**COUNCIL
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Working sessions 2 and 3: freedom of the media

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 at promoting the right to respect for private life as guaranteed by Article 8 of the European Convention on Human Rights and the 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. Whilst the European Court of Human Rights provides judicial protection of the right to private life and data protection, and 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 rights and freedoms having regard to new services, technologies and trends.

The rapid spreading of new information technologies and their ever growing role in all sectors of everyday life increase challenges to the respect for private life, leading the Council of Europe to continuously adapt its standards. The modernisation of the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the guidance provided on a sector by sector approach (big data, health-related data, data processing in the police sector, etc.) has been a priority of the organisation for the past years.

In the 2016-2017 biennium as well as 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 followed the directions given at the 2013 ministerial conference in Belgrade. It is currently focussing on the application of Article 10 of the European Convention on Human Rights in the context of new developments and technological innovations, including AI, embracing a multi-stakeholder approach.

Main activities and achievements

Media Freedom

A pluralist media landscape with transparent and diverse media ownership is a precondition for a functioning democracy and an effective use of freedom of expression. The *Recommendation on media pluralism and transparency of media ownership* adopted in 2018 tackles the issues of media pluralism and diversity in the new multimedia environment where actors other than legacy media have come to the fore.

Media coverage of elections has an important impact on the public's understanding of electoral stakes and influences the result of electoral competitions. *The 2017 Study on the use of internet in electoral campaigns* looks at how, as an important part of political campaigning is moving online, electoral spending and questionable advertising techniques based on micro-targeting of voters cause a number of concerns for the fairness and legitimacy of elections. The 2017 *Study on media coverage of elections with a specific focus on gender equality*, on the other hand, explores how male and female politicians are portrayed in the media during electoral campaigns and to what extent the representation of gender during elections influences voters' decisions. It consists of a review of existing research reports and an overview of current practices in the member states of the Council of Europe.

The 2017 report *"Information Disorder: Toward an interdisciplinary framework for research and policy making"* addresses today's challenge of information pollution. It examines the implications of disinformation campaigns designed to sow mistrust and confusion, and identifies steps to reduce the global pollution.

Safety of Journalists

The issues of freedom of the media and safety of journalists have implications in many areas of society and must involve various actors. The *Recommendation CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors,* adopted in April 2016, contains guidelines on prevention, protection, prosecution and promotion of information, education and awareness-raising. These are designed to ensure the effective protection of journalism as a function as well as the safety of journalists and other media actors, which necessitates coherent, complementary strategies by member States to fulfil their relevant obligations, combining legal, administrative and practical measures. In furtherance of this aim, the Council of Europe has devised a strategic and systematic implementation of Recommendation CM/Rec(2016)4 by way of an implementation strategy encompassing a number of actions including, *inter alia*: the identification of priority areas of implementation of the Recommendation through the input of NGOs and journalist associations active in the area of safety of journalists; the collection of "valuable practices" in the areas identified as deserving priority implementation; the production of a technical guide to the Recommendation explaining and providing context to those priority areas, offering suggestions for implementation and providing a self-assessment tool to Member States; a comparative study on the implementation of the identified priority areas of the recommendation; and a manual/training courses on the protection of journalists and other media actors.

The online *Platform to promote the protection of journalism and safety of journalists* was launched in April 2015 as an initiative of the Secretary General of the Council of Europe. The platform is a public space to facilitate the compilation, processing and dissemination of information on serious concerns about media freedom and safety of journalists in Council of Europe member States, as guaranteed by Art. 10 of the European Convention on Human Rights. Since the beginning of its operation, 445 alerts originating from 37 member states have been registered. Out of these, 226 alerts have either been resolved or responded to by governments. On-going efforts are underway to increase the response rate, and in this way better address the threats and violence against media professionals and improve their protection.

Internet Freedom and Internet Governance

In March 2016 the Committee of Ministers approved the Council of Europe's *Internet Governance Strategy 2016-2019*. Its aim is to ensure that the activities of the Organisation related to the internet are people-centred and rights-based in order to build democracy online, to protect internet users, and to ensure respect and protection for human rights

online. In particular, the strategy is defined by a series of key actions and activities which seek to protect the freedom, privacy and security of Internet users and to empower and engage them as stakeholders in internet governance dialogue.

