

STUDY

Requested by the LIBE committee



Safety of journalists and the fighting of corruption in the EU



Policy Department for Citizens' Rights and Constitutional Affairs
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Abstract

Journalism and journalists face a growing range of threats, including violence and harassment; the misuse of defamation and other laws against them, and restrictive measures on freedom of information and expression adopted in response to the Covid-19 crisis. States must ensure a safe and favourable environment for journalists to perform their public watchdog function. This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, examines the overall chilling effect of crimes and threats against journalists and explores various regulatory and other measures to counter them.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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LIST OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
CoE	Council of Europe
CMPF	Centre for Media Pluralism and Media Freedom
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECPMF	European Centre for Press and Media Freedom
EFJ	European Federation of Journalists
EU	European Union
IFJ	International Federation of Journalists
IGO	Intergovernmental Organisation
IPI	International Press Institute
MPM	Media Pluralism Monitor
NGO	Non-Governmental Organisation
OBCT	Osservatorio Balcani e Caucaso Transeuropa
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
RRM	Rapid Response Mechanism
SLAPP	Strategic Lawsuit Against Public Participation
UN	United Nations

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EXECUTIVE SUMMARY

Ongoing monitoring exercises reveal that long-standing threats to the safety of journalists are persisting: threats and acts of violence against journalists; impunity for crimes against journalists and the vexatious use of litigation against them, especially on the basis of defamation laws. In addition, other threats are emerging or are starting to receive more attention than in the past: gender-related threats, especially online; Strategic Lawsuits Against Public Participation (SLAPPs); restrictions on media freedom and access to information in the context of Covid-19 measures. The urgency of these threats to journalism, journalists and other actors demands explicit prioritization in ongoing and forthcoming law- and policy-making initiatives, as well as funding schemes, at the national and European levels.

With so many threats to be countered, it can be very challenging to prioritise certain threats above others and to channel limited resources into specific lines of action. It can thus be useful to first take one step back, and then take a more systematic approach. States have a positive obligation under the European Convention on Human Rights to secure a safe and favourable environment in which everyone can participate in public debate without fear.

A systematic approach also creates space to address the different, inter-related dimensions of safety of journalists: safety and protection issues; media pluralism and transparency of media ownership and the broader conditions needed for quality journalism to flourish, including working conditions and support measures in the face of massive losses of revenue. This broader perspective is necessary in order to be able to identify the interplay between different types of threats and how their combined effects can be aggravated.

The study examines the European-level (EU, Council of Europe and OSCE) systems of protection for journalists, as well as an illustrative selection of national systems of protection. A number of positive and promising practices can be detected in various EU Member States. Denmark and Sweden present well-rooted cultures of political and societal appreciation of independent media and journalism, in which autonomous systems of journalistic ethics feature strongly. This is also true of the Netherlands, which additionally has an advanced model of cooperation by a range of key stakeholders (journalists, editors, the police force, the public prosecutor's office and the government) around issues concerning the safety of journalists.

Some problematic practices can also be detected across the European Union, such as threats to media pluralism and freedom in Hungary and Poland; a high incidence of SLAPPs in, for instance, Malta (where there are also concerns about impunity and the rule of law), Italy and Spain (where the absence of legislative protection for whistleblowers remains a concern); heavy reliance by politicians on defamation laws to stifle critical reporting, such as in Slovakia (where the discrediting of journalists, including by smear campaigns, is also a problem).

Another problem addressed is how legislation and judicial procedures can be exploited with the aim of silencing independent and critical voices in public debate. Defamation laws are a case in point – national defamation laws sometimes have loopholes, such as definitional vagueness, an absence of adequate defences, an absence of checks and balances to ensure equality of arms between plaintiffs and defendants. It is very problematic when these legislative and procedural deficiencies are misused to curb freedom of expression. Other types of laws that are susceptible to misuse include anti-terrorism or national security laws and anti-“hate speech” laws. Attention is also paid to civil society organisations' expression of growing concerns about the chilling effect of SLAPPs on freedom of

expression, and increasing calls for reform of EU regulation dealing with defamation and for a new anti-SLAPP EU Directive.

The study clarifies the nature and scope of European regulatory standards and policy on the highly complex topics of media pluralism and transparency of media ownership. National regulatory and policy approaches to these topics take their cue from European standards, and some recent standards have considerable instructional value. National approaches tend to be very divergent, making it difficult to operationalize European standards consistently.

The Covid-19 pandemic and subsequent governmental measures to contain the spread of the virus have had a roundly negative impact on freedom of expression and journalistic and media freedoms. The study examines the scale and details of how adopted measures – sometimes in the form of emergency measures – have led to interferences with and/or violations of the right to freedom of expression. Countervailing initiatives by civil society organisations are also examined, as well as 'best practices' for journalism and financial and support measures that aimed to throw lifelines to threatened media and journalists.

The study's main recommendations are informed by the need for continued vigilance to ensure effective protection of journalism and the safety of journalists and other actors who contribute to public debate, paying due attention to the emergence of new threats and the aggravating impact of combinations of threats. Combating impunity for killings or other very serious crimes against journalists should be given utmost priority, in order to bring all perpetrators – including the masterminds of the killings and crimes – to justice.

It recommends that EU Member States fully and effectively implement the Council of Europe's Committee of Ministers' Recommendation CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors, and in particular to review their national laws, policies and practice, and revise them as necessary, to ensure their compatibility with the standards developed under European human rights law. In the same vein, it also recommends that EU Member States implement the Council of Europe's Committee of Ministers' Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership.

The study recommends an inclusive process of EU legislative reform to tackle the growing problem of SLAPPs. This should involve a comprehensive legislative package, comprising appropriate amendment of the Brussels I Regulation (recast) and Rome II Regulation, as well as the drafting of a dedicated anti-SLAPP EU Directive. Any legislative reform should include effective safeguards for the standards on freedom of expression and defamation that have been developed by the European Court of Human Rights in its case-law.

The Covid-19 crisis has brought a wave of measures threatening access to information and media freedom. This underscores the need for robust protection for journalists, the media and other actors to enable them to carry out their public watchdog tasks and to produce quality, independent and critical journalism. Such protection necessarily involves sustainable funding at national and European levels, especially in light of the financial impact of the Covid-19 crisis on already precarious sectors of journalism, media and culture.

1. INTRODUCTION

1.1. Public watchdogs and democratic society

Democracies are shaped by the public's right to know and whether this 'right' is effective in practice. The effectiveness of the right depends on the public's ability to seek and receive, without hindrance, information and diverse opinions, which help them to make informed decisions about how they are governed and public affairs generally. Journalists and the media – and increasingly other actors too – play crucial roles in ensuring that the public are informed on matters of general interest to society. They act as purveyors of information, public watchdogs who hold governmental authorities and other powerful forces in society to account, and as the custodians of shared spaces for public debate. Their roles as purveyors of information and public watchdogs are of vital importance when it comes to the investigation and exposure of corruption. Those roles involve doggedly pursuing and reporting on malpractices and wrongdoing. Such reporting is all about making public stories that powerful forces would prefer to keep secret.

All too often, the powerful forces implicated in corruption, who risk being exposed by the public watchdogs, will go to great lengths – even threats, violence and killing – to silence the watchdogs. With such high stakes, it is important to insist, as the Council of Europe's Committee of Ministers has done, that States "ensure that the media have freedom to receive and impart information on corruption matters subject only to limitations or restrictions which are necessary in a democratic society".¹ That freedom necessarily entails safety and protection.

This study seeks to give an overview of the vast number of threats to the personal safety of journalists and other media actors who contribute to public debate; to their freedom of expression – individually and institutionally, and to their work. The volume and diversity of those threats makes this a complex and challenging exercise. The interplay between threats – how they combine to aggravate the chilling effect on freedom of expression – and the ability and willingness of State authorities to fulfil their obligations to secure the safety of journalists and other media actors, renders the exercise even more complex and challenging.

1.2. The changing nature of journalism and of threats to journalists and other media actors

Throughout the study, reference will be made to journalists and other media actors. This is consistent with relevant standard-setting texts, e.g. the Council of Europe's Committee of Ministers' Recommendation CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors. It is important to distinguish between both focuses and at the same time to be mindful of their complementarity. Journalism (the first focus) is understood as an activity carried out by a growing range of actors (the second focus). There is occasional resistance in certain quarters to take a very expansive definition of journalism, pointing to professional standards and codes of ethics.

¹ Principle 16, Council of Europe Committee of Ministers' Resolution (97)24 on the twenty guiding principles for the fight against corruption, 6 November 1997.

Be that as it may, it is clear that the nature of journalism and, more broadly, public debate, are changing. Public debate is no longer the preserve of professional journalists and institutionalized media. A wider range of actors can, and must, participate in public debate. The European Court of Human Rights has recognized the valuable contributions that individuals can make to public debate. Other voices must be heard and not drowned out by dominant voices. That is a prerequisite for pluralistic public debate. The European Court of Human Rights has also specifically recognized the importance of contributions to public debate by specific actors such as citizen journalists, civil society organisations, human rights defenders, whistleblowers, academics, bloggers, trade unions, and social media users. The term, 'other media actors', is used to capture this broad range of actors who (seek to) contribute to public debate.

In a similar vein, it is also possible to observe certain changes in the nature of threats to journalism and journalists and other media actors. Ongoing monitoring exercises reveal that long-standing threats to the safety of journalists are persisting and that other new threats are emerging (see further, 1.4, below).

This study seeks to give an overview of those threats, while paying particular attention to a selected number of specific threats that have been highlighted by various monitoring mechanisms as constituting current patterns of concern.

1.3. Methodology

The study is based on desk research; all sources used are publicly available (unless otherwise stated) and traceable. The bulk of the materials consulted and used for the study are from civil society organisations specialising in freedom of expression, media freedom and journalists' rights, and the monitoring mechanisms in which they participate. The analysis has also been informed by academic literature and news reporting. An awareness of relevant law and policy frameworks at the European and national levels also guides the analysis.

1.4. Scope and structure of the study

The study focuses on a representative selection of threats to journalism and to journalists and all other actors who contribute to public debate. Some of those threats are familiar and persistent: threats and acts of violence against journalists; impunity for crimes against journalists and the vexatious use of litigation against them, especially on the basis of defamation laws. Other threats are emerging or are starting to receive more attention than in the past: gender-related threats, especially online; Strategic Lawsuits Against Public Participation (SLAPPs); restrictions on media freedom and access to information in the context of Covid-19 measures. The latter two focuses will receive particular attention in the study. Both the 'old' and 'new' threats are equally pressing.

Chapter 2 provides an overview of current patterns of threats to the protection of journalism and the safety of journalists and other media actors throughout the European Union. It relies predominantly on data gleaned from the Council of Europe Platform to promote the protection of journalism and the safety of journalists as this is the best-established monitoring mechanism of its kind in Europe.

Chapter 3 sets out and analyses the three main European-level law and policy frameworks governing protection and safety issues for journalism, journalists and other media actors: the European Union, the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE). Each of these

systems of protection has its own particularities, but they are largely congruent in their aims and focuses. Together they forge a shared, interlocking framework of protection at the European level.

Chapter 4 examines a selection of national systems of protection. The selection does not purport to be comprehensive or fully representative of the range of different systems obtaining throughout the European Union. Instead, it seeks to be illustrative – of best or promising practices on the one hand, and of certain problematic practices on the other hand. The selection comprises nine Member States: Denmark, Hungary, Italy, Malta, the Netherlands, Poland, Slovakia, Spain and Sweden. The aim of this examination is not to point fingers, but to pick up on perceptions of positive and negative trends and contextualize those trends in additional analytical detail, including against the benchmark of European human rights standards.

Chapter 5 pays specific attention to one of the flagged focuses of the study – different ways in which legislation and judicial procedures can be exploited with the aim of silencing independent and critical voices in public debate. Defamation laws are a case in point – national defamation laws sometimes have loopholes, such as definitional vagueness, an absence of adequate defences, an absence of checks and balances to ensure equality of arms between plaintiffs and defendants. It is very problematic when these legislative and procedural deficiencies are misused to curb freedom of expression. Other types of laws that are susceptible to misuse include anti-terrorism or national security laws and anti-“hate speech” laws. Prompted by growing concerns about the chilling effect of SLAPPs on freedom of expression, this chapter pays particular attention to the topic.

Chapter 6 seeks to clarify relevant the nature and scope of European regulatory standards and policy on the highly complex topics of media pluralism and transparency of media ownership. National regulatory and policy approaches to these topics take their cue from European standards, but those standards are generally terse and lack instructional value. National approaches tend to be very divergent. Conscious of the difficulty of collecting reliable, up-to-date information from different Member States, this chapter dwells on the difficulties of developing blueprints for these issues at the European level.

The Covid-19 pandemic and subsequent governmental measures to contain the spread of the virus have had a roundly negative impact on freedom of expression and journalistic and media freedoms. Chapter 7 examines the scale and details of how adopted measures – sometimes in the form of emergency measures – have led to interferences with and/or violations of the right to freedom of expression. Countervailing initiatives by civil society organisations are also examined, as well as ‘best practices’ for journalism and financial and support measures that aimed to throw lifelines to threatened media and journalists.

The study rounds off with a set of conclusions and policy recommendations.

2. CURRENT CHALLENGES

This chapter will provide an overview and analysis of current challenges and threats facing journalism, journalists and other media actors today. A recurrent theme in this chapter and in the study as a whole is the positive obligation for States under the European Convention on Human Rights to create a safe and favourable environment for journalism, journalists and other participants in public debate. By framing the discussion and analysis in terms of States' positive obligation to create a safe and favourable environment, it is possible to consider the full panoply of challenges and threats and their interrelationship.²

Before exploring selected current challenges facing journalists and other actors who seek to contribute to public debate, attention will turn to some statistical information concerning the safety of journalists in EU Member States. The statistical information has been gleaned primarily from [The Platform to promote the protection of journalism and safety of journalists](#).³ The Platform, hosted by the Council of Europe, and run by 14 Partner Organisations,⁴ is an alert-based system that warns of threats to media freedom across the 47 Member States of the Council of Europe. The Platform's partners, including journalists' and media organisations as well as freedom of expression advocacy groups, can register alerts about the safety of journalists, and request responses by States to the individual alerts.

According to the Platform's data, there are currently 114 journalists in detention across the Council of Europe region, as well as 20 cases of impunity for killings of journalists. Since the launch of the Platform in April 2015, there have been 749 alerts in 40 countries.⁵ Only two EU Member States – Ireland and Portugal – have not yet featured among the alerts. 437 of the total number of alerts have been resolved or have elicited responses from Council of Europe Member States. 27 journalists have been killed across the Council of Europe region, including in eight EU Member States.⁶ As the following table shows, the number of alerts registered on the Platform has worryingly increased in 2018 and again in 2019:

² This positive obligation will be teased out further in Chapter 3.

