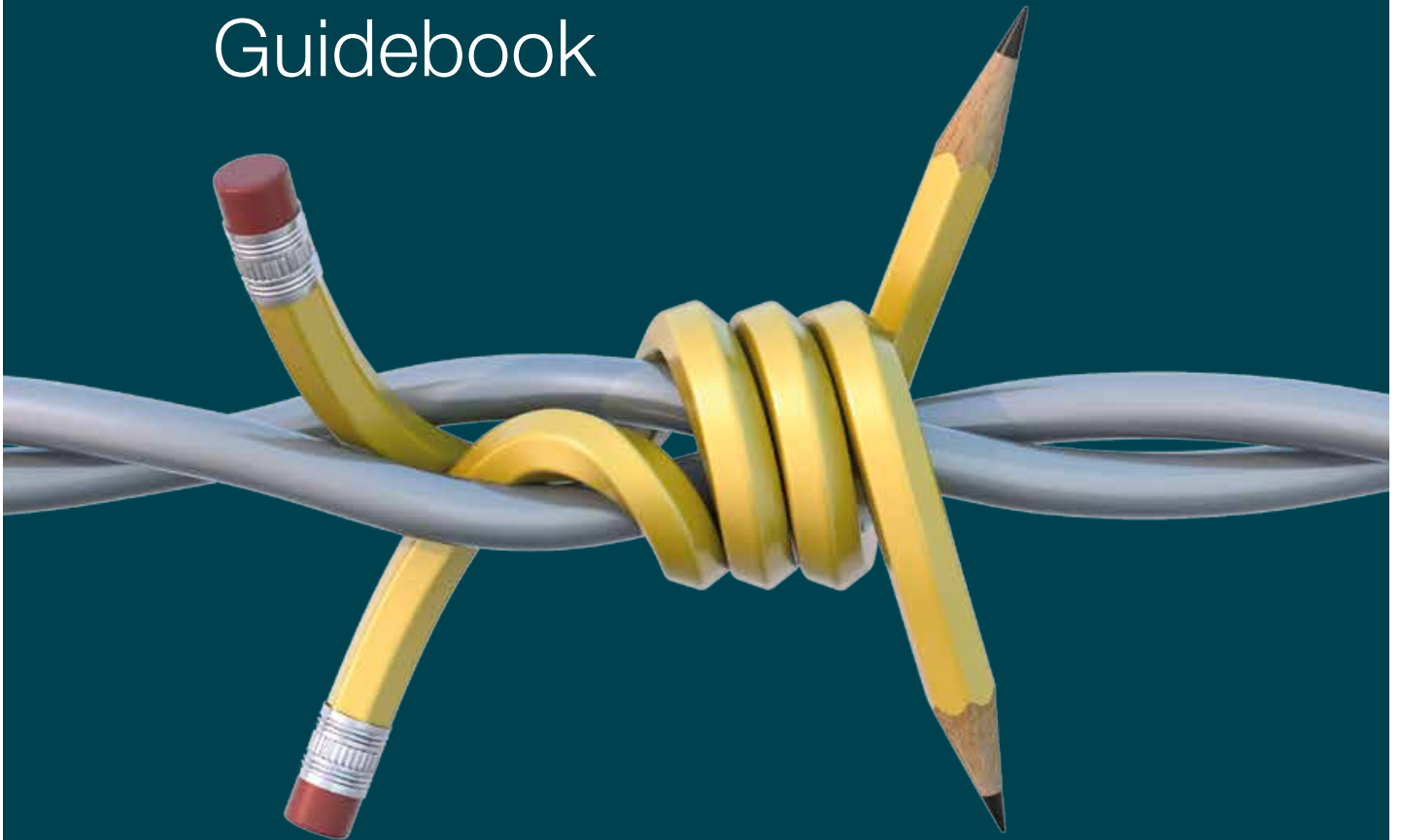


Second edition

# ■ Safety of journalists

Guidebook



osce

Organization for Security and  
Co-operation in Europe

The Representative on  
Freedom of the Media

**The views expressed by the contributing authors in this publication are their own and do not necessarily reflect the views of the OSCE Representative on Freedom of the Media.**

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SAFETY OF  
JOURNALISTS  
GUIDEBOOK

2nd edition

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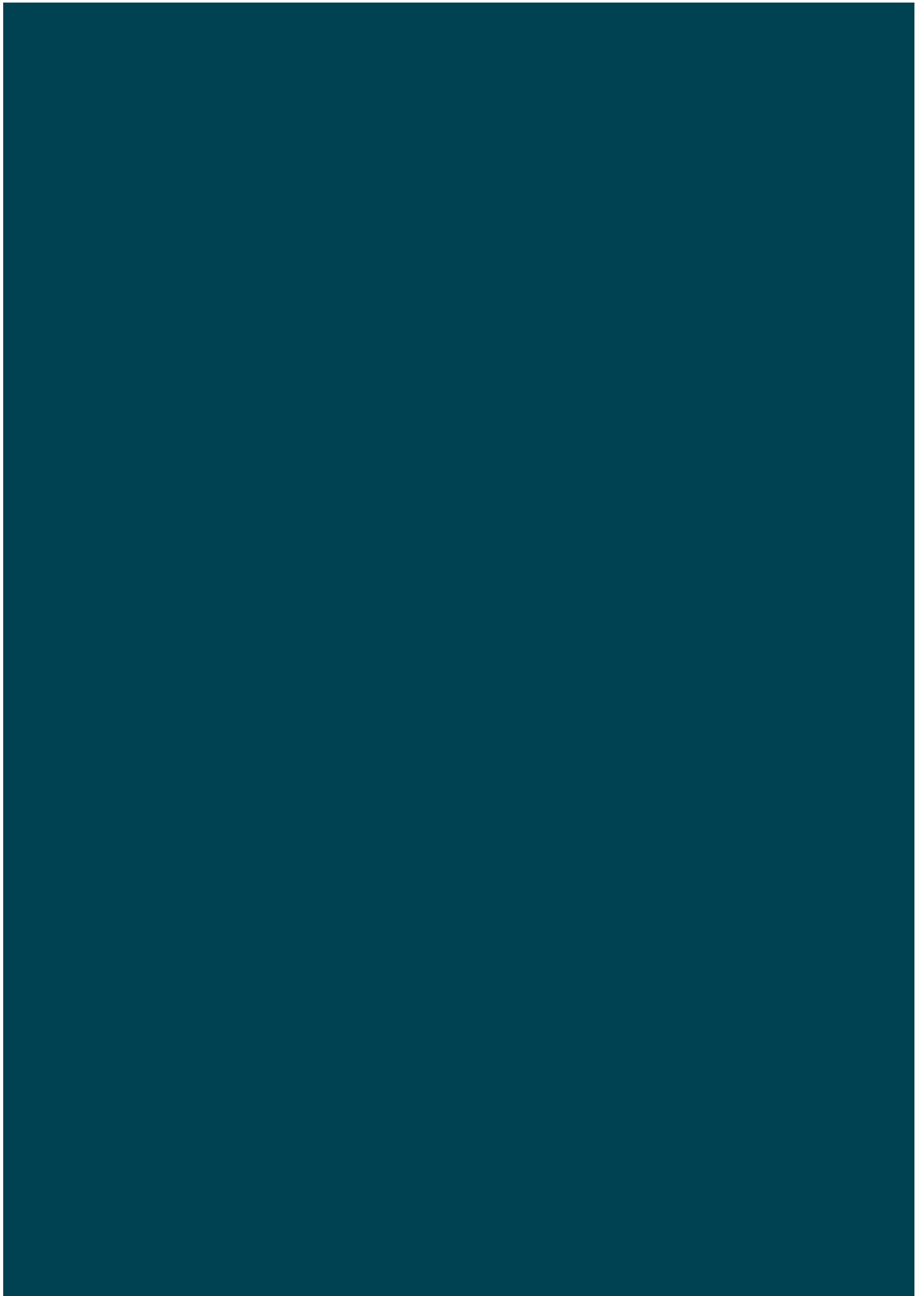
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## Foreword

### Dunja Mijatović

When my Office first published the Safety of Journalists Guidebook in 2012, attacks on media were not new – but approaching the issue in a comprehensive way and positing serious solutions was.

Much has happened during the past two years that makes it worthwhile to update our campaign to create a safe environment for journalists and show the progress made.

In the summer of 2011 the Chairmanship of the OSCE, Lithuania, convened a conference to address the issue of journalists' safety and the result was a practical, eight-step program designed to identify the issues in specific ways and propose some real-world solutions to the problem.

While the OSCE and, in particular, the Office of the Representative on Freedom of the Media, was playing its role, other international organizations, including the Council of Europe and the Human Rights Committee of the United Nations adopted resolutions and held discussions with a broad range of actors and stakeholders to raise public awareness of the dangerous conditions extent worldwide.

Much progress has been made on many fronts due to the combined efforts of journalist associations, concerned legislators and the international community. Most recently, the United Nations General Assembly passed the first resolution on the issue and named 2 November as the annual day to recognize the need to end impunity for those who instigate or commit crimes against the media.

William Horsley, a former BBC journalist and author of the original Safety of Journalists Guidebook, has authored this Second Edition.

I encourage all readers to consider the good-practice examples included in this guide so that the entire OSCE region can attain the goal of an environment friendly to free media.

*Mijatović is the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe.*





## Part I.



## **The safety of journalists: an urgent concern for OSCE participating States**

The safety of journalists has become an increasingly urgent issue for OSCE participating States because the scale of violence against journalists, including murders, attacks leading to serious injuries and cases of intimidation, has grown significantly over recent years with far-reaching effects.

Other means of suppressing independent news media, for example through arbitrary arrests and prosecutions, oppressive political and commercial pressures, and suffocating forms of official regulation, have also become commonplace for journalists working within the OSCE region. Those actions also give rise to fear and insecurity among journalists and other members of the media and have a chilling effect on freedom of expression within whole societies.

The universal right of freedom of opinion and expression includes the right both to impart, seek and to receive information. Violence, harassment and intimidation directed against journalists represent an attack on democracy itself. They have the effect of stifling freedom of the media and freedom of expression, depriving people of the ability to make informed decisions about issues that affect their lives.

Freedom of expression has been recognized internationally as a fundamental right on which the enjoyment of a range of other freedoms depends – such as freedom of assembly and association and the right to vote.

The right to freedom of expression in a State or society is also acknowledged to be an important indicator of the level of protection of

other human rights and freedoms (UN Human Rights Council Resolution A/HRC/RES/12/16 of 12 October 2009 on Freedom of opinion and expression).

The OSCE participating States have established clear principles and commitments in the field of freedom of expression and media freedom. These are based on the conviction that freedom of expression is a fundamental human right and a basic component of a democratic society; and that free, independent and pluralistic media are essential to a free and open society and to accountable systems of government. They are also committed to ensuring that these principles are implemented and upheld, through effective concerted action by the participating States and in full co-operation with the OSCE Representative on Freedom of the Media.

The safety of the media is a precondition for free media, as journalists cannot write or report freely and independently without safe working conditions. In recognition of this, the OSCE Representative on Freedom of the Media, Dunja Mijatović, continues to give paramount importance to halting violence and intimidation toward journalists. She has called on governments and non-governmental organizations to combine their efforts to defend the rights of free media and free expression.

In this context, a number of OSCE participating States, together with civil society and journalists' organizations, have advocated a more forward stance on the part of the OSCE to protect the safety and security of journalists. These issues have been brought forward for discussion among participating States but a consensus is required in order for further steps to be achieved.

### **Growing online challenges**

Freedom of expression applies on the Internet as it does to all means of communication. The Internet has had a transforming effect on societies, giving a new or enhanced voice to community media, citizen journalists, bloggers and other users in addition to professional journalists.

