



OSCE Human Dimension Implementation Meeting

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**Working session 4: Fundamental freedoms I including 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. Ministerial Conferences in 2005 and 2009 which specialised on freedom of expression have given directions for further action on freedom of expression and media freedom with regard to new communication technologies and the information society. Council of Europe output has been the Committee of Ministers Recommendation to member states on a new notion of media (September 2011). It 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 other instruments address freedom of expression and other human rights 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

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

Europe Internet Governance Strategy 2012-2015 which covers a broad range of 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 a 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 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. Its objective is to identify emerging problems in member states as early as possible and to enable rapid responses. The Task Force gives particular priority to areas such as the safety and protection of journalists and other media actors, 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

A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights, Toby Mendel, 2012

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 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;
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- 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 on freedom of expression and information (Amsterdam, November 2008 and Reykjavik, May 2009), led to the adoption of a Resolution on the subject³ at the 1st Council of Europe Conference of Ministers responsible for media and new communication services (May 2009). Ministers 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:

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

- 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

New communications technologies

The development of new communication technologies and services, in particular now that the Internet is for many an essential tool accessed continuously via mobile devices, can bear significantly on the exercise of freedom of expression and information. The services provided via these technologies 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.

The Council of Europe continued to develop a more holistic and sustainable vision for the Internet, one which puts people first. After adoption in March 2012, of the Committee of Ministers' Internet Governance Strategy 2012-2015 the Council initiated implementation of its more than 40 action lines in order to build a free, open and secure Internet. The strategy identifies challenges and corresponding responses to enable state and non-state actors together to make the Internet a space which is inclusive and people-centred. The existing framework of international law, including human rights law, is, as a matter of principle, equally applicable on-line as it is off-line.

On 11 June 2013 the Committee of Ministers adopted a Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies. This declaration recalls in particular that tracking and surveillance measures by law enforcement authorities must comply with the European Convention on Human Rights and strictly respect the limits, requirements and safeguards set out in the Data Protection Convention 108 of the Council of Europe.

As a follow-up to the adoption of the Committee of Ministers' Declaration on network neutrality in 2010, which underlines, inter alia, the importance of Internet users having the greatest possible access to Internet-based content, applications and services of their choice, the Council of Europe is currently examining the human rights implications of network neutrality.

As part of its follow-up to the 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 and the Declaration by the Committee of Ministers on Internet governance principles of 21 September 2011, a multi-stakeholder conference on "Transparency to protect Internet freedom: a shared commitment", held in Strasbourg, on 24-25 September 2013. The results of this conference, including any proposals for new standards, will be examined by the Council of Europe's Steering Committee on Media and Information Society (CDMSI).

The Council of Europe is currently finalising a standard setting text bringing together in a single instrument the rights of Internet users as defined in a range of legal instruments and in the case law of the European Court of Human Rights in a Compendium for users.

The Council of Europe is actively involved in the follow-up to the World Summit on the Information Society (WSIS), in particular by contributing to and participating in the United Nations-led Internet Governance Forum (IGF). The Council of Europe participated actively in the 7th IGF, in Baku (Azerbaijan) from 6 to 9 November in particular by organising - in cooperation with EBU, OSCE and UNESCO - an open forum on "What can be done to ensure the safety of online media professionals and actors?".

The Council of Europe also supports and facilitates the European Dialogue on Internet Governance the 6th edition of which brought together 600 participants in Lisbon (Portugal) from 20 – 21 June 2013 on the theme of "Internet for society – how to serve the public interest?".

Related publications:

Declaration of the Committee of Ministers on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies, adopted on 11 June 2013

Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services, adopted on 4 April 2012

Recommendation CM/Rec(2012)3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines, adopted on 4 April 2012

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

Assistance and co-operation

The Council of Europe standards described above acquire real value when they are integrated into the law and practice of member states. Assistance and co-operation activities are the main tools for promoting this integration. These activities include legal expertises, training programmes, seminars, conferences and other events with the participation mainly of public officials, media professionals and civil society alongside Council of Europe experts.

The assistance and cooperation activities address the needs identified by the Council of Europe monitoring mechanisms and respond to the specific requests of member states. In addition to helping promote freedom of expression and freedom of the media, these activities contribute more generally to strengthening democracy, human rights and the rule of law.

Thanks to Council of Europe support, target countries have ratified important conventions and have adopted and implemented key laws aimed at guaranteeing freedom and pluralism of the media. Our work helps to keep media freedom always on the European agenda. Its impact also includes reforming of public-service broadcasters and of journalism education, supporting networks of media professionals, capacity-building for the governmental and non-governmental sectors and a lot more.

In order to achieve efficiency, maximum impact and sustainable results, we constantly look for links between our various projects. The best practices and the results achieved in one place are shared with others through bilateral and regional networking. Such exchanges have taken place, for example, regarding the reform of university journalism education and making broadcast regulatory bodies independent, effective and transparent. The Council of Europe also helped create a regional network of journalistic self-regulatory bodies. Currently, the network includes press councils from the South Caucasus, Moldova, the Russian Federation and Ukraine.

In 2012 only, some 100 cooperation activities were carried out within five externally-funded projects. Assistance is being provided to Hungary to align its media laws with Council of Europe standards. A high-level conference addressed the issue of online hate speech.

In this extensive work, the Council of Europe is cooperating with the OSCE Representative on Freedom of the Media and with field offices. The most recent example of such cooperation is the joint effort of the Council of Europe, the Office of the OSCE Representative on Freedom of the Media and the European Commission on media legislation in the “former Yugoslav Republic of Macedonia”

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