media freedom in Europe has been confirmed by a large number of violations of the rights and freedoms of media actors. Therefore, the Assembly pays special attention to the state of media freedom and the security of journalists in Europe."

### **The role and duties of journalists**

In the famous case of *Lingens v. Austria*<sup>6</sup>, for the first time, Court emphasized the role of the press as a public watchdog. Mr Lingens was a journalist who in several articles criticized the Austrian Chancellor for a particular political move. Mr Lingens was an investigative journalist who, following the announcement of the Austrian Chancellor's alliance with a party led by a person with Nazi interests, called the Chancellor's actions "immoral", "inappropriate" and "opportunistic". Austrian courts found the allegations insulting and fined him. National courts also ruled that the journalist could not substantiate his allegations. In view of the recent issue, the European Court of Human Rights has ruled that the method of national courts is incorrect because, in the Court's view, "value judgments" are not provable (paragraph 12).<sup>7</sup> Looking at the context of Lingens' conviction, the Court emphasized the importance of press freedom in political debates: "These principles are of particular importance to the press. While the press should not cross boundaries, including "protecting the

credibility of others," it nevertheless has a duty to provide information and opinions on political issues, as it should in other areas of public interest. "The press not only has a duty to convey such information and views, people also have the right to receive it ..." In this regard, the European Court of Human Rights did not accept the judgment of the Vienna Court of Appeals on this issue and acknowledged that it is the duty of the press to convey information, the interpretation of which should be left primarily to the reader (paragraph 41). In the same case, the Court argued that freedom of the press provided one of the best tools for discovering and shaping opinions about the views and attitudes of political leaders; As a result, freedom of political debate is at the core of the concept of a democratic society.

The Court also reiterates in *Castells v. Spain* <sup>8</sup> that the prominent role of the press in a state governed by the rule of law should not be forgotten. "... Freedom of the press is one of the best tools for discovering and forming opinions about the ideas and attitudes of its political leaders. In particular, it gives politicians the opportunity to think about the concerns of public opinion and reflect and comment about this. It therefore enables everyone to participate in the free political debate that is at the core of the concept of a democratic society."

In the *Observer and Guardian v. United Kingdom*<sup>9</sup>, national courts of UK banned the publication of specific articles on the grounds that they endanger national security by their judgments. Here the Court referred to the duty of the press in "transmitting information and opinions on matters of public interest" and added that the right of the people to receive such information was in line with the duty of the press to publish it. As a result, the press gained

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<sup>5</sup>- Resolution "2141 (2017)1, Attacks against journalists and media freedom in Europe, Parliamentary Assembly of council of Europe.

<sup>6</sup> - *Lingens v. Austria*, 8 July 1986.

<sup>7</sup>- See *Thorgeirson v. Iceland*, 25 June 1992, paragraph 65. In this case the charges against the police were collected from various sources, the Court referred to as such; But the article also mentioned rumours from the public. While the respondent Government argued that applicant's

articles lacked an objective basis because he could not substantiate the allegations, the Court considered the condition of truth to be irrational (not impossible), and stated that If the press is only allowed to publish fully explored facts, they will hardly be able to publish anything.

<sup>8</sup>- *Castells v. Spain*, 23 April 1992, paragraph 43

<sup>9</sup>- *Observer and Guardian v. the United Kingdom*, 26 November 1991

more freedom by receiving the right and duty to transmit information and opinions; Thus, the possibility of limiting such interventions in the UK was reduced. The Court stated that because of the "duties and responsibilities" inherent in the exercise of freedom of expression, The protection of journalists under Article 10 is subject to the condition that they "act in good faith to provide accurate and reliable information in accordance with journalistic ethics."<sup>10</sup>

Another important point in the ethics of journalism is to prevent the spread of violence and hate speech. In addition, the Court has emphasized that the "duties and responsibilities" of media professionals are of particular importance in times of conflict and tension. According to the Court, special care must be taken when publishing comments containing incitement to violence against the government so that the media does not become a means of inciting and promoting violence.<sup>11</sup> The Court also stated: "... Member States may not impose criminal penalties on the media, on the basis of arguments based on the protection of territorial integrity or national security or the prevention of crime or public disorder, in order to limit the right to know and receive information of the people."<sup>12</sup>

The court also noted that the articles published by applicant contained strong criticism of the government's policy and the actions of its security forces towards the Kurds in south eastern Turkey, and that its specific expressions seemed offensive. However, the Court notes that this article does not recognize violence and has no motive for retaliation or armed resistance, and therefore the criminal conviction violates Article 10 of the Convention; Applicant did not go beyond the limits of his duties and responsibilities in the conflict and tensions, but he offered the people another perspective on the

situation in south eastern Turkey, regardless of whether this view is unpleasant for the people.

In addition to the above, journalists are required to collect material and news in accordance with professional standards. In *Heldiman's v. Switzerland*<sup>13</sup>, which domestic tribunals convicted four journalists for recording and broadcasting interviews using hidden cameras, the Court found such an approach acceptable given the specific circumstances of the case. The Court found that Article 10 protects journalists from reporting on the condition that they act in good faith and with accurate facts, while providing "credible and accurate" information in accordance with journalistic ethics. On the other hand, the recording was reported in the audio-visual media, and the audio-visual media usually have an immediate and more powerful effect than the print media. One decisive factor in this case, however, was that the journalists disguised the insurance agent's face and voice, and that the interview did not take place at his usual workplace.

Thus, in the world of media and press, adherence to the standards of ethical and professional journalism is essential so that audiences can make informed judgments about the world around them in a wide range of public spheres. It is also worth noting that the concept of a responsible journalist requires that in cases where journalists act to the detriment of their duty to comply with criminal law, they should be aware that they are subject to legal penalties, including criminal penalties.<sup>14</sup>

### **Risks and threats related to gender**

International experts have identified a variety of risks associated with gender-specific attacks, online harassment, media inequality, and public discrimination against women in society, which certainly pose obstacles to the professional work of journalists.<sup>15</sup> Violence against female journalists has a disproportionate effect on

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<sup>10</sup>- See also: *Fressoz and Roire v. France*, January 1999; *Bergens Tidende and Others v. Norway*, May 2000

<sup>11</sup>- *Şener v. Turkey*, 18 July 2000

<sup>12</sup>- *Ibid.*

<sup>13</sup>- *Haldimann and Others v. Switzerland*, 24 February 2015.

<sup>14</sup>- *Brambilla and Others v. Italy*, 23 June 2016.