However, as the importance of those activities has grown and added greatly to the pluralism of reporting, online journalists, bloggers and Internet users have increasingly become targets of violence and, in many instances, they have faced threats, harassment and spurious allegations of criminal behaviour intended to silence them.

Blocking or filtering of websites may not be carried out arbitrarily or in a sweeping fashion, as has been established by the European Court of Human Rights in Strasbourg. (See *Ahmet Yildirim v. Turkey*, nr. 3111/10 of 18 December 2012).

Internet and mobile technologies which effectively make self-publishing available to all have brought new challenges for state authorities in terms of ensuring protections for freedom of opinion and expression while, at the same time, guarding against crimes such as incitement to violence and the dissemination of illegal material such as images of abuse involving children.

The Internet revolution also has made it possible for massive leaks of sensitive and secret government information, when disclosed by an individual, to reach a global audience almost instantly. At the same time new and sophisticated technologies and their applications have enabled States to vastly expand their surveillance, interception, processing and retention of data of all kinds. This has increasingly extended to the mass collection of metadata about communications traffic and transnational operations.

However, restrictions on freedom of expression including interception and other forms of interference, whether online or in traditional media or private communications should conform to internationally approved conditions of legality, necessity and proportionality.

Surveillance and tracking of Internet users, whether carried out by state agencies or by non-state organizations, should be strictly limited by the requirements of legality and privacy. The concerns of European states were expressed in June 2013 in the Committee of Ministers of the Council of Europe Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies. It drew attention to the fact that those practices may be used for unlawful purposes that lead to illegal access, data interception or interference, system surveillance and other forms of malpractice.

Surveillance and interception of electronic communications is used to assist state authorities in preventing and countering terrorism and serious crime. However some governments acknowledged that laws and procedures in this area, which were designed for an earlier technological age, have not kept pace with the rapid pace of technological change. Inadequate legal standards and the absence of robust procedures to ensure that surveillance is conducted with judicial authorization and oversight can represent a particular risk to journalists, human rights defenders and others who are among those who may be subjected to arbitrary surveillance activities and potentially to judicial harassment or other reprisals.

The United Nations Human Rights Council, in its decision A/HRC/24/L.13 of 20 September 2013 to hold a panel discussion on the safety of journalists (in June 2014), expressed its deep concern about measures taken by state authorities such as surveillance, search and seizure ‘when aimed at hampering the work of journalists’.

Powerful concerns have also been expressed by governments and civil society organizations about the evident risk to the privacy of very large numbers of people by any attempts to interfere with encryption systems used by Internet companies that are intended to ensure the privacy and safety of private communications,

Adequate oversight of state intelligence and security agencies is necessary for public trust in governments to be maintained.

### **International momentum in favour of better protections for journalists**

Since 2011, when the first edition of this OSCE Safety of journalists Guidebook appeared, wider international efforts to improve protections for the personal safety of journalists and end the impunity associated with attacks against the media have gathered pace rapidly.

The United Nations Security Council, the UN General Assembly and the UN Human Rights Council have all focused fresh attention on the obligations of state authorities to ensure a safe and enabling environment for journalists, in recognition of the particular risks faced by journalists and the essential importance of the role they play through their work as public watchdogs in society. The United Nations, with support from member States and a broad range of civil society organizations, has also launched an ambitious and open-ended Inter-Agency Action Plan on the Safety of Journalists and the Issue of Impunity.

The renewed international focus on journalists' safety has come to be informed by a better understanding of the context within which journalism has become more dangerous. In recent times most violent attacks against journalists have taken place in non-conflict zones, rather than in areas of armed conflict. The majority of attacks target journalists who report

on corruption, crime or sensitive political matters. And in the age of the Internet the function of journalism is no longer restricted to full-time media professionals but is recognized as being shared by a wide range of actors, including bloggers and others who self-publish on the Internet, in print or through some other medium (General Comment 34, UN Human Rights Committee 2011 CCPR/C/GC/34).

In September 2012 the UN Human Rights Council, the primary forum for UN member states to consider human rights issues by, adopted the Resolution on the Safety of Journalists [A/HRC/21/L.6]. It acknowledged the particular role played by journalists in matters of public interest, including by raising awareness of human rights, and recognized that the work of journalists often puts them at specific risk of intimidation, harassment and violence.

The Safety of Journalists Resolution called on governments to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, through a wide range of measures, including putting in place voluntary protection measures for journalists, based on local needs. The HRC Resolution acknowledged the specific risks faced by women journalists in the course of their work.

In November 2012, in response to rising global concerns, the 2nd United Nations Inter-agency Meeting on the Safety of Journalists and the Issue of Impunity was held in Vienna. It marked the launch of an unprecedented global programme to strengthen the safeguards and protections for journalists and to counter impunity. The UN Action Plan on the Safety of journalists and the Issue of Impunity calls for the active participation of all the relevant agencies and programmes of the UN, the willing co-operation of the UN and practical partnerships and support from civil society and media-related actors and organizations.



The purpose of the UN Action Plan is to enable an informed citizenry that is capable of strengthening peace, democracy and development worldwide. The headline action areas of the Plan are to strengthen UN mechanisms, co-operate with member States, partner other Organizations and institutions, raise public awareness and foster practical safety initiatives.

Regional organizations including the OSCE and the Council of Europe were invited to assist in the implementation of the Plan through a range of actions at international and regional level.

Special mention is made of the part to be played by monitoring bodies such as the Office of the Representative on Freedom of the Media of the OSCE, which observe the level of state compliance with their commitments and call attention to violations when necessary.

UNESCO, the United Nations Educational, Scientific and Cultural Organization, is the lead UN Agency for the UN Action Plan. Details of the Plan and its Implementation Strategy as well as updated information and contacts for stakeholders are available on the Safety and Impunity section of the UNESCO website (<http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/>).

In July 2013 the UN Security Council held an unprecedented debate on the protection of journalists in armed conflict. Deputy Secretary-General Jan Eliasson deplored the fact that more than 600 journalists have been killed worldwide in the past decade while performing their role of reporting from both war zones and places that are called non-conflict zones. He said that when journalists are killed information about threats to international peace and security is often buried; and the Security Council might in future adopt a more proactive stance in standing up against suppression of media freedom wherever it occurs.

In November 2013 the international momentum to strengthen the safeguards for journalists' safety and stamp out impunity was carried forward in the UN General Assembly, which adopted a Resolution on the Safety of journalists and the issue of impunity. The Resolution proclaims 2 November as the International Day to End Impunity for Crimes against Journalists, and proposed a range of actions to enable States to fulfil their existing obligations and to advance the goals of the UN Action Plan.

Those actions include legislation; awareness-raising about commitments under international law among judicial, law-enforcement and armed forces personnel; monitoring and publicly condemning attacks and providing adequate resources to bring perpetrators to justice.

### **UN policies**

Laws guaranteeing the right of journalists and others to access official information are an essential aspect of the creation of a safe and enabling environment for journalists. Tensions often arise among journalists and state authorities and other powerful interest because journalists naturally seek out information, including things intended by others to be kept from public view, in order to do their job of reporting matters of public interest. A high proportion of assaults and cases of intimidation against journalists appear to be motivated by attempts to stop disclosure of embarrassing or incriminating behaviour. In a democracy, a government can be expected to make official information accessible unless there are exceptionally strong public interest reasons not to do so.

In July 2013 the Office of the UN High Commissioner for Human Rights (OHCHR) proposed a number of more far-reaching proposals in a special Report concerning good practices in the protection of journalists, the prevention of attacks and the fight against impunity for attacks committed against journalists. To fulfil their international obligations, the Report said,

States should establish an effective ‘early warning and rapid response mechanism’ for which they should be responsible in co-operation with journalists and civil society. Such mechanisms, the OHCHR said, should include special protection programmes to provide swift and effective protection for journalists and media professionals who face risks to their safety on account of their work, particularly those who report on sensitive issues such as corruption and organized crime.

### **Securing a ‘safe and enabling environment’ for journalists across the OSCE region**

The task for states of creating safe conditions for free and independent media calls, broadly, for governmental authorities to undertake three sorts of actions in a consistent way, in line with OSCE commitments, the European Convention on Human Rights and international norms and standards.

They are:

1) Self-restraint: the creation by government and parliament of a framework of laws which ensure a minimum of political interference in the media, which take full and active account of the need to uphold freedom of expression and media freedom in relation to matters considered to bear on national security, which protects media workers from arbitrary harassment of any kind and which is safeguarded by an independent judiciary equipped to prevent intimidation by the misuse of law and to ensure that attacks on journalists are effectively investigated and punished.

2) Enacting proactive safeguards for the workings of free and independent media, including laws to protect whistle-blowers and the confidentiality of journalists’ sources; laws enabling ready access to official information

and providing for independent public service media, sound labour laws and the like, while enabling the media to regulate themselves in matters concerning professional standards and ethics without control or interference by the state and within the law.

3) Observing the principles and standards agreed among OSCE participating States and the legal standards developed in the European Court of Human Rights and international human rights conventions and treaties. The core of this is the conviction that freedom of expression is a precondition for a functioning democracy; and the effective exercise of this freedom does not depend only on the State's duty not to interfere but also requires positive measures of protection, especially when the personal safety of media workers and their ability to carry out their watchdog function are threatened. The OSCE is invited, together with other regional organizations in Europe and elsewhere, to coordinate more effectively with each other and with the UN Action Plan on the Safety of Journalists and the Issue of Impunity to implement practical measures both for the safety of journalists and to eradicate impunity.

At the OSCE Astana Summit in 2010 they again recognized the important role played by civil society and free media in helping to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections and the rule of law.

Having free, independent and diverse media is both a sign of a healthy democracy and an indispensable basis for achieving it. It is necessary to achieve accountability in public life and public trust in government and the rule of law.

Free and independent media also bring important economic benefits by encouraging transparency in business and economic affairs. They

deliver opportunities for whole populations to reap the advantages of new information and communications technologies.

However, actions and laws which suppress or inhibit free and vigorous media undermine and jeopardize security and co-operation both within countries and across borders among the participating States.

To make real progress and to remedy serious shortcomings, governments should acknowledge the dangers faced by journalists because of their work and counteract them with determination. At the Vilnius conference on Safety of Journalists in the OSCE Region on 7-8 June 2011, governments and experts re-affirmed their conviction that protecting the safety of journalists is essential to uphold the fundamental purposes of the OSCE for the benefit of all.

Summarizing the underlying issues in an address to that conference Professor Michael O'Flaherty, Vice Chairperson of the UN Human Rights Committee, drew attention to the serious nature of abuses in some OSCE States, including the killing of journalists, enforcement of unacceptable laws that forbid criticism of officials and efforts to censor the Internet. He emphasized the view of the Human Rights Committee that the protection of the media should be a top priority for States and that they should conduct a comprehensive review of their laws, policies and practices in order to fulfil their obligations.

### **How violence against journalists can threaten the foundations of democracy**

According to statistics compiled by the OSCE Office of the Representative on Freedom of the Media, in the past eight years more than 40 journalists have been killed because of their work in the OSCE region and many hundreds of violent assaults have also taken place

which resulted in physical injury. In several cases journalists have been abducted and later found murdered; in others threats were made against the family members of journalists to silence them or force them to abandon their profession.

In a significant number of cases the pattern of these crimes points to contract killings or premeditated assaults involving attackers who are able to operate with little fear of detection and arrest. Among journalists a climate of fear has grown acute in some places because of a very low rate of arrest and conviction of the perpetrators and masterminds of these crimes. Impunity has gradually been allowed to become commonplace, particularly with regard to killings and serious assaults against journalists within the OSCE region.

