



## **OSCE Human Dimension Implementation Meeting**

**Warsaw, 16 to 27 September 2019**

**Working sessions 1 and 2: Freedom of expression, free media and information**

**Contribution of the Council of Europe**

### **OVERVIEW OF THE WORK OF THE COUNCIL OF EUROPE IN THE INFORMATION SOCIETY FIELD**

The Council of Europe's activities in the information society field aim to promote the right to freedom of expression and information, as guaranteed by Article 10 of the European Convention on Human Rights (the Convention), as well as the free flow of information at the pan-European level and the respect for private life as guaranteed by Article 8 of the Convention. Whilst the European Court of Human Rights provides judicial protection of the right to freedom of expression and information and to private life and data protection, the Council of Europe policy-making work strives to map out measures that will facilitate the effective exercise of these rights and freedoms both in the off-line and in the on-line environment, having due regard to new services, technologies and trends.

#### **Standard-setting work in the area of freedom of expression, free media and information**

In the context of its current terms of reference for 2018-2019, the Council of Europe Steering Committee on Media and Information Society (CDMSI) has worked in line with the directions given at the 2013 ministerial conference in Belgrade. It is currently focusing on the application of Article 10 of the Convention in the context of new technological developments, including artificial intelligence (AI), embracing a multi-stakeholder approach.

To facilitate its standard-setting work in the area of freedom of expression, free media and information the Council of Europe has established two sub-committees under its Steering Committee on Media and Information Society (CDMSI): a Committee of experts on quality journalism in the digital age (MSI-JOQ) and a Committee of experts on Human Rights Dimensions of automated data processing and different forms of artificial intelligence (MSI-AUT).

The MSI-JOQ Committee has produced a *Declaration on the financial sustainability of quality journalism in the digital age* that was adopted by the Committee of Ministers on 13 February 2019. The Declaration emphasizes the urgency of revising funding models and providing a more sustainable environment for quality journalism. It highlights that the digitisation of the media sector has compromised the traditional business models based on advertising and this has resulted in reduced news coverage, job losses, the deterioration of journalists' working conditions and greater concentration of media ownership. It calls on Council of Europe member states to ensure the financial sustainability of quality journalism considering that it is

a public good and is essential for the formation of individuals' opinions, and their ability to make informed choices about government and society. It encourages states to put in place a regulatory and policy framework that facilitates the operation of quality journalism, whilst not constraining media outlets' editorial and operational independence.

MSI-JOQ is also finalising a *Recommendation on Promoting a Favourable Environment for Quality Journalism in the digital Age*. The final text will be submitted to the Committee of Ministers for possible adoption before the end of 2019. The Recommendation is premised on the same concerns expressed in the Declaration on the Financial Sustainability of Quality Journalism, notably that rapid technological developments and the growing dominance of Internet Intermediaries has had profound disrupting effects on news business and the preservation of quality journalism, undermining accuracy and depth of reporting but also facilitating the spread of disinformation. It thus provides guidelines for Member States, online platforms and other stakeholders in order to stimulate and reinforce accurate and reliable quality journalism including as a means to respond to disinformation and ensure the functioning of democracies. The Guidelines are organised in three sections – funding – ethics – and education.

The MSI-AUT Committee has produced a *Declaration on the manipulative capabilities of algorithmic processes* that was adopted by the Committee of Ministers on 13 February 2019. The Declaration warns about the risks for democratic societies resulting from the possibility to employ machine learning tools to manipulate and control not only economic choices, but also social and political behaviours. It encourages states to assume their responsibility to address this growing threat by taking a number of steps, including appropriate and proportionate measures to ensure that effective legal guarantees are in place against illegitimate interferences and to empower users by promoting critical digital literacy skills.

MSI-AUT is currently working on a draft Recommendation of the Committee of Ministers to member states on human rights impacts of algorithmic systems. The Recommendation will provide guidelines to advise states and private sector actors in all their actions regarding the design, development and implementation of algorithmic systems to ensure that the human rights and fundamental freedoms of all individuals and affected parties, as enshrined in the Convention and other relevant treaties, are effectively protected throughout technological revolution.

## **Other main activities and achievements in the field of media freedom**

### [2018 Report on Freedom of Expression](#)

The Information Society department (ISD) is continuing its report on freedom of expression, integrated, in the past, in the annual reports of the Secretary General of the Council of Europe. In 2019, the Information Society department has published a separate, dedicated report on freedom of expression. This report draws on various sources including the alerts of the Platform to promote the protection of journalism and safety of journalists, the ECtHR case-law, Venice Commission reports and opinions, the Council of Europe Human Rights Commissioner's opinions, Council of Europe Parliamentary Assembly's reports and ISD assessments of national freedom of expression legislation. It addressed five areas:

- Legal guarantees for FoE
- Safety of journalists and other media actors
- Media independence
- Media pluralism and diversity
- FoE on the internet.