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[www.oas.org/en/iachr/expression/showarticle.asp?artID=1100&IID=1](http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1100&IID=1), accessed 8 July 2020.

them. This type of violence takes many forms and often involves physical and verbal harassment. The Council of Europe conducted a study in 2017 with the aim of understanding the nature of pressures on journalists in Europe, examining the impact of intimidation and pressure on journalists, such as self-censorship, how journalists deal with the dangers of the profession, and discovering how flexible journalists are to continue, and reflect on ways to deal with pressure and intimidation in order to silence journalists, etc. The study was published in an interview with 20 leading investigative journalists around the world in 2020; This study presents the views of these 20 journalists on the dangers, pressures and obstacles experienced in the course of their work in different European countries. Seven of these journalists were women and spoke about the gender nature of some of the violence against them and other forms of discrimination against women. Female journalists spoke about all kinds of discrimination, such as access to the male-dominated world of journalism, gender pay gaps, and the division of gender responsibilities in the workplace. Khadija Ismayilova, a prominent Azerbaijani investigative journalist, is one of the victims of gender-based threats. He has been harassed by threats of disclosure and scandal, the publication of articles about his privacy, such as the disclosure of videos and pictures of his relationship with his partner. She filed a claim with the European Court of Human Rights and finally the Court condemned the Azerbaijani government. In this case, however, the Court stated that the government's involvement in disclosing her private information, as the applicant had claimed, could not be

conclusively proven, however, given the serious nature of the crimes, the Court found that the police investigation was completely superficial and inconclusive. And even with the disclosure of applicant private information, the government has acted against the correct ethics of journalism and has once again violated his right to privacy and family life. Also, the Azerbaijani government has not fulfilled its positive obligation to protect her freedom of expression and privacy.<sup>16</sup>

Daphne Caruana Galizia, another prominent Maltese investigative journalist and blogger, was killed in a car bombing on October 16, 2017,<sup>17</sup> said it was difficult to enter the male-dominated world of journalism in a country like Malta that has the widest gap between the overall participation of women and men in the EU labour market.<sup>18</sup> Daphne Galizia's disclosures about corruption in the then Maltese government led to early elections in the country. Among Galizia's actions was the disclosure of evidence that then-Maltese Prime Minister Joseph Muscat and members of her family were involved in large-scale corruption, which eventually led to the resignation of the Prime Minister following pressure from the Prime Minister. Council of Europe standards, as well as a recent UN resolution<sup>19</sup>, call for safeguards to address the dangers and discrimination against journalists on grounds of gender, ethnic identity, religion and other discrimination. The Recommendation of the Committee of Ministers<sup>20</sup>, also calls for special attention to be paid to the protection of female journalists and those media actors who face specific gender risks, Including sexual abuse, misogyny and

<sup>16</sup>- Khadija ismayilova v. Azerbaijan, June 2020.

<sup>17</sup>-(Her report focused primarily on Malta politicians with a particular focus on corruption, egalitarianism, advocacy, money laundering, and organized crime. "Running Commenting" was widely read, and she was a regular columnist for the Sunday Times of Malta and later The Malta Independent and faced more than 40 defamation complaints.)

<sup>18</sup>- European Commission (2017), "European semester thematic factsheet. Women in the labour market":

[https://ec.europa.eu/info/sites/info/files/european-semester\\_thematic-factsheet\\_labourforce-participation-women\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/european-semester_thematic-factsheet_labourforce-participation-women_en_0.pdf), accessed 5 July 2020.

<sup>19</sup>- Political Declaration of the High-level Midterm Review on the Implementation of the Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024 The General Assembly (5 December 2019), <https://undocs.org/en/A/RES/74/15>

<sup>20</sup>- CM/Rec (2016)4, paragraph 2

humiliating threats, intimidation, harassment and rape and violence.

### **Positive government actions to ensure freedom, safety and strengthen protection against violence**

Threats and acts of violence have become a bitter reality in the lives of many media actors in Europe; Journalists, in particular, reporting on corruption and abuse of power are more exposed to a variety of verbal and physical threats. European Court of Human Rights cases, explicitly state that government officials have a duty to enact legislation to protect journalists and writers who face death or bodily harm.<sup>21</sup> In fact, although in the past it has always been said that governments have a duty not to interfere in the implementation of rights such as the right to freedom of expression, they are required to take positive steps to ensure effective protection of human rights. These include preventing interference with the rights of individuals by private or non-governmental actors.<sup>22</sup> The Secretary General of the Council of Europe acknowledged that governments have faced unprecedented challenges in the Covid-19 public health crisis, but that the crisis should not be used "to silence newspapers or create roadblocks". However, many attacks on media activists in Europe are carried out by police or other security personnel, especially during public street protests and other public events (increased violence against journalists covered by protests across Europe, International Press Institute, May 11, 2020).<sup>23</sup> Therefore, independent police oversight mechanisms are essential in this regard; Law enforcement officers should be trained to refrain from attacking media activists and to respect their right to report.<sup>24</sup> As briefly mentioned earlier, in

the context of the media and press freedom, the Court emphasizes that the Government's obligations to protect the freedom of expression of journalists are based on the rights set forth in Articles 2, 3 and 10, in particular, and other rights in the European Convention on Human Rights.

The Court upheld the importance of positive action in the exercise of freedom of expression, as well as the case of *Ozgur Gundem v. Turkey*<sup>25</sup>, a case involving pro-PKK journalists and media workers who had been subjected to violence and intimidation; The Court emphasized the importance of positive action to exercise freedom of expression, as well as considerations that highlight the scope of such positive commitments for the government. The court stated that the effective exercise of this freedom does not depend solely on the government's duty not to intervene, but may require positive government protection measures, even in the area of interpersonal relations ...in determining the existence or non-existence of a positive obligation, consideration must be given to the fair balance that must be struck between the public interest of society and the interests of the individual... The scope of this obligation will inevitably vary given the variety of situations created in the Contracting States, the difficulties associated with policing in modern societies, and the choices that must be made in terms of priorities and resources...Nor should such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities.<sup>26</sup>

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<sup>21</sup>- *Gongadze v. Ukraine*, Application No. 34056/02, 8 November 2005.

<sup>22</sup>- Human Rights Committee, General comment No 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, paragraph 7; Organization of American States, Inter-American Commission on Human Rights, Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of

Perpetrators, OEA/Ser.L/V/II, CIDH/RELE/INF.12/13, 31 December 2013, p. 22.

<sup>23</sup>- May 2020: <https://ipi.media/increase-in-violence-against-journalists-covering-protestsacross-europe/>, accessed 8 July 2020

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<https://europeanjournalists.org/blog/2018/12/05/dutch-journalists-sign-agreement-to-improve-safety-of-journalists/>, accessed 8 July 2020.

<sup>25</sup>- *Ozgur Gundem v. Turkey*, 16 March 2000.

<sup>26</sup>-Ibid.

The Court also found a violation of Article 2 of the Convention in Dink's case.<sup>27</sup> The case involved the assassination of journalist Hrant Dink, due to his newspaper articles on Turkish-Armenian relations, he was severely hostile and hated by Turkish extremist nationalists. The Court found that, given that law enforcement agencies were aware of the real and imminent threat of assassination, it could be reasonably assumed that the security forces were aware of their hostility to Mr Dink, however they have not been able to take appropriate measures to protect Dink's life. Article 10 of the Convention has also been violated in this case; Not only because of Dink's lack of protection against attack, but also because of his conviction by government for his articles in the newspaper, Article 10 has been violated because he was found guilty in his articles under the pretext of denouncing "being a Turk," which the court found lacking in urgent social need. Article 2 of the Convention requires that effective investigations into illegal killings be carried out. If the government is aware of threats or intimidation against journalists or media organizations, it is obliged to take protective measures and conduct effective investigations into these allegations if there is a reasonable suspicion that the murder is related to journalistic activities. Article 2 may also be violated in cases where investigators do not consider the possibility that government officials (such as members of the security forces) may be involved in the attacks.<sup>28</sup>