The situation has deteriorated drastically to the extent that the OSCE region, made up of 57 States, is assessed over recent years to have been among the regions of the world with the highest recorded number of physical attacks on journalists, including murders.

The ability of journalists and others to exercise their rights and perform the role of scrutinizing the conduct of public life has also been seriously constrained by laws and practices on the part of governments, such as defamation lawsuits and pressures to suppress critical media coverage, which impose new limits on freedom of expression and the free flow of information.

These have distorted the media landscape in parts of the OSCE area, and deprived parts of the population of their legitimate right to freely receive and disseminate information and opinions.

Journalists' organizations report that self-censorship has become widespread because journalists, and others who mainly express

themselves through Internet sites or social networks, fear physical or legal reprisals for what they write or say or report.

Journalists and members of the media are exposed to intense pressures, and to the risk of suffering intimidation or violence, because their work of scrutinizing public life and investigating crime and corruption is resisted or opposed by powerful and sometimes violent forces in society.

Hundreds of journalists have been forced to quit the profession or leave their home countries. Some have been forced into hiding or obliged to accept the protection of police, when that possibility exists.

These developments are in contradiction with the OSCE's founding principle of respect for freedom of expression as a fundamental human right and a basic component of a democratic society. Freedom of the press is valued as "the mother of all liberties" because it is necessary for the exercise of other rights. Many of the recorded cases of violence causing injury or harm to journalists have involved allegations of assaults and other abuses carried out by public officials, such as prison officers and police officers. In March 2011 the Committee of Ministers of the Council of Europe explicitly deplored such behaviour both within member states and in countries outside the Council of Europe.

To eradicate impunity, it is essential to ensure that the judicial system is independent of political or other pressures. The conduct of investigations into crimes of violence against journalists, as in the case of all crimes, must be conducted promptly, impartially, effectively and with professionalism.

On 30 March 2011 the Committee of Ministers of the Council of Europe approved its Guidelines on Eradicating Impunity for serious human rights violations. The Ministers noted:

*Cases of impunity for violations of human rights are unfortunately not uncommon in Council of Europe member states, particularly as regards those committed by police and prison officers, or those directed against human rights defenders. Allowing such crimes to go unpunished demonstrates a lack of respect for human rights (often involving a human rights violation in its own right) and encourages repetition of those crimes, as perpetrators, and others, feel free to commit further offences, knowing they will be shielded from punishment. Impunity erodes the rule of law. Furthermore, those who permit it are effectively condoning the crimes that are committed. It is therefore essential to eradicate impunity in the member states and encourage states outside Europe to do the same.*

OSCE principles make clear that in democracies the State's monopoly on law making and law enforcement must not be abused to serve the interests of any persons or groups who exercise power. Governments should not tolerate abuses by any person in official authority, and should establish oversight and complaint structures to ensure that such behaviour is punished.

Many attacks against journalists, including murders, are also attributed to criminal organizations and other non-governmental actors. Strong and effective systems of protection need to be established for those who may become targets of such groups. Governments are responsible for preventing criminal gangs and any lawless elements from threatening or attacking journalists.





## Part II.



## Ending impunity: an imperative for the OSCE

All OSCE participating States are publicly committed to ensuring high standards of justice, and it is significant that in 1994, in the OSCE Budapest Summit Declaration, they condemned all attacks on journalists and pledged to hold those responsible for such attacks accountable.

In 2009, the OSCE Parliamentary Assembly, meeting in Vilnius, passed a Resolution urging participating States to investigate threats and acts of violence against journalists effectively, especially those aimed at intimidating journalists' independent reporting, and to prosecute those responsible.

However, the current situation gives no cause for satisfaction. Concerns about attacks on journalists and the media are aggravated by the reality that in some OSCE participating States a climate of impunity has developed concerning crimes of violence directed against journalists.

The proportion of investigations in such cases globally that result in the conviction and punishment of those responsible is – according to the International Freedom of Expression Exchange, IFEX – only about one in ten, a much lower rate than that recorded in other categories of murder cases. This amounts to a pattern of impunity which has a severe impact far beyond the particular cases.

Impunity represents a systemic failure of the functions of government and the rule of law, on which the safety and rights of everyone depends. Ending impunity is therefore an absolute imperative for the OSCE. In every case impunity represents a double injustice to the victims of crimes of violence and undermines the rule of law in societies where it occurs. It leads to a loss of public confidence in the independence of law-enforcement agencies and judicial systems, and encourages more

criminal acts because those who have an intention to commit assault or murder know that previous crimes have gone unpunished.

The European Court of Human Rights, which decides individual complaints brought under the European Convention on Human Rights, has ruled that States are obliged to protect freedom of expression and the rights of journalists who face threats of violence or other reprisals because of their work.

In several cases States have been found in violation for failing to protect the life and the freedom of expression of journalists who have faced threats and become murder victims.

The Court has also found violations on grounds of the lack of an effective investigation in cases when journalists were killed.

Forty-seven of the 57 OSCE participating States are members of the Council of Europe. All Council of Europe member states have ratified the European Convention on Human Rights and incorporated its provisions into their domestic laws.

Investigations of attacks on journalists require particular sensitivity and expertise to ensure that any possible link between the crime and the journalist's professional activities is uncovered and taken into account. A newspaper article, broadcast item, or any form of published material, may be a significant piece of evidence.

Timely and effective investigations are critical so that evidence is preserved and justice can be done. Regrettably, in a number of cases within OSCE participating States, the authorities have been overly quick to dismiss the possibility of such a link, with the result that proper investigations were not carried out.

Appropriate training of police officers, prosecutors, lawyers and judges is therefore recommended to give them the necessary skills.

Police and governmental authorities should also be mindful of the fact that journalists may be especially vulnerable to malicious physical attacks on account of their work. They should be prepared to take steps to provide protection in cases when there is a substantial or imminent fear of assault or harm.

OSCE participating States may be expected to demonstrate transparency and commitment in the common effort to eradicate impunity by responding fully and promptly to UNESCO's request for information concerning judicial follow-ups to any killing of a journalist that has taken place in their jurisdictions.

**Other threats to journalists and free expression: deprivation of liberty, harassment and exclusion**

Physical attacks and threats of violence or harm against journalists and members of their family represent an extreme form of censorship. Intimidation and harassment also take many other forms which deprive journalists of safety or security and may lead to habitual self-censorship of the media, which restricts freedom of expression in the society.

Unfortunately, in OSCE participating States the threat of criminal charges which may lead to a prison sentence has all too often been used to silence journalists, and has stopped them from doing their work.

Journalists have in many cases faced arbitrary arrest on what later were shown to be spurious charges; yet the criminal investigations and prosecutions against them have led to detention or prison sentences on account of their work as journalists.

Special and growing concern is attached to the fact that in a number of participating States journalists have been charged and convicted of a criminal offence for defamation of a public figure or state institution, in contradiction to the norms established by the case law of the European Court of Human Rights in its judgments related to Article 10 of the European Convention on Human Rights, dealing with the right to freedom of expression.

Almost 30 years ago the court established the principle that politicians must accept more criticism than private individuals. In a 1986 judgment in a criminal defamation case involving a critical press report about the then chancellor of Austria, Bruno Kreisky, the court ruled that a politician knowingly opens himself to close scrutiny, and must tolerate a higher level of criticism (*Lingens v Austria*, 1986 8 EHRR 40).

Explaining its decision, the European Court of Human Rights noted that political debate rests “at the very core of the concept of a democratic society. Politicians should therefore accept that courts will seriously consider the value of political debate when ruling in a defamation suit.” That judgment has been reflected in subsequent rulings by the Strasbourg court.

Persistent threats of prosecution which contradict the accepted right to the protection of sources are also a persistent cause for concern. The press has been accorded the broadest scope of protection in the case law of the European Court of Human Rights, including with regard to confidentiality of journalistic sources.

In a landmark ruling in 1996 the Court ruled that the protection of sources is one of the basic conditions for press freedom. “Without such protection”, the Court said, “sources may be deterred from assisting the

press in informing the public on matters of public interest,” and the vital public-watchdog role of the press may be undermined.

Journalists have also faced other seriously disruptive measures, such as unwarranted and vexatious tax investigations, the denial of travel permits or visas, denial of access to press events and the right to ask questions, and other administrative hindrances.

Government officials should not deny access to any journalist or media organization on a discriminatory basis, and should not demand or request favourable coverage, apply pressure, or threaten journalists with reprisals or exclusion because of the contents or manner of their reporting. Media employers should not order journalists to behave unethically or to report untruths.

Unfortunately, in a number of OSCE participating States journalists still lack proper legal protection from the threat of arbitrary loss of employment and with it the loss of livelihood for themselves and their family members. Governments are responsible for providing those basic protections in law.

## Part III.





## **The safety and security of journalists: the responsibility of OSCE participating States**

Responsibility for upholding all OSCE commitments lies with the governments of the participating States. National governments are called on to take the necessary steps to protect the physical safety and security of journalists who face threats of violence.

That obligation calls for coordinated and consistent State policies and practices. It is necessary to ensure that national laws, administrative and judicial systems protect and promote freedom of expression and safeguard the lives and professional rights of journalists.

Elected politicians and all who hold high office are called on to demonstrate their unequivocal commitment to respecting press freedom and the safety of journalists. Politicians and officials should not abuse their status by speaking in a derogatory or inflammatory way about journalists or the media.

Such language, when used by leading public figures, can encourage extremists to view journalists as targets to be silenced or attacked. Senior political leaders therefore have a special responsibility not to use intemperate or inappropriate language.

### **A framework for journalists' safety in law and administration**

The following 16 points cover matters of law, regulation and practice which, taken together, represent a framework for protecting the safety and legitimate professional rights of journalists in OSCE participating States:

1. Basic provisions in national constitutions and laws that guarantee freedom of opinion, freedom of expression and media freedom;

in particular, libel, defamation and insult should be decriminalized and treated as a civil offence, with the award only of proportionate penalties

2. Guarantees of the free flow of information and freedom of expression regardless of frontiers, including international broadcasts and other forms of media
3. The open nature of the Internet is to be ensured; Internet freedom should be promoted and maintained without mandatory blocking or filtering of content or websites
4. Open and responsive government structures, with provisions for free, independent and enquiring media to perform their watchdog role in public life without harassment or hindrance from State authorities or others
5. Robust and transparent guarantees of the independence of the judiciary, to protect the rights of free media and ensure that those responsible for attacks on journalists are brought to justice
6. Abolition of laws giving special protections from criticism to officials or elected political representatives; public figures should accept higher level of criticism than ordinary citizens
7. State authorities should respect the confidentiality of journalists' sources as a basic condition for press freedom; an order of source disclosure cannot be compatible with the media's right to report unless it is justified by an overriding requirement in the public interest
8. Provision of a substantial public interest defense in law cases related to journalists' methods of gathering information and reasons for making information public
9. Regulation and supervision of law-enforcement agencies, including police and the prison service, with effective oversight and complaints procedures
10. State security and anti-terrorism laws to be carefully defined and limited in time and scope; their drafting and application should take

due account of the fundamental right to freedom of opinion and expression

11. Enacting laws guaranteeing the right to freedom of information and access to official records
12. Allowing media access to officials, government spokespersons and to public and press events without discrimination or arbitrary exclusion
13. Ensuring transparency of ownership of media outlets and proper competition rules to prevent over-concentration of ownership, market distortions and increased risks of undue pressures on editors and journalists
14. Not seeking to license print media or to control the production and distribution of media
15. Enacting and upholding journalists' employment rights, including the right to organize and join trade unions, which can protect them from arbitrary dismissal and from undue pressures to act in unethical or unprofessional ways
16. Supporting mechanisms that provide for the protection of journalists from violence and intimidation, such as an Ombudsman or Human Rights Commissioner

### **The common responsibilities of OSCE participating States**

In the Astana Commemorative Declaration in 2010, participating States reaffirmed that all OSCE principles and commitments are matters of immediate and legitimate concern to all participating States. The task of protecting the safety of journalists is one that must be shared.

