OSCE Human Dimension Implementation Meeting

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

Contribution of the Council of Europe

OVERVIEW OF THE WORK OF THE COUNCIL OF EUROPE IN THE MEDIA FIELD

Introduction

The Council of Europe's activities in the media field 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 in the media field strives to broaden the scope of freedom of expression and information by adopting appropriate measures for the exercise of these freedoms.

In 2005, the Kiev Ministerial Conference backed the Council of Europe's work concerning human rights and new communication technologies. The Reykjavik Ministerial Conference, held in May 2009, confirmed the importance of that work and set ambitious objectives for further work towards the integration of human rights and Council of Europe standards in the information society.

The implementation of the media component of the Intergovernmental Programme of Activities of the Council of Europe falls within the competence of the Steering Committee on the Media and New Communications Services (CDMC) which has broadened its field of action to emphasise the growing importance of the media's use of new information and communication technologies. The OSCE enjoys observer status with the CDMC.

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 naturally concerned with the necessary protection and promotion of freedom of expression and information without which none of these values can be upheld.

It is therefore vital that the Council of Europe take more and more timely action to promote the respect of Article 10 of the European Convention on Human Rights. Its impressive body of standards in the freedom of expression and media field and its large network of media experts puts the Council of Europe in the best place to do this .

The European Court of Human Rights examines complaints of alleged violations of Article 10 by member states. Other CoE 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 other organisations. Furthermore, an ongoing dialogue with member states will ensure that solutions are found for shortcomings that meet both state concerns and CoE imperatives

Against this background the Committee of Ministers adopted on 13 January 2010 its **Declaration** **on measures to promote the respect of Article 10 of the European Convention on Human Rights**, adopted on 13 January 2010. This declaration and related proposals by the CDMC concerning its concrete follow-up are the result of a long process, involving the different bodies mentioned above as well as the office of the OSCE Representative on Freedom of the Media. Reference is furthermore made to the **Parliamentary Assembly's Resolution 1897 (2010)** **on Respect for Media Freedom**, adopted in support of the Declaration and containing further proposals to strengthen its implementation.

Related publications:

Proposals by the Steering Committee on the Media and New Communication Services (CDMC) for enhancing the means available to the Council of Europe to promote respect of freedom of expression and media freedoms in the member states (Doc CM (2009) 175 Abridged report of the 11th meeting of the Steering Committee on the Media and New Communication Services (CDMC), Strasbourg, 20-23 October 2009, Appendix III)

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

Public service media, media diversity and independence

Public service media, when they benefit from 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. They are therefore a fundamental component of the media landscape in our democratic societies. However, in a changing environment, public service media face major challenges which may threaten their very survival. The Council of Europe pursued its reflection on possible responses to these challenges, in particular in governance terms related to structure, management and operational culture. The Committee of Ministers should adopt a recommendation on these subjects early in 2012.

In the recent years, the Council of Europe adopted numerous standards addressing public service media independence, pluralism, quality and diversity of content, particularly in the face of media concentration :

- a **Declaration on the independence and functions of regulatory authorities for the broadcasting sector**, adopted by the Committee of Ministers on 26 March 2008 invites Member States to implement its related Recommendation Rec(2000)23, in particular, by providing the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference. Other actors, the broadcasting regulatory authorities themselves and civil society, are also invited to actively play their respective roles towards independence, responsibility and accountability;

- **a Declaration on the allocation and management of the digital dividend and the public interest, adopted** in February 2008, calling member States to acknowledge the public nature of

the digital dividend resulting from the switchover and the need to manage such a public resource efficiently in the public interest and to take decisions accordingly.

Related publications

- 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 Together**[1] is a reference tool on Council of Europe standards on the contribution of the media to harmonious living among different communities and groups in a democratic society. Faced with challenges of multiculturalism, technology and fast-paced modern communication, it is necessary to build bridges, crossroads and links among cultures, traditions and lifestyles.