In addition, the use of force by law enforcement against journalists may violate Article 3 of the Convention, which prohibits torture, inhuman or degrading treatment or punishment. This violation of Article 3 in the *Najafli v. Azerbaijan* has also been established by the Court.<sup>29</sup> In fact, in this case, it was revealed that the applicant had been beaten by the police during a political demonstration in which he had participated in preparing a report. The Court held that any action that prohibits journalists from pursuing their profession could lead to a

breach of the rights set forth in Article 10 of the Convention. The journalist wore a journalistic badge on his chest and told police officers that he was a journalist. Excessive use of force while performing his professional duties (regardless of whether the police intended to interfere in journalistic activities) violated Article 10 of the Convention.<sup>30</sup> Due to the unfavourable situation of media and media actors in Azerbaijan, the Parliamentary Assembly of the Council of Europe calls on the Azerbaijani authorities to refrain from pressuring the staff of some independent media outlets and to investigate allegations of ill-treatment against some independent media activists, and to stop targeting the Institute for Journalists' Freedom and Security (IRFS) and to provide the necessary conditions for the organization to operate freely (Parliamentary Assembly; 2017: 7).

The Committee of Ministers of Europe Council imposes a positive obligation for governments to protect journalists and other media actors from any attack (including attacks by private individuals) and to end impunity for perpetrators of violence against them.<sup>31</sup> Media actors will not be able to perform their duties in a safe and non-violent environment unless national authorities and institutions take effective and protective measures to protect media activists, human rights activists and civil society, as well as critics of the government. Such an environment will eventually lead to their discouragement in their public awareness activities. These positive actions are still not implemented in countries where democratic principles and human rights are not considered key and valuable concepts, and the government somehow silences any political expression. What the member states of the European Convention on Human Rights are expected to improve in their policies is that governments take precautionary action in cases of real and immediate danger to the lives or physical safety of journalists; These can be include police protection or voluntarily taking journalists and

<sup>27</sup>- *Dink v. Turkey*, 14 September 2010.

<sup>28</sup>- *D.D. v. Turkey*, 2 September 1998, paragraph 100.

<sup>29</sup>- *Najafli v. Azerbaijan*, 2 October 2012.

<sup>30</sup>-*ibid.*

<sup>31</sup>- Adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies.



other media activists to a safe and secure place. Adequate training of law enforcement and mechanisms for overseeing the independent implementation of the law is also of particular importance.

### **Protection of media actors against verbal threats and the smear campaign<sup>32</sup>**

Cases in which politicians or elected public figures humiliate journalists and media actors (in public statements or online) are a source of deep concern for freedom of media and the safety of journalists (Council of Europe 2020: 12). Verbal attacks create an atmosphere in which the likelihood of physical violence against journalists increases. In addition, when such threats and verbal attacks against members of the media are not challenged by government officials, the lack of attention of government officials has an extremely destructive effect on the work of journalists and society in general. After visiting Serbia and Slovakia, the Council of Europe Commissioner for Human Rights noted the dangers of increasing use of smear campaigns and hate speech against the media and independent reporters. Such statements create an insecure atmosphere for journalism, especially when presented by government officials as part of a deliberate attempt to intimidate critical voices.<sup>33</sup> According to the Committee of Ministers, Politicians, government officials, and public figures should not force or pressure journalists to deviate from professional journalistic ethics, whether through violence, financial penalties, or financial incitement.<sup>34</sup> So what the Council of Europe expects from member states is that Political leaders and government officials should publicly condemn verbal threats and insults to journalists and media actors and attempts to humiliate or stigmatize them, and

reinforce them instead of being hostile to the media and weakening them.

### **Freedom and independence of the media**

When it comes to media independence, there is serious concern in many parts of Europe about the risk of traditional and online media becoming a "propaganda mouthpiece for those in power" and capitalists. In some cases, the media is bought by public or private executives and becomes a tool of power.<sup>35</sup> Manipulating the media for political or commercial purposes often leads to immoral journalism. Dishonest journalism and journalism by taking bribes or spreading lies and propaganda will destroy public trust in the media. In the face of these unpleasant realities, journalists and their associations are called upon to uphold their moral principles as they should not allow themselves to become instruments of partisan or private interests. As the Court has repeatedly emphasized, " "The protection and guarantee that Article 10 imparts to journalists is subject to acting in good faith and providing accurate and credible information in accordance with journalistic ethics."<sup>36</sup> The Court considers that the power of the domestic authorities to regulate the licensing system, except for technical purposes, in such a way as to interfere with freedom of expression contrary to the requirements of paragraph 2 of Article 10, cannot be exercised. In the case of *Groppera Radio AG and others v. Switzerland*, the Court stated: "The purpose of this section The purpose of this section of Article 10(1) of the convention is to allow states to control the way in which broadcasting is organized in their territories, especially from a "technical point of view", through a licensing system. However, it does not stipulate that licensing measures would otherwise be subject to the requirements of

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<sup>32</sup>- A smear campaign is an intentional, premeditated effort to undermine an individual's or group's reputation, credibility, and character. Like negative campaigning, most often smear campaigns target government officials, politicians, political candidates, and other public figures.

<sup>33</sup>- Statements of Council of Europe Commissioner for Human Rights, 22 February and 16 March 2018.

<sup>34</sup>- CM/Rec(2016)4, "Guidelines", paragraph 15.

<sup>35</sup>- Council of Europe Commissioner for Human Rights, "Ethical journalism: self-regulation protects the independence of media": [www.coe.int/en/web/commissioner/blog//asset\\_publisher/xZ32OPEoxOkq/content/ethical-journalism-self-regulation-protects-theindependence-of-med-1/pop\\_up](http://www.coe.int/en/web/commissioner/blog//asset_publisher/xZ32OPEoxOkq/content/ethical-journalism-self-regulation-protects-theindependence-of-med-1/pop_up), accessed 10 July 2020.

<sup>36</sup>- *Cumpana and Mazare v. Romania*, December 2004.

paragraph 2 ... as this would lead to a result contrary to the purpose of Article 10.<sup>37</sup> Thus, government ownership and effective editorial control over the media are not in line with Council of Europe standards. Propaganda for war, and all forms of incitement to discrimination, hatred or violence, is prohibited under international law (International Covenant on Civil and Political Rights, Article 20). The media must play an important role in informing the public by performing its duty of accuracy, editor independence and necessary impartiality. The requirements of the political independence of their oversight bodies must also be fully met to avoid political bias and other forms of prejudice. The Court therefore considers the monopoly on audio-visual media to be contrary to Article 10, mainly because the state-owned media alone cannot provide a wide variety of sources of information. Such a monopoly is not necessary in a democratic society, and in modern societies, the multiplicity of means of broadcasting communications and the proliferation of cross-border television make it impossible to justify monopolies. Because the diversity of public needs cannot be covered by a single broadcasting company<sup>38</sup> In its case law, the Court has set special standards for the mass media, in particular their independence from political influence. In *Manole and Others. v. Moldova* case, the Moldovan Public Broadcasting Company (TRM) came under political control by the government and the ruling political party. There was no guarantee of pluralism in editorial policy and its news and information programs. Journalists at TRM complained that they had been censored and that their dismissal was politically motivated. The Court affirms that the government should be the ultimate guarantor of pluralism, and entrusts this task to the government to ensure that people have access to impartial and accurate information and a wide range of views and opinions through television and radio., which shows the diversity of the political landscape within the state. This information and interpretation should not be prevented by journalists and other experts in the audio-visual