In 1997 OSCE participating States established a mechanism to promote this principle, the Office of the Representative on Freedom of the Media.

The Representative on Freedom of the Media has worked since then with a mandate to concentrate on rapid response to serious non-compliance

with OSCE principles and commitments by participating States in respect of freedom of expression and free media.

The Representative promotes compliance with OSCE commitments through early warnings and recommendations.

The work of the Representative consists of a range of activities to assist with the resolution of issues that arise, including providing expert advice on the drafting of laws and regulations, technical assistance and training, country visits and communications, regular reports to the Permanent Council and public appearances.

The work is of a non-judicial nature, but draws attention to problems, working in consultation with State authorities and with relevant non-governmental organizations to facilitate solutions.

The mandate of the Representative is supported by all participating States, and its activities are conducted so that all States are treated equally.

OSCE participating States are also bound by their obligations under international law, including the International Covenant on Civil and Political Rights (ICCPR), which is binding on the States which have ratified it.

The growing concerns of OSCE participating States about the safety of journalists are matched by concerns among UN member States about the assassinations of journalists in countries in many regions. In 2012 alone a total of 121 journalists were killed worldwide, according to figures provided by competent monitoring organizations and published by UNESCO.

The positive obligations of States have been clarified by the United Nations Human Rights Committee, which acts as the oversight body for the ICCPR.

In July 2011 the Committee published its considered interpretation of Article 19 of the International Covenant on Civil and Political Rights, on freedom of opinion and freedom of expression (General Comment No.34 on Article 19).

The General Comment stated that all States must put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression, including journalists.

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The Human Rights Committee identified journalists as among the groups frequently subjected to threats, intimidation and attacks on account of their activities, together with persons who engage in gathering and analysis of information on the human rights situation and who publish human-rights related reports, including judges and lawyers.

The range of those threats and attacks are identified as “arbitrary arrest, torture, threats to life and killing”. The General Comment states that all such attacks “should be vigorously investigated in a timely fashion and the perpetrators prosecuted, and the victims or their representatives receive appropriate redress. From General Comment 34 on Article 19 of the International Covenant on Civil and Political Rights:

*23. States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom*

*of expression. Paragraph 3 [of Article 19] may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with Article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.*

**Article 19 of the International Covenant on Civil and Political Rights**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

## Part IV.





## **Journalists' safety and the role of civil society and non-governmental organizations**

A fundamental characteristic of democratic governments and free societies is that they encourage and promote the expression of diverse views both through free media and through the activities of citizens in independent non-governmental organizations which engage in vigorous, open public debate.

Robust and independent NGOs play a vital role in sustaining open democracy. They provide independent information to the media and to the whole society on matters of public concern and they are able to challenge governments and other vested interests over a wide variety of matters of legitimate concern.

An important part for the media is to promote open and vigorous public debate; and the activities of civil society organizations have an essential part in bringing that debate about.

NGOs of all kinds have a necessary and legitimate job in every society in representing a wide range of opinions among the public, including those of vulnerable minorities, assisting governments in the process of drafting legislation and regulations, conducting independent election monitoring and playing a legitimate part in holding the institutions of the state as well as other powerful interests to account.

Many national and international NGOs in the OSCE region also help to protect the safety and security of journalists by monitoring cases of violence against the media and other serious infringements of freedom of expression, protecting journalists against wrongful prosecutions, and seeking to ensure that crimes against journalists are properly investigated.

All forms of official and unofficial harassment, unnecessarily burdensome registration procedures, deliberate obstruction or criminalization of NGOs and civil society organizations is contrary to the letter and spirit of OSCE principles. It is important that States ensure favourable conditions for civil society organizations of all kinds to flourish, refrain from placing onerous obligations or restrictions on them, and are receptive to the findings and concerns of those organizations, as they are to other representative groups in local communities, businesses, the professions and organized labour.



## Part V.



## **Media professional standards and self-regulation**

Journalists, editors and media owners are responsible for taking all possible measures to safeguard the physical safety of members of the media operating in areas of conflict and on dangerous assignments, including providing personal insurance, training and support systems.

Those precautions and supporting measures on the part of media organizations and members of the media are necessary to minimize the dangers and risks. However, their effectiveness also depends critically on the fulfilment by States of their obligations to assist with protecting journalists and enabling them to carry out their work. All branches of government, including the armed forces, should acknowledge and uphold the rights of journalists as civilians who report on conflict zones to keep the public informed.

Journalists and media organizations should at all times strive to maintain high professional standards. When mistakes are made by journalists, governments should not use them to impose new controls or to seek to close down a media organization.

The State should not own or control media organizations itself, and should ensure that the rules governing public broadcasting, the granting of broadcasting licences, including during the digital switchover, and other matters are handled impartially.

Media self-regulation through independent press councils, media councils or similar bodies is recommended as the best way to maintain ethical and professional standards. These exist to administer an agreed code of practice, which generally contain ethical rules that go beyond statutory

legal requirements. In some cases national press councils also investigate complaints from members of the public about editorial content.

Media self-regulation requires that news media organizations of all kinds draw up and adhere to a detailed code of practice. In the case of corporate codes such as the BBC's Editorial Guidelines in the UK, these are overseen by senior editors within the organization, and public complaints are heard by a separate body under the aegis of an independently selected governance body, the BBC Trust.

Most OSCE participating States also have some form of cross-media press or media council, which allows editors from many organizations to operate a code of journalistic practice. That task should be conducted independently of government and of any kind of political authority although in practice currently the degree of independence and effectiveness of such organizations varies considerably.

As an example of the issues and issues covered by such arrangements, the Editors Code of Practice of the UK's Press Complaints Commission requires that inaccuracies are acknowledged and corrected, sets out guidelines on matters of intrusion, harassment, discrimination and the use of pejorative language about particular groups in society, upholds the principle that journalists should protect the confidentiality of sources of information and provides guidelines on what constitutes the public interest in media terms – for example, to expose crime or serious impropriety and to prevent the public from being misled.

Such codes of practice must be respected and implemented by media themselves if they are to win the confidence of the public. Self-regulation is the only system inherently capable of maintaining the true freedom and independence of the media. Any form of state supervision or rule-setting easily gives rise to seen or unseen constraints and is liable to lead to a

condition of caution or dependency that inhibits robust questioning and investigation of the authorities purporting to oversee the media.

Public broadcasting may be considered a separate category: in some cases it has been able to thrive with stricter rules concerning its fixed responsibilities than newspapers, provided it is granted the tools and the mandate to operate with demonstrable independence.

In addition, major international journalists' organizations have developed their own codes of conduct, setting out professional principles by which their members agree to abide.

The International Federation of Journalists has a formal set of professional and ethical principles which journalists should respect. It covers matters of editorial independence and self-regulation and asserts the right of journalists not to be directed by an employer to behave in a way which would breach his or her professional ethics.

Furthermore, positive examples are found in some OSCE participating States of agreement being reached on guidelines aimed at building good relations between police and media reporters, photographers and other workers, especially concerning media coverage of demonstrations, crime and major events.

An example is the agreement in place between several journalists' unions in the UK and the country's various police forces on guidelines for the police to allow and assist the media to carry out their reporting responsibilities from the scene of incidents, provided that the media do not interfere with the responsibility of the police.

The guidelines set out the rights of members of the media in situations of potential friction, steps to promote practical co-operation and agree rules for the police on respecting press cards as forms of media identification.

These various forms of media self-regulation and professional codes of conduct serve to promote and maintain open and democratic societies by distancing the essential work of a free press from the possibility of interference by governments or by corporate or other powerful interests.





## Part VI.



## OSCE principles and commitments as a framework for the safety of journalists

Successive Conference on Security and Co-operation in Europe (CSCE) and OSCE texts have set out provisions related to press freedom, freedom of expression and information and the safety of journalists. The importance of these issues has grown over time. The main stages of that development are summarized here.

### **The Helsinki Final Act (1975)**

In the Helsinki Final Act of 1975 the leaders of the then Soviet Union, the USA, Canada and the States of Eastern and Western Europe first jointly recognized the importance of freedom of expression, freedom of opinion and the role of journalists in fostering those things:

#### **Section IV, Chapter II**

##### *Information:*

The participating States,

- *Conscious of the need for an ever wider knowledge and understanding of the various aspects of life in other participating States,*
- *Acknowledging the contribution of this process to the growth of confidence between peoples,*
- *Desiring, with the development of mutual understanding between the participating States and with the further improvement of their relations, to continue further efforts towards progress in this field,*
- *Recognizing the importance of the dissemination of information from the other participating States and of a better acquaintance with such information,*

- *Emphasizing therefore the essential and influential role of the press, radio, television, cinema and news agencies and of the journalists working in these fields,*
- *Make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State,*

#### **The Charter of Paris for a new Europe (1990)**

In 1990, in the midst of a major transformation of the political landscape of Europe, the Heads of State or Government of what were then the CSCE participating States signed the Charter of Paris, which expressed the determination of all States to forge a new level of co-operation based on a common commitment to democratic values, with the free flow of information as an essential element:

*We undertake to build, consolidate and strengthen democracy as the only system of government of our nations.*

*...Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.*

*... In accordance with our CSCE commitments, we stress that free movement and contacts among our citizens as well as the free flow of information and ideas are crucial for the maintenance and development of free societies and flourishing cultures.*

**The Budapest CSCE Summit Declaration (1994)**

By the time of the CSCE Summit in Budapest in 1994, the former Yugoslavia was breaking up. Media workers had in some cases become targets in the civil war and media had been exploited by rival warring parties as a propaganda tool. Concerns about those things were reflected in the Summit text on freedom of expression and free media:

*(36) The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principles that they will safeguard this right.*

*(37) They condemn all attacks on and harassment of journalists and will endeavor to hold those directly responsible for such attacks and harassment accountable.*

At the **Lisbon Summit in 1996** the participating States of what had by then become the OSCE resolved that the implementation of commitments in the field of the media needed to be strengthened. They decided to elaborate a mandate for the appointment of an OSCE Representative on Freedom of the Media.

The Office of the OSCE Representative on Freedom of the Media was duly established in 1997, with a mandate to

*(3) concentrate on rapid response to serious non-compliance with OSCE principles and commitments by participating states in respect of freedom of expression and free media.*

At the **Maastricht Ministerial Council in 2003** the participating States gave additional weight to the central role of free and pluralistic media in

strengthening good governance, promoting transparency and combating corruption:

*(2.2.5) we will make our governments more transparent by further developing processes and institutions for providing timely information, including reliable statistics, about issues of public interest in the economic and environmental fields to the media, the business community, civil society and citizens, with a view to promoting a well-informed and responsive dialogue. This is essential for decision-making which is responsive to changing conditions and to the needs and wishes of the population.*

In the succeeding years, issues of media plurality, media freedom and the safety of journalists continued to occupy the attention of OSCE participating States.

