



OSCE Human Dimension Implementation Meeting

Warsaw, 24 September - 5 October 2012

Working session 1: Freedom of expression, free media and information society

Contribution of the Council of Europe

OVERVIEW OF THE WORK OF THE COUNCIL OF EUROPE IN THE MEDIA AND INFORMATION SOCIETY FIELD

Introduction

The Council of Europe's activities in the media and information society fields aim at promoting freedom of expression and information, as guaranteed by **Article 10 of the European Convention on Human Rights**, as well as the free flow of information at the pan-European level through the existence of a plurality of independent media. Whilst the European Court of Human Rights provides judicial protection of freedom of expression and information, the Council of Europe policy-making work strives to map out measures that will facilitate the effective exercise of these freedoms having regard to new services technologies and trends, which the Court has not yet had the occasion to examine. Recent Ministerial Conferences which specialised on freedom of expression have guided this work and confirmed the need for further action on freedom of expression and media freedom with regard to new communication technologies and the information society. The Recommendation of the Committee of Ministers to member states on a new notion of media (September 2011) is worthy of note. This text encourages States to acknowledge that social networks, online games or online whistleblower sites should enjoy media rights freedom and related responsibilities. It offers a set of criteria to be used when providing a graduated and differentiated policy response to different actors according to their role in the production and dissemination of information or content and in the operation of applications designed to facilitate mass communication, including platforms or applications for content-based interactive experiences. A number of specific aspects of instruments address freedom of expression on the Internet.

A further step was taken in 2011 when the Committee of Ministers mandated a new Steering Committee on Media and Information Society (CDMSI)¹ broadening the Council of Europe actions by gathering under one umbrella all human rights activities relating to media and information society, including oversight for the Council of Europe Internet Governance strategy 2012-2015 which covers a broad range of

¹ Replacing the Steering Committee on the Media and New Communications Services (CDMC)

subjects such as data protection and cybercrime. This enables the Council of Europe to keep pace with the rapid changes occurring in the field of media and information society, building on our well-established multistakeholder dialogue. As in previous steering committees, the OSCE enjoys observer status with the CDMSI.

Promotion of the respect of Article 10 of the European Convention on Human Rights

As guardian of Europe's common values on human rights, democracy and rule of law, the Council of Europe is concerned with the necessary protection and promotion of freedom of expression and information without which none of these values can be upheld. It promotes the respect of Article 10 of the European Convention on Human Rights, especially in view of challenges to the safety of journalists, media pluralism and access to information and freedom of expression online. The Council of Europe does this through the development of standards and cooperation assistance activities. A recent example concerns the issue of "libel tourism" as a threat to freedom of expression, which has been exacerbated by globalisation and the Internet. On 7 July 2012; the Committee of Ministers adopted, a Declaration on the desirability of international standards dealing with forum shopping in respect of defamation, "Libel Tourism". It identifies the risks to freedom of expression and encourages member states to take this into account in the reform of defamation laws.

The European Court of Human Rights examines complaints of alleged violations of Article 10 by member states. Other Council of Europe institutions, the Secretary General, the Commissioner for Human Rights, the Parliamentary Assembly and the Committee of Ministers, have distinct and important political, diplomatic and technical roles to play in promoting freedom of expression and of the media. This requires well informed, rapid reaction capacity and adequate follow up involving close cooperation with civil society and other stakeholders and organisations. Ongoing dialogue between member states is the key to finding solutions for shortcomings that meet both state concerns and Council of Europe imperatives.

Against this background, on 13 January 2010 the Committee of Ministers adopted a Declaration on measures to promote the respect of Article 10 of the European Convention on Human Rights. This declaration is the result of prolonged dialogue between the bodies mentioned above as well as the Office of the OSCE Representative on Freedom of the Media. In its Resolution 1897 (2010) on Respect for Media Freedom, the Parliamentary Assembly supported the Declaration and made proposals to strengthen its implementation.

In response to the Declaration, the Council of Europe Secretary General established in 2012 a *Task Force on Freedom of Expression and Media* as a transversal structure, bringing together relevant Council of Europe services, for collecting, processing and sharing information on Article 10 issues. The objective is to identify emerging problems in member states as early as possible and to enable rapid responses. The Task Force is giving particular priority to areas such as the safety and protection of journalists and other media representatives, the functioning of independent and pluralistic media and access to the media. The Task Force aims at developing transversal working methods for gathering, exchanging and verifying

information with a view to preparing the basis for action by pertinent bodies/officials of the Council of Europe within their respective remits.