media. In addition, for a democracy to function properly, it is essential that public broadcast news, and information impartially, independently, and in a balanced manner, and provide a platform for public debate, where a wider range of views and opinions can be expressed. The Committee of Ministers has issued several recommendations on the pluralism and independence of the mass media, in particular on how to elect the members of the board of directors of those media. Examples include Recommendation R (1996) 10 of the Committee of Ministers to member states on ensuring the independence of public broadcasting, and Recommendation R (2007) 2 of the Committee of Ministers to member states on media pluralism and diversity of media content. The Council of Europe has always advised member states to establish effective protections in law and in practice to ensure and promote the independence and pluralism of the media. Supporting a free, independent and diverse media requires coherent and comprehensive action. Government officials are legally bound by their obligations as parties to the Convention. Other stakeholders, including employers, journalists' associations and civil society, also play a key role and should be consulted when reviewing laws and amendments.

### **Protection of whistle blowers**

A whistle blower is someone who informs the public or competent authorities of the existence of a wrongdoing person (ies) or wrongdoing in the public, public, or private sector. Misconduct includes a wide range of illegal activities, breaches of regulations, and threats to public or private interests, such as fraud and corruption. Whistle blowers are people who report or disclose information about threats or harm to the public interest and can play an effective role in enhancing transparency and democratic accountability. As Bastin Obermeier, a leading German investigative journalist who won the Pulitzer Prize *Suddeutsche Zeitung*, rightly states: "If we cannot protect the whistle blowers, they will not come to our aid when we

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<sup>37</sup>- *Groppera Radio AG and Others v. Switzerland*, 28 March 1990.

<sup>38</sup>- *Informationverein Lentia v. Austria*, 24 November 1993.

need them more than ever."<sup>39</sup> In *Guja v. Moldova*<sup>40</sup> the Court recognized the need to protect whistle blowers under Article 10 of the Convention, stating: "During his career, a government employee may become aware of an entity's internal information, including confidential information, the disclosure of which is in the public interest." The Court therefore recognizes that disclosure by a public sector employee of an unlawful act or misconduct in the workplace must be protected in certain circumstances. In cases where the employee is only a person or part of a small group of people who are aware of what is happening in the workplace, it is better to warn the employer or the general public in the public interest.<sup>41</sup> Therefore, according to the Court, although in the first instance, disclosure should be made to the competent authority or person of that body or another competent body; But the Court has accepted that when such a method is clearly impractical, the information holder can disclose the information to the public as a last resort. In this case, the Court acknowledged that the dismissal of a government employee for leaking two confidential letters from the Public Prosecutor's Office to the press was contrary to Article 10, also pointing to the neutralizing effect of dismissal on other government employees will discourage them from reporting any misconduct. The Court's view in the case of *Heinisch v. Germany* also confirms the violation of the right to freedom of expression in relation to disclosure.<sup>42</sup> In this case, a nurse in a nursing home, along with her colleagues, had repeatedly protested to management that a lack of staff was affecting their ability to perform their duties, leading to serious deficiencies in the day-to-day care of patients. The applicant (nurse) brought her claim to the Court for dismissal without prior notice because she had filed a criminal complaint against her employer over these concerns, which violated her right to freedom of expression. The Court reaffirmed the practice and standard that employees should, in certain circumstances, be

protected from disclosure of illegal acts or misconduct in the workplace, especially if the employee is only one person or only part of a small group, is aware of what is happening and therefore "the best thing to do in the public interest" is to warn the employer or the public. Here the Court noted that the information disclosed by the applicant in the public interest is vital to prevent abuse, given the special vulnerability of patients in the nursing home; Because these vulnerable people are often unable to draw attention to their lack of self-care. In addition, the plaintiff had repeatedly raised concerns with his employer on various occasions but to no avail. The Court also reiterated that "The person who chooses to disclose the information should, as far as the circumstances allow, carefully verify its accuracy." The Court finally found that the applicant had acted in good faith here; Although the applicant had exaggerated to some extent, her revelations nevertheless described serious shortcomings in the operation of the nursing home. Finally, the Court found that the public interest in receiving information about nursing home was greater than the employer's right and that the dismissal request was "disproportionately severe".

In the case of *Matuz v. Hungary*<sup>43</sup>, the applicant was a journalist and presenter of the state-owned television company Magyar Televízió Zrt. He was fired after his disclosure about one of his superiors who was censoring parts of the cultural program that he was the editor and host of. On several occasions, Mr. Matz had asked the board of directors of the television company to end censorship of news and television programs. He subsequently published a book containing documentary evidence and censorship imposed on the state-owned television company, which led to his dismissal for violating the confidentiality clause in his employment contract. Mr Mautz appealed to the national court against his expulsion, but failed to take legal action in Hungary. Finally, he lodged a complaint with the European Court of

<sup>39</sup>- PREMS 021220 GBR 2018 A Mission to inform Journalists at Risk Speak Out, page132.

<sup>40</sup>- *Guja v. Moldova*, 12 February 2008 (GC).

<sup>41</sup>-Ibid.

<sup>42</sup>- *Heinisch v. Germany*, 21 July 2011.

<sup>43</sup>- *Matuz v. Hungary*, 21 October 2014.

Human Rights, alleging a violation of his rights under Article 10 of the European Convention on Human Rights. Mr. Mautz said that as a journalist and head of the Speakers' Union, he also had the right and obligation to inform the public about censorship on national television. The Court found that the alleged censorship was a matter of public concern. The Court further added that the publication of the book took place at a time when Mr. Mautz was prevented from correcting his alleged interference in the television company; That is, Mr. Mautz's disclosure occurred because he did not have access to any other effective channel for information and disclosure. Given the importance of the right to freedom of expression in matters of public interest, Mr. Matz's professional obligations and responsibilities as a journalist, on the one hand, and the duties and responsibilities of employees to their employers, on the other, and in view of the various interests involved in the case, the Court eventually concluded that interference with the right to freedom of expression "was not necessary in a democratic society". The Court therefore considered the immediate dismissal of the journalist a violation of Article 10 of the Convention and reiterated the importance of disclosure in a democratic society. In this regard, the recommendation of the Committee of Ministers CM / Rec (2014) 7 on protection of whistle blowers is also significant. The Recommendation emphasizes that member states should strengthen an environment in which reporting or disclosure of information is encouraged in an open manner, and that individuals should feel safe to freely raise concerns in the public interest. It is also recommended that "specific channels should be established for the reporting of matters of public interest and disclosure of information, and that recourse to them should be facilitated through appropriate measures." Whistle blowers must be protected by a law across Europe that gives them immunity from action. There are discussions in the Council of Europe about

drafting a convention on the protection of whistle blowers. The European Union has also adopted a directive in this regard.<sup>44</sup>