In the **Astana Commemorative Declaration in 2010** the Heads of State or Government of the 56 participating States re-affirmed their commitments to OSCE principles and acknowledged the mutual concern of each in the fulfilment of those commitments in the other States:

*[we] reaffirm the relevance of, and our commitment to, the principles on which this Organization is based. While we have made much progress, we also acknowledge that more must be done to ensure full respect for, and implementation of, these core principles and commitments that we have undertaken in the politico-military dimension, the economic and environmental dimension, and the human dimension, notably in the areas of human rights and fundamental freedoms. ...*

*... We regard these [OSCE] commitments as our common achievement, and therefore consider them to be matters of immediate and legitimate concern to all participating States.*

*...We reaffirm categorically and irrevocably that the commitments undertaken in the field of the human dimension are matters of legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.*

## Part VII.





## Other international obligations

International legal norms and standards concerning freedom of expression and other basic human rights are enshrined in European and global instruments and agreements, including the European Convention on Human Rights and its case law; the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol, which establishes a mechanism for individual complaints; and the International Covenant on Social and Economic Rights. In 2002 the International Criminal Court came into being as a permanent and independent international organization which is not part of the United Nations system. It was established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. A number of OSCE participating States, including the Russian Federation and the United States, are among those which are not States Parties to the Rome Statute on which the work of the Court is based.

The following are some important texts setting out international norms related to journalists' safety, media freedom and freedom of expression:

### **UNESCO Resolution 29: Condemnation of violence against journalists**

UNESCO is the United Nations agency with a specific mandate to promote freedom of expression and media freedom and to protect the safety of journalists. In 1997 UNESCO Member States passed Resolution 29 on "Condemnation of violence against journalists".

The Resolution was proposed and adopted by States in response to serious concerns about the killing of journalists in many countries and the evidence of the spread of impunity – that is, the persistent failure of the lawful authorities to bring those responsible to justice.

The Resolution identified the wider damage being done to societies by the assassination of many journalists, urged States to discharge their duty to investigate and punish such crimes, and called for the removal of the statute of limitations related to the killing of journalists.

It further urged the competent authorities of States to discharge their duty of preventing, investigating and punishing such crimes and remedying their consequences; and it urged them to refine their legislation to make it possible to prosecute and sentence those who instigate the assassination of persons exercising the right to freedom of expression.

The UNESCO Resolution also recommended that governments should remove any statute of limitations for crimes against the person when these are perpetrated to prevent the exercise of freedom of information and expression or when their purpose is the obstruction of justice.

### **UN Security Council Resolution 1738 (2006) condemnation of attacks against journalists in conflict situations**

The Resolution, unanimously adopted in 2006, recalled that journalists engaged in dangerous professional missions in areas of armed conflict shall be considered civilians, to be protected as such.

It emphasized that under international humanitarian law attacks intentionally directed against civilians constitute war crimes and all parties in situations of conflict were urged to respect the professional independence and rights of journalists, media professionals and associated personnel as civilians.

*(1) Condemns intentional attacks against journalists, media professionals and associated personnel, as such, and calls upon all parties to put an end to such practices*

*(7) Emphasizes the responsibility of States to comply with relevant obligations under international law to end impunity and to prosecute those responsible for serious violations of international law*

*(9) Recalls that systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and reaffirms in this regard its readiness to consider such situations and, where necessary, to adopt appropriate steps.*

### **UN Human Rights Council Resolution A/HRC/21/L.6 on the safety of journalists**

The resolution, adopted in September 2012 emphasizes States' obligations to protect journalists from targeted attacks and be accountable for measures to end impunity and calls for States to establish voluntary protection programmes. (Extract)

The Human Rights Council

*6. Calls on all parties to armed conflict to respect their obligations under international human rights law and international humanitarian law, including their obligations under the Geneva Conventions of 12 August 1949 and, where applicable, the Additional Protocols thereto of 8 June 1977, the provisions of which extend protection to journalists in situations of armed conflict, and to allow, within the framework of applicable rules and procedures, media access and coverage, as appropriate, in situations of international and non-international armed conflict;*

*7. Expresses its concern that attacks against journalists often occur with impunity, and calls upon States to ensure accountability through the conduct of impartial, speedy and effective investigations into such acts*

*falling within their jurisdiction, and to bring to justice those responsible and to ensure that victims have access to appropriate remedies;*

8. Calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including by means of (a) legislative measures; (b) awareness-raising in the judiciary, law enforcement officers and military personnel, as well as journalists and civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; (c) the monitoring and reporting of attacks against journalists; (d) publicly condemning attacks; and (e) dedicating necessary resources to investigate and prosecute such attacks;

9. Encourages States to put in place voluntary protection programmes for journalists, based on local needs and challenges, including protection measures that take into account the individual circumstances of the persons at risk, as well as, where applicable, the good practices in different countries;

### **Implementation Strategy 2013-2014 for the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity**

The Implementation Strategy on UN Plan for the safety of journalists and the issue of impunity 2013-2014 ...combines efforts among all actors to promote a free and safe environment for journalists in both conflict and non-conflict situations, with a view to enabling an informed citizenry that is capable of strengthening peace, democracy and development worldwide.

The document includes a work plan to put the UN Plan of Action into effect and follows extensive consultation since the endorsement of the Plan by the UN Chief Executives Board on 12 April 2012. The strategy

is designed to be implemented at global and regional level, and for adaptation at national level. In the initial phase of its rollout, and in order to concentrate efforts, the Strategy is especially being adapted to a selection of countries including Iraq, Nepal, Pakistan and South Sudan, as well as Latin America.

The Strategy outlines more than 100 specific actions to be put in place over the coming two years by different UN agencies, working in conjunction with other entities, as part of joint efforts to secure the safety of journalists. Among the measures set out are:

creating UN internal coordination mechanisms to harmonize the UN actions in this field;

supporting governments to develop laws on safeguarding journalists and mechanisms favorable to freedom of expression and information;  
conducting awareness-raising activities so that citizens understand the importance of the right to freedom of expression and access to information;

- providing training for journalists on the issue of safety and online safety;
- promoting good working conditions for journalists developing their professional activities on both a full-time and freelance basis;
- establishing real time emergency response mechanisms; and enhancing special measures for women journalists in response to the increasing incidence of sexual harassment and rape.

Led by UNESCO, the strategy is the result of a participatory process involving almost 100 actors including UN bodies, intergovernmental

organizations, professional associations, media houses, NGOs, academia and governments.

**The safety of journalists: Report of the Office of the United Nations High Commissioner for Human Rights, July 1 2013 A/HRC/24/23**

The Office of the United Nations High Commissioner for Human Rights and the post of High Commissioner were established in 1993. The High Commissioner coordinates human rights activities throughout the UN system. In 2013, the UN High Commissioner for Human Rights, Navanethem Pillay, joined the battle to fight violence by issuing a report and recommendations on the issue. It states, in part:

63. State authorities should investigate promptly and thoroughly all reports of threats against journalists, and take any necessary and appropriate steps to ensure that the individual is protected from further threats and/or physical attack. In this respect, the protection of journalists can be significantly strengthened through the establishment of an early warning and rapid response mechanism to give journalists and other media professionals, if threatened, immediate access to the authorities and protective measures. The mechanism should be an official State entity with high-level recognition and be sufficiently funded to function effectively. It should be established in consultation with journalists and other media professionals and organizations, and have the confidence of the media community. Once established, the mechanism should be composed of representatives from relevant State organs concerned with law enforcement and human rights, together with representatives from civil society, including journalist and media organizations.

64. Access to the mechanism should be available to all journalists and other media professionals, and particularly those working on high-risk issues, such as corruption and organized crime. Following any

determination that an individual needs protection, the mechanism should be able to provide material measures of protection, including mobile telephones and bulletproof vests, as well as establish safe havens and emergency evacuation or relocation to safe parts of the country or other countries through a protection programme. Such programmes, including witness protection programmes, must operate efficiently and on a rapid-response basis, and should not be used in such a way as to unduly restrict the work of journalists and other media professionals. In countries where attacks against journalists are of particular concern, States should seriously consider establishing special protection programmes in consultation with journalists and civil society.

65. Where early warning systems, such as hotlines or 24-hour emergency contact points, have been established by media organizations or civil society, States should facilitate immediate assistance for individuals identified at risk and their families.

**COMMITTEE DECISION General Assembly A/C.3/68/L.40/Rev.1  
18 December 2013**

Safety of journalists and the issue of impunity (Extract)

The General Assembly

3. Decides to *proclaim 2 November as the International Day to End Impunity for Crimes against Journalists;*

5. Urges Member States to *do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their*

*jurisdiction, and to bring the perpetrators of such crimes to justice and to ensure that victims have access to appropriate remedies;*

6. *Calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including by means of: (a) legislative measures; (b) awareness-raising in the judiciary and among law enforcement officers and military personnel, as well as among journalists and in civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; (c) the monitoring and reporting of attacks against journalists; (d) publicly condemning attacks; and (e) dedicating the resources necessary to investigate and prosecute such attacks;*





## Part VIII.



## **Key issues and recommendations for the safety of journalists**

The media have an essential function as public watchdog and as part of the system of checks and balances in a democracy. Journalists are exposed to special risks of legal challenges, harassment and sometimes violent attacks on account of their work. The following is a list of the major issues that arise, together with Recommendations for responses that conform to good practice based on OSCE principles and commitments.

Examples of positive responses are mentioned as illustrations; the benefits of exemplary policies and actions are fulfilled when implementation is effective and sustained:

### **The legal framework**

**Issue:** In many cases State constitutions and legislation are not in compliance with international standards and are likely to expose journalists and others to wrongful prosecution or punishment. In many cases legislation is unclear or imprecise, depriving journalists and citizens of the legal certainty which is essential to accountable government. National constitutions and statutory laws require clear and effective safeguards for freedom of expression and safe working conditions for the media, in keeping with OSCE principles and commitments and with the international obligations of OSCE participating States.

**Good practice:** Any restrictions to freedom of expression, including those on grounds of public security, must be provided by law, necessary to protect an interest recognized under international law, and proportionate. They should also be clear, easily accessible to the public and capable of being challenged.

Legislation covering state secrecy, national security, treason and public order contain clear safeguards for freedom of expression and so assist in creating a safe and enabling environment for journalists and their work. Such laws take full and transparent account of commitments related to freedom of expression; they are subject to independent judicial as well as public scrutiny; and individuals can have genuine recourse to appeal in cases when they believe their rights have been infringed.

Steps to bring their laws related to media freedom and freedom of expression into line with international standards, by enacting general measures as intended by the European Court of Human Rights, in line with the expert interpretation of international law on freedom of expression given by the UN Human Rights Committee (General Comment 34 on Article 19 of the ICCPR); and by giving effect to international standards of protection in domestic law.

The law recognizes that the right to freedom of expression includes expressions of views and opinions that offend, shock and disturb.

The law does not give the State arbitrary or extraordinary powers to censor any media or close a media outlet.

The universal right of freedom of expression applies to materials on the Internet in the same way as to traditional media.

Freedom of expression and the free flow of information are guaranteed regardless of frontiers.

International communications, including broadcasts and travel by media representatives, is not impeded.

States accede to relevant international instruments and treaties, including the ICCPR and its Optional Protocol, the Geneva Conventions including their Additional Protocol 1, and the Rome Statute setting up the International Criminal Court: see more under Armed Conflict below.

Parliaments should play an active and independent role in scrutinizing the proposals and conduct of the executive arm of government; this is particularly important in the protection of the safety and legitimate rights of journalists and the exercise of freedom of expression in society. Parliaments and their specialist committees can represent the public interest best by acting as a check on the arbitrary exercise of state power, especially to silence criticism on matters of public interest.

### **Judicial, law-enforcement and penal systems**

**Issue:** The judiciary must be independent of governmental authority and of any political, commercial or other outside influence.

**Good practice:** Police forces, other law-enforcement agencies and prison services are subject to independent systems of oversight, with transparent internal discipline and public complaint procedures.

Law enforcement personnel, members of the judiciary including judges, investigators, prosecutors and lawyers receive a high level of training regarding their obligations under international human rights law and international humanitarian law and how to ensure effective fulfilment of obligations concerning particular areas of risk for journalists, such as violence and intimidation, serious abuses of state authority, as well as protests and public events.