In the framework of the Council of Europe's Internet Governance Strategy 2016-2019, there is an on-going dialogue between the Council of Europe and internet companies on the respect for human rights and fundamental freedoms of internet users. This collaboration has been formalised by way of an exchange of letters signed between the Secretary General of the Council of Europe and representatives of eight leading technology firms and six associations during a ceremony in Strasbourg on 8 November 2017. On 23 May 2018, a workshop was organised with such representatives to discuss their responsibilities in particular with respect to data protection, content moderation and enhanced transparency requirements, upon which two more partners joined the agreement.

Considering further the respective challenges in promoting an enabling environment for the free exercise and enjoyment of fundamental rights and freedoms online, the Committee of Ministers of the Council of Europe adopted in April 2016 a *Recommendation CM/Rec(2016)5 on Internet freedom* which outlines internet freedom indicators which member States could use to evaluate their level of internet freedom and produce respective reports.

Also the accessibility and quality of an internet connection is an essential factor. In its *Recommendation CM/Rec(2016)1 on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality*, the Council of Europe calls upon its member States to safeguard this principle in their policy frameworks on the basis of provided guidelines. These focus on ensuring the privacy of personal data that is being processed, the transparency of internet traffic management practices and the accountability of internet service providers for breaches of the principle of network neutrality.

In June 2016, the Council of Europe published a *Comparative study on blocking, filtering and take-down of illegal internet content in the 47 member States*. The study was carried out by the Swiss Institute of Comparative Law and it describes and assesses the legal framework as well as the relevant case-law and practice. It is divided in two main parts: country reports and comparative considerations.

To ensure that the internet remains an open and safe space where privacy and freedom of expression are protected, the Council of Europe has also tackled the crucial role and the accompanying responsibilities of internet intermediaries. Recommendation *CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries* offers guidelines for member states to help them determine what they should do and what they should expect from private companies when it comes to respect for user rights, transparency and accountability.

On a related topic, the Council of Europe has mapped out its human rights' perspective on automated data processing techniques in the *expert study on the human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications (2017)*. While listing the possible implications for various rights enshrined in the European Convention on Human Rights, it concludes that all rights are potentially impacted by the growing use of automation and algorithmic decision-making in all spheres of life.

Data protection

In order to respond to new technological challenges, the Data Protection Convention 108 of

the Council of Europe has been modernised through an amending Protocol. The modernisation of the Convention contains relevant innovations such as the obligation to declare data breaches and reinforcing the requirement that data processing is carried out in a proportional way and applying the data minimisation principle. It also strengthens considerably the rights of data subjects with the introduction of the right "not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration;" the right "to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her" and with the right to object to the processing of personal data concerning him or her. The accountability of data controllers and the transparency of data processing gets reinforced, which is essential to maintaining trust in the digital environment.

The Amending Protocol sets forth also conditions for the lawful use of exemptions and restrictions and provides that this has to be foreseen by the law and has to constitute a necessary and proportionate measure in a democratic society, notably, in the interests of protecting State security, public security, the economic and financial interests of the State or the prevention and suppression of criminal offences. Article 9 also introduces the mandatory external oversight for the lawful use of those exceptions and restrictions.

The principles of transparency, proportionality, accountability, data minimisation, privacy by design, etc. are now acknowledged as key elements of the protection mechanism and have been integrated in the modernised instrument.

Furthermore, the protocol strengthens the role of the convention committee, which will evaluate compliance by Parties to the convention, and opens the treaty for accession by the European Union and international organisations. Supervisory authorities' powers and rights are also strengthened which could support the effective implementation of the Convention throughout its 53 parties.

The Committee of Convention 108 recently adopted the following important texts: a Practical Guide on the use of personal data in the police sector; as well as Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data, .

During a joint session held on 20 June 2018, the CDMSI and the Committee of Convention 108 jointly approved 'Guidelines on safeguarding privacy in the media' which are largely based on the case-law of the European Court of Human Rights and aim to be a practical tool for journalists.