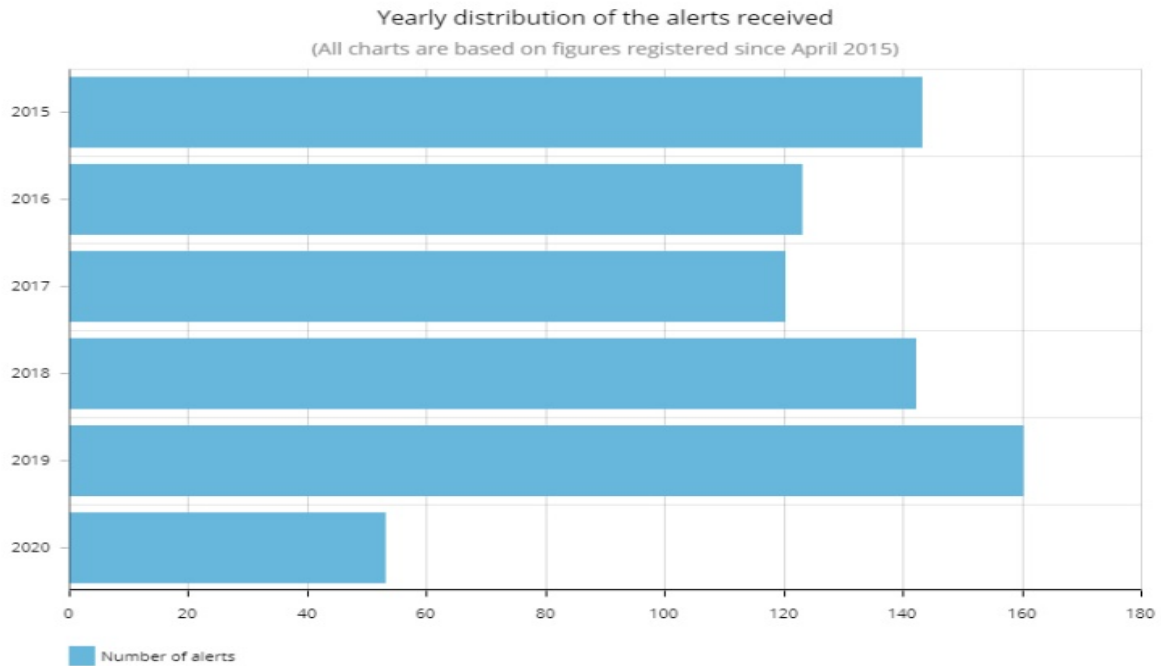
³ See: <https://www.coe.int/en/web/media-freedom/home>.

⁴ European Federation of Journalists (EFJ), The International Federation of Journalists (IFJ), Association of European Journalists (AEJ), ARTICLE 19, Reporters without borders, Committee to Protect Journalists, Index on Censorship, International Press Institute, International News Safety Institute, the Rory Peck Trust, the European Broadcasting Union (EBU), PEN International, the European Centre for Press and Media Freedom, Free Press Unlimited.

⁵ Data gathered from the Platform on 21 June 2020.

⁶ When Lyra McKee was killed in Northern Ireland on 18 April 2019, the United Kingdom was still an EU Member State.

Figure 1: Yearly distribution of alerts on the Council of Europe Platform (since 2015)



Source: The Platform to promote the protection of journalism and safety of journalists

On the Platform, a very large number of types of threats are organized into five main categories, which are also classified according to two levels of seriousness (with Level 1 being more serious than Level 2):

Table 1: Categories of threats on the Council of Europe Platform

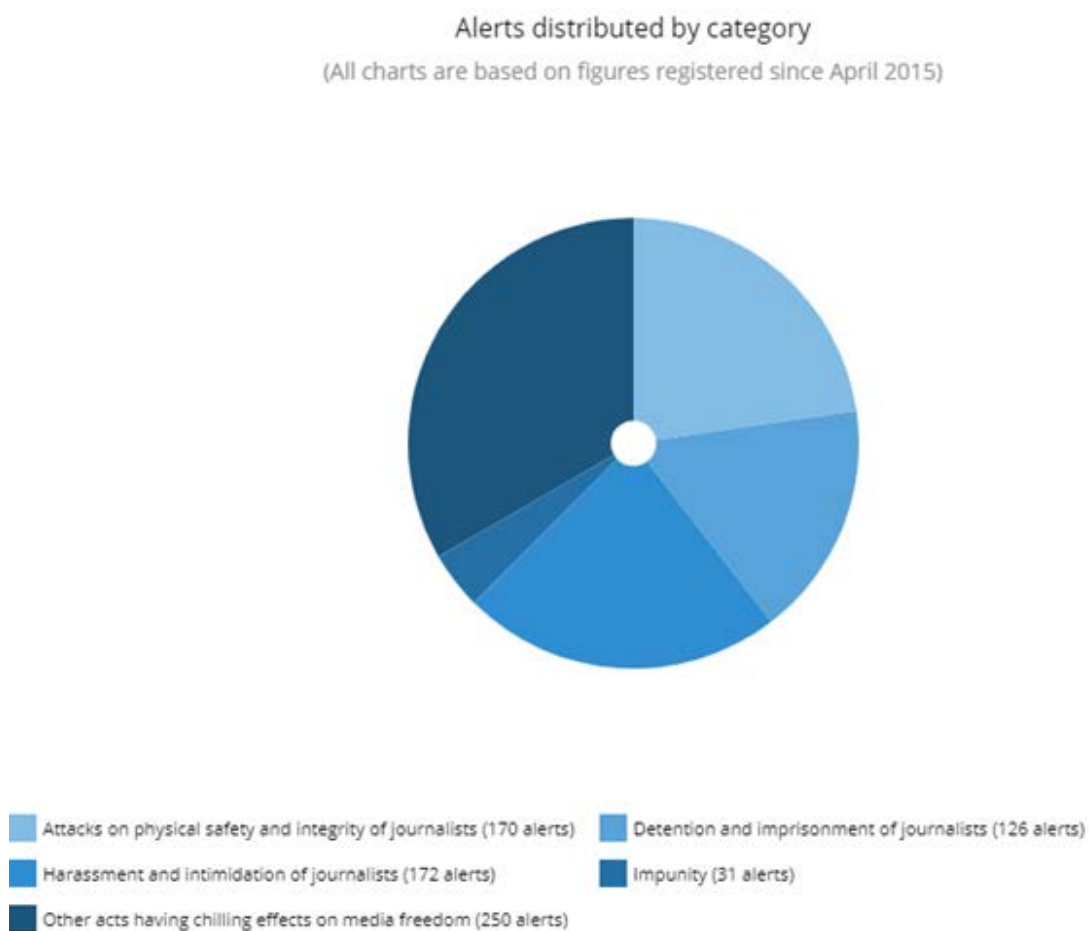
Category of threat	Description
Attacks on physical safety and integrity of journalists	Killings; abductions; threats and acts of violence against the physical integrity of journalists, their family members and other media actors; attacks against journalists’ sources because of their co-operation with journalists or media.
Detention and imprisonment of journalists	Arbitrary, unwarranted or politically-motivated arrests, detention and imprisonment of journalists and other media actors.
Harassment and intimidation of journalists	Harassment of journalists and other media institutions or actors; violence or interference causing damage or destruction of journalists’ equipment or other property; punitive or vindictive exercise of investigatory tax or administrative powers; arbitrary denial of access for journalistic coverage; threats to journalists’ privacy, threats to employment status, psychological abuse, bullying, online harassment and cyber-bullying; Judicial intimidation: opportunistic, arbitrary or vexatious use of legislation, including defamation, anti-terrorism, national security, hooliganism or anti-extremism laws; issuing bogus or fabricated charges; Political intimidation, including hate speech and use by public figures of abusive or demeaning language against journalists or media outlets; Other forms of intimidation and harassment.

Impunity	Failures to promptly, independently and effectively investigate and seek to prosecute crimes and offences against journalists and other media institutions or actors.
Other acts having chilling effects on media freedom	Acts having chilling effects on media freedom including restrictive legislation encroaching on media freedom; Censorship, interference with editorial freedom; Threats to the confidentiality of journalists' sources; Unjustified or indiscriminate blocking of websites or social media platforms, hacking, and surveillance or interception of communications data of journalists without due process of authorisation, etc.

Source: The Platform to promote the protection of journalism and safety of journalists

Alerts registered since 2015 are distributed over all categories:

Figure 2: Distribution of alerts on the Council of Europe Platform per category



Source: The Platform to promote the protection of journalism and safety of journalists

This fairly even pattern of distribution indicates that the full range of threats are prevalent. There is little comfort in the fact that one category has considerably fewer alerts – Impunity (31 alerts). As impunity involves killings of journalists or other very serious crimes against them, the figure of 31 is a cause of grave concern. This is clear from the inclusion of impunity as one of the highlighted problems/patterns in both of the previous two annual reports by the Partner organisations to the Platform (see further, below).

It is very important to provide a gender-specific perspective for these threats. Gender-based harassment is a common threat to journalists, yet it is significantly underreported. There is a need to redress the lack of acknowledgement of gender-based violence, in order to sustain a safe environment for all journalists.⁷ While various gender identities experience gender-based harassment, women are particularly affected. The intersectional nature of these threats must be considered, where women journalists with a particular cultural, religious, racial background or sexual orientation are particularly vulnerable to threats.

The OSCE Ministerial Council adopted a Decision on Safety of Journalists, which recognises the specific nature of harassment faced by women journalists, 'such as sexual harassment, abuse, intimidation, threats and violence.'⁸ It highlighted the necessity of taking a gender-sensitive approach in order to safeguard the safety of journalists. Gender-related threats silence journalists and undermine democratic society as they marginalise important voices and 'make women feel more vulnerable and question their work as journalists, a job that is itself under threat.'⁹

Gender-based harassment has several chilling effects on quality reporting, namely by silencing women journalists and stopping them from taking calculated risks with their work.¹⁰ The threats range from minor verbal to significant physical abuse, as shown in the Council of Europe's platform on threats in media freedom. Subordinated speech, where women are degraded due to an assumed inferior position in society is a prevalent format. Verbal abuse is often of a sexualised nature, focusing on appearance and threatening with rape and sexual exploitation. Threats of physical violence and death are particularly detrimental to the safety of journalists. According to OSCE's Representative on Freedom of the Media, at least 24 women journalists have been killed in the OSCE region from 1997 to 2017¹¹ and thousands are threatened on a daily basis.

A significant issue is also demonstrated with the reporting and communication of gender-based harassment, which is limited. While underreporting remains a significant obstacle to improving the awareness of and responsiveness to gender-based harassment, the means in which such data is presented should also be reconsidered. For instance, the Council of Europe's platform requires a search entry using exact terms. Results for 'woman' will therefore be different than those for 'women', which is a significant limitation. The database should be forthcoming about how it generates results and should be developed to include terms related to the search term rather than just the exact term. Two main issues arise: first, many cases are not being reported or published and second, when they do get published, they are not published appropriately. Second, not enough detail is provided for the specific

⁷ Anne Helen Peterson, 'The cost of reporting while female', *Columbia Journalism Review*, Winter 2018.

⁸ MC.DEC/3/18, Decision No. 3/18 Safety of Journalists, Organization for Security and Co-operation in Europe, Ministerial Council, 7 December 2018.

⁹ Anne Helen Peterson, 'The cost of reporting while female' *Columbia Journalism Review*, Winter 2018.

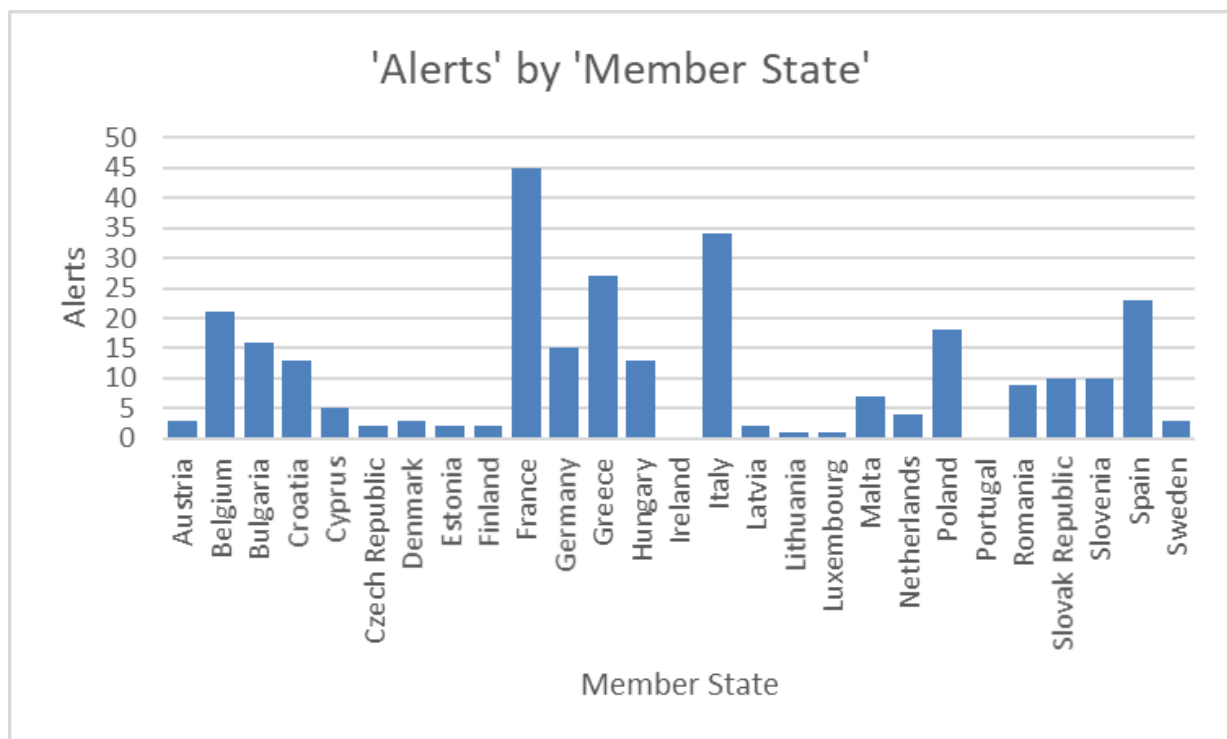
¹⁰ Ibid.

¹¹ List of Killed Journalists in the OSCE Region 1997-2017, Organization for Security and Co-operation in Europe, 19 December 2017.

context of the case. Naming the gender, for example, and highlighting the possibility that the harassment is based on one's gender rather than their occupation, needs to be addressed. Women journalists are more often attacked than male journalists, because of their gender. Not paying enough attention to this is a significant oversight. Moreover, many reports indicate gender-based motives, while they are not mentioned (using gendered terms).¹² The lack of identifying gender-based harassment as such is further demonstrated in the 2020 Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists. While the report recognises the heightened threat for women journalists, it fails to expand on the scope of gender-based violence and the resolutions that should be adopted.¹³ A stronger commitment to understanding, reporting and protecting against gender-based harassment is necessary to ensure the safety of journalists.

The following table presents the number of alerts per EU Member State since 2015:

Figure 3: Alerts on the Council of Europe Platform per Member State



Source: The Platform to promote the protection of journalism and safety of journalists

The above statistics are useful, but they should not be taken at face value. The details and context of the individual alerts are crucial for understanding their seriousness and impact, on individual journalists and on entire societies. The additional information provided by the Partner organisations for each alert, as well as States' responses to those alerts (as relevant), are key for unlocking the full meaning of the

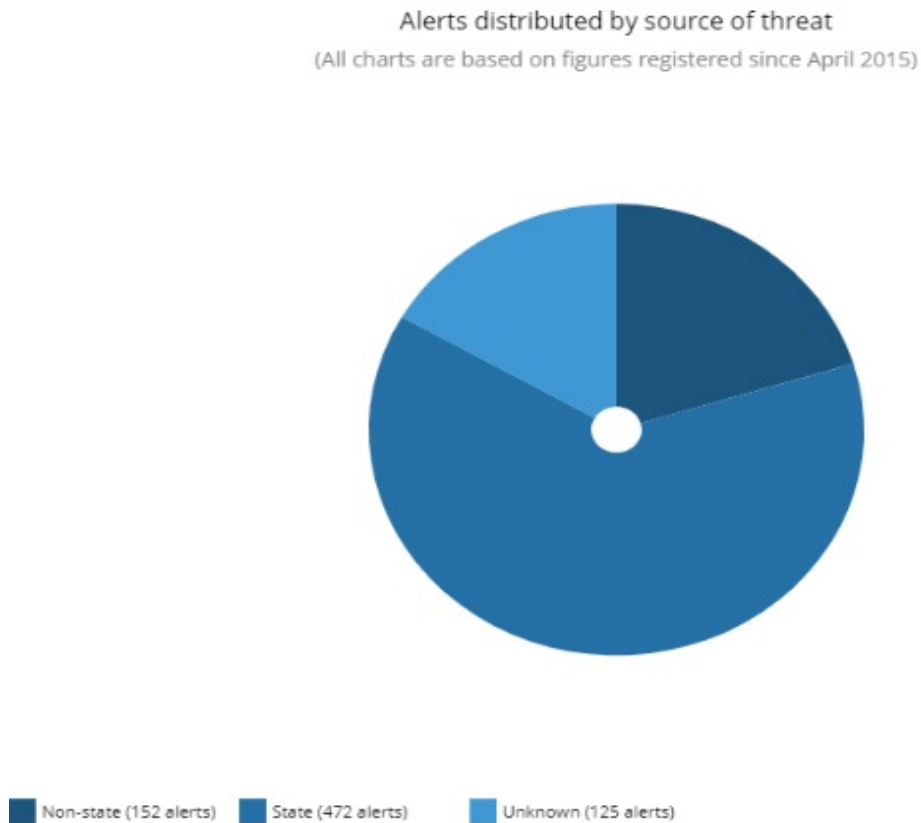
¹² Search terms that were used for this research: 'gender', 'female', 'woman', 'women', 'transgender', 'sex', 'intersex', 'sexism' and 'sexist' (3 June 2020).