Investigations of serious crimes against journalists are conducted promptly, independently and efficiently; the authorities take proper care to take due account of any evidence of a link with the journalist's professional activities.

Limitations on court reporting are applied only in exceptional circumstances, for example to protect minors.

No one is punished or imprisoned for expressing an opinion or disseminating information, unless they are found to have committed another serious offence (such as incitement to violence or terrorism).

#### **Dealings between media and State authorities: regulation, openness and dialogue**

**Issue:** National, regional and local government offices and agencies should be open and responsive, with provisions for free, independent and inquiring media to perform their role of scrutinizing and investigating matters of public interest and reporting in a free and unhindered way.

**Good practice:** There are no undue requirements from the State before journalists can work.

Adequate legislation is enacted to protect whistle-blowers who inform the media and the public about serious abuses of power, criminality or wrongdoing from prosecution, loss of employment or other reprisals.

Public institutions of all kinds do not restrict their employees from writing or speaking out about serious wrongdoing or management failings by means of 'gagging laws', oppressive confidentiality clauses or conditions of service, or other unduly restrictive terms of employment.

Regulatory authorities for broadcasting operate in an unbiased way in the granting of licences and other matters.

Tax investigations and other special administrative demands are not directed at the media arbitrarily as a form of harassment or without due cause.

Media access to officials, government spokespersons and to public and press events is administered without discrimination or arbitrary exclusion of any media.

The State supports mechanisms which engage civil society to reinforce the protection of journalists' rights, such as an Ombudsman's Office or Human Rights Commissioner.

Recommendation: Government representatives, public officials and elected politicians do not manage or control any media organization while in office.

### **Elections**

**Issue:** During election periods and times of social unrest and major events, journalists have been exposed to heightened risks of being detained, charged or prosecuted for alleged criminal offenses, including libel and defamation; they may also be subject to undue pressures to produce partisan and biased coverage.

In some cases election observers of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) have reported serious distortions in access to media and the content of media reporting during election campaigns in parts of the OSCE region, which have impaired the overall fairness of the election process.

Observed, the number of recorded cases of the threat or use of violence against journalists and other media actors has often increased sharply around the time of elections.

**Good practice:** Especially at times of elections, laws and regulations must be upheld which guarantee the freedom of the media to scrutinize all aspects of the process.

Election laws, State election commissions and broadcasting guidelines oblige media to ensure equitable coverage of election campaigns by political parties and candidates, as well as voting procedures.

State authorities allow peaceful protests, ensure restraint on the part of police and other law-enforcement officials, and respect the right and duty of journalists to report on demonstrations and protests.

### **Street demonstrations, protests and public events**

**Issue:** Journalists and photographers covering public protests or gatherings have suffered arbitrary arrest and mistreatment at the hands of police and security forces; in some cases they suffered physical injury and loss or damage to equipment while working or while in custody; police surveillance and monitoring of media workers at public protests may be intimidating and hinder their legitimate work.

**Good practice:** Police do not detain, arrest or use violence against media that perform their proper role by covering all aspects of the political process, as well as protests and other events in public places.

Law-enforcement officials allow media coverage of street demonstrations and similar events, respect press identification such as press cards, vests



and armbands, and maintain channels of dialogue with media to reduce the risk of disputes.

Even short-term detention of members of the media presents a form of harassment and intimidation.

**Recommendation:** Police forces and journalists' organizations conclude agreements on media guidelines for the police and give training to officers to ensure understanding and respect for the guidelines.

#### **Police raids on media offices and journalists' homes**

**Issue:** Police raids have been carried out on media offices and journalists' homes, involving physical detention, destruction of property, and seizure of equipment such as computers as well as recordings, files and notebooks

**Good practice:** Law-enforcement authorities respect the right of journalists to report on matters of public interest and refrain from arresting them or confiscating equipment of property without exceptionally strong evidence that such action is necessary in the public interest.

#### **Imprisonment of journalists**

**Issue:** Some journalists are unlawfully imprisoned on arbitrary and false charges; many more are detained, sometimes for long periods, in pre-charge or pre-trial detention. Large numbers of journalists have been also placed under criminal investigation without due cause, sometimes for lengthy periods. This practice often leads to serious loss of income or loss of employment. It is entirely unjustified and should cease.

**Terrorism and state security charges have often been misused to prosecute and convict journalists to jail terms on the basis of laws which do not conform to European and international norms.**

**Good practice:** National laws and practices concerning terrorism, state security and related matters are reformed thoroughly and regularly to comply with States' international commitments.

No imprisonment or detention takes place in cases involving insult or defamation alone; these should be treated under the civil law.

Cases in which journalists are falsely charged with common offences such as hooliganism and handling drugs are investigated and, if found to be unfounded, rejected by independent investigators, prosecutors and judges.

Law-enforcement officers who are found responsible for fabricating evidence or raising malicious charges are duly punished.

No one is charged or convicted of a criminal offence for what they write or report in the media, or for expressing an opinion through any media, unless one of the strictly defined conditions for restricting freedom of expression is met.

National laws, prosecutors and other state authorities do not conflate the work of journalists who may receive or handle sensitive information with criminal liability.

Libel, defamation and insult laws do not accord special protections to public figures or officials in law, or in terms of the fines or penalties which courts may impose, including imprisonment. State institutions and offices, such as heads of state or government ministries, armed forces or other

high authorities are not eligible to claim or receive special protections in law; government officials must not give orders or directions to courts or any members of the judiciary about prosecutions or sentencing.

### **Threats and acts of violence against journalists**

**Issue:** Threats and acts of violence against journalists have continued and in some parts even increased in the OSCE area in recent years. Threats made through social media or by telephone, e-mail or mail have often been followed by physical assaults, including murders.

**Good practice:** State authorities investigate reports of threats promptly and thoroughly, and take appropriate steps to protect the person or persons threatened.

Designate crimes involving attacks against journalists as ‘aggravated offences’, which may attract more severe penalties.

Governments have an obligation to protect the physical safety of those who are threatened, and take account of the fact that journalists, bloggers and human-rights defenders are among the groups in society which are most vulnerable to the risk of attacks because of their activities.

Law-enforcement agencies take determined and vigorous steps to eliminate threats from members of organized crime groups.

**Examples:** In Italy and Serbia, police have provided effective protection to a number of threatened journalists.

In Italy, where a large number of cases of intimidation against journalists continue to be recorded, pressures have grown for firm action to counter persistent threats and address their root causes. In 2012, the

Anti-Mafia Committee of parliament took account of data from the monitoring organization Ossigeno del'Informazione concerning the scale of such intimidation and made recommendations to the parliament and government for legislative actions to provide a safer environment for journalists, investigate allegations of criminal involvement in media ownership, and strengthen the law with respect to journalists' right to protect the secrecy of their confidential sources. Appropriate action by the government authorities is awaited.

**Investigating assaults against journalists and killings of journalists, ensuring that those responsible are brought to justice, and eradicating impunity**

**Issue:** The high number of attacks and killings of journalists has made parts of the OSCE region among the most dangerous in the world for journalists to work; the rule of law and the integrity of systems of law enforcement and justice have been placed in doubt; a climate of impunity has grown.

**Good practice:** No statute of limitations applies to such crimes.

Prompt and effective criminal investigations are conducted to arrest those responsible and bring them to justice.

Police and prosecutors develop and use specialized protocols and methods to ensure that the investigation of crimes against journalists includes thorough checks to search for links with the journalist's work.

Governments comply with the 2011 Guidelines on eradicating impunity issued by the Committee of Ministers of the Council of Europe which set out norms and standards for effective, timely and independent

investigations, protection of witnesses, and access for family members of the victim, etc.

Police, prosecutors, lawyers and judges receive appropriate training to implement the above.

Court proceedings are normally open to public, with strict exceptions and procedures for a decision in favour of closed hearings to be challenged.

**Examples:** In Serbia, a government-backed Commission for Investigating the Killings of Journalists was established in January 2013 with a mandate to uncover the facts concerning the unsolved killings of three journalists who were murdered since the 1990s. The Commission is made up of representative journalists as well as officials of the Ministry of the Interior and the Security and Intelligence Agency. The chairman, the investigative journalist Veran Matic, is one of several journalists under round-the-clock police protection because of credible threats against him. The mandate of the Commission was extended to include the deaths of media members in the headquarters of Serbian state Radio and Television during NATO air raids during the conflict over Kosovo in 1999. An important goal of the Commission's work is to investigate the causes of impunity and so restore the trust of the media community and the general public in the institutions responsible for law-enforcement and the justice system.

In Russia, investigations have been reopened into several cases involving the murder of journalists; in May 2011 two defendants were convicted and sentenced for the double murder of the human rights lawyer Stanislav Markelov and the Novaya Gazeta journalist Anastasia Baburova in Moscow in 2009. In December 2013 a Russian businessman was sentenced to seven years in prison for inciting the murder in 2000 of Novaya Gazeta journalist Igor Domnikov. In 2007 five members of a criminal gang had been convicted of murdering Domnikov.

However, in recent years a large number of cases of killings and attacks on journalists remain unsolved. The low rate of successful prosecution in cases involving journalists is in contrast with the much higher conviction rate recorded in cases of violent crime where the victim is a non-journalist.

Also in Russia, a database developed by the International Federation of Journalists on the deaths of journalists [www.journalists-in-russia.org](http://www.journalists-in-russia.org) and another, <http://mediaconflictsinrussia.org>, which records cases of threats and assaults against journalists in Russia provide a high level of verified information which can assist all concerned parties including the country's investigating authorities. The information for both websites is gathered by monitors of the Glasnost Defence Foundation and the now-defunct Centre for Journalism in Extreme Situations.

Examples of constructive co-operation and information-sharing between journalists' representatives and local or regional law-enforcement authorities to counter violence against journalists and impunity have become more common. Sometimes they have proved fruitful in deterring threats against journalists and improving the safety of the environment in which they work. In 2012 representatives of the Russian Union of Journalists held a meeting in Dagestan with law-enforcement officials from the North Caucasus region which has been the site of numerous unsolved journalists' killings.

The murder of Hajimurad Kamalov in Dagestan in December 2011, and a number of other killings of journalists, have prompted State Duma deputies and members of the Human Rights Council under the Russian President to press publicly for more effective protections for journalists and for more effective investigations of violent crimes directed at journalists in order to stamp out impunity.

Croatia: on 3 November 2010 a court convicted and sentenced six men for the murder of Ivo Pukanić, the director of the weekly Nacional and its marketing director Niko Franjić. Both men were killed by a car bomb in 2008; it is hoped that those responsible for ordering the killings will also be brought to justice.

In January 2013, more than 12 years after the abduction and murder of the Ukrainian investigative journalist Georgiy Gongadze, a former police general was sentenced to life in prison in connection with the killing. Several accomplices had been convicted and sent to prison for the abduction and beheading of the journalist. An effective investigation to establish the identity of the mastermind of the murder is long overdue. A second case in Ukraine, involving the disappearance and suspected death of journalist Vasil Klementiev in 2010, remains unsolved. Suspicions have been voiced that Klementiev was targeted because of his incriminating reports about abuses in the local police.

### **Armed conflict**

**Issue: Journalists continue to be exposed to severe risks of injury or death in times of armed conflict, violent political instability and the breakdown of the rule of law**

**Good practice:** In areas of armed conflict civilians including journalists are effectively protected by international humanitarian laws in addition to universal human rights law. States sign and ratify the following:

The 1977 Protocol I to the Geneva Conventions of 1949, which establishes that in times of war journalists are entitled to the status of civilians; as such they benefit from the belligerent parties' obligation to discriminate civilians from combatants and legitimate military targets and

observe proportionality in planning attacks likely to result in collateral damage.