### **Improve legislation**

The case law of the European Court of Human Rights and the standards of the Council of Europe in general, state that member states have a duty to create a "favourable environment" for the exercise of the right to freedom of expression, which requires a wide range of responsibilities to be exercised by all organs of government. The Council of Europe has made it a priority for member states to create a favourable environment for the freedom of the media and the safety of journalists through an effective legal framework, with the support of a full review of law frameworks and measures affecting the realization of the rights set out in Article 10. Government labour laws must also protect media actors against "arbitrary dismissals and unfavourable working conditions, as well as retaliation and undue pressure"(Noorlander P; 2020: 14). Understanding the scale and severity of attacks on journalists, member states have agreed to commit to predict the possibility of a comprehensive and independent review of domestic law for protection of journalism and the safety of journalists and other media actors in order to comply with government commitments (CM / Rec (2016) 4, paragraph 3).<sup>45</sup> Clause 4 of the same recommendation states: "Laws may be reviewed by one or more independent new or existing entities that have sufficient authority and support with sufficient resources. National authorities are required to provide favorable conditions; This allows for close public oversight and the provision of recommendations by organizations and experts that are independent of the influence of governmental, political, religious, commercial and other parties .These review and monitoring bodies can be a National Human Rights Commission, a human rights defender and / or another independent body set up for the above

<sup>44</sup>- <https://eur-lex.europa.eu>, accessed 9 July 2020; see also "New EU Directive enhancing the protection of whistleblowers": [www.lexology.com/library/detail.aspx?g=bf77eced](http://www.lexology.com/library/detail.aspx?g=bf77eced)

-04c0-41be-93e9-dcf799ff4d7c, accessed 9 July 2020.

<sup>45</sup>- CM/Rec(2016)4, "Guidelines", paragraph 3

specific purposes. It is recommended that the review body or bodies explicitly have the duty to collect, receive and use information from any source and to have optimal access to documents in all branches of government. The review process should be transparent and include public meetings, as well as facilitate the full and active participation of civil society, including representatives of journalism organizations, the media and other participants." According to Council of Europe standards, public figures elected by the people and other officials should not have a "higher level of protection against criticism and insults to ordinary people" (Council of Europe 2019: 6). Special attention should also be paid to national security and surveillance laws; In fact, the modern "age of surveillance" has heightened concerns about its negative effects on investigative journalism, the safety of journalists, and, more generally, the media's ability to expose and combat high-level corruption and serious human rights abuses in a country. We are talking about an environment in which any online communication and data exchange can be tracked and recorded. In 2018, the Council of Europe Commissioner for Human Rights acknowledged that "the abuse of anti-terrorism law has become one of the most widespread threats to freedom of expression and the media in Europe" (Jagland 2019: 16.). While protecting the public against terrorist acts is a fundamental responsibility of governments and a serious public concern, a vague or overly broad national security law, if applied arbitrarily, could lead to serious misuse of the law. To criminalize the legal activities of journalists and other media actors. In accordance with international requirements and standards, relevant national laws must be carefully drafted so that media actors can reasonably predict the possible consequences of a particular action.<sup>46</sup> Meanwhile, "domestic authorities in member states should refrain from equating media coverage of terrorism with

supporting terrorism."<sup>47</sup> Recommendation CM / Rec (2016) Committee of Ministers calls on Council of Europe member states to ensure the effective functioning of government oversight mechanisms for communications, to ensure transparency and accountability within the scope and nature of such practices; This added: A wide range of stakeholders should be present in such regulatory bodies, including journalists and journalists' organizations and unions, and legal and technical experts. Therefore, the commitment that the Council of Europe will require from member states is to ensure that the anti-terrorism and national security law is not abused against journalists and other media actors. Governments should also operate strong safeguards against abuse of oversight by public or private institutions.

In addition to the above, journalists' narratives show barriers to accessing information to investigate and report on matters of public interest, including corruption and covering up such violations.<sup>48</sup> As the European Court of Human Rights has pointed out, "Information gathering is a fundamental step forward in journalism and is an inherent and protected part of press freedom ...Barriers to accessing information that is in the public interest may discourage people working in the media or related fields from pursuing such cases. As a result, they may no longer be able to play their vital role as 'public watchdogs' and may negatively affect their ability to provide accurate and credible information."<sup>49</sup> The same message was echoed by the Committee of Ministers of the Council of Europe: "Journalists and others who act as public observers through the media are often in a vulnerable position in the face of government officials or powerful groups...Barriers to accessing information on matters of public interest not only discourage journalists and other media activists from acting as public observers, but also have a negative

<sup>46</sup>- Altuğ Taner Akcam v. Turkey, Application No. 27520/07, 25 October 2011, paragraph 87.

<sup>47</sup>- Platform to Promote the Protection of Journalism and the Safety of Journalists, "Freedom of expression and terrorism", thematic factsheet, June 2018: <https://rm.coe.int/factsheet-on-anti->

[terrorism-legislation-june2018-docx/16808b3dd7](https://rm.coe.int/factsheet-on-anti-terrorism-legislation-june2018-docx/16808b3dd7), accessed 9 July 2020.

<sup>48</sup>- PREMS 021220 GBR 2018 A Mission to inform Journalists at Risk Speak Out Couv + Texte 16x24 WEB.pp 134

<sup>49</sup>- Guseva v. Bulgaria, Application No. 6987/07, paragraph 37.

impact on their security. It is therefore<sup>50</sup> essential that governments enact strong laws on access to information to facilitate the media's duty to provide accurate information to the public and to prevent monopolies of information by government officials.

### **Guarantee of an independent judiciary**

The media has always expressed concern about the influence and interference of political powers in some judicial systems. At present, cases of abuse of law and obstruction of justice in domestic jurisdictions can no longer be described as rare exceptions. Such interference results in a lack of guarantees to protect journalists from arbitrary arrest, imprisonment or other restrictions and restrictions on their job. Not only has this led to a lack of protection for journalists against criminal acts, but it has also led to their inability to access justice and the "effective redress" guaranteed by Article 13 of the European Convention on Human Rights.<sup>51</sup> The Council of Europe therefore always urges government officials to ensure the highest standards of legal protection mechanisms for journalists and an independent judiciary to protect them effectively.

Council of Europe standards on fairness and justice in criminal proceedings against media representatives emphasize that they have the right to a fair trial by an independent and impartial tribunal and to a fair trial. In addition, as stated in the Court's case-law, imprisonment for "a press crime related to the freedom of expression of journalists, only in exceptional circumstances, especially in cases where other fundamental rights have been seriously violated, for example, in the case of hate speech or incitement to violence, may be

appropriate."<sup>52</sup> Other media actors, including bloggers, NGOs, and other participants in public debates, are entitled to similar protections for protecting the press while acting as a public watchdog.

### **Reporting mechanisms**

On 4 December 2014, the Council of Europe and the Platform's Partner Organisations<sup>53</sup> signed a Memorandum of Understanding. Today, 14 international NGOs and associations of journalists are partners to the Platform. In conformity with the Memorandum, the Platform allows the contributing partners to post alerts, subject to their own verification processes and standards. Contributing Partner organisations - invited international NGOs and associations of journalists – issue alerts on media freedom violations and publish annual reports on the situation of media freedom and safety of journalists in Europe. The Platform enables the Council of Europe to be alerted in a more systematic way on the situation with regard to media freedom in the member states and to take timely and coordinated action when necessary. It helps the Organisation identify trends and propose adequate policy responses in the field of media freedom.<sup>54</sup>

The Platform for the Protection of Journalism and Safety of Journalists reports on the growing number of attacks on the physical security and integrity of journalists across the Council of Europe. Most of the most serious incidents of violence are said to have been committed by unknown or non-governmental actors (Information Society Department, 2018). Despite the public commitments made in the Committee of Ministers' recommendation adopted in 2016, intimidation and harassment of

<sup>50</sup>Declaration on the protection of journalism and safety of journalists and other media actors adopted on 30 April 2014, the Committee of Ministers

<sup>51</sup>-"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

<sup>52</sup>- Cumpăna and Mazăre v. Romania.