¹³ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020, p. 12.

statistics. Further benefit would be gained from the integration of these statistics in ongoing, systematic research and analysis of country situations.

It is striking that the majority of threats originate from State actors. Of the 749 alerts registered on the Platform since its inception in 2015, 472 threats have come from State actors, as opposed to 152 by non-State actors (the source of the remaining 125 threats is unknown). Of the 315 Level-1 alerts registered, 173 threats have come from State actors and 52 from non-State actors.

Figure 4: Distribution of alerts on the Council of Europe Platform by source of threat



Source: The Platform to promote the protection of journalism and safety of journalists

Further disaggregation of this data is needed in order to derive sharper insights into the source of threats. State/non-State/Unknown are useful, but only in a limited way. Greater disaggregation could help to specify which State actors (government ministers, the judiciary, law enforcement services, etc.) or non-State actors (political parties, private companies, criminal organisations, etc.). Greater clarity in identifying the sources of threats facilitates a more granular analysis of causes and consequences, and the development of a range of tailored responses.

Given the sheer volume of alerts and the additional information provided on each alert, the highlighting of specific threats and trends by the Partner organisations in their annual reports on the operation of the Platform, provide a very useful service. They allow a broader community of stakeholders to take the pulse of protection of journalism and journalists and other media actors in Europe at regular (annual) intervals. The following table provides an overview of the highlighted threats and trends for the past two years:

Table 2: Highlighted threats/trends based on Council of Europe Platform alerts

Highlighted threats/trends based on Platform alerts	
2019 Annual Report ¹⁴	2020 Annual Report ¹⁵
<ul style="list-style-type: none"> • increasing attacks and threats (including death threats) targeting journalists • impunity for crimes against journalists • arbitrary and unjust detention and imprisonment of journalists • repressive legislation • blocking of Internet sites and social media platforms by States • independence and sustainability of public service broadcasters • protection of journalists' confidential sources • the chilling effect of laws threatening to criminalize journalists' work 	<ul style="list-style-type: none"> • censorship in the context of "fake news", counterterrorism and government accountability • media coverage of protests and demonstrations • SLAPPs: abusive legal actions designed to intimidate • impunity for the killings of journalists and other serious attacks • online harassment • public service media

Source: The Platform to promote the protection of journalism and safety of journalists

These highlighted patterns of threats will be recurrent in the analysis in the next chapters.

¹⁴ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Democracy at risk: Threats and attacks against media freedom in Europe*, Annual Report 2019, available at: <https://rm.coe.int/annual-report-2018-democracy-in-danger-threats-and-attacks-media-freed/1680926453>.

¹⁵ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020, available at: <https://rm.coe.int/annual-report-en-final-23-april-2020/16809e39dd>.

3. EUROPEAN SYSTEMS OF PROTECTION

This chapter will give an overview of the European systems for the protection of journalism and the safety of journalists and other media actors. The international system comprises United Nations standards, including UNESCO instruments and activities.¹⁶

The European system comprises distinct sets of standards emanating from the European Union, the Council of Europe and the OSCE. Overlap and complementarity between these systems will be explained. Each system entails law and policy frameworks and institutional actors. The interplay between these norms and actors is essential for ensuring the effectiveness and dynamism of each system. This chapter will include emphases on selected themes that will be examined in more detail in subsequent chapters. It will also anticipate the challenges of implementation of standards at the national level.

3.1. European Union

The European Union plays an important role in the protection of journalism and the safety of journalists, particularly relating to protecting journalists from undue influence and pressure. At the level of EU fundamental rights, Article 11(1) of the Charter of Fundamental Rights of the European Union guarantees the right to freedom of expression, and of particular importance, Article 11(2) also specifically guarantees that “freedom and pluralism of the media shall be respected”.¹⁷ Flowing from this guarantee of media freedom, a number of EU institutions have implemented important measures and recommendations to protect the safety of journalists, and ensure journalists are protected from undue influences and pressure.

First, the European Commission has implemented considerable funding and support for important media freedom projects, in order to “promote media freedom, investigative journalism and defend journalists under threat”.¹⁸ For example, in March 2020, a notable Commission-funded project began, led by the European Centre for Press and Media Freedom (ECPMF), in order to establish a Europe-wide rapid response mechanism (RRM) for violations of press and media freedom.¹⁹ The mechanism is designed to provide “concrete tools to protect journalists under threat, such as providing advice and legal support as well as offering shelter and logistical assistance so that they can continue to pursue

¹⁶ For more extensive overviews and analysis, see: Sejal Parmar, “The international human rights protection of journalists”, in Onur Andreotti, Ed., [Journalism at risk: Threats, challenges and perspectives](#) (Strasbourg, Council of Europe Publishing, 2015), pp. 37-80; Tarlach McGonagle, [How to address current threats to journalism?: The role of the Council of Europe in protecting journalists and other media actors](#), Expert paper, Doc. No. MCM 2013(009), the Council of Europe Conference of Ministers responsible for Media and Information Society, ‘Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights, Responsibilities’, Belgrade, 7-8 November 2013.

¹⁷ Charter of Fundamental Rights of the European Union, 2012/C 326/02, Article 11, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

¹⁸ European Commission, Shaping Europe’s digital future - Media Freedom Projects, available at: <https://ec.europa.eu/digital-single-market/en/media-freedom-projects>.

¹⁹ European Commission, Pilot Project: A Europe-wide response mechanism for violation of press and media freedom, 2 March 2020, available at: <https://ec.europa.eu/digital-single-market/en/news/pilot-project-europe-wide-response-mechanism-violation-press-and-media-freedom>.

professional activities”, and “[r]epresentatives will be sent to countries affected, and anti-impunity action will be supported through advocacy”.²⁰

The European Commission has also co-financed other projects led by the ECPMF operating as an Alarm Center, which monitors violations of media freedom across Europe.²¹ Alerts are raised by a number of organisations, including Index on Censorship, and the International Press Institute. Importantly, the protection of female journalists is also of particular concern. And in this regard, the Commission has awarded funding to the ECPMF’s Women’s Reporting Point. This rapid response mechanism allows female journalists to report “if they are subjected to harassment or they witness it in their journalistic work”, and such reports are granted priority, dealt with in confidence, and only considered by women staff.²²

Further, the Commission has awarded funding to the Centre for Media Pluralism and Media Freedom (CMPF), which has developed the essential Media Pluralism Monitor (MPM).²³ The MPM is a tool to assess the risks to media pluralism in Europe. The CMPF is currently conducting its Media Pluralism Monitor 2020, which will assess media pluralism in all EU countries, and two candidate countries (Albania and Turkey).²⁴ The previous MPM included a number of important findings on the safety of journalists, including that (a) journalists and other media actors are facing a series of threats and attacks (physical and digital) in several European countries; (b) journalists’ working conditions are deteriorating, exposing journalists to external and undue pressures in their professional work in most of the countries examined; and (c) news organisations continue to be vulnerable to political interference.²⁵

Second, the Council of the European Union has also adopted important Conclusions in relation to the protection of journalism. For example, in 2018, the Council adopted Conclusions on the strengthening of European content in the digital economy, which underlined that “safe working conditions for journalists are essential in the changing media landscape in order to ensure professional and independent journalism”.²⁶ Notably, the Council invited member states and the European Commission to “ensure the effective protection of journalists and other media actors as well as their sources, inter alia, in the field of investigative journalism,” and “promote independent journalism and protect journalists from undue influence.”²⁷ Similarly, in 2014, the Council and the Representatives of the Governments of the Member States, adopted Conclusions on media freedom and pluralism in the

²⁰ European Commission, Pilot Project: A Europe-wide response mechanism for violation of press and media freedom, 2 March 2020.

²¹ European Commission, Shaping Europe’s digital future - Media Freedom Projects, available at: <https://ec.europa.eu/digital-single-market/en/media-freedom-projects>.

²² European Centre for Press and Media Freedom, Women’s Reporting Point, available at: <https://www.ecpmf.eu/support/womens-reporting-point/>.

²³ European Commission, Shaping Europe’s digital future - Media Freedom Projects.

²⁴ Centre for Media Pluralism and Media Freedom, MPM 2020, available at: <https://cmpf.eu/media-pluralism-monitor/mpm-2020>.

²⁵ Centre for Media Pluralism and Media Freedom, Media Pluralism Monitor, available at: <https://cmpf.eu/media-pluralism-monitor/>.

²⁶ Council conclusions on the strengthening of European content in the digital economy (2018/C 457/02), 19 December 2018, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018XG1219\(01\)&from=EN#tr1-C_2018457EN.01000201-E0001](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018XG1219(01)&from=EN#tr1-C_2018457EN.01000201-E0001).

²⁷ Council conclusions on the strengthening of European content in the digital economy (2018/C 457/02), 19 December 2018.

digital environment.²⁸ The Conclusions noted that “ensuring protection of journalists from undue influence is of key importance to guarantee media freedom,” and invited the Commission to continue supporting “projects that aim at enhancing the protection of journalists and media practitioners.”²⁹

Third, the European Parliament, and the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee), have also been engaging in important work on the safety of journalists. In the aftermath of the killing of the journalist Daphne Caruana Galizia in Malta, and the journalist Ján Kuciak and his finance Martina Kušnírová in Slovakia, the European Parliament adopted a number of important relevant resolutions.

First, in 2017, the European Parliament adopted a Resolution on the rule of law in Malta,³⁰ which strongly condemned the assassination of Daphne Caruana Galizia. The Parliament noted that the protection of investigative journalists and whistleblowers was in the “vital interests of society”, and called on Malta and all EU Member States to “ensure the protection of journalists’ and whistle-blowers’ personal safety and livelihoods”. The Resolution noted that the 2017 World Press Freedom Index, which was published by Reporters Without Borders, had identified Malta’s defamation laws as a “key factor limiting freedom of expression in Malta”, as defamation is “punishable by fines or imprisonment and broadly used, especially by politicians, against journalists”. The Resolution did note some reforms, including a bill that would abolish criminal libel and prohibit precautionary orders or warrants in actions for libel or defamation.

Then in 2018, the Parliament adopted a Resolution on the protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová.³¹ The Resolution strongly condemned the murders of Ján Kuciak and Martina Kušnírová, and called on Slovakia to ensure the protection of investigative journalists from “any form of intimidation, defamation charges, threats or physical attacks, and to take effective measures for the protection of those exercising their right to freedom of expression against attacks aimed at silencing them”. Tellingly, the Resolution noted that the protection of journalists and journalistic sources varies across Member States, and “in most” does not include providing “effective protection against retaliation, defamation charges, threats, intimidating lawsuits or other negative consequences”.

Crucially, the Parliament adopted an important 2018 Resolution on media pluralism and media freedom in the European Union.³² The Resolution expressed “deep concern” over the “abuses, crimes and deadly attacks still being committed against journalists and media workers in the Member States because of their activities”. The Resolution made a number of recommendations, including that Member States (a) set up an independent and impartial regulatory body, in cooperation with journalists’ organisations, for monitoring, documenting and reporting on violence and threats against journalists and to deal with the protection and safety of journalists at national level; and (b) carry out

²⁸ Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on media freedom and pluralism in the digital environment (2014/C 32/04), 4 February 2014, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XG0204\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XG0204(02)).

²⁹ Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on media freedom and pluralism in the digital environment (2014/C 32/04), 4 February 2014.

³⁰ European Parliament resolution of 15 November 2017 on the rule of law in Malta (2017/2935(RSP)), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0438_EN.html.

³¹ European Parliament resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová (2018/2628(RSP)), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0183_EN.html.

³² European Parliament resolution of 3 May 2018 on media pluralism and media freedom in the European Union (2017/2209(INI)), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0204_EN.html?redirect.

an independent review of relevant laws and practices in order to protect freedom of expression and freedom and pluralism of the media. The Resolution also called upon the European Commission to propose an anti-SLAPP Directive in order to “protect the independent media from vexatious lawsuits intended to silence or intimidate them in the EU”.

Further, in January 2019, the Parliament adopted a Resolution on the situation of fundamental rights in the European Union in 2017.³³ It noted that journalists and other media actors in the EU are at risk of “multiple attacks, threats and pressure and even assassination from state and non-state actors”.³⁴ Notably, the Parliament expressed concern that “few specific legal or policy frameworks protecting journalists and media workers from violence, threats and intimidation can be identified at national level in EU Member States”.³⁵ Later in 2019, the Parliament also adopted a Resolution on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia.³⁶ The Resolution noted that the “lack of safety for journalists”, and a “narrowing space for civil society because of harassment and intimidation”, were undermining oversight of executive power.³⁷ It also noted that journalists are “increasingly faced with so-called ‘Strategic Lawsuits Against Public Participation’ (SLAPP) against them, intended purely to frustrate their work”,³⁸ and noted with “great concern” the “rising threats bearing down on journalists and media freedom”.³⁹ In relation to EU responses, the Resolution again called upon the Commission to present proposals to prevent SLAPPs.

Finally, in terms strengthening enforcement and implementation of EU measures, a notable joint recommendation was published in April 2020 by 24 press freedom and civil society organisations.⁴⁰ It included a number of recommendations on how to safeguard media freedom and pluralism through the European Rule of Law Mechanism. In this regard, the European Commission had published a Communication on Strengthening the rule of law within the Union, which set out measures to strengthen the EU’s capacity to promote and uphold the rule of law.⁴¹ In their 2020 recommendations, the press freedom and civil society organisations welcomed the announcement that would be a dedicated chapter to media freedom and pluralism in the Annual Rule of Law Report published by the Commission, and that it would be a “key step in addressing the worrying state of media freedom and

³³ European Parliament resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI)), available at: [https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2019/01-16/0032/P8_TA\(2019\)0032_EN.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2019/01-16/0032/P8_TA(2019)0032_EN.pdf).

³⁴ European Parliament resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI)), at G.

³⁵ European Parliament resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI)), at 27.

³⁶ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)), 28 March 2019, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0328_EN.html.

³⁷ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)), 28 March 2019, at X.

³⁸ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)), 28 March 2019, at Y.

³⁹ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)), 28 March 2019, at 3.

⁴⁰ From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism, Joint civil society organisation recommendations, April 2020, available at: https://www.freepressunlimited.org/sites/freepressunlimited.org/files/rule_of_law_pf_joint_recommendations_april_2020.pdf.