The 1966 Optional Protocol of the International Covenant on Civil and Political Rights, which permits individual complaints to be received and considered.

Other relevant international treaties and instruments, including the Conventions against torture and for protection against enforced disappearance.

UNSC Resolution 1738 of 2006, which states that attacks intentionally directed against members of the media constitute war crimes, should be observed.

**Recommendation:** Governments and media organizations should be familiar with humanitarian law provisions and with formal and informal procedures designed to minimize the dangers to journalists in areas of conflict.

Training should be provided to members of the armed forces and journalists and media organizations regarding international human rights and international humanitarian law obligations applicable during armed conflict, the legitimacy of the presence of journalists during situations of armed conflict and practices and procedures to minimize risks to journalists. Collaboration with international and regional organizations and civil society in providing such training greatly enhances their effectiveness.

Media organizations and journalists should be made aware of and utilize information produced to limit the risks to journalists in conflict zones, including:



**Publications:**

The Reporters Without Borders' Charter for Safety of Journalists Working in War Zones or Dangerous Areas which urges media, journalists and public authorities to consult in order to reduce the risks in war zones or dangerous areas.

The International News Safety Institute (INSI) Safety Code which sets out the duties of media organizations to provide hostile environment training, safeguards and protections; it also calls on governments and armed forces to respect the safety of journalists, whether accompanying their forces or not, and to refrain from unnecessarily restricting their freedom of movement or reporting, or harassing, intimidating or physically attacking journalists as they conduct their lawful business.

The International Federation of Journalists' Survival Guide for Journalists entitled "Live News" 2003 which specifies the responsibilities of governments, including that of protecting journalists from any compulsion to testify in war crimes trial, to protect their physical safety and to protect them from any perception of partisanship.

The Journalist Security Guide of the Committee to Protect Journalists provides advice on all aspects of physical and digital security.

**Hotlines:**

The International Committee of the Red Cross (ICRC)'s 24-hour hotline for Assistance for journalists on dangerous assignments which is provided specifically for the use of journalists' families and professional associations. (The number is +41792173285).

The ICRC responds to humanitarian issues arising in cases of the disappearance or captivity of journalists and other civilians in wartime or detention in situations of internal disturbances and tensions.

In December 2011 the ICRC adopted its Action Plan for the implementation of international humanitarian law, which urges States to recognize that the work of the media provides public knowledge about violations and may assist in preventing them, as well as facilitating the fight against impunity. The Action Plan includes the objective of enhanced protection of journalists and the role of the media with regard to international humanitarian law.

Reporters Without Borders (RSF) also has a permanent hotline, SOS Presse, which journalists in trouble can call to obtain help urgently: the number is +33 1 4777 7414.

### **State security and Anti-terrorism laws**

**Issue:** Anti-terrorism, extremism and national security laws have frequently been used to prosecute and imprison journalists, to restrict or deter their ability legitimately to gather and report information, and to place them under special surveillance.

**Good practice:** Anti-terrorism laws are not used to prosecute journalists or others unless the expression is intended and is likely to incite violence, as provided by international law; factual reporting and comment on terrorism-related issues is not to be equated with support for terrorism.

When sensitive information is leaked, the journalist or media outlet which receives and publishes it is not to be held liable for any criminal offence.

Anti-terrorism laws are not too broad in scope; they define clear limits to authorities' interference, and contain sufficient procedural guarantees to prevent abuse.

**Recommendation:** States should conduct regular reviews of national antiterrorism laws and practices to ascertain if they infringe the right to freedom of expression.

### **Libel and defamation**

**Issue:** Libel, defamation and insult laws have been widely used in some OSCE participating States to prosecute and imprison journalists or force them to pay punitive fines; this has had a disruptive and chilling effect on the work of hundreds of journalists.

**Good practice:** Libel and defamation laws are decriminalized; custodial sentences are abolished; special protections for political and public figures in law are removed and fines for those convicted are proportionate and not on a scale which may affect the viability of the media outlet or force its closure.

In 2006 the U.N. Human Rights Committee called on all States to abolish prison sentences as a punishment for defamation. In 2007 the Council of Europe Parliamentary Assembly issued an appeal to all European states to do so without delay.

**Examples:** Fourteen OSCE participating States have partly or fully decriminalized libel and defamation: Armenia, Bosnia and Herzegovina, Cyprus, Estonia (with the exception of defamation of state officials), Georgia, Ireland, Kyrgyzstan, Moldova (with exceptions including insult of investigators and judges), Montenegro, Romania, Tajikistan (with the exception of public insults against the president which are punishable by

up to 5 years imprisonment), Ukraine, the United Kingdom and the United States (except 19 states and two territories).

The Russian Federation amended its Criminal Code to decriminalize libel and insult in November 2011. However subsequently, criminal sanctions were re-instated for libel. While custodial sentences have been dropped, the maximum fine is raised to 5 million roubles (€20,000), and the offense of defamation can attract a penalty of up to 480 hours of community work.

In October 2012 and again in December 2013 the government of Ukraine sought to reintroduce criminal sanctions for libel, but on each of those occasions the move was shelved amid large-scale public protests.

Italy amended its libel law in 2013 to abolish prison sanctions but retained the criminal offence of defamation against the President, the Republic, the constitutional institutions, armed forces, and the Italian nation. Several journalists continued to serve prison terms on the basis of previous convictions for defamation.

The UK parliament in April 2013 approved major reforms to defamation law in England and Wales to address widespread complaints that the previous law was unfairly and severely weighted in favour of plaintiffs who are the very rich and against defendants including media outlets and individual journalists. The new law provides for a stronger public interest defence, a more stringent requirement to demonstrate serious harm, and measures to prevent 'libel tourism' by plaintiffs in other jurisdictions seeking to exploit the UK's perceived bias for their own advantage and extremely high legal costs. Defamation law remains unchanged in other parts of the UK.

**Protection of journalists' sources**

**Issue:** Protection of journalistic sources is one of the basic conditions for press freedom. Accordingly, orders requiring the disclosure of journalists' sources may only be justified by an exceptional and overriding requirement in the public interest. However, bona fide journalists have sometimes been arrested and threatened with prosecution, and their workplace and home or their personal data records have been searched to discover the source of sensitive information which has been or may be made public.

**Good practice:** The confidentiality of journalists' sources is protected, in accordance with the international standards and rulings by the European Court of Human Rights.

The journalist's privilege not to disclose information sources should apply to online expression as it does on traditional media platforms.

**Examples:** In Albania a parliamentary committee decided to refrain from requesting phone logs of journalists covering violent demonstrations in January 2011, respecting the journalists' rights to keep their sources confidential.

Belgium, France and the Netherlands have all in recent years enacted laws to bring their penal codes and judicial procedures into conformity with European standards. In each case the reforms were prompted by rulings in the European Court of Human Rights that the states concerned had committed violations of Article 10 of the European Convention on Human Rights.

In 2013 the Netherlands drafted new legislation to protect journalists' confidential sources in response to three judgments against the Netherlands in the European Court of Human Rights. The progress of the

draft law has taken longer than the Ministry of Security and Justice had publicly foreseen.

### **Surveillance and data collection and retention laws**

**Issue:** Laws which oblige service providers to retain data records related to personal communications for prolonged periods (of six months or more) have been widely used by State investigatory agencies under anti-terrorism laws; they have exposed journalists to clandestine state surveillance and made them more vulnerable to attempts to discover their confidential sources of information.

National laws protecting freedom of expression and privacy must be adequately taken into account in regulating in what may constitute, in particular circumstances, legitimate State involvement in communications surveillance or interception and retention or processing of private communications or data.

**Good practice:** Data protection laws conform with norms related to personal privacy, stipulate clear conditions before authority may be given to allow access to personal data, and are used in ways that do not infringe journalists' right to protect the confidentiality of their sources.

### **Freedom of Information laws**

**Issue:** The ability of private citizens and news media to have access to official information with a minimum of restrictions is a normal expectation in a democracy. The absence of freedom of information laws, and restrictive application of those laws, leads to denial of the public right to information about the workings of the State.

**Good practice:** Freedom of information laws are enacted with minimum restrictions, according to principles of open government and the free flow of information. The ability of journalists and others to gather and use official information is essential for press freedom; the media must be enabled to carry out their work of informing societies on matters of public interest.

As a rule, state authorities should place government information of public interest in the public domain and make every effort to ensure easy, prompt, effective and practical access to such information.

The administration of freedom of information laws are independent, transparent and avoid unreasonable delays and costs.

**Examples:** Ukraine in 2011 adopted an access to information law for the first time; subsequent draft proposals by the then governing party to impose severely restrictive and bureaucratic barriers to the release of information in response to bona fide requests have cast doubt on the prospects that the law would improve government transparency.

Spain took steps in late 2013 to enact a Law on Transparency, Access to Information and Good Governance, which provides for a system by which access to information requests may be made at the national and regional levels. However the law was due to come into force only after a designated period of delay of a year or more, and it has been criticized as falling below European standards and as being liable to obstruct the work of journalists seeking information in the public interest.

**Recommendation:** States consider acceding to the 2009 Council of Europe Convention on Access to Official Documents (not yet in force), which establishes a right to request information held by public authorities in any form.

### **Labour and employment rights**

**Issue:** In some participating States the absence of laws which provide a minimum of employment protection and guarantee the right to form unions have severely impacted on journalists: many have been dismissed at the whim of their employer or at the behest of officials without reason or means to defend their rights. Journalists' employment rights should include the right to organise themselves in labour unions for the purposes of collective bargaining on wages and conditions; journalists are not be punished or dismissed for refusing to behave in an unethical way.

**Good practice:** Enacting and upholding journalists' employment rights, including the right to organize and join trade unions, which can protect them from arbitrary dismissal and from undue pressures to act in unethical or unprofessional ways.

Journalists have the opportunity to sign up to a "conscience clause" which protects them from any sanction or loss of employment as a result of their refusal to contradict the journalists' code of ethics.

**Recommendation:** Editors and publishers establish and subscribe to a voluntary code in which they undertake not to order or coerce journalists to practise any unethical behaviour or to report any untruth.

### **Online journalism and social media**

**Issue:** Blocking and filtering of websites has increased in scope and the variety of methods used.

**Good practice:** Freedom of expression applies on the Internet as it does in all means of communication.



Governments refrain from mandatory blocking or filtering of content or websites which may amount to prior censorship, such as filters excluding pages containing keywords; any take-down order is limited to an offending item or page and does not apply to an entire website.

Prohibitions of websites or materials are not ordered on the basis that the contents are critical of the government or of interests close to the government. Cutting off access to the Internet for whole populations or segments of the public, or stopping access to social networking media, is not justifiable.

No one should be held liable for disseminating content on the Internet of which he or she is not the author, as long as they obey legal orders to remove that content, where they have the capacity to do so. Holding intermediaries liable for the content disseminated or created by users undermines the enjoyment of the right to freedom of opinion and expression because it leads to self-protective and overly broad “private censorship,” non-transparent and potentially arbitrary decisions, often without respecting due judicial process (Recommendation from the Office of the OSCE Representative on Freedom of the Media Internet 2013 conference in Vienna).

States promote universal access to the Internet.

**Examples:** In 2000, Estonia declared Internet access to be a fundamental right.

In its first judgment in a case concerning Internet blocking (*Yildirim v. Turkey*), the European Court of Human Rights in Strasbourg in December 2012 found Turkey in violation of freedom of expression obligations under Article 10 of the European Convention. The court ruled that blocking access to an entire online platform was a violation of the right to freedom

of expression. The Court found that the legal framework in place in Turkey was inadequate and failed to provide sufficient safeguards against abuses.