Related publications:

[Parliamentary Assembly Recommendation 1783\(2007\)](#) on threats to the lives and freedom of expression of journalists.

[Parliamentary Recommendation 1791 \(2007\)](#) on the state of human rights and democracy in Europe

Public service media, media diversity and independence

Public service media, when they enjoy genuine editorial independence and institutional autonomy, contribute to media diversity and help counterbalance the risk of misuse of power in a situation of strong concentration of the media and new communication services. Public service media are therefore a fundamental component of the media landscape in our democratic societies. However, in a changing environment, they face major challenges which may threaten their very survival. On 16 February 2012, the Committee of Ministers of the Council of Europe adopted a Declaration and a Recommendation on public service media governance, urging member states to review the governance framework of public service media in order to give response to these challenges in terms of management, decision making arrangements and operational culture. It is important that public service media adapt themselves to the new communication environment, where the relationship with the public is based on transparency, openness and dialogue. The Council of Europe's professional partners welcomed these and related texts; their follow-up features in a June 2011 Memorandum of understanding between the Council of Europe and the European Broadcasting Union (EBU).

Related publications

- [Public Service Media Governance, Looking to the Future](#) – a report by the Council of Europe Secretariat
- The role of public service media for widening individual participation in European Democracy (2008) - [H/Inf \(2008\) 12](#)
- Strategies of public service media as regards promoting a wider democratic participation of individuals - [H/Inf\(2009\)6](#)
- How member states ensure the legal, financial, technical and other appropriate conditions required to enable public service media to discharge their remit - [H/Inf\(2009\)7](#)

Media and social cohesion

The media play a growing role in social cohesion and combating racism, xenophobia, anti-semitism and intolerance. The Council of Europe pays ongoing attention to these issues which is reflected in texts adopted and other work, including campaigns and publications. Living Together² is a reference tool about Council of Europe standards

² Living Together exists in printed versions in English and French and, in pdf versions in Albanian, Bosnian,

on the contribution of the media to harmonious living among different communities and groups in a democratic society. Further, in February 2009, the Committee of Ministers adopted a Declaration on the role of community media in promoting social cohesion and intercultural dialogue.

Related publications:

- The role of independent productions in promoting cultural diversity;
- Methodology for monitoring media concentration and media content diversity;
- Member states' current practice regarding the democratic and social contribution of digital broadcasting;
- ;
- Promoting social cohesion - The role of community media (2008) - H/Inf (2008)13, version PDF;
- Contribution of public service media in promoting social cohesion and integrating all communities and generations - H/Inf(2009)5

Media law, human rights and fight against terrorism

Terrorism has a devastating effect on the enjoyment of human rights, not only for the right to life, but also for other fundamental rights and freedoms that Council of Europe member states have undertaken to protect. Freedom of expression and information risk falling victim to terrorism, due to a climate of fear that terrorism can create or as a side effect of anti-terrorism legislation or measures. Since 2002, the Committee of Ministers of the Council of Europe has adopted a number of important standard-setting texts designed to assist member States in this respect.

Any interference with the freedom of expression and information must be prescribed by law and be a proportionate response to a pressing social need related to the limited exceptions set out in Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. Concerns that, in some cases, anti-terrorism legislation restricts unduly freedom of expression and information in various ways or that it lacks sufficient procedural guarantees to prevent abuse, led to the variance with Council of Europe standards. Two important conferences organised by the Council of Europe explored the impact of anti-terrorism legislation and on freedom of expression and information (Amsterdam, November 2008 and Reykjavik, May 2009), adoption of a Resolution on the subject ³ at the 1st Council of Europe Conference of Ministers responsible for media and new communication services (May 2009). They resolved, inter alia, to review their respective national legislations and/or practices on a regular basis to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards, with a particular emphasis on the case law of the European Court of Human Rights.