<sup>53</sup>-Reporters Without Border, International Federation of Journalists, European Federation of Journalists, Committee to protect Journalists,

Association of European Journalists, Article 19, Index of Censorship.

<sup>54</sup>-Council of Europe - Platform: protection of journalism and safety of journalists, Recourse center on media freedom in Europe.  
<https://www.rcmediafreedom.eu/Tools/Monitoring-tools/Council-of-EuropePlatformprotectionofjournalismandsafetyofjournalists2#:~:text=In%202015%2C%20the%20Council%20of,Council%20of%20Europe%20member%20States>

journalists has not improved in practice. The 2020 annual report by the platform's partner organizations, based on 142 serious threats against media freedom in 2019, concluded that political efforts to seize the media and the failure of many countries to maintain a credible framework legislation to protect media freedom has become systematic (Council of Europe, 2020: 10).

In this platform, each violation is described according to the country, the category of violation and the level of warning, which can also be seen by the charts. At the time of writing this article (May 2021), according to information published on the platform's website, two murders of journalists have been reported in 2021 (Hazım sşzu from Turkey and Giorgos Karaivaz from Greece) and so far, 120 journalists are in prison.<sup>55</sup> The Council of Europe calls on member states to establish transparent reporting mechanisms to monitor and respond to attacks on journalists and the media. Since its launch in 2015, the platform has made member states more aware of the need to use effective systems to protect journalism and the safety of journalists, and has created a new horizon to expedite the reform of actions when recording alerts in this context. The United Nations Sustainable Development Goals by 2030 also calls for the collection and reporting of all murders, kidnappings, enforced disappearances, torture or arbitrary detention of journalists.<sup>56</sup>

### **Immunity from punishment for perpetrators of violence against journalists; Need effective prosecution**

Impunity for assault on life and professional members of the media has remained a major concern in recent years. "The fight against impunity is at the heart of what the Council of Europe stands for," the Secretary-General of the

Council of Europe said in a speech on the occasion of the International Day for the Elimination of All Forms of Discrimination against Journalists in November 2019. He also expressed concern that "journalists who investigate and report on corruption, abuse of power and human rights abuses are still being killed in Europe today, and that these crimes are often not punished" (Statement by the Secretary General of the Council of Europe, 2019)<sup>57</sup> In this regard, each case tells a story of terror and injustice that shows ineffective investigations and prosecutions. This refers to negligence, inadequate legal frameworks or corruption, and shows the inability to protect human rights, the rule of law and fragile democracy. When people responsible for the murder, assault, or ill-treatment of journalists are not brought to justice, a culture of impunity develops (CM / Rec (2016) 4). The culture of impunity makes journalists more vulnerable to pressure for fear of retaliation or fear of harm. Immunity from punishment undermines public confidence in the justice system and the rule of law. In July 2018, the European Court of Human Rights described the government's duty to fully investigate attacks on media workers in the case of the 2006 murder of Russian investigative journalist Anna Politkovskaya, according to the Information Society Department annual report in 2018; After nine years of national investigation and prosecution, five people were finally convicted. However, the perpetrators of the murder are still at large. Deuton noted that the research was not effective because it was incapable of examining and identifying the attack planners.<sup>58</sup> Among the positive steps taken by the member states of the Council of Europe in maintaining the safety of media actors is the actions of the Dutch government. Dutch authorities impose special protective measures on De Telegraaf and other media outlets after two suspected attacks on organized

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[https://www.coe.int/en/web/mediafreedom/allalerts?p\\_p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column4&p\\_p\\_col\\_count=3&sojdashboard\\_WAR\\_coesojportlet\\_selectedStringFilters=special.killed%2Cyear.2021&sojdashboard\\_WAR\\_coesojportlet\\_selectedCategorie=](https://www.coe.int/en/web/mediafreedom/allalerts?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column4&p_p_col_count=3&sojdashboard_WAR_coesojportlet_selectedStringFilters=special.killed%2Cyear.2021&sojdashboard_WAR_coesojportlet_selectedCategorie=)

<sup>56</sup> - Sustainable Development Goals Indicator 16.10.1 <https://sdgdata.gov.uk/16-10-1>.

<sup>57</sup> - statement by the Council of Europe Secretary General, 2 November 2019: [www.coe.int/en/web/media-freedom/-/sg](http://www.coe.int/en/web/media-freedom/-/sg), accessed 10 July 2020

<sup>58</sup> - Mazepa and Others v. Russia, 15086/07, 17 July 2018.



crime against media outlets.<sup>59</sup> On the contrary, in Turkey, criminal prosecutions against a large number of Turkish journalists continue in the aftermath of the July 2016 coup, which tarnishes the country's media freedom background. More than 100 journalists have been detained by the end of 2018, the highest number in the Council of Europe region. In March 2018, a Turkish court issued two temporary arrest warrants for two Turkish journalists on charges of terrorism, violating their rights to freedom of expression and having a devastating impact on society at large scale. However, the European Court of Human Rights has emphasized that even a state of "public emergency that threatens the life of the nation" can not be an excuse to undermine the freedom of political debate, which is necessary to restore and protect democracy. The Court further emphasizes the lack of reasonable suspicion that the two journalists have been charged with crimes, and notes Turkey's fundamental problem with the lack of interpretation of the anti-terrorism law, and its failure to comply with its own Constitutional Court rulings.<sup>60</sup>

Here, it is noteworthy to refer to the clauses of the Parliamentary Assembly resolution entitled "Attacks against journalists and media freedom in Europe" approved in 2017, which was mentioned earlier, regarding Turkey. In paragraph 7 of the resolution, the Assembly calls on the Turkish authorities to review and improve the conditions for the detention of journalists convicted of active participation in terrorist acts, and to consider requests submitted by the media or media staff to the Constitutional Court. Pursuant to Articles 216, 299, 301 and 314 of the Penal Code, in accordance with Opinion No. 831/2015 of the Venice Commission, and to consider the report of the Special Rapporteur of the United Nations on the promotion and protection of the right to freedom of opinion and expression ....<sup>61</sup>

The Committee of Ministers' Recommendation on the Protection of Journalists and the Safety of Journalists and Other Media Actors also acknowledged the need for immediate, decisive and systematic responses and called for more effective and accurate implementation by governments of existing international and regional standards to strengthen support for Journalists and the abolition of impunity for perpetrators of violence against them (CM / Rec (2016) 4). This document is not legally binding on member states, but is a politically and legally valid text that acts as a valuable reference for the Court when deciding on specific cases. In May 2020, the Secretary General of the Council of Europe, Marija Pejčinović stated that: "Unfortunately, the worrying trend of violence and intimidation against journalists that has been observed in recent years continues. Journalists are in prison for longer than expected and there are many cases of impunity for the murder of journalists. At the end of 2019, the perpetrators of at least 22 murders of journalists in Europe be protected from justice in cases classified as evidence of impunity (Council of Europe 2020: 25). These included the case of the October 2017 murder of Daphne Caravan Galicia. On the second anniversary of her death, the Council of Europe Commissioner for Human Rights and other senior international officials issued a statement stating that the accountability of government officials and effective guarantees against participation by any responsible person are at the core of the fight against impunity."<sup>62</sup>

In general, in those member states where the political expression of human rights activists and non-governmental organizations as well as members of the media is very limited, we always see arbitrary and retaliatory prosecutions on charges of various crimes in retaliation for political expression; In the case of

<sup>59</sup>- Platform alert, "Dutch biggest daily De Telegraaf attacked in latest incident targeting media", 27 June 2018.