⁴¹ European Commission, Communication on Strengthening the rule of law within the Union, COM(2019) 343 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0343&from=EN>.

pluralism in the EU".⁴² They also made a number of specific recommendations in this regard, including (a) that there should be country-specific recommendations,⁴³ and (b) that the report should assess framework for the protection of journalists. This would also include the implementation of a "comprehensive legislative frameworks and other rules enabling an online and offline safe environment for journalists and other media actors".⁴⁴ Crucially, it was also recommended that evidence collected through the rule of law mechanism "should be used to activate the future rule of law conditionality clause of the Multiannual Financial Framework 2021-2027, and lead to the potential suspension of EU structural funds to Member States or local/regional authorities".⁴⁵

3.2. Council of Europe

The European Convention on Human Rights is the centrepiece of human rights protection in Europe. The rights enshrined in a number of the Convention's articles are relevant for the protection of journalism and the safety of journalists and other media actors: Article 2 (Right to life); Article 3 (Prohibition of torture); Article 5 (Right to liberty and security); Article 6 (Right to a fair trial); Article 7 (No punishment without law); Article 8 (Right to respect for private and family life); Article 10 (Freedom of expression); Article 11 (Freedom of assembly and association); Article 13 (Right to an effective remedy), and Article 18 (Limitation on use of restrictions on rights).

The European Court of Human Rights has interpreted these rights to include a range of negative and positive obligations for States Parties to the Convention. In order to ensure that these rights are effective in practice, it is not enough for States not to interfere with the exercise of the rights. In addition, positive measures are often required, such as creating legislative frameworks for the protection of journalists and other media actors, and providing practical protection when journalists are threatened. One of the key positive obligations of States in this area is "to create, while establishing an effective system of protection of authors and journalists, a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even irritating or shocking to the latter".⁴⁶

This principle has been a driver of recent standard-setting work on freedom of expression and safety of journalists by the Committee of Ministers of the Council of Europe. The Committee of Ministers has adopted/drafted a trilogy of Recommendations addressed to the organisation's 47 Member States. The Recommendations seek to create an enabling environment for public debate in complementary and cumulative ways. The first (2016) focuses on the protection of journalism and the safety of journalists

⁴² From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism, Joint civil society organisation recommendations, April 2020, p. 1.

⁴³ From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism, Joint civil society organisation recommendations, April 2020, p. 2.

⁴⁴ From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism, Joint civil society organisation recommendations, April 2020, p. 5.

⁴⁵ From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism, Joint civil society organisation recommendations, April 2020, p. 3.

⁴⁶ ECtHR, *Dink v. Turkey*, nos. 2668/07 and 4 others, § 137, 14 September 2010.

and other media actors.⁴⁷ It seeks to secure the outer ramparts of public debate and it highlights all-important gender-specific and digital dimensions to safety issues. The second (2018) focuses on media pluralism and transparency of media ownership.⁴⁸ Its aim is to strengthen structural aspects of public debate (see further, Chapter 6, below). The third (which is expected to be adopted in July 2020) focuses on the promotion of a favourable environment for quality journalism in the digital age.⁴⁹ It is centrally concerned with qualitative aspects of public debate, with key focuses on funding, ethics and quality, and education and training.

Figure 5: Committee of Ministers' standard-setting on freedom of expression and public debate



Source: authors of the study

The Committee of Ministers' Recommendation CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors urges States authorities to raise their game to ensure more effective protection of journalists and other media actors. It is a central reference point for the Council of Europe's approach to these issues. It builds on the legally-binding principles from the case-law of the European Court of Human Rights. It unpacks relevant State obligations and spells out what they mean in practice for State authorities. It also seeks to foreground gender-specific threats and digital threats.

⁴⁷ Committee of Ministers' Recommendation CM/Rec(2016)4 to member States on the protection of journalism and safety of journalists and other media actors, 13 April 2016.

⁴⁸ Committee of Ministers' Recommendation CM/Rec(2018)1 to member States on media pluralism and transparency of media ownership, 7 March 2018.

⁴⁹ Draft Committee of Ministers' Recommendation CM/Rec(2020)XX to member States on promoting a favourable environment for quality journalism in the digital age, 7th draft as of 26 September 2019, available at: <https://rm.coe.int/msi-joq-2018-rev7-e-draft-recommendation-on-quality-journalism-finalis/168098ab76>.

Recommendation CM/Rec(2016)4 comprises a Preamble, an operative part (para. 7), a set of Guidelines and an explanation of the principles from the case-law of the European Court of Human Rights, on which the Guidelines are based. The Guidelines have four pillars: Prevention; Protection; Prosecution (general focus and specific focus on impunity); Promotion of information, education and awareness-raising. The very detailed provisions of each pillar are summarized here:

Table 3: Key focuses of the Committee of Ministers' Recommendation CM/Rec(2016)4

Pillar	Key points
Prevention	<ul style="list-style-type: none"> • States should ensure a favourable environment for freedom of expression, including media pluralism and an independent public service broadcasting system. • A comprehensive legislative framework for protection of journalists and other media actors should include legal protection for journalistic sources and whistleblowers. • There should be independent, substantive reviews of national laws and practice at regular periodic intervals, which include attention for: <ul style="list-style-type: none"> • Gender-related issues, and • Anti-terrorism, extremism and national security. • National review mechanisms should be independent, have authoritative mandates and adequate resources. • Defamation laws should include freedom of expression safeguards. • State surveillance should include safeguards against misuse and be subject to effective oversight mechanisms.
Protection	<p>States are called upon to:</p> <ul style="list-style-type: none"> • Take preventive operational measures, like providing police protection or voluntary evacuation to a safe place • Encourage the establishment of or support the operation of hotlines and 24-hour emergency contact points • Fully support the Council of Europe Platform to promote the protection of journalism and safety of journalists • Develop protocols and training programmes for all State authorities: <ul style="list-style-type: none"> • Judges, other legal professionals, law enforcement officers • Take into account the specific democratic role and value of journalism, especially in times of crisis, during election periods, at public demonstrations and in conflict zones • Publicly condemn all threats and violence against journalists and other media actors • Encourage media organisations to fulfil their institutional responsibilities towards journalists and free-lancers in all aspects of safety

<p>Prosecution (general focus and specific focus on impunity)</p>	<ul style="list-style-type: none"> • Specific rules and procedures for the effective investigation and prosecution of crimes against journalists. The importance of involving victims and/or their families in the investigation process is underscored. • Specific provisions aimed at preventing and ending impunity for crimes against journalists. When investigations and prosecutions do not lead to the bringing to justice of the perpetrators of killings of journalists or other media actors, commissions of inquiry or other such bodies may be established.
<p>Promotion of information, education and awareness-raising</p>	<p>States should:</p> <ul style="list-style-type: none"> • promote the translation of the Recommendation into domestic languages, its dissemination and awareness-raising about its content. • capitalize on the publicity opportunities afforded by designated international days, such as World Press Freedom Day (3 May) and International Day to End Impunity for Crimes against Journalists (2 November).

Source: authors of the study.

Recommendation CM/Rec(2016)4 and the other Recommendations adopted by the Committee of Ministers face considerable challenges of implementation. They are political in character; they are not legally-binding and they are not backed up by enforcement mechanisms. Their uptake by national authorities is contingent on the goodwill of those authorities. Some states embrace the spirit of the Recommendations and seek to operationalize their key points. However, the push for implementation at the national level is often a battle against political indifference, reluctance or outright resistance.

Various international bodies have thus called on States to implement effectively or fully the Guidelines that are appended to Recommendation CM/Rec(2016)4. Those bodies include the Parliamentary Assembly of the Council of Europe (PACE)⁵⁰ and the European Parliament.⁵¹ The Tallinn Guidelines on National Minorities and the Media in the Digital Age, issued by the OSCE High Commissioner on National Minorities in February 2019, also draw on CM/Rec(2016)4.⁵²

⁵⁰ See: PACE Resolution 2179 (2017) Political influence over independent media and journalists, 29 June 2017, para. 7.1; PACE Resolution 2213 (2018) The status of journalists in Europe, 25 April 2018, para. 6.2; PACE Resolution 2317 (2020) Threats to media freedom and journalists' security in Europe, 28 January 2020, para. 5.1.

⁵¹ See: European Parliament Resolution of 3 May 2018 on media pluralism and media freedom in the European Union (2017/2209(INI)), para. 7.

⁵² This is documented in the Explanatory Note to the Guidelines, pp. 31 – 35.

The Council of Europe has developed an Implementation Strategy for Recommendation CM/Rec(2016)4⁵³ and it is currently promoting the need for national action plans.⁵⁴ The envisaged review mechanism to ensure that national laws, policies and practice are aligned with the principles of the European Court of Human Rights and States thereby fulfil their obligations to secure the safety of journalists and other media actors, remains of the utmost importance.

3.3. OSCE

OSCE participating States (including all EU Member States) have entered into and are subject to a range of political commitments on freedom of expression, freedom of the media and the free flow of information. The safety of journalists is a recurrent theme in these commitments, which have been adopted progressively since the establishment of the organisation in 1975. The OSCE has recently produced two milestone documents dealing with the safety of journalists:

- [Decision No. 3/18 - Safety of Journalists](#),⁵⁵ which was adopted by the Ministerial Council on 7 December 2018, and
- the [Tallinn Guidelines on National Minorities and the Media in the Digital Age](#)⁵⁶, which were issued by the High Commissioner on National Minorities in February 2019.

In its Decision No. 3/18, the OSCE Ministerial Council calls on participating States, first of all, to “[f]ully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom” (para. 1) and to bring their “laws, policies and practices” into line with those commitments and obligations, and to review and revise them, “where necessary” (para. 2).

Ending impunity for crimes against journalists is rightly singled out as a “key element in preventing future attacks” (para. 6). The Decision also addresses the broader political and societal context in which impunity can emerge (para. 7). When political leaders and public officials and figures fail to outrightly condemn all threats and attacks on journalists, including female journalists, impunity gains its first firm foothold in society.

The Decision also repeats familiar – but nonetheless important – calls for awareness-raising and training initiatives on the safety of journalists (para. 9) and for defamation laws to be properly calibrated in accordance with international human rights standards on freedom of expression (para. 11).

Although the aforementioned substantive provisions are more or less covered by existing instruments, in particular the Council of Europe’s Committee of Ministers’ Recommendation CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors, the Decision contains a number of provisions that are either novel in their own right, or novel in the specific, detailed way in which they have been developed.

⁵³ See: <https://www.coe.int/en/web/freedom-expression/implementation-of-recommendation-cm/rec-2016-4>.

⁵⁴ Peter Noorlander, *Taking action to protect journalists and other media actors*, Background Paper, Ministerial Conference, Cyprus 2020, available at: <https://rm.coe.int/cyprus-2020-safety-of-journalists/168097fa83>.

⁵⁵ Available at: <https://www.osce.org/files/mcdec0003%20safety%20of%20journalists%20en.pdf>. For analysis, see: Andrei Richter and Deniz Yazici, ‘Pioneer Decision on Safety of Journalists in the Preceding Context’, in P. Czech, L. Heschl, K. Lukas, M. Nowak, & G. Oberleitner (Eds.), *European Yearbook on Human Rights 2019*, pp. 339-368.

⁵⁶ Available at: <https://www.osce.org/hcnm/tallinn-guidelines>.

For instance, it calls on participating States to “[u]rge the immediate and unconditional release of all journalists who have been arbitrarily arrested or detained, taken hostage or who have become victims of enforced disappearance” (para. 5). This should be a routine reaction. It also calls for the establishment, or strengthening, where possible, of “national data collection, analysis and reporting on attacks and violence against journalists” (para. 10). This would yield valuable insights into the scope of the problem and a statistical evidence base for developing policies and action lines. The call to “[r]efrain from arbitrary or unlawful interference with journalists’ use of encryption and anonymity technologies” (para. 8) may seem modest, but it bears explicit mention.

Another example is the Decision’s call for the public and unequivocal condemnation of attacks and violence directed at journalists (para. 3) and specifically at women journalists (para. 4). In both cases, it spells out the different types of attacks and violence involved. This itemization is very confronting, but also very revealing. Indeed, this is true of the hard and very important work being done on the OSCE Representative on Freedom of the Media’s [#SOFJO – Safety of Female Journalists Online campaign](#)⁵⁷ over the past few years. The campaign has been doing pioneering work, naming the specific safety-related threats to the work and lives of female journalists, unpacking the different layers of harm and viciousness, and educating and warning about the dangers they pose.

The Tallinn Guidelines on National Minorities and the Media in the Digital Age stress the importance of the safety of journalists, even though this is not their central focus. The Guidelines seek to foster robust, public debate in which everyone, including persons belonging to national minorities, can participate effectively and without fear. They recommend that States put in place and implement “effective systems of legal and practical protection to guarantee the safety and security of everyone wishing to participate in public debate” (Guideline 3).

The Tallinn Guidelines also exhort State and/or public officials to refrain from undermining or threatening journalists and other media actors, or incite hatred or discrimination against them, on the grounds of belonging to a national minority or for reporting on issues relating to national minorities (Guideline 4). This Guideline is infused with the understanding that attacks on the integrity of journalists or other media actors, for example by deliberately making false accusations against them, can jeopardize their safety. State and/or public officials are called on to “publicly and unequivocally condemn all threats and violence against journalists and other media actors, irrespective of the source of those threats and acts of violence” (Guideline 4). The specific emphases in this cluster of recommended courses of action are particularly relevant for all public watchdogs covering malpractice and corruption.

With their focus on the digital age, the Tallinn Guidelines remind us that public debate today is shaped by a range of actors: journalists, and other media actors such as citizen journalists, NGOs, academics, bloggers, whistleblowers, fact-checkers, ordinary individuals, etc. This realisation has prompted international and European human rights law to embrace an expansive understanding of journalism and public debate.

The Tallinn Guidelines underscore the importance of safety of journalists as a key feature of the enabling environment for freedom of expression and media freedom that States must ensure.⁵⁸

⁵⁷ Available at: <https://www.osce.org/representative-on-freedom-of-media/safety-female-journalists-online>.

⁵⁸ An animation presenting the Tallinn Guidelines is available at: <https://www.osce.org/hcnm/410759>.

4. NATIONAL SYSTEMS OF PROTECTION

The purpose of this chapter is to give an illustrative sense of how the key issues addressed throughout this study are dealt with in the national laws, policies and practice of selected EU Member States. The immediate aim is to point to a diversity of approaches at the national level and to identify:

1. best or promising practices for possible replication in other Member States, and
2. threats to the safety of journalists and other (media) actors and/or media freedom.

The secondary aim is to underscore the value of, and need for, detailed, contextual, expert analysis of flashpoints for the protection of journalism and the safety of journalists and other media actors that have been identified by individual alerts in monitoring exercises. Such monitoring exercises are indispensable tools for signalling threats to media freedom and for ensuring rapid responses thereto, but their value would be even further enhanced if they were to be supplemented by/aligned with in-depth, contextual and comparative research.

The first set of country profiles consists of countries which overall represent high standards of protection for freedom of expression and media freedom. This set comprises Denmark, the Netherlands and Sweden. Each offers various practices that are regarded as best or promising practices for securing a safe and favourable environment for journalists and other media actors. Even though these countries are widely considered to be “gold standard” countries when it comes to freedom of expression, it is also important to remember that all that glitters is not gold and that they, too, have room for improvement in some respects.

The second set of country profiles consists of countries that have been chosen because they are illustrative of problematic practices in relation to a number of the themes addressed throughout this study – in different ways and to different degrees. The countries are, in alphabetical order: Hungary, Italy, Malta, Poland, Slovakia and Spain.