The case created a legal precedent by stating that any measures restricting access to Internet content must be properly based on law and must be precisely targeted so as to impact only on the specific content identified as to be blocked. It also pointed to the need for adequate legal training of national prosecutors and judges with respect to restrictions applied to materials on the Internet

### **Media ownership rules**

**Issue:** In many OSCE participating States, ownership and control of large parts of the media are under the direct or indirect influence of national or regional administrations, or of large business interests with close ties to political forces. Over-concentration and non-transparency of media ownership give excessive power to owners.

Those things may expose journalists as employees to undue pressures or inducements to report in unethical or unprofessional ways to the detriment of the society and to the reputation of the profession as a whole. They also encourage unhealthy or improper collusion between media owners or editors and governments.. Secrecy or opaqueness with regard to ownership of media outlets makes it hard to determine whether plurality rules are being infringed.

**Good practice:** Conflict of interest legislation is transparent and strictly enforced to ensure that no individual or group in a position of political authority may use ownership or control of media, or favour and business interest, out of motives of for self-interest.

Plurality and competition rules exist to prevent overconcentration of media ownership.

Media ownership and control by any state or government body or dominant State influence through proxy or State-friendly owners is discouraged; such media are transformed into public service media with independent management structures or privatized.

Private media should not be run or owned by state or state-controlled companies.

Rules exist to ensure transparency of ownership of all media outlets through registration and publication of company accounts.

**Examples:** In 2012 Access Info Europe, a non-governmental organization, published detailed research showing that in 9 out of 19 European states surveyed the legal framework was inadequate to guarantee transparency of media. In those countries the public have no means of finding out the identity of the actual owners of the broadcast media from information reported to media regulators or to company registers.

In November 2013 Access Info Europe and Open Society Media Program proposed Recommendations for Transparency of Media Ownership, including mandatory reporting requirements concerning media ownership in each country and provisions to make the information readily and freely accessible to the media regulators and the public.

In April 2011, Georgia amended the law on broadcasting to make media ownership transparent.

### **Public Service Broadcasting: TV and Radio**

**Issue:** Public Service Broadcasting (PSB) remains an influential or dominant source of news for the population in many places; political control, interference or dominant influence over PSB undermines the independence of editorial practices and of the work of journalists. Public service media in some participating States are perceived as serving particular political interests and so failing to fulfil the basic mission of public service media; they should live up to their commitments to independence and public accountability.

**Good practice:** Public Service Broadcasting is operated with guaranteed independence, impartiality and editorial integrity and without influence or direction from any political or outside group; licensing of broadcasters and allocation of frequencies and channels is carried out transparently and without political bias; PSB governance and editorial appointments are organized according to these principles; senior managers and journalists do not owe their jobs to an affiliation with a political party.

The appointment of public service media regulators is transparent and done on the basis of proven expertise and ability; regulatory and governance bodies are chosen in such a way that no political grouping or ideology is dominant.

States protect freedom of expression and diversity of media in the transition to digital terrestrial broadcasting. Decision-making processes should take place in a transparent manner and allow for all stakeholders to be heard and the interest of all sectors of society to be catered for. Decisions must be made fairly and equitably. Government-friendly media outlets or those controlled by partisan interests must not be favoured during the process to the disadvantage of others.

**Examples:** In May 2012, sustained public criticism was directed at Azerbaijan over its treatment of critical journalists and other dissenting voices around the time of the Eurovision Song Contest held in Baku; and at the European Broadcasting Union for not being seen to use its influence to ensure that critical voices were heard in public discourse as well as those representing the government authorities.

Later the EBU issued a Declaration on the core values of public service media – including independence, diversity and accountability – and undertook, in a Memorandum of Understanding signed with the European Union, to enabling the democratic role of public service media in the countries covered by the EU's enlargement policy.

In November 2013 the Portuguese public broadcaster RTP and the government reached a new long-term agreement which put an end to uncertainty arising from an earlier suggestion made by a government minister about its possible privatization. However, RTP remains one of the most poorly-funded public broadcasters in Europe, so concerns about its long-term future as a public have not been entirely dispelled.

### **Self-regulation of the media**

**Issue:** State controls, ownership and regulation of the media are in compatible with freedom of journalistic inquiry and media independence; they place the security of journalists at risk by making their employment directly or indirectly dependent on the State.

**Good practice:** Self-regulation of the media and the work of journalists, by means of press councils, press complaints commissions and the like, give security to journalists and makes them responsible for maintaining professional standards without the danger of State censorship or control.

Media self-regulation is an achievement of a society where government is conducted with the consent of the people in a plural democracy where people enjoy freedom of expression and a free, unhindered and uncensored press.



**ANNEX:**





## THE VILNIUS RECOMMENDATIONS

In June 2011, acting in its capacity of chair-in-office of the OSCE, Lithuania convened a conference, which issued a set of recommendations on the safety of journalists in the OSCE region. This document, drafted in cooperation with the Office of the Representative on Freedom of the Media, emphasizes the role of national governments and legislatures, law enforcement agencies and the media themselves in ensuring safe working conditions for journalists.

Through the **Vilnius Recommendations on Safety of Journalists**, the OSCE Chairmanship and the Representative:

- Strongly encourage governments of OSCE participating States to treat violence against journalists as a direct attack on freedom of expression, and publicly refute any attempt to silence critical or differing voices in the society;
- Recommend that governments give their full political support to the strengthening of media freedom by promoting safe and unimpeded conditions for journalists to perform their professional duties;
- Encourage legislators to increase safe working conditions for journalists by creating legislation that fosters media freedoms, including guarantees of free access to information, protection of confidential sources, and decriminalising journalistic activities, including defamation and libel;
- Advocate that the authorities make it their priority to carry out swift and effective investigations, sending a message to society that perpetrators and masterminds of violence against journalists will be efficiently brought to justice;
- Urge that law enforcement agencies be given sufficient resources and expertise to carry out effective investigations in the particular field of the media and to develop practices that respect the legal

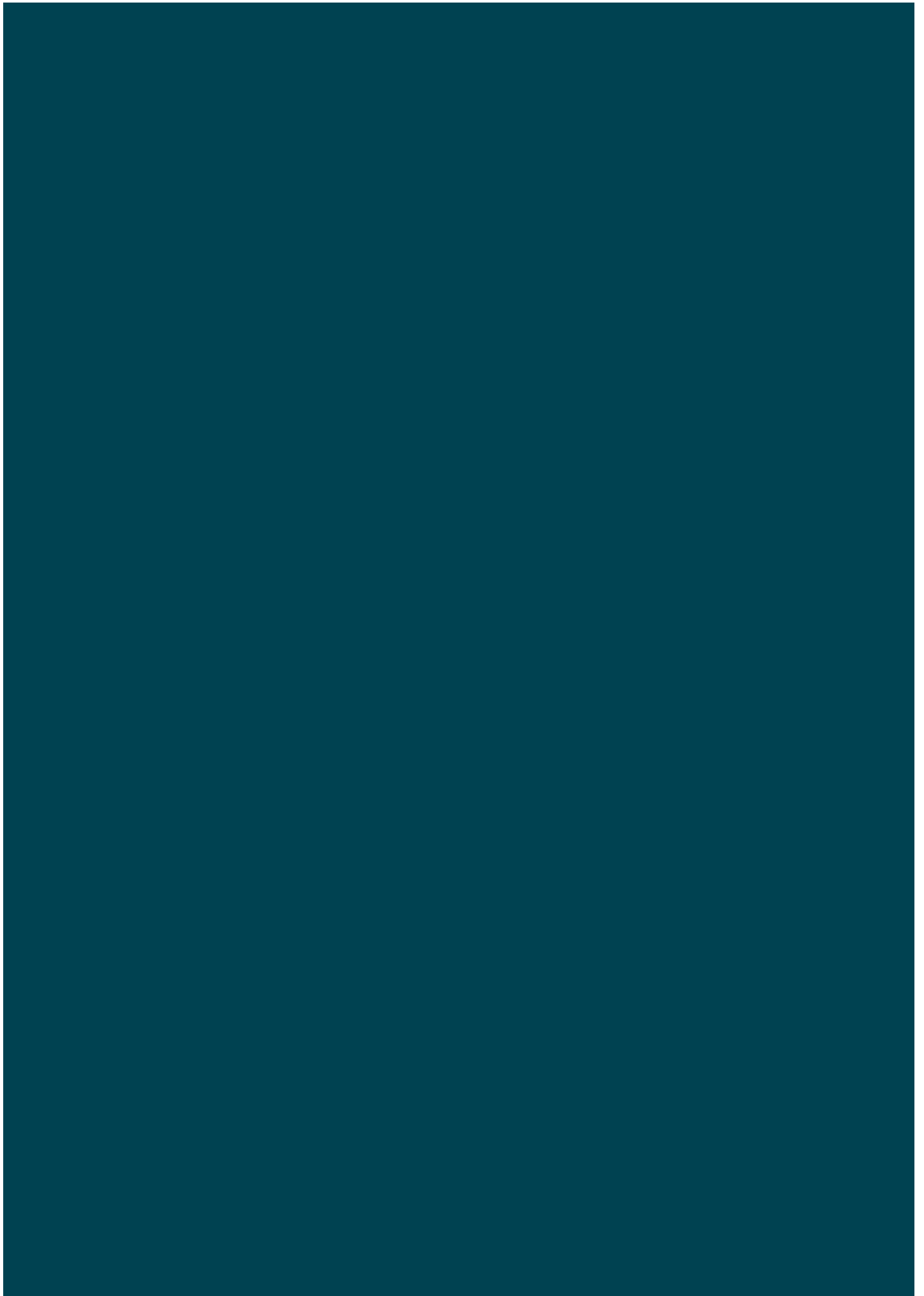
rights of members of the media, including their unhindered access to information during public protests or in cases of civil and public unrest;

- Call for due weight to be given to the public interest in judicial procedures initiated against journalists as a result of their professional duties, and to ensure that such cases are handled without delay and in a transparent manner;
- Call upon law enforcement agencies and media to jointly establish good practices that can increase the safety of members of the media and to engage in joint training activities to promote these practices;
- Support the work of the OSCE field operations in their important role in assisting participating States in this regard and encourage field operations to undertake further projects aimed at capacity building and training for the media, including the promotion of dialogue between the media and law enforcement agencies.

The full text of the document is accessible here:

<http://www.osce.org/cio/78522>







## About the Office of the OSCE Representative on Freedom of the Media

During the height of the Cold War, the countries of the Northern Hemisphere recognized the crucial importance of the free flow of information in reducing tensions and maintaining peace and stability. In 1975 they resolved, in the Helsinki Final Act, to act in conformity with the Universal Declaration of Human Rights and, in particular, to increase co-operation in the field of information and improve access to information and the working conditions of journalists.

The Organization for Security and Co-operation in Europe, which evolved out of the Helsinki Process, established the Office of the OSCE Representative on Freedom of the Media in 1997 to strengthen implementation of the Organization's principles and commitments regarding freedom of expression and free media.

The Office remains the world's only inter-governmental institution mandated to protect and promote media freedom.

The Office is based in Vienna and works closely with two other independent institutions established by the OSCE, the Office for Democratic Institutions and Human Rights, located in Warsaw, and the High Commissioner on National Minorities, based in The Hague.

Other partners are national, regional and global organizations working in the field of human rights, as well as media associations and journalists in the OSCE region.

## ■ ABOUT THE OFFICE OF THE OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA

For further information, please visit the Office's website at [www.osce.org/fom](http://www.osce.org/fom), where you can find a downloadable version of reports, declarations, reviews and press releases. The Office also can be contacted by e-mail at [pm-fom@osce.org](mailto:pm-fom@osce.org).

Information also can be obtained in person from the Office at the OSCE Secretariat, Wallnerstrasse 6, A-1010 Vienna, Austria.