<sup>60</sup>- Mehmet Hasan Altan v. Turkey, 13237/17, 20 March 2018; Sahin Alpay v. Turkey, 16538/17, 20 March 2018.

<sup>61</sup>- Resolution "2141 (2017)1, Attacks against journalists and media freedom in Europe, Parliamentary Assembly of council of Europe.

<sup>62</sup>- [www.coe.int/en/web/commissioner/-/malta-must-establish-accountability-for-the-murder-of-daphne-caruana-galizia](http://www.coe.int/en/web/commissioner/-/malta-must-establish-accountability-for-the-murder-of-daphne-caruana-galizia), accessed 10 July 2020.



Ibrahimov and Mamadov v. Azerbaijan<sup>63</sup>, the Azerbaijani prosecuted the applicants, two university students, members of the non-governmental organization NIDA-an organization which have goals such as justice, freedom, and transformation in Azerbaijan-retaliate by graffiti paintings on the statue of the former president and distribute them. Authorities prosecuted the two for drug trafficking in retaliation for graffiti paintings on the former president's statue and its posting of pictures and critical political slogans on the Internet; The two young men were also beaten several times by police. In this case, in addition to finding a violation of Article 3 (prohibition of inhuman or degrading treatment with respect to police misconduct and lack of effective investigation), the Court found the violation of Article 5 (concerning the lawfulness of detention because their detention was arbitrary and without proper reason) and Violation of Article 18 (misuse of the Convention) and violation of Article 10, ie freedom of expression, because in Court's view, the arbitrary prosecution of officials for drug-related crimes in retaliation for political expression is quite evident. The Court stated that the applicants' actions were supported by the Convention and were a form of political expression. In fact, instead of acting within the legal framework, the Azerbaijani authorities decided to prosecute the plaintiffs for retaliation for drug-related crimes. This interference is illegal, arbitrary and contrary to the rule of law which is the essence of the Convention. It can be said that this case is part of the pattern seen in previous cases of arbitrary arrests of Azerbaijan government critics, civil society activists and human rights defenders through retaliatory prosecution and abuse of criminal law, all for political purposes.

According to the Committee of Ministers' 2016 Recommendation, which has been repeatedly cited in this article, the Council of Europe calls for harsher punishment for those government officials who obstruct justice in such cases. Any person who has a personal interest in a case or may be involved in it in any way should have no

role in the investigation of the case. Politicians should have no role or influence in conducting research. The Council of Europe therefore recommends that, in order to ensure a thorough, prompt, impartial and independent investigation into the murder, assault and ill-treatment against journalists, Governments must follow the strict rules and protocols set out in the Court's case-law and in documents adopted by the Council of Europe. Therefore, it can be concluded that there are effective solutions to eliminate the immunity of perpetrators of violence and crime against media actors from punishment; Severe penalties should be imposed on government officials who, through negligence, complicity or otherwise obstruct effective investigation, prosecution or punishment of perpetrators; Legal amendments should also be made to eliminate prosecution deadlines for violent crimes against journalists and other media activists, and to pardon such crimes only in very exceptional cases.

### **Protection of the resources of journalists**

Journalistic sources are also protected by the Court's case-law on the interpretation of Article 10. The Court considers that the protection of journalistic resources is a fundamental condition of freedom of the press. Goodwin's famous case on the balance between the interests of social justice and the rights of others on the one hand and the protection of resources on the other is significant.<sup>64</sup> The Court argued that without such protection, sources might be reluctant to assist the press in informing the public about matters of public interest. As a result, the vital role of public press oversight may be undermined and the press' ability to provide accurate and reliable information may be adversely affected. Goodwin, a journalist for "The Engineer", received information about "Tetra Company" through a telephone "source." The source said that the company was taking out a large loan while it was having a lot of financial problems. The information has not been requested or received in return for payment. During the preparation of the article in this regard, the journalist had contacted the

<sup>63</sup>- Ibrahimov and Mamadov v. Azerbaijan, June 2020

<sup>64</sup>- Goodwin v. the United Kingdom, 27 March 1996 (GC).

company by phone and asked for the company's comments on the information. Following the phone call, the company filed a lawsuit against Mr. Goodwin, citing the disclosure of information, which would seriously undermine their commercial and economic interests. The order was issued and the company sent a copy to all major newspapers. In addition, the company asked the court to ask the journalist to reveal the name of its source. In fact, the company argued that the disclosure of the source would help the company identify the dishonest employee and initiate proceedings against him. The journalist repeatedly denied the court's request and did not reveal its source. He was later sentenced to a fine for "obstructing the execution of justice". At the European Court of Human Rights, the applicant (Goodwin) claimed that the domestic court's decision to disclose his source, as well as a fine for failing to do so, violated both rights to freedom of expression. "The protection of journalistic resources is a fundamental condition of freedom of the press, as reflected in laws and regulations in a number of committed countries, and in several international instruments, freedom of the press has been endorsed ... Without such support, resources may be reluctant to help the press inform the public about topics of public interest. As a result, the vital role of public media oversight may be undermined and adversely affect the press' ability to provide accurate and reliable information." The court acknowledged that "both the injunction to disclose its source and the fine imposed on it for refusing to disclose the source, violated the applicants' right to freedom of expression". In addition, the Court has previously stated in other cases that wherever journalists assist in disclosing anonymous sources, there will be discouraging effects.<sup>65</sup>

Thus, the growing number of incidents and threats that journalists seek to protect their confidential resources is partly due to

vulnerabilities created by the use of new technologies, as well as to the aggressive actions of the police and relevant authorities. These actions are contrary to the jurisprudence of the Court, according to which the search and investigation of confidential journalism sources should be carried out only on the basis of a court order and in compliance with other basic protections and procedures. In accordance with this case law, for example, in September 2018, the Court issued an interim injunction (known as order 39) to the Ukrainian authorities to refrain from accessing any data via the investigative journalist's mobile phone. The Kyiv court had previously allowed prosecutors' access to text messages, calls and location data over the telephone as well as the second journalist for 17 months. It should be noted, however, that the Council of Europe has already trained more than a thousand judges and law enforcement officials across Ukraine on good practices in investigating crimes against journalists and other media actors.<sup>66</sup>

One of the most important dangers to the confidentiality of journalists' resources is extensive government surveillance and extensive interception of telecommunications. Government oversight and communications control were the subject of two important Court's cases in 2018.<sup>67</sup> In the judgment against the British government, the Court concluded that the legal framework of the UK, which was in force at the time, did not adequately protect privacy rights in certain aspects of mass interception and access to data provided by telecom service providers. In addition, both extensive monitoring and access to mechanisms, contrary to Article 10 of the Convention, did not adequately protect journalistic resources or confidential journalistic content. It is noteworthy that in the period following the filing of this petition with the Court, the United Kingdom updated its oversight rules under the new rules

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<sup>65</sup>- Becker v. Norway, Application No. 21272/12, paragraph 82.