Before examining the systems for the protection of journalists in the selected Member States in detail, it is useful to first consider a broader (statistical) overview of all Member States. The following table collates relevant statistical data from a number of widely-used databases/sources. Although the range of databases/sources are independent of one another and have different focuses, this tabular overview of relevant statistics aims to provide a snap-shot of some key indicators of the national contexts for the safety of journalists. Although developed separately, a comparison of the different statistics can reveal noteworthy patterns. As noted by Transparency International, “countries with higher rates of corruption, as measured by the Corruption Perceptions Index (CPI), also tend to have the fewest protections for the media and journalists.”⁵⁹

⁵⁹ Transparency International, ‘The high costs journalists pay when reporting on corruption’, 4 May 2020, available at <https://www.transparency.org/en/news/the-high-costs-journalists-pay-when-reporting-on-corruption>.

Table 4: Collated statistical data per country

Country	Reporters Without Borders World Press Freedom Index (2020)	[Council of Europe] Platform to promote protection of journalism & safety of journalists: alerts ⁶⁰	Transparency International: Corruption Perceptions Index (2019)	Reuters Digital News Report – Overall trust in news (2020) ⁶¹
Austria	18	3	12	40%
Belgium	12	21	17	45%
Bulgaria	111	16	74	33%
Croatia	59	13	63	39%
Cyprus	27	5	41	N/A
Czechia	40	2	44	33%
Denmark	3	3	1	46%
Estonia	14	2	18	N/A
Finland	2	2	3	56%
France	34	45	23	23%
Germany	11	15	9	45%
Greece	65	27	60	28%
Hungary	89	13	70	27%
Ireland	13	N/A	18	48%
Italy	41	34	51	29%
Latvia	22	2	44	N/A
Lithuania	28	1	35	N/A
Luxembourg	17	1	9	N/A
Malta	81	7	50	N/A
Netherlands	5	4	8	52%
Poland	62	18	41	45%
Portugal	10	N/A	30	56%
Romania	48	9	70	38%
Slovakia	33	10	59	28%
Slovenia	32	9	35	N/A
Spain	29	23	30	36%
Sweden	4	3	4	38%

Source: data extracted from above-named sources.

⁶⁰ Since 2015. Data as of 21 June 2020.

⁶¹ Not all EU Member States were included in this Report.

4.1. Denmark

Denmark is one of the leading examples for the protection of journalism. This is because Denmark is consistently ranked in the top ten countries in the World Press Freedom Index, published by Reporters Without Borders. Denmark was ranked third in 2020.⁶² Denmark was also considered “comparatively speaking the best environment for media freedom in the EU,” along with Sweden and Finland, according to a study published in May 2020 by an expert delegation from the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), and Osservatorio Balcani e Caucaso Transeuropa (OBCT).⁶³ The study identified a number of features that make Denmark such a bastion for media freedom.

4.1.1. Media ownership

The first feature is in relation to media ownership, where Denmark is quite notable, as its media outlets are largely run by foundations, rather than by business owners, investors, families, or oligarchs. This is in contrast to many other countries across the world and Europe. As the Centre for Media Pluralism and Media Freedom’s latest Media Pluralism Monitor report noted, Denmark has not had problems with “political affiliated businessmen who have taken control over central media outlets and used it for direct or indirect political influence,” and is due to the “large public service sector and to the tradition of foundation ownership.”⁶⁴ For example, the JP/Politikens publishing house, which publishes leading Danish newspapers and tabloids such as Politiken, Ekstra Bladet and Jyllands-Posten, is owned by two foundations.⁶⁵ The function of the foundations is to ensure the viability of the newspapers, and there is thus no dependence on shareholders, or the government. Indeed, a delegation from the ECPMF, EFJ, and OBCT recommended that other EU member states should provide a legal framework enabling foundations to similarly take part in media markets, as it was a best practice for media ownership, given the experience of Denmark.⁶⁶

4.1.2. State subsidies

A second feature of the Danish model is that of state subsidies for the media, including for private media outlets. The purpose of the subsidises is to ensure media pluralism, and reduce the pressure from commercial influence. Under legislation introduced in 2014, the state subsidy for private media is determined by a number of factors, including the number of journalists employed; the social diversity

⁶² Reporters Without Borders, 2020 Press Freedom Index, available at: <https://rsf.org/en/ranking>.

⁶³ Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (European Centre for Press and Media Freedom, the European Federation of Journalists, and Osservatorio Balcani e Caucaso Transeuropa, 2020), available at: https://www.ecpmf.eu/wp-content/uploads/2020/05/ECPMF-FFM-Scandinavia_2020.pdf.

⁶⁴ Kasper Netterstrøm, *Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey - Country Report: Denmark* (Centre for Media Pluralism and Media Freedom, 2018), p. 2, available at: https://cadmus.eui.eu/bitstream/handle/1814/61136/2018_Denmark_EN.pdf?sequence=1&isAllowed=y.

⁶⁵ Lutz Kinkel, “Foundations help media outlets to focus on professional journalism and media freedom,” in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 5.

⁶⁶ Lutz Kinkel, “Foundations help media outlets to focus on professional journalism and media freedom,” in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 8.

of their readership; and the amount of political and cultural content created.⁶⁷ The subsidies are administered by the Danish Agency for Culture and Palaces, and a committee appointed by the Minister of Culture decides on the allocation of funds. In 2019, nearly 400 million DK was granted to media outlets.⁶⁸ Further, newspapers in Denmark also receive an indirect subsidy, as newspaper sales are exempted from VAT.

4.1.3. Trade unions for journalists

A third feature of Denmark is the strength of trade union organisations for journalists, and as the ECPMF, EFJ, and OBCT argue, a “high degree of trade union organisation helps to protect journalists”.⁶⁹ In this regard, Denmark is unique in Europe, as the Danish Union of Journalists has an extended membership, which includes full time journalists, freelancers, photojournalists, graphic designers, journalism trainees and students, and also media technicians, camera- men and women, communication/public relation officers and pensioners.⁷⁰ Indeed, the Danish Union of Journalists has over 18,000 members, and it has been pointed out that this gives union considerable political weight, and it is not possible to “circumvent such a union in any negotiation concerning the working conditions in the media sector.”⁷¹ As such, the union has negotiated a collective agreement for freelancers, “giving them equal rights and shielding them against economic precariousness.”⁷²

4.1.4. Co-regulatory model for ethical journalism

A fourth distinguishing feature of Denmark is its co-regulatory model for promoting and safeguarding ethical journalism, which is comprised of the Danish Press Council, which facilitates the promotion of ethical journalism, and dealing with complaints about alleged violations of press ethics under the Press Ethical Rules. Notably, the Press Council is established pursuant to the Media Liability Act.⁷³ The system is applicable to all mass media registered in Denmark, including print, broadcast and online media. The Act provides that the “content and conduct of the mass media shall be in conformity with sound press ethics” and complaints of press ethics “can be lodged with the mass media concerned or directly with the Danish Press Council.”⁷⁴ The Press Council is also competent to decide whether a mass media outlet is under an obligation to publish a reply. Although the Press Council cannot impose any

⁶⁷ Kim Christian Schrøder and Mark Ørsten, *Denmark - Digital News Report* (Reuters Institute for the Study of Journalism, 2019), available at: <http://www.digitalnewsreport.org/survey/2019/denmark-2019/>.

⁶⁸ Renate Schroeder, “A high degree of trade union organisation helps to protect journalists and preserve professional journalism,” in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 14.

⁶⁹ Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), section 3.

⁷⁰ Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), section 3.1.1.

⁷¹ Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), section 3.1.1.

⁷² Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), section 3.1.1.

⁷³ The Media Liability Act, Consolidating Act 2018-12-27 no. 1719, available at: <https://www.pressnaevnet.dk/media-liability-act/>.

⁷⁴ The Media Liability Act, Consolidating Act 2018-12-27 no. 1719, section 34(1) and (2).

sanctions, it issues decisions on whether a media outlet has respected the rules of ethical journalism. The decisions by the Press Council are made public by the media concerned, and published by the Council. The chair and the vice-chair of the Press Council are members of the legal profession, judges or lawyers, while the other six members represent the journalists, editors and citizens. They are all appointed by the Minister of Justice, under Article 41 of the Media Liability Act.

4.2. Hungary

4.2.1. An overview of the media landscape

As reported by Freedom House, since Fidesz took power in Hungary in 2010, the government has tightened the grip on the democratic institutions of Hungary. The work of critical NGOs and independent media has been systematically hampered.⁷⁵ According to Transparency International, Hungary is the second most corrupt country in the EU.⁷⁶ In light of Hungary's democratic backsliding, Freedom House demoted Hungary's status from 'free' to 'partly free' in 2019.⁷⁷

The media landscape has been significantly restructured since 2010, leading to serious concerns about media freedom in the country. The Platform to Promote the Protection of Journalism and Safety of Journalists records 13 active alerts for Hungary, including four new alerts already in 2020.⁷⁸ As observed by the partner organisations of the Platform in their annual report of 2020, two types of threats imperil media freedom in Hungary: the strong state influence on both public service media and a large portion of the private media sector, and the harassment of journalists and other media actors.⁷⁹

Article 83(1) of the Media Act requires public service media to provide a balanced and independent account of news that caters for a diversity of viewpoints.⁸⁰ As reported by Centre for Media Pluralism and Media Freedom public service media is plagued by a distinct pro-government bias.⁸¹ Viewpoints that appear critical to the government are either absent or presented in a negative light.⁸² Editorial freedom is demonstrably lacking in public service media: prior permission is necessary in order to report on certain subjects.⁸³

The Media Pluralism Monitor reported a high risk of media concentration in Hungary.⁸⁴ The establishment of the Central European Press and Media Foundation has only exacerbated these concerns.⁸⁵ In November 2018, the majority of right-wing media outlets were 'donated' to the

⁷⁵ Freedom House, 'Freedom in the World 2020: Hungary', available at: <https://freedomhouse.org/country/hungary/freedom-world/2020>.

⁷⁶ Transparency International, 'Corruption Perceptions Index', available at: <https://www.transparency.org/en/cpi/2019/results/table?>

⁷⁷ Freedom House, 'Freedom in the World, 2019' (2019), available at: https://freedomhouse.org/sites/default/files/2020-02/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf.

⁷⁸ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'Hungary', available at: <https://www.coe.int/en/web/media-freedom/hungary>.

⁷⁹ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020, p. 41.

⁸⁰ 2010. évi CLXXXV. Törvény a médiaszolgáltatásokról és a tömegkommunikációról [Act CLXXXV of 2010 of Media Services and Mass Communications], Article 83(1).

⁸¹ Center for Media Pluralism and Media Freedom, 'Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey. Country Report: Hungary' (2018), p. 10.

⁸² International Press Institute, European Federation of Journalists, Reporters Without Borders, Free Press Unlimited, European Centre for Press & Media Freedom, Article19, CPJ & Committee to Protect Journalists, 'Conclusions of the Joint international Press Freedom Mission to Hungary', 3 December 2019, p. 4.

⁸³ Lili Bayer, 'Human rights and Greta on Hungarian state media watch list', *Politico*, 2 March 2020, available at: <https://www.politico.eu/article/hungarian-state-media-not-free-to-report-on-greta-thunberg-human-rights/>.

⁸⁴ Center for Media Pluralism and Media Freedom, 'Country Report 2017: Hungary', op. cit., p. 8.

⁸⁵ Center for Media Pluralism and Media Freedom, 'Assessing Certain Developments in the Hungarian Media Market Through the Prism of the Media Pluralism Monitor' (2019).

Foundation, creating a media conglomerate of 476 outlets.⁸⁶ A governmental decree declared this merger to be of “national strategic importance”, this way exempting it from the scrutiny of the competition authority.⁸⁷

According to Center for Media Pluralism and Media Freedom, political influence over the media is further exerted through the biased allocation of state advertising. State advertising is distributed as a political favour to pro-government outlets, distorting competition on the media market and financially stifling the work of critical media.⁸⁸

Reflecting the tight control of the government on public service media and a large portion of private outlets and the shrinking space for critical outlets, Hungary scored the second lowest among EU countries on the World Press Freedom Index in 2020.⁸⁹ The deterioration of press freedom has also impacted the perceptions of Hungarian audiences: trust in news is extremely low in Hungary.⁹⁰

4.2.2. Stifling the work of independent journalists

As reported by Hungarian Civil Liberties Union in a media environment firmly captured by the government, independent journalists and other media actors face a considerable headwind. Beyond a draining of financial resources, the work of critical media is also systematically obstructed.⁹¹ As reported by seven press freedom organisations in the Joint International Press Freedom Mission to Hungary, the government has deployed various tools that not only make the work of independent media harder, but also induce self-censorship, resulting in a diminishing capacity of independent journalists to fulfil their public watchdog role.⁹²

4.2.3. Strategic litigation

a. Defamation

Criminal sanctions for defamation are still in place in Hungary. In fact, pursuant to articles 226 and 227 of the Criminal Code, media actors face heightened criminal sanctions for defamation.⁹³ While such criminal punishment is rarely used, its presence in the Criminal Code can engender a chilling effect on critical media.⁹⁴ By contrast, civil defamation lawsuits against independent media outlets are common, particularly initiated by state officials, as documented by a study of the International Press Institute

⁸⁶ Ibid., p. 3.

⁸⁷ Magyar Kozlony [Hungarian Gazette], p. 34352, 5 December 2018, available at: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK18192.pdf>.

⁸⁸ Center for Media Pluralism and Media Freedom, ‘Country Report 2017: Hungary’, op. cit., p. 11; Adam Szeidl & Ferenc Szucs, ‘Media Capture Through Favour Exchange’ (2017) CEPR Discussion Paper No. DP11875, available at: <https://ssrn.com/abstract=2924736>.

⁸⁹ Reporters Without Borders, ‘2020 World Press Freedom Index’, <https://rsf.org/en/ranking>.

⁹⁰ Reuters Institute for the Study of Journalism, ‘Digital News report 2019’ (2019), p. 90.

⁹¹ Hungarian Civil Liberties Union, ‘„The Minister and the Barkeep are all that’s Left in the Public Sphere”. Research on Barriers to Hungarian Journalism’ (2020), p. 2.

⁹² International Press Institute, European Federation of Journalists, Reporters Without Borders, Free Press Unlimited, European Centre for Press & Media Freedom, Article19 & Committee to Protect Journalists, ‘Conclusions of the Joint international Press Freedom Mission to Hungary’, 3 December 2019, pp. 1-2.

⁹³ 2012. évi C. Törvény a Büntető Törvénykönyvről [Act C of 2012 of the Criminal Code], Articles 226, 227.

⁹⁴ Center for Media Pluralism and Media Freedom, ‘Country Report 2017: Hungary’, op. cit., p. 6.

(IPI).⁹⁵ The widespread use of civil defamation lawsuits against critical media coupled with the disproportionate damages applied have the potential to stifle the free flow of critical information.⁹⁶

b. Hate speech

According to article 14 of the Press Act, the media is required to respect human dignity in its reporting and refrain from abusive portrayal of vulnerable or humiliated persons.⁹⁷ This vague formulation could potentially cover a broad range of expressions, and has been criticised to be open for abuse.⁹⁸ Lawsuits on the basis of blasphemy have also been documented. Recently, a cartoonist of a critical news outlet has been threatened with a blasphemy lawsuit by the leader of a far-right political party, and the threat was followed by a campaign of intimidation.⁹⁹

c. Other

Hungarian authorities brought criminal charges against investigative journalist, Andras Dezso, for misusing personal data in his investigative work, although he used information from publicly available records.¹⁰⁰ If convicted, the journalist faces up to three years of imprisonment.¹⁰¹

d. Access to information

Public authorities routinely ignore or explicitly reject inquiries from independent media.¹⁰² Independent media are often not invited, invited belatedly, or even banned from official press conferences or public press events.¹⁰³

Access to public sector information is formally guaranteed by the Freedom of Information Act¹⁰⁴ but an amendment to the law in 2013 has significantly curtailed its scope.¹⁰⁵ The possibility to request payment for labour-costs of freedom of information requests is systematically misused, creating

⁹⁵ International Press Institute, 'Civil Defamation and Media Freedom in Hungary', February 2017.