This year's highlights on journalists' safety included the progress made in the murder investigations of D. Caruana Galizia, J. Kuciak, criminal prosecutions of Turkish journalists, smear campaigns against journalists in Slovakia and Serbia, Hungarian legislative package criminalising some NGO activities, Russian and Ukrainian interferences with the work of media workers, and state surveillance and bulk interception of communications.

### Studies

The MSI-JOQ Committee is currently finalising a study titled *Supporting Quality Journalism through Media and Information Literacy*, focusing on enhancing users' awareness and appreciation of quality journalism and its fundamental elements.

The MSI-AUT Committee is currently finalising a draft study of the implications of advanced digital technologies (including AI systems) on the concept of responsibility within a human rights framework.

### Conferences

The international Conference "*Addressing hate speech in the media: the role of regulatory authorities and the judiciary*" (6-7 November 2018, Zagreb) was organised in partnership with the Croatian Agency for Electronic Media. The Conference examined how hate discourse is regulated in different member States focusing on the specific role and work of national regulatory authorities, the judiciary and media self-regulatory bodies.

The high-level Conference "*Governing the Game Changer – Impacts of artificial intelligence development on human rights, democracy and the rule of law*" that took place on 26 – 27 February 2019 in Helsinki, was organised by the Information Society Department, together with the Finnish Presidency of the Council of Europe Committee of Ministers.

One of the main messages of the conference was that AI can only be developed in a human-centric manner and produce benefits for individuals and societies, if legitimate and effective mechanisms are established that provide clear guidance regarding the design, development and deployment of AI tools. To this end, a number of measures need to be introduced, including effective supervision and oversight over AI systems in all stages of their implementation, and development of new skills and competences that will allow the public to identify and manage AI-related risks.

The Council of Europe will follow up on the Helsinki Conclusions through continued in-depth exploration and research into AI impacts on human rights, democracy and the rule of law; development of sector-specific recommendations and guidance; identification of gaps in the existing regulatory framework; and notably through an assessment of the need for a binding legal instrument with main principles and red lines.

The Conference "*Media freedom – how can we deliver?*" took place on 20 March 2019, following an "Academic dialogue on media and information literacy" and a "High-level policy dialogue on media regulation and concentration of ownership". The conference provided an insight into updated standards on media pluralism, ownership and literacy included in the *Council of Europe's Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership*, and ideas for embedding those standards into practice.

From this conference emerged, inter alia, that Media and Information Literacy needs to be

placed in a normative context, and regulatory authorities or other bodies should be given adequate competences and funding to adopt MIL policies and measures adapted to a variety of age and social groups. Reaching beyond Europe, the conference focused on the Southern Neighbourhood in particular and provided an 'East-meets-West' platform for exchange.

On 28 June 2019, a Seminar "*Human rights challenges in the digital age: Judicial perspectives*", organised by the European Court of Human Rights, in cooperation with Directorate General of Human Rights and the Rule of Law of the Council of Europe (DGI), and with the support of the Ministry for Foreign Affairs of Finland, brought together members of the judiciary, prominent legal practitioners and academics, representatives of European institutions and non-governmental organisations, as well as other professionals. It focused on three major subjects: protecting free expression and privacy in the digital environment, also with regard to implications of Big Data, and determining jurisdiction on the World Wide Web. Speakers coming from different legal systems and jurisdictions exchanged views on the ways to address the complexity that protection of human rights online presents for the judiciary.

## **Other main activities and achievements in the field of internet freedom and internet governance**

### *The Council of Europe Strategy 2016-2019 on Internet Governance*

On 30 March 2016, the Ministers' Deputies adopted the *Council of Europe Strategy 2016-2019 on Internet Governance*, with the aim to ensure that all public policies related to the internet, including relevant aspects of its infrastructure and functioning which can affect access to and the exercise of human rights, are people-centered and respect the core values. The implementation of the Strategy was carried out over two biennium cycles (2016-2017 and 2018-2019), with a focus on the implementation of legal instruments, on the development of new policy documents, and on initiatives to raise awareness and build capacity. A final report on the implementation of the Strategy is currently in preparation, as well as a new strategy for the period of four years (2020-2023).

### *Multi-stakeholder cooperation*

The Council of Europe further continuously promoted *partnerships* with different stakeholders amongst governments, the private sector, civil society, technical community and academia. In particular, in 2018 two more internet companies joined the cooperation framework established in November 2017 by the *Exchange of letters between the Secretary General of the CoE and leading technology firms and associations on mutual commitment to cooperate*. Strengthened dialogue and closer cooperation with the private sector has helped to achieve a better understanding of complex technical matters and has translated into the more active engagement of diverse stakeholders in Council of Europe expert groups and the targeted promotion of Council of Europe's standards at diverse international forums. In particular, on 23 May 2018 and on 18 June 2019 internet companies' representatives exchanged views with the Committee of Ministers of the Council of Europe to discuss suitable implementation mechanisms of the CM recommendation on the roles and responsibilities of internet intermediaries, as well as opportunities for further cooperation, including in the field of development of new technological services and artificial intelligence.