CoE Secretary General Report

The Secretary General of the Council of Europe in his fifth *Report on the State of Democracy, Human Rights and the Rule of Law in Europe*, released in May 2018 and entitled "Role of institutions – Threats to institutions" pointed to persistent serious challenges to freedom of expression in Europe: Media independence is undermined by the arbitrary shutdown of media organisations, attempted financial manipulation by government and commercial entities, and an increase in attacks against the public service media in many member states; a number of efforts have been made in member states to address the media owners' conflicts of interest and excessive concentration of ownership, however, existential threats to traditional media persist; impunity remains a serious concern with five journalists killed in the territory of Council of Europe member states in 2017 and 13 murder cases from previous years which remain unpunished; and freedom of expression on the internet is threatened by arbitrary blocking of online content, through administrative decisions or pursuant to flawed legal frameworks.

On-going standard-setting and other activities

The Council of Europe has established a committee of experts on Quality Journalism in the Digital Age (MSI-JOQ) which is currently working on a draft recommendation on promoting a favourable environment for quality journalism in the digital age. An additional expected deliverable of the expert committee is a study on media and information literacy in the digital environment, focusing on enhancing users' awareness of quality journalism and its fundamental elements. Finally, the expert committee will also produce a declaration on the funding of quality journalism emphasising the urgency of revising funding models and providing a more sustainable environment for quality journalism.

The Expert Committee on Human Rights Dimensions of Automated Data Processing and Different Forms of Artificial Intelligence (MSI-AUT) is currently working on the following three deliverables: (a) a declaration on the manipulative powers of algorithm-empowered tracking devices; (b) a draft recommendation on the human rights impacts of the use of algorithms; and (c) a study on the development and use of AI focusing on the implications of AI decision-making systems for the concept of responsibility within a human rights framework.

The Finnish Chairmanship of the Council of Europe Committee of Ministers and the Council of Europe are organizing the high-level conference *"Governing the Game Changer – Implications of AI development on human rights, democracy and the rule of law"*, to be held on 26 – 27 February, 2019, in Helsinki, Finland. The Conference's objective is to engage in a critical and inclusive discussion with global leaders from different spheres (law, public policy, sociology, economics, finance, philosophy, psychology, and information science) for a multi-disciplinary and multi-stakeholder dialogue. Organised around the three main pillars that constitute the Council of Europe core values, human rights, democracy, and the rule of law, panel discussions will explore the challenges and opportunities that AI carries for individuals, for societies, and for the viability of our legal and institutional frameworks.
The Committee of Convention 108 is currently working on a Recommendation on the protection of Health-related data, on a study on "Artificial Intelligence and data protection: Challenges and envisaged remedies" as well as on a Guide on Privacy and data protection for ICANN related data processing.

Co-operation with the OSCE

The Estonian Chairmanship of the Committee of Ministers of the Council of Europe, the German Chairmanship of the OSCE and the Council of Europe co-organised a conference on "Internet freedom: a constant factor of democratic security in Europe" on 9 September 2016 in Strasbourg. The conference promoted the *Recommendation on Internet freedom,* adopted in April 2016, and examined best practices and examples regarding its implementation by member States. Experience of non-governmental organisations reporting on internet freedom was also showcased and discussed in order to promote a multi-stakeholder engagement to internet freedom. In addition, the OSCE Guidebook on Media Freedom on the Internet was presented and discussed at the conference.

Regular contacts are kept with the Office of the OSCE Representative for Freedom of the Media, on the occasion of events organised in the framework of the general work of both Organisations as well as within Council of Europe co-operation activities. For instance, Dunja Mijatović, former OSCE Representative for Freedom of the Media, and Frane Maroevic, Director of the Office of the OSCE Representative on Freedom of the Media, featured as speakers at the Conference on Internet Freedom. Furthermore, Thijs Berman, Principal Adviser of the OSCE Representative on Freedom of the Media, participated in the *High Level Seminar on the role and powers of National Human Rights Institutions (NHRIs)* and other

national mechanisms in protecting freedom of expression, which was co-organised by the Council of Europe and the European Network of National Human Rights Institutions and held on 15 December 2016.

The Czech Chairmanship of the Council of Europe, the Austrian Chairmanship of the OSCE and the Council of Europe have jointly organised another key internet freedom related event entitled "A test case for internet freedom" on 13 October 2017 in Vienna. Given that the needs of society in the digital age are shifting and the role of internet intermediaries is expanding, key stakeholders were brought together to examine the scope of their duties and responsibilities in promoting the enjoyment of human rights and fundamental freedoms online.

The OSCE is a participant in the Council of Europe's Steering Committee on Media and Information Society (CDMSI) as well as in its two Committee of Experts, MSI-JOQ and MSI-AUT.