⁹⁶ IFEX, 'Hungarian Civil Defamation Laws Threaten Political Journalism', 6 March 2017, available at: <https://ifex.org/hungarian-civil-defamation-laws-threaten-political-journalism/>.

⁹⁷ 2010. évi CIV. Törvény a sajtószabadságról és a médiatartalmak alapvető szabályairól [Act CIV of 2010 of Press Freedom and Rules for Media Content], Article 14.

⁹⁸ Article 19, 'Hungary: Responding to 'Hate Speech'' (2018), p. 37.

⁹⁹ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'Threats of Legal Action Against Cartooning Gabor Papai', 11 May 2020, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=64037609&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.

¹⁰⁰ Committee to Protect Journalists, 'Hungarian Authorities Bring Criminal Charges Against Prominent Investigative Journalist', 7 November 2018, available at: <https://cpj.org/2018/11/hungarian-authorities-bring-criminal-charges-again.php>.

¹⁰¹ Reporters Without Borders, 'Criminal Charge revived Against Hungarian Investigative Reporter', 21 February 2020, available at: <https://rsf.org/en/news/criminal-charge-revived-against-hungarian-investigative-reporter>.

¹⁰² Hungarian Civil Liberties Union, '„The Minister and the Barkeep are all that's Left in the Public Sphere". Research on Barriers to Hungarian Journalism' (2020), pp. 8-10.

¹⁰³ Ibid., pp. 13-14.

¹⁰⁴ 2011. évi CXII. Törvény az információs önrendelkezési jogról és az információszabadságról [Act CXII of 2011 of Informational Self-Determination and Freedom of Information].

¹⁰⁵ Center for Media Pluralism and Media Freedom, 'Country Report 2017: Hungary', op. cit., p. 6.

financial obstacles to access public sector information.¹⁰⁶ Moreover, the documentation of certain public projects is explicitly closed off from media, undermining transparency about public spending.¹⁰⁷

e. Discreditation

Independent journalists commonly face public smear campaigns that aim to discredit them.¹⁰⁸ State officials and pro-government media often accuse critical journalists of spreading ‘fake news’.¹⁰⁹ For example, as reported by Hungarian Civil Liberties Union, the Prime Minister referred to Index.hu (the largest online news portal) as a “fake news factory”.¹¹⁰

In November 2019, a markedly anti-Semitic campaign was initiated against two journalists of Index.hu.¹¹¹ The two journalists were subject to repeated attacks in pro-government outlets and appeared on anti-Semitic posters throughout Budapest.

Their case is not unique, critical journalists are commonly labelled by pro-government media as ‘non-Hungarians’, ‘Soros-mercenaries’, ‘foreign agents’ or ‘traitors’.¹¹²

f. Physical exclusion

Critical journalists have been prevented from being physically present on certain sites, inhibiting the possibility of ‘first-hand’ reporting. In 2015, journalist Illes Szurovecz was prevented from entering a refugee camp by the Hungarian Office of Immigration and Nationality. The European Court of Human Rights found that this amounted to a violation of the journalist’s right to freedom of expression.¹¹³

The media is increasingly excluded from the Parliament. Six journalists were banned from Parliament for attempting to record a video outside the areas authorized for video recording. The European Court of Human Rights recently ruled that this measure constitutes a violation of the right to freedom of expression.¹¹⁴

¹⁰⁶ Amnesty International Hungary, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, K-Monitor, Mertek Media Monitor, Political Capital, Romaversitas Foundation & Transparency International Hungary, ‘Contribution of Hungarian NGOs to the European Commission’s Rule of Law Report’ (May 2020), p. 41.

¹⁰⁷ Center for Media Pluralism and Media Freedom, ‘Country Report 2017: Hungary’, op. cit., p. 6.

¹⁰⁸ Conclusions of the Joint international Press Freedom Mission to Hungary, op. cit., p. 5.

¹⁰⁹ Reuters Institute for the Study of Journalism, ‘Digital News report 2019’, op. cit., p. 90.

¹¹⁰ Hungarian Civil Liberties Union, ‘The Minister and the Barkeep are all that’s Left in the Public Sphere’. Research on Barriers to Hungarian Journalism’ (2020), p. 16.

¹¹¹ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, ‘Anti-Semitic Posters Stigmatizing Hungarian Journalists’, 27 November 2019, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=10&sojdashboard_WAR_coesoportlet_alertPK=55358460.

¹¹² See also: CoE Platform to Promote the Protection of Journalism and Safety of Journalists, ‘Journalist Lili Bayer Verbally Attacked by Government Spokesperson’, 31 January 2019, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=2&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=44235142#block-member-replies

¹¹³ ECtHR, *Szurovecz v. Hungary*, no. 15428/16, 8 October 2019.

¹¹⁴ ECtHR, *Mándli and Others v. Hungary*, no. 63164/16, 26 May 2020.

Additionally, since 2019 the circumstances under which journalists can visit the Parliament has been substantially restricted¹¹⁵, effectively undermining the possibility of journalists to come in contact with parliamentarians.¹¹⁶

g. Physical safety

Violent actions against critical journalists and the inadequate response of law enforcement have also been documented. Photojournalist Julia Halasz was physically harassed and aggressively expelled from an event of the government. The organisers took her phone away and deleted the photos she had taken of the event.¹¹⁷ The investigation into her case has been suspended by the prosecutor's office for lack of evidence, even before the case could have reached a courtroom.¹¹⁸ At the same time, her attacker initiated a defamation lawsuit against her, the case of which is still pending.¹¹⁹

4.2.4. Reporting on corruption

Since 2012, the scale of corruption in Hungary has gradually deteriorated. This trend is enabled by a largely defunct institutional framework addressing corruption.¹²⁰ As Transparency International observed, corruption has become extremely centralized and in fact "an integral part of the system" in Hungary.¹²¹ The willingness to report on corruption is low in Hungary, and people generally do not feel empowered to step up against it.¹²²

The Whistleblower Protection Act was adopted in 2016 to protect those who expose corruption and other wrongdoings. However, the practical safeguards are limited, and the Act "does little more than simply declaring that any punishment of whistleblowers is unlawful".¹²³

¹¹⁵ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'New Restrictions on Journalists Working in Hungarian Parliament', 27 November 2019, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=2&p_p_cacheability=cacheLevelPage&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesoportlet_alertPK=55455763&sojdashboard_WAR_coesoportlet_cmd=get_pdf_one.

¹¹⁶ Hungarian Civil Liberties Union, '„The Minister and the Barkeep are all that's Left in the Public Sphere". Research on Barriers to Hungarian Journalism' (2020), p. 12.

¹¹⁷ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'Hungarian Journalist Julia Halasz Attacked and Violently Expelled from Fidesz's Public Meeting in Budapest' (31 January 2019) https://www.coe.int/en/web/media-freedom/all-results?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=2&p_p_cacheability=cacheLevelPage&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesoportlet_keywords=J%C3%BAlia+Hal%C3%A1sz&sojdashboard_WAR_coesoportlet_orderByCol=&sojdashboard_WAR_coesoportlet_orderByType=asc&sojdashboard_WAR_coesoportlet_selectedCategories=&sojdashboard_WAR_coesoportlet_selectedStringFilters=&sojdashboard_WAR_coesoportlet_cmd=get_pdf_dashboard.

¹¹⁸ Hungarian Civil Liberties Union, '„The Minister and the Barkeep are all that's Left in the Public Sphere". Research on Barriers to Hungarian Journalism' (2020), p. 15.

¹¹⁹ Ibid.

¹²⁰ Transparency International Hungary, 'Corruption, Economic Performance and the Rule of Law in Hungary', 23 January 2020, p. 4.

¹²¹ Ibid., p. 5.

¹²² Transparency International Hungary, 'Globalis Korruptios Barometer 2016' (2016), pp. 7-12.

¹²³ Contribution of Hungarian NGOs to the European Commission's Rule of Law Report, op. cit., p. 26.

While independent journalists often report on the wrongdoings of public officials, particularly the misuse of state subsidies and EU funds, their findings remain ignored and are rarely followed up by law enforcement.¹²⁴

4.2.5. Journalism in times of Covid-19

The Covid-19 crisis has aggravated the dire situation of independent journalists in Hungary. As a response to the pandemic in Hungary, the Parliament passed the Coronavirus Act, allowing the government to adopt extraordinary measures for an unlimited period.¹²⁵ Article 10 of the Coronavirus Act expanded the scope of the provisions of the Criminal Code on fearmongering. According to the amendment, disseminating false or distorted facts that may obstruct the efficiency of the protection against the virus is a criminal offence to be punished by up to five years of imprisonment.¹²⁶

The broad and vague wording of the provision risks inducing serious chilling effects on journalists reporting on Covid-19. According to interviews conducted by the Hungarian Civil Liberties Union, independent journalists have been “walking on eggshells” since the introduction of the Coronavirus Act.¹²⁷ As of 13 May 2020, the police has already initiated 87 cases on account of coronavirus related fearmongering.¹²⁸

As a recent report by IPI demonstrates, the pandemic has also adversely affected the possibilities of journalists to gather information.¹²⁹ Official information about the pandemic has been restricted to a single channel, the daily press conference held by the Operative Group, where questions by independent journalists are often ignored. Alternative sources, particularly healthcare workers, refuse to talk with independent journalists out of fear of retaliation. Furthermore, the deadlines for freedom of information requests have been extended from 30 to 90 days, meaning journalists have to wait for three months to access vital information. As a result, independent journalists can hardly gather the necessary information to inform the public on the pandemic.

During the pandemic, attempts to discredit journalists have also intensified. The new daily program on public service media called ‘Exposing Fake News’ regularly accuses reports from independent media of constituting fake news.¹³⁰

In addition, the pandemic has aggravated the already dire financial situation of independent journalists. In the absence of any emergency support package, independent media are struggling for survival more than ever.¹³¹

¹²⁴ Reuters Institute for the Study of Journalism, ‘Digital News report 2019’, op. cit., p. 90

¹²⁵ 2020. évi XII. Törvény a koronavírus elleni védekezésről [Act XII of 2020 of the Protection Against the Coronavirus]

¹²⁶ Ibid., Article 10.

¹²⁷ Hungarian Civil Liberties Union, ‘Research on the Obstruction of the Work of Journalists During the Coronavirus Pandemic in Hungary’ (2020), p. 6.

¹²⁸ Rendorseg Kozlemeny [Police Press Release], 13 May 2020, available at: <http://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/kozrendvedelem/kozlemeny-36>.

¹²⁹ Jamie Wiseman, ‘Crisis Point: Covid-19 Intensifies Challenge for Independent Media in Hungary’ (International Press Institute, 18 May 2020), available at: <https://ipi.media/crisis-point-covid-19-intensifies-challenge-for-independent-media-in-hungary/>.

¹³⁰ Ibid.

¹³¹ Ibid.

4.2.6. Stifling the work of civil society organisations

A series of laws that hamper the work of civil society organisations were passed in 2017 and 2018, creating a “climate of fear and suspicion” against NGOs.¹³² The Law on Foreign-Funded NGOs forces civil society organisations that receive more than 24,000 EUR funding from abroad in a year to reregister themselves as ‘civic organisation funded from abroad’ and indicate this label on all their publications.¹³³ While the law was introduced for national security purposes, it has been criticised for stigmatising and intimidating critical NGOs and implying that members of such organisations are foreign agents.¹³⁴

The ‘Stop Soros’ package of 2018 has advanced further restrictions on the work of civil society organisations. Most notably, it created a criminal offence of ‘facilitating illegal immigration’ and introduced higher taxes on NGOs that carry out work that is found to be in support of immigration.¹³⁵ The Court of Justice of the European Union has found Hungary’s law on foreign-funded NGOs to be in violation of EU law.¹³⁶

Along with independent journalists, civil society activists are often subjected to widespread smear campaigns and are routinely labelled as ‘Soros-mercenaries’ by the government.¹³⁷

¹³² Amnesty International, ‘Civil Society is Under Attack in Hungary’ (2018), available at: <https://www.amnesty.org/en/latest/campaigns/2018/02/civil-society-is-under-attack-in-hungary/>.

¹³³ 2017. évi LXXVI. Törvény a külföldről támogatott szervezetek átláthatóságáról [Act LXXVI of 2017 of Transparency of Organisations Funded from Abroad], Article 2.

¹³⁴ Amnesty International, ‘Hungary: NGO Law a Vicious and Calculated Attack on Civil Society’, 13 June 2017, available at: <https://www.amnesty.org/en/latest/news/2017/06/hungary-ngo-law-a-vicious-and-calculated-assault-on-civil-society/>.

¹³⁵ Amnesty International, ‘Laws Designed to Silence’, p. 26.

¹³⁶ *European Commission v. Hungary*, Case C-78/18, 18 June 2020. For background, see: European Commission, ‘Commission Takes Hungary to Court for Criminalising Activities in Support of Asylum Seekers and Opens New Infringement for Non-Provision of Food in Transit Zones’, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260.

¹³⁷ Freedom House, ‘Hungary: Government Intensifies Smear Campaign Against Civil Society’, 13 July 2017, available at: <https://freedomhouse.org/article/hungary-government-intensifies-smear-campaign-against-civil-society>.

4.3. Italy

4.3.1. Media landscape

Italy currently ranks 41st in the latest World Press Freedom Index, ascending from a previous 52nd position in 2017.¹³⁸ Historically, the country's media landscape has been characterised by persistent entanglements with the political sphere, which have undermined the development of an autonomous journalistic consciousness in both the audiovisual and the printed sector.¹³⁹ The former remains in fact dominated by legacy organisations RAI and Mediaset, whose level of political independence has often come into question.¹⁴⁰ According to the Reuters Institute Digital News report 2019, key editorial figures at RAI, the national public broadcaster, are regularly dismissed and replaced at the will of major political parties so as to mirror majority changes in Parliament, whereas significant conflicts of interest emerge in relation to Mediaset's ownership ties with mainstream party leader Silvio Berlusconi.¹⁴¹ This becomes more alarming if one considers that television broadcasting still represents the main source of information for almost half of the population.¹⁴²

On the other hand, the substantial readership and revenue losses reported by national and local newspapers throughout the last ten years aggravate the threat to the country's pluralistic information environment.¹⁴³ The government's plan to abolish public funding to the press by 2022 will likely lead to the disappearance of many small-medium dailies, strengthening the grip of large editorial groups over the press market.¹⁴⁴ The fact that this latter category primarily responds to wealthy industrialists, politicians and financial groups should therefore raise concerns as to the prospects for print readers to access independent and objective journalistic work.¹⁴⁵

The present circumstances seemingly hinder the creation of a favourable environment for Italian reporters to conduct investigative activities against the same circles of power who retain control over most communication channels. With Italy's public sector figuring among the most corrupt in the

¹³⁸ Reporters Without Borders, "World Press Freedom Index: Italy", available at: <https://rsf.org/en/italy>

¹³⁹ Available at: <https://medialandscapes.org/country/italy>.

¹⁴⁰ See Area Studi Mediobanca, "Report on the TV Sector", available at: https://d110erj175o600.cloudfront.net/wp-content/uploads/2020/03/ASM_Report-TV-2019_DEFINITIVO.pdf; Alessio Cornia, "TV-centrism and politicisation in Italy: obstacles to new media development and pluralism" (2015), available at: <https://journals.sagepub.com/doi/10.1177/0163443715594035>.

¹⁴¹ Reuters Institute Digital News, "Italy", available at: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-06/DNR_2019_FINAL_1.pdf?fbclid=IwAR0t3MWT58rzeVEsTn4K9VATRFaTvxxvYINSC9Fds1EYcUX3v6fqZdkek5pg.

¹⁴² AGCOM, "Report on Information Consumption", available at: <https://www.agcom.it/documents/10179/9629936/Studio-Ricerca+19-02-2018/72cf58fc-77fc-44ae-b0a6-1d174ac2054f?version=1.0>.