All components of the society that may play a role towards social cohesion should be supported and encouraged. To that effect, in February 2009, the Committee of Ministers issued a **Declaration on the role of community media in promoting social cohesion and intercultural dialogue**, declaring its support for community media, with a view to helping them play a positive role for social cohesion and intercultural dialogue. It encouraged member States to support community media in various ways, and to help them play and develop that important role.

Related publications

- Public Service Media Governance, Looking to the Future – a report by the Council of Europe Secretariat
- 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
- The ways in which the public, in all its diversity, can be involved in consultative programming structures
- 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

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[1]   Living Together exists in printed versions in English and French and, in pdf versions in Albanian, Bulgarian, English, French, Russian, Turkish and Ukrainian

undertaken to protect. In addition to threat to individuals, terrorism considerably threatens states, democracy and the rule of law. 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. However, concerns have been raised that, in some cases, anti-terrorism legislation restricting freedom of expression and information is too broad, fails to define clear limits to authorities' interference or lacks sufficient procedural guarantees to prevent abuse. Concerns have also been raised about undue restrictions on media professionals' access to information, interference with their rights to privacy and communications, the protection of journalistic sources and media reporting. Sometimes, restrictions have been reported to apply under anti-terrorist pretences without a legal basis and, in consequences, at variance with Council of Europe standards.

Following two important conferences organised by the Council of Europe on anti-terrorism legislation and its impact on freedom of expression and information (Amsterdam, November 2008 and Reykjavik, May 2009),,Ministers adopted a **Resolution on Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information**[2] at the 1st Council of Europe Conference of Ministers responsible for media and new communication services. They resolved, inter alia, to review national legislation and/or practice 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

New communications technologies

The development of new communication technologies and services, such as digital television and on-line information services, social networks and, more generally, new interactive participatory means of communication 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 to the protection of human rights and democratic values and in respect of the regulatory framework applicable to media activities. The need to pay attention to these matters will persist in the coming years.

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

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[2] 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

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.

People in all countries are increasingly relying on the Internet for their everyday activities, professional or private, and are therefore expecting to be able to enjoy continuous and affordable connections to services that are free from interference. In April 2011, a conference was organised on Internet Freedom – from Principles to Global Treaty Law? To address the crucial issues of freedom of Internet, Internet sustainability, which was considered a sine-qua-non condition for that freedom, and principles for Internet governance.

On 21 September 2011, the Committee of Ministers of the Council of Europe adopted a **Declaration on Internet governance principles**, declaring its firm commitment to 10 important principles contained in this declaration which should be upheld by all member states in the context of developing Internet-related policies. It also encouraged other stakeholders to embrace them in the exercise of their responsibilities.
The Committee of Ministers also adopted a **Recommendation CM/Rec(2011)8 on the protection and promotion of Internet's universality, integrity and openness,** calling on members states to commit to protect and promote the universality, integrity and openness of the Internet in accordance with the principles included in the appendix to that recommendation and ensure that they are reflected in practice and law.

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 an important Recommendation on a new notion of media adopted by the Committee of Ministers on 21 September 2011, which gives a basis for policy developments in member states.

Related texts and publications:

- 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

- a Recommendation CM/Rec(2009)5 on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment
encourages public-private partnerships to create and facilitate confidence building environments for children on the Internet, the creation of a European trust-mark for new and existing online content labelling systems and, through the action of those actors that play a key role in children's lives, improved children's Internet literacy;

- the **Internet Literacy Handbook (**available in printed form and online in several languages) and **an online game for children** (www.wildwebwoods), were developed to help empowering users to participate actively in the new communication environments, aware of their rights and responsibilities and adequately protected from possible harm.

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 2011, the Council of Europe stepped-up its focus on Internet governance. In the fourth edition of the European Dialogue on Internet Governance (EuroDIG, Belgrade, 30 and 31 May) there was focus on data protection, cybersecurity and cybercrime, new media freedoms and responsibilities, critical Internet resources, 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

- A New Notion of Media? - by Karol Jakubowicz
- Internet Governance and critical Internet resources - a report by the Council of Europe Secretariat
- Protecting children from harmful content – report by by Andrea Millwood Hargrave H/Inf(2009)13

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