<sup>66</sup>- Platform alert, "Ukraine court allows prosecutors access to investigative journalist's phone records", 5 September 2018.

<sup>67</sup>- Centrum för Rättvisa v. Sweden, 35252/08, 19 June 2018.

Big Brother Watch and Others v. the United Kingdom, 58170/13, 62322/14 and 24960/15, 13 September 2018

(Investigative Powers Act 2016), which was not due to the Court's decision. Therefore, the protection of journalists' resources must be ensured in all governments by appropriate law frameworks that must be formulated or revised in accordance with Council of Europe standards and effectively enforced. In its 2018 Annual Report on Freedom of Expression, the Information Society Department addresses the security of journalists and other media actors in Chapter 2 of the report, and recounts and analyses important violations of freedom of expression, and reiterates this important point. Protects confidential sources and unhindered access to public records are essential tools of journalism that must be guaranteed in law and in practice (Information Society Department, 2018).

### **Protection of investigative journalism**

Independent media actors have always committed themselves to telling the truth and exposing corruption, abuse of power and injustice. In many cases, journalists are frustrated by the fact that they have to work in an environment where officials are increasingly trying to control the content of the media for political gain and mobilize government power to humiliate or eliminate critical and independent voices. Many journalists believe that government officials and international institutions have not yet made the necessary progress in protecting physical and mental security and providing an environment for unhindered work. Investigative journalism plays a very important role in holding people in power accountable. But in some cases, national governments have punished independent media outlets that receive funding from external sources by labeling them as "external agents" and imposing undue pressure and other restrictions. The European Union has also recently funded investigative journalism projects as well as media freedom initiatives, thereby improving the safety of journalists, which demonstrates the importance of the

media and the independent journalist.<sup>68</sup> The Parliamentary Assembly of the Council of Europe also states in its 2017 resolution in paragraph 20: Welcoming the fact that investigative journalists have exposed government misconduct in some member states. However, the Assembly is concerned that many of these journalists have been pressured by governments, law enforcement officials or charged with organized crime. The rights of whistle blowers and the right of journalists to not disclose their sources must be respected. The Assembly invites the Group of States against Corruption (GRECO), Transparency International and the Global Network of Investigative Journalism to work more closely together in this area. In this regard, the Council of Europe calls on all the media and journalists' associations to protect and support investigative journalism at the forefront of its work and to inform the public.

### **Promoting public media literacy**

Concerns about the spread of fake news, hate speech and incitement to violence, and Internet trolls, and the difficulty of distinguishing between fact-based news and misinformation, indicate an urgent need to improve public media literacy. It should be made clearer that democracy will die in the dark; More public awareness of the consequences of pressure and violence against journalists is essential to creating a safe environment and preventing violence and abuse against the media and media actors. Police officials, prosecutors and judges, and other public officials also need to be trained to ensure that they have a full understanding of international norms and standards regarding the strengthening of legal and administrative protection for journalists and the elimination of impunity. (Council of Europe; 2018b). Journalists are always concerned about the lack of effective public awareness and support that is necessary for them to continue working; In some cases, they have expressed concern about attempts by public officials to stigmatize them, use populist slogans to portray them as traitors

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<sup>68</sup>- ee <https://ec.europa.eu/digital-single-market/en/media-freedom-projects>, accessed 29 July 2020.

or criminals, and suppress critical voices. In fact, a study of media pluralism shows that a low level of media literacy is associated with high risks of political interference in media ownership and production, as well as risks associated with the disappearance of media pluralism. What is important is that, in promoting media literacy, governments should increase the awareness of government officials about the rights of journalists, provide the best methods and tools in educating journalists about access to information frameworks and security issues and promote public media literacy as well.

### **Conclusion**

The safety and independence of media actors is essential to protecting and ensuring that all members of the society enjoy the right to freedom of opinion and expression. Effective legal protection and reform are needed to support the media and public watchdogs, including independence of the judiciary, the independence of the police and security agencies, and the rule of law. The most important areas in which establishing security and protecting the freedom of expression of journalists are discussed in detail in this article. Violence against journalists is on the rise across the Europe - and the world. Despite the adoption of the European Convention on Human Rights, and in particular the principles of democracy and the rule of law, attacks have intensified in some member states and in some cases include car killings and bombings, as well as other forms of physical violence and threats. This culture of impunity, which protects perpetrators of crimes against journalists, is still present in some member states, where, according to the rule of law, these immunities should not be allowed to grow and develop. The Council of Europe calls for effective measures to protect the security of at-risk media actors, to prosecute perpetrators of violence and attacks against the media and media actors, and to create a conducive environment for a free, independent and pluralistic media. The outlined standards of the Council of Europe include legal and regulatory reforms. Effective safeguards, rapid and effective monitoring and reporting mechanisms to prevent threats against media activists, increase media literacy promotion programs for the public, and double support through the professional training of those

interested in journalism profession. Psychological and social support for media actors, especially investigative journalists working in very difficult environments and conditions, if necessary, are among these effective support measures.

European governments should review their policies to protect media freedom and the safety of journalists, within the framework of the norms and standards of the Council of Europe and the case law of the European Court of Human Rights. Officials of States Parties who are responsible for the safety of journalists are obliged to take all possible protective measures to create an appropriate environment for journalists, especially independent journalists, so that they can do their job in complete safety. While government officials have specific legal obligations to protect the safety of journalists and to create an appropriate condition for a free, independent and pluralistic media, The media and NGOs supporting the activities of journalists are also called upon to take professional steps to protect the security of media activists and to ensure a favourable future for journalism. The European Court of Human Rights is called the European Conscience and has repeatedly emphasized the vital role of a free media in holding public officials accountable to the public interest. The European Court of Human Rights is a beacon of hope for many journalists and media actors who have faced unjust punishments but have ultimately been deprived of justice in domestic courts. The organs who are responsible for protecting the safety and the rights of journalists must take immediate and decisive action to ensure that perpetrators of serious attacks and abuses against journalists are effectively punished and a safe and empowering environment is established for journalists and other media actors across Europe. Considering the various dimensions of risks and harms examined in this article, can lead to the development of policies and methods of awareness about the world of media and members of the media, by government officials, media and organizations supporting media actors and finally, it will lead to the development of effective protection measures and the establishment of other practical support. This article also referred to the new definition of a journalist and the activities of journalists in cyberspace, including bloggers as public watchdogs, as well as online media in European Council of Human Rights

documents; Therefore, considering the importance of explaining the dimensions of the freedom of expression in the digital age, researchers who are interested in this field are suggested to study the role and limitations of media actors in cyberspace in accordance with the new notions of this framework.

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