¹⁴³ Osservatorio Quotidiani Carlo Lombardi, "2019 Report on the Newspapers Industry in Italy", available at: http://www.fieg.it/upload/studi_allegati/Rapporto2019.pdf.

¹⁴⁴ Council of Europe, "Government Decided to Abolish Public Funding to the Press", available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=2&p_p_col_count=11&sojdashboard_WAR_coesojportlet_alertPK=56873887#block-member-replies.

¹⁴⁵ Silvia S. Borrelli, "Agnelli Heir Perseveres with Contrarian Bet on Print Media", *Financial Times*, available at: <https://www.ft.com/content/945ca7e4-e65f-4d6d-b08d-ae851cd630d4>.

European Union in Transparency International's index,¹⁴⁶ an insufficiently free media will only contribute to exacerbating the structural weaknesses that have long afflicted the country.¹⁴⁷

4.3.2. Threats to journalists investigating corruption

Corruption in Italy is rooted in an intricate design of converging interests between politics, bureaucracy, criminal organisations and private parties.¹⁴⁸ Journalists attempting to penetrate these schemes therefore not only expose themselves to the violent retaliatory methods of the organised crime, but also risk finding opposition in an institutional framework which should instead guarantee their safety.

The Council of Europe's Platform to promote the protection of journalism and safety of journalists reports 34 alerts originating from Italy in the last 6 years.¹⁴⁹ While these figures comparatively stand out across the Member States spectrum, they do not represent the real scale of the problem in the country. According to the Italian Ministry of the Interior, the acts of intimidation and reprisal committed against reporters in the last two years amount in fact to 147.¹⁵⁰ A very worrying scenario is presented by the NGO "Ossigeno per l'Informazione", which lists 472 cases of threats experienced by journalists and bloggers only in the year 2019.¹⁵¹ Among others, two specific categories of threats emerge most frequently from the report: physical violence and SLAPPS.¹⁵²

a. Violence

In contrast to the turbulent decades during which 11 journalists lost their lives at the hands of mafia clans and of a terrorist organisation, no journalist has been killed in Italy in the last 28 years.¹⁵³ Nevertheless, physical assaults and verbal or written threats remain ordinary experiences for Italian reporters, whose current perpetrators mostly stem from local criminal organisations wishing to avert public attention from their illicit economic activities.¹⁵⁴ Attacks on public watchdog journalism have

¹⁴⁶ Transparency International, "Corruption Perception Index", available at: <https://www.transparency.org/en/cpi/2019/results/ita#details>.

¹⁴⁷ Available at: https://www.primaonline.it/wp-content/uploads/2020/02/Sintesi_27.pdf.

¹⁴⁸ ANAC, "Corruption in Italy (2016-2019)", available at: <https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Anticorruzione/MisurazioneTerritorialeRischio/RELAZIONE%20+%20TABELLE-rev3.pdf>.

¹⁴⁹ Council of Europe, "Platform to Promote the Protection of Journalism and the Safety of Journalists", available at: <https://www.coe.int/en/web/media-freedom/italy>.

¹⁵⁰ Ministry of the Interior, "Riunito il Tavolo di Monitoraggio degli Atti Intimidatori ai Giornalisti", available at: <https://www.interno.gov.it/it/notizie/riunito-tavolo-monitoraggio-atti-intimidatori-giornalisti>.

¹⁵¹ Ossigeno per l'Informazione, "472 threatened in 2019", available at: <https://www.ossigeno.info/472-minacciati-nel-2019-donne-23-nel-lazio-245/>.

¹⁵² Ibid.

¹⁵³ Gian-Paolo Accardo, "Europe is not so Safe for Journalists", European Data Journalism Network, available at: <https://www.europeandatajournalism.eu/index.php/eng/News/Data-news/Europe-is-not-so-safe-for-journalists>.

¹⁵⁴ Council of Europe, "Democracy at Risk: Threats and Attacks against Media Freedoms in Europe", p. 23, available at: <https://rm.coe.int/annual-report-2018-democracy-in-danger-threats-and-attacks-media-freed/1680926453>.

been manifested in a variety of manners, ranging from crude violence,¹⁵⁵ to explicit death threats,¹⁵⁶ and indirect forms of duress.¹⁵⁷

Recent trends show increasing hostilities towards reporters also among political extremist associations and football ultras, who have found opportunities to express their contempt in both public and private settings.¹⁵⁸ Besides resorting to traditional intimidatory strategies, these groups have also started making a notable use of the Internet, and in particular of social media, to privately target individuals and entire editorial teams with their hateful rhetoric.¹⁵⁹ Considering this background, it is not surprising that 24 Italian journalists are still receiving 24-hour armed protection by the State police force.¹⁶⁰

b. SLAPPS

The Italian Media Regulatory Authority has recognised SLAPPS as a main source of concern for media freedom in the country,¹⁶¹ amounting to over 30 % of the overall threats received by journalists in the year 2019.¹⁶² The frequent recourse to these strategies has been accommodated by the inadequacy of the applicable criminal and civil procedural frameworks to prevent abusive litigation against targeted

¹⁵⁵ See, for example, the case of Daniele Piervincenzi and his colleague who respectively suffered a nasal fracture and a concussion after being attacked during an interview by the brother of a local boss. Council of Europe, “Brother of Mafia Boss Breaks Italian Journalist’s Nose during Interview”, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=43392346&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.

¹⁵⁶ As in the case of Giovanni Taormina, who frequently found unshot bullets left on the carseat of his locked automobile. Ossigeno per l’Informazione, “Three more Bullets to the RAI Journalist in Udine”, available at: <https://www.ossigeno.info/altri-3-proiettili-al-giornalista-rai-di-udine/>.

¹⁵⁷ Data theft or burglary are common examples; see Council of Europe, “Italian Investigative Journalist Suffers Data Theft in Home Burglary”, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=2&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=56868926#block-member-replies.

¹⁵⁸ Ultras of a lower league football club approached a reporter in his private home to deter him from conducting further investigation on stadium violence. La Stampa, “Ultras Threatens the Journalist: it’s Private Violence”, available at: <https://www.lastampa.it/i-tuoi-diritti/2018/04/30/news/ultras-minaccia-il-giornalista-e-violenza-privata-1.34011861>; Neo-fascist protestants reportedly interrupted the official presentation of Paolo Berizzi’s book “Nazitalia” with intimidatory messages. Council of Europe, “NEofascist Threats against Journalist Paolo Berrizzi”, available at: [https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=40924360&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId\(\)](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=40924360&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId()).

¹⁵⁹ Valerio Cataldi, threatened via private chat on Facebook after documenting the activities of an Italian-Albanian drug cartel. Ossigeno per l’Informazione, “Threatened after RAI Inquiry on the Albanian Drug Cartel”, available at: <https://www.ossigeno.info/minacciato-dopo-inchiesta-rai-su-narcos-albania/>; The editorial board of “Cronache Nuoresi” received an implicit death threat by an anonymous user after posting an article on its Facebook page. Ossigeno per l’Informazione, “Nuoro. Threats via Facebook to the Editorial Board”, available at: <https://www.ossigeno.info/nuoro-minacce-fb-alla-redazione-di-cronache/>; Paolo Borrometi received a private Facebook message containing minatory messages by a man connected to the Bottaro Attanasio clan.

¹⁶⁰ Council of Europe, “Hands Off Press Freedom: Attacks on Media in Europe Must not Become a New Normal”, available at: <https://rm.coe.int/annual-report-en-final-23-april-2020/16809e39dd>.

¹⁶¹ AGCOM, “Osservatorio sul Giornalismo II Edizione” available at: <https://www.agcom.it/documents/10179/7278186/Documento+generico+29-03-2017/3c3b73a7-64ce-47e9-acf1-e0ae62fad01f?version=1.0>.

¹⁶² See: Ossigeno per l’Informazione, “List of Names”, available at: <https://www.ossigeno.info/la-tabella-dei-nomi/>; Ossigeno per l’Informazione, Ossigeno per l’Informazione, “472 threatened in 2019”, available at: <https://www.ossigeno.info/472-minacciati-nel-2019-donne-23-nel-lazio-245/>.

media actors.¹⁶³ Although unfounded claims are mostly dismissed in the preliminary stages of criminal proceedings, these last for an average period of 30 months, during which the accused has to sustain all related costs in both financial and psychological terms and may consequently be deterred from undertaking further investigations before a verdict is issued.¹⁶⁴ Paradoxically, civil actions make for an even more frightening weapon, considering that the absence of a preliminary judicial scrutiny renders proceedings more complex and time-consuming, and that no cap is provided for the possible amount of compensatory damages.¹⁶⁵ Moreover, the fact that no practical consequences are entailed for *mala fide* claimants makes the weaponisation of SLAPPS more appealing for those wishing to suppress undesirable stories.¹⁶⁶ In response to the problem, a new proposal to introduce punitive damages for claimants who specifically abuse judicial routes against the press is currently under examination in the Italian Senate.¹⁶⁷

On the other hand, the chilling effect induced by SLAPPS is also exacerbated by the harsh criminal penalties that are still provided under Italian defamation law. Art. 595 of the Criminal Code prescribes fines of at least 516 euro or a prison term from six months to three years for journalists found guilty of libel.¹⁶⁸ The punishment is aggravated if the subject of defamation is a political, administrative and judicial body, one of its representatives, or other collegial authorities.¹⁶⁹ In addition, heavier fines or prison terms up to 6 years may also be warranted in case the defamatory statements contain a specific accusation of fact, pursuant Art. 13 of Law 47/1948.¹⁷⁰ Following the European Court of Human Rights' ruling in *Belpietro v Italy*,¹⁷¹ an attempt to modernise the legal framework was made in 2013, when the lower parliamentary chamber introduced a proposal to cap fines and abolish reclusion for defamatory conduct (including libel).¹⁷² Supporters of the bill argued that the modifications would be justified not only in light of the scarce level of deterrence offered by imprisonment, but also due to the excessive discretion left to the judges under present law to determine the appropriate punishment in individual cases.¹⁷³ With remarkable delays, the draft law is currently pending for approval before the Senate.¹⁷⁴ Its destiny is likely tied to the upcoming Constitutional Court's ruling on the compatibility of custodial sentences for libel with the Italian constitution, postponed to next June due to the outbreak of the Covid-19 pandemic.¹⁷⁵

¹⁶³ Claudia Pierobon and Paola Rosà, "SLAPPS: the Italian Case", Resource Centre on Media Freedoms in Europe", available at: <https://www.rcmediafreedom.eu/Tools/Legal-Resources/SLAPPS-the-Italian-Case>.

¹⁶⁴ Ossigeno per l'Informazione, "Taci o ti Querelo: The Effects of libel laws in Italy" available at: http://notiziario.ossigeno.info/wp-content/uploads/2016/10/DOSSIER_TACI_O_TI_QUERELO.pdf.

¹⁶⁵ Pierobon and Rosà, "SLAPPS: the Italian Case", Resource Centre on Media Freedoms in Europe", op. cit.

¹⁶⁶ Ossigeno per l'Informazione Ossigeno per l'Informazione, "Taci o ti Querelo: The Effects of libel laws in Italy", op. cit.

¹⁶⁷ Italian Senate, "Senate Act n. 835", available at: <http://www.senato.it/leg/18/BGT/Schede/Ddliter/50682.htm>.

¹⁶⁸ Italian Criminal Code, Art. 595.

¹⁶⁹ Ibid.

¹⁷⁰ Law 47/1948, Art. 13.

¹⁷¹ ECtHR, *Belpietro v Italy*, no. 43612/10, 24 September 2013.

¹⁷² S. Griffen/IPI, *Defamation and insult laws in the OSCE region: A comparative study*, OSCE Representative on Freedom of the Media, March 2017, p. 124.

¹⁷³ Italian Senate, "Fascicolo iter DDL S. 812", p. 6, available at: <http://www.senato.it/leg/18/BGT/Schede/FascicoloSchedeDDL/ebook/50613.pdf>.

¹⁷⁴ Italian Senate "Senate Act n. 835", op. cit..

¹⁷⁵ Council of Europe, "Government Signals Reversal of Commitments to End Jail Penalties for Journalists in Defamation Law", available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesojportlet_alertPK=64526603&sojdashboard_WAR_coesojportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.

c. The Italian Government and safety of journalists

After almost two years of inactivity, in 2019 the Italian government has started engaging again with the alerts on the Platform to promote the protection of journalism and safety of journalists managed by the Council of Europe.¹⁷⁶ The platform's database notably shows that the number of threats reported by Italian journalists in the two-year period 2019-2020 is lower than in the single year 2018.¹⁷⁷ The trend is also confirmed by the aforementioned dossier compiled by Ossigeno per l'Informazione, which juxtaposes the 472 threats in 2019 to the 959 recorded in 2018.¹⁷⁸ The Council of Europe attributes the escalating figures in 2018 to the general climate of hostility towards the media, to which the former government coalition contributed upon entering office after the last national elections.¹⁷⁹ According to Reporters Without Borders, tensions between political representatives and reporters have gradually declined since then.¹⁸⁰ However, worrying signs have also been given by the newly formed cabinet. According to the media, activists of the Five Stars Movement, which remains part of the leading coalition, continue obstructing the work of reporters with physical and verbal attacks, condoned by party representatives.¹⁸¹ Members of the co-ruling Democratic Party instead passed a law in 2017 which sought to criminalise the unauthorised publication of wiretapped conversations, as an attempt to mainly target journalists investigating public officials.¹⁸² However, the provision was removed from the final draft shortly before its entry into force.¹⁸³ Lastly, the persistence of antagonistic sentiments for the press has also been signalled by the government's recent submission to the Constitutional Court, in which it stated its support for the retention of imprisonment as a punitive measure against defamation and libel.¹⁸⁴

4.3.3. Whistleblowers

The entry into force of Law 179/2017 established a binary system to shield private and public employees from retaliatory measures taken against them for exposing illicit conduct within their undertaking. While the law sought to strengthen the already existing safeguards for whistleblowers in the public sector,¹⁸⁵ the inclusion of private employees represented a novel aspect of Italian anti-corruption legislation.¹⁸⁶ Both categories now enjoy a similar scope of protection under the new instrument, which renders void any direct or indirect discriminatory act or organisational measure

¹⁷⁶ Council of Europe, "Hands Off Press Freedom: Attacks on Media in Europe Must not Become a New Normal", , op. cit., p. 18.

¹⁷⁷ Council of Europe, "Platform to Promote the Protection of Journalism and the Safety of Journalists", available at: <https://www.coe.int/en/web/media-freedom/italy>.

¹⁷⁸ Ossigeno per l'Informazione, "472 threatened in 2019", op. cit..

¹⁷⁹ Council of Europe, "Democracy at Risk: Threats and Attacks against Media Freedoms in Europe", op. cit., p. 23., p. 23.

¹⁸⁰ Reporters Without Borders, "World Press Freedom Index: Italy", op. cit.

¹⁸¹ Fabio Capasso and Giulia Zaccariello, "Italy 5 Stars, Shouts against Reporters upon Virginia Raggi's Arrival. Activists to the Iena Filippo Roma "Sell-out"", *Il Fatto Quotidiano*, available at: <https://www.ilfattoquotidiano.it/2019/10/13/italia-5-stelle-urlo-contro-i-giornalisti-allarrivo-di-virginia-raggi-attivisti-contro-la-iena-filippo-roma-venduto/5513050/>.

¹⁸² See Law 103/2017, available at: <https://www.gazzettaufficiale.it/eli/id/2017/07/4/17G00116/sq>.