Related publications:

- Speaking of Terror - A survey of the effects of counter-terrorism legislation on freedom of the media in Europe [pdf, 1049KB] (2008) by David Banisar

Bulgarian, Croatian, English, French, Russian, Turkish and Ukrainian

³ The Delegation of the Russian Federation made a reservation in respect of this paragraph. It indicated that the subject matter dealt with in it does not fall entirely under the competence of the authorities of the Russian Federation responsible for media and mass communication

New communications technologies

The development of new communication technologies and services can bear significantly on the exercise of freedom of expression and information. They help contribute to the plurality of views, opinions and cultures in Europe, but they also raise new challenges as regards the protection of human rights and democratic values and the regulatory framework applicable to new media or new means of mass communication. In December 2011, the Committee of Ministers adopted a Declaration on protecting privately operated Internet platforms and online service providers. It states that attacks against websites of independent media, human rights defenders, dissidents, whistle-blowers and other new media actors can represent an interference with freedom of expression. Similarly, in September 2011, the Committee of Ministers declared that (the protection of) freedom of expression and access to information extended to domain names and name strings.

In bringing together these issues and challenges, the Council of Europe continues to develop a more holistic and sustainable vision for the Internet, one which puts people first. In March 2012, the Committee of Ministers adopted its Internet Governance Strategy 2012-2015 which comprises over 40 action lines in order to build a free, open and secure Internet. As part of its overall aims and objectives, member states underline that the strategy is built on the Committee of Ministers 2011 Declaration on Internet Governance Principles and on its Recommendation CM/Rec(2011)8 on the protection and promotion of the universality, integrity and openness of the Internet; both texts contribute to a human rights based approach to the Internet which builds an international environment of shared understanding on Internet policy.

The ways in which information is gathered, content is created and the methods by which both are made available and sought, have changed with technological developments. Users have ready access to, and create content for, means of mass communication which employ diversified communication platforms for both existing and newly developed media or comparable media-like mass-communication or information services. The relations between the media or other providers of those services and users or consumers have also evolved. In this connection, the Committee of Ministers adopted a [Declaration on network neutrality](#) which underlines, inter alia, the importance of Internet users having the greatest possible access to Internet-based content, applications and services of their choice.

Like traditional media, new providers of media-like mass-communication services should also strive to promote and respect certain fundamental values. Existing media-related standards that were developed for traditional forms of mass communication may well apply to new services and service providers. The Council of Europe has addressed this question in its [Recommendation on a new notion of media](#) adopted by the Committee of Ministers on 21 September 2011. In April 2012, the Committee of Ministers adopted [Recommendation CM/Rec\(2012\)3](#) on the protection of human rights with regard to search engines and [Recommendation CM/Rec\(2012\)4](#) on the protection of human rights with regard to social networking services.

The Council of Europe is actively involved in the follow-up to the World Summit on the Information Society (WSIS), in particular in contributing to and participating in the United

Nations-led Internet Governance Forum (IGF) and in supporting and facilitating the European Dialogue on Internet Governance ([EuroDIG – the European IGF](#)). The Council of Europe also participates in the WSIS action lines follow-up on the media and on the ethical dimension of the information society.

In 2012, the Council of Europe stepped up its focus on Internet governance. In the fifth edition of the European Dialogue on Internet Governance (EuroDIG, Stockholm, 14 and 15 June) there was focus on data protection, intellectual property, cybersecurity and cybercrime, ethics and corporate responsibility, hate speech and freedom of expression, identity, anonymity and privacy, digital literacy and skills, as well as new and emerging Internet services and business models.

Related publications:

Declaration of the Committee of Ministers on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, adopted on 7 December 2011

Declaration by the Committee of Ministers on Internet governance principles, adopted on 21 September 2011

Declaration by the Committee of Ministers on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings, adopted on 21 September 2011

Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, adopted on 21 September 2011

Recommendation CM/Rec(2011)8 of the Committee of Ministers to member states on the protection and promotion of the universality, integrity and openness of the Internet, adopted on 21 September 2011

Declaration of the Committee of Ministers on the management of the Internet protocol address resources in the public interest, adopted on 29 September 2010

Declaration of the Committee of Ministers on network neutrality, adopted on 29 September 2010

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Further and more detailed information can also be obtained on the web sites, at the following address: <http://www.coe.int/media> and <http://www.coe.int/information society>