¹⁸³ Chamber of Deputies, "Urgent Amendments to the Regulation on Wiretapping", available at: <https://temi.camera.it/leg18/provvedimento/modifiche-urgenti-alla-disciplina-delle-intercettazioni.html>

¹⁸⁴ Council of Europe, "Government Signals Reversal of Commitments to End Jail Penalties for Journalists in Defamation Law", op. cit.

¹⁸⁵ See Law 190/2012.

¹⁸⁶ Law 190/2012, Art. 2. Note that bank employees already benefited from certain protection pursuant the Italian Central Bank's [Circolare no. 285 of 17 December 2013](#).

taken against a whistleblower in his/her professional sphere.¹⁸⁷ Moreover, an obligation exists also for the competent authority receiving the alert to not disclose the identity of the sender.¹⁸⁸ The Anti-Corruption Authority (ANAC) has for this purpose launched an ad hoc platform to communicate with public employees through an encrypted channel in anonymous form.¹⁸⁹ Whistleblowers in the private sector, on the contrary, can only benefit from these guarantees if their company has also adopted the relevant organisational model prescribed under Law 231/2001, a requirement which may significantly slow down the attainment of the proposed objectives under Law 179/2017.¹⁹⁰

4.3.4. Media freedom in times of Covid-19

The outbreak of the Covid-19 crisis has inflicted an unprecedented wound to the political, economic and social organism in Italy. Notwithstanding its disruptive impact on the lives of citizens, the pandemic could not however eradicate persevering expressions of grudge for journalists and sporadic disrespect for media freedoms by the institutions. For instance, the Italian Journalists Union has condemned the display of an anonymous banner stating "Stop attacking us, terrorist journalists" in the city of Pescara as a violent reaction to the work of some reporters.¹⁹¹ The protest was triggered by a story reported on regional media channels about the rising spreading of the virus, following the celebration of a funeral which was attended by members of several Roma communities located in other regions.¹⁹² Other colleagues were instead physically threatened with a sword for inquiring on fraudulent online sales of medical face masks.¹⁹³ Overall, Ossigeno per l'Informazione has collected 19 of these alerts since the crisis began in the country.¹⁹⁴

As reported by the media, the unanticipated attack carried out by Prime Minister on members of the opposition parties during an address to the nation in April, for which all major television channels suspended their broadcasting schedule, represented a non-negligible interference with media freedoms.¹⁹⁵ While the Prime Minister's speech was in fact reserved universal prime time airing to maximise the outreach of an official governmental communication amid the Covid-19 crisis, he used the occasion to also stigmatise his political opponents as "fake news disseminators" before a nationwide audience.¹⁹⁶ The action was met with sharp criticism by prominent journalists in the country, who condemned the premier's improper use of his broadcasting privilege on public and private television

¹⁸⁷ Ibid., Art. 1-2.

¹⁸⁸ Ibid.

¹⁸⁹ ANAC, "Open Whistleblowing", available at: <https://servizi.anticorruzione.it/segnalazioni/#/>.

¹⁹⁰ See Law 231/2001.

¹⁹¹ FNSI, "Covid-19, Banners against Journalists in Pescara", available at: <https://www.fnsi.it/covid19-striscioni-contro-i-giornalisti-a-pescara-sga-ennesimo-attacco-alla-liberta-di-stampa>.

¹⁹² Ibid.

¹⁹³ Striscia la Notizia, "Moreno Morello threatened with a Scimitar", available at: https://www.mediassetplay.mediasset.it/article/striscialanotizia/moreno-morello-minacciato-con-una-scimitarra_b100000674_a11916.

¹⁹⁴ Ossigeno per l'Informazione, "19 Attacks against Journalists at Work during the Health Emergency", available at: <https://www.ossigeno.info/coronavirus-19-attacchi-a-giornalisti-al-lavoro-durante-emergenza-sanitaria/>.

¹⁹⁵ Monica Guerzoni, "Coronavirus, Conte's attack live on TV: Salvini and Meloni are Telling Lies" *Corriere della Sera*, available at: https://www.corriere.it/politica/20_aprile_11/coronavirus-show-premier-conte-diretta-tv-salvini-meloni-dicono-falsita-9396558e-7b67-11ea-afc6-fad772b88c99.shtml.

¹⁹⁶ Ibid.

for the advancement of his political agenda.¹⁹⁷ The case therefore provides an additional confirmation of the political class' inconsiderate attitude in circumventing established boundaries of media independence, protracted throughout the last decades of Italian history.

¹⁹⁷ News Editor Enrico Mentana declared that he would have not aired the address, had he known that the premier would have targeted his political opponents; F.Q. "Coronavirus: Mentana on Conte's words against Salvini and Meloni" *Il Fatto Quotidiano*, available at: <https://www.ilfattoquotidiano.it/2020/04/11/coronavirus-mentana-sulle-parole-di-conte-verso-salvini-e-meloni-se-lavessimo-saputo-non-avremmo-mandato-in-onda-quella-parte/5767318/>.

4.4. Malta

In recent years, Malta has been the subject of numerous reports and resolutions detailing a problematic climate for media freedom and the protection of journalism. Malta was ranked 81st in the 2020 World Press Freedom Index published by Reporters Without Borders, falling four places since 2019, and 24 places since 2017.¹⁹⁸ Importantly, Reporters Without Borders and *The Shift* news organisation, published a report in October 2019, on the deteriorating press freedom climate in Malta, and detailed the aftermath of the shocking assassination of Maltese journalist Daphne Caruana Galizia in 2017.¹⁹⁹ Daphne Caruana Galizia was killed in a car bomb in October 2017, which led to universal international condemnation, including from the UN, EU, Council of Europe, and OSCE. Indeed, following the journalist's assassination, in November 2017, the European Parliament adopted a Resolution on the rule of law in Malta, which strongly condemned the assassination of Daphne Caruana Galizia, and called on Malta's government to "deploy all necessary resources to bring her murderers to justice," and called for an "independent international investigation into the murder".²⁰⁰

However, on the two-year anniversary of the assassination in October 2019, a joint statement was issued by four international special mandates - the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the UN Special Rapporteur on the right to freedom of opinion and expression; the Council of Europe Commissioner for Human Rights; and the OSCE Representative on Freedom of the Media - stating that Malta's authorities had "failed to fully investigate the killing," with two years having passed, with "[n]o convictions, no trials of ringleaders and masterminds."²⁰¹ The experts noted that three people had been charged with murder, and have been ordered to stand trial, but "ending impunity requires holding accountable not only those who carried out the murder, but everyone complicit in it, including the masterminds behind it. Those masterminds remain unaccountable for now."²⁰² Further, in December 2019, a delegation of MEPs from the European Parliament visited Malta to conduct a fact-finding mission to assess the Caruana Galizia murder inquiry. The delegation acknowledged the progress in investigating the murder, but noted the "case is far from being closed," and "expressed their worry that the investigations into related money laundering and corruption cases

¹⁹⁸ Reporters Without Borders, 2020 World Press Freedom Index, available at: <https://rsf.org/en/ranking>.

¹⁹⁹ Justice Delayed: The Assassination of Daphne Caruana Galizia and Malta's Deteriorating Press Freedom Climate, A report by Reporters Without Borders and The Shift News (2019), available at: https://rsf.org/sites/default/files/rapport_2019_v4.pdf.

²⁰⁰ European Parliament resolution of 15 November 2017 on the rule of law in Malta, P8_TA(2017)0438, section 1, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0438_EN.html?redirect.

²⁰¹ UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Special Rapporteur on the Right to Freedom of Opinion and Expression, the Council of Europe Commissioner for Human Rights, and the OSCE Representative on Freedom of the Media, "Malta must establish accountability for murder of Daphne Caruana Galizia, say human rights experts", 19 October 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25150&LangID=E>.

²⁰² UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Special Rapporteur on the right to freedom of opinion and expression, the Council of Europe Commissioner for Human Rights, and OSCE Representative on Freedom of the Media, "Malta must establish accountability for murder of Daphne Caruana Galizia, say human rights experts", 19 October 2019.

have not advanced.”²⁰³ Importantly, a public inquiry into murder of Daphne Caruana Galizia began in December 2019.²⁰⁴

4.4.1. Media pluralism

As the European Parliament has emphasised, the assassination of Daphne Caruana Galizia has had a chilling effect on journalists in Malta,²⁰⁵ and in the aftermath of killing, the Parliament identified a number of factors which had led to “serious concerns” about media freedom in Malta.²⁰⁶ First, the CMPF’s Media Pluralism Monitor’s 2016 Country Report on Malta identified a number of risks to media pluralism, such as the “lack of protection and self-regulation of journalists and editorial autonomy, direct political ownership of media outlets and lack of media literacy policy.”²⁰⁷ It is also helpful to refer to the 2017 report on Malta, which identified a number of further factors in relation to media freedom in Malta, including “high risk” factors, such as (a) the lack of regulatory and self-regulatory measures that “safeguard editorial independence in the news media,”²⁰⁸ and public service media being “particularly vulnerable to political influence.”²⁰⁹

4.4.2. Defamation law

Second, defamation laws in Malta have also been highlighted as a particular risk to the protection of journalism. The European Parliament has referenced the 2017 World Press Freedom Index, which identified Malta’s defamation laws, which were “punishable by fines or imprisonment and broadly used, especially by politicians, against journalists, as a key factor limiting freedom of expression in Malta”.²¹⁰ Further in relation to the operation of these defamation laws, Daphne Caruana Galizia was “facing numerous libel charges brought by political representatives from across the political spectrum in Malta”, and “had her bank accounts frozen this year by a court order issuing precautionary warrants relating to a libel case brought by a government minister”.²¹¹ It also noted that the Maltese Parliament

²⁰³ European Parliament, Malta: MEPs conclude fact-finding visit to assess Caruana Galizia murder inquiry, 4 December 2019, available at: <https://www.europarl.europa.eu/news/en/press-room/20191204IPR68278/malta-meps-conclude-fact-finding-visit-to-assess-caruana-galizia-murder-inquiry>.

²⁰⁴ Article 19, “Malta: International organisations urge close scrutiny of public inquiry into murder of Daphne Caruana Galizia”, 4 December 2019, available at: <https://www.article19.org/resources/malta-international-organisations-urge-close-scrutiny-of-public-inquiry-into-murder-of-daphne-caruana-galizia/>.

²⁰⁵ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)), at G, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0328_EN.html.

²⁰⁶ European Parliament resolution of 15 November 2017 on the rule of law in Malta, P8_TA(2017)0438, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0438_EN.html?redirect.

²⁰⁷ Iva Nenadic, Media Pluralism Monitor 2016 Monitoring Risks for Media Pluralism in the EU and Beyond - Country report: Malta (CMPF, 2017), p. 3, available at: https://cadmus.eui.eu/bitstream/handle/1814/46805/Malta_EN.pdf?sequence=1&isAllowed=y.

²⁰⁸ Iva Nenadic, “Country Report: Malta” in *Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey* (CMPF, 2018), p. 7, available at: https://cadmus.eui.eu/bitstream/handle/1814/61149/2018_Malta_EN.pdf?sequence=1&isAllowed=y/.

²⁰⁹ Iva Nenadic, “Country Report: Malta” in *Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey* (CMPF, 2018), p. 8, available at: https://cadmus.eui.eu/bitstream/handle/1814/61149/2018_Malta_EN.pdf?sequence=1&isAllowed=y/.

²¹⁰ European Parliament resolution of 15 November 2017 on the rule of law in Malta, P8_TA(2017)0438, at H.

²¹¹ European Parliament resolution of 15 November 2017 on the rule of law in Malta, P8_TA(2017)0438, at K.

was “discussing a bill proposed by the Maltese Government which abolishes criminal libel”.²¹² Notably, in 2018, Malta enacted its Media and Defamation Act 2018, repealing its previous Press Act, and thus abolishing the criminal offences of libel, slander and defamation.²¹³ The 2018 Act also provided that “[a]ny criminal proceedings instituted under the repealed Act prior to the coming into force of this Act and which, on the coming into force of this Act, are pending before any court shall be discontinued.”²¹⁴

4.4.3. SLAPPs

Further, SLAPPs have also featured in the concerns surrounding Malta. For example, a European Parliament Resolution in 2018 expressed concern over the state of media freedom in Malta, and noted the harassment Daphne Caruana Galizia was subjected to, including precautionary warrants freezing her bank accounts, and threats made by multinational companies.²¹⁵ Moreover, the European Parliament’s later Resolution in 2019 on the rule of law in Malta also called on Malta’s government to “ensure the withdrawal, with immediate effect, of the libel suits being faced by the mourning family of Daphne Caruana Galiza, to refrain from using the libel laws to freeze critical journalists’ bank accounts, and to reform the libel laws that are being used to frustrate journalists’ work”.²¹⁶ Importantly, Reporters Without Borders have also detailed the problematic effect of SLAPPs in Malta, which “silence public interest reporting.”²¹⁷

4.4.4. Rule of law

It must be mentioned that concerns over the rule of law in Malta have also impacted upon the state of media freedom. This has been recognised by both EU and Council of Europe institutions, such as Parliamentary Assembly of the Council of Europe (PACE), noting that the rule of law in Malta is “seriously undermined by the extreme weakness of its system of checks and balances”.²¹⁸ Indeed, the PACE considered that the “weaknesses of the rule of law in general and the criminal justice system in particular are also directly relevant” to the response to the assassination of Daphne Caruana Galizia.²¹⁹

²¹² European Parliament resolution of 15 November 2017 on the rule of law in Malta, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0438_EN.html?redirect.

²¹³ An Act to provide for the updating of the regulation of media and defamation matters and for matters consequential or ancillary thereto, ACT No. XI of 2018, available at: <https://parlament.mt/media/93813/act-xi-media-and-defamation-act.pdf>.

²¹⁴ An Act to provide for the updating of the regulation of media and defamation matters and for matters consequential or ancillary thereto, section 33(4), available at: <https://parlament.mt/media/93813/act-xi-media-and-defamation-act.pdf>.

²¹⁵ European Parliament resolution of 3 May 2018 on media pluralism and media freedom in the European Union (2017/2209(INI)), at 9, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0204_EN.html.

²¹⁶ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia, (2018/2965(RSP)), at 47, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0328_EN.html.

²¹⁷ Justice Delayed: The Assassination of Daphne Caruana Galizia and Malta’s Deteriorating Press Freedom Climate, A report by Reporters Without Borders and The Shift News (2019), available at: https://rsf.org/sites/default/files/rapport_2019_v4.pdf.

²¹⁸ Parliamentary Assembly of the Council of Europe, Resolution 2293 (2019) Daphne Caruana Galizia’s assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28053&lang=en>.

²¹⁹ Parliamentary Assembly of the Council of Europe, Resolution 2293 (2019) Daphne Caruana Galizia’s assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges, section 6, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28053&lang=en>.

In this regard, the Venice Commission published an Opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement in Malta, and made a number of recommendations, including in relation to reforms of (a) judicial power, (b) legislative power, (c) executive power, and (d) police and prosecuting authorities.²²⁰ Importantly the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) also set up a Rule of Law monitoring group in 2018 on the situation of rule of law in the EU, with a specific focus on corruption and freedom of the press.²²¹ A delegation visited Malta in 2018 and 2019, and produced reports on the rule of law in Malta, and urged Malta to implement all of the Venice Commission's recommendations "without exception."²²² Notably, the LIBE Committee renewed and expanded the mandate of the working group in autumn 2019, and has been renamed the Democracy, Rule of Law and Fundamental Rights Monitoring Group. The Group's mandate will remain in force until 31 December 2021.²²³

Finally, in May 2020, a number of press freedom organisations wrote to Malta's Attorney General urging Malta to invite Europol to provide further support to legal proceedings in relation to the murder of Daphne Caruana Galizia, including establishing a Joint Investigation Team.²²⁴ The NGOs stated that they were "deeply concerned that legal proceedings around the murder have not yet delivered full justice".²²⁵

²²⁰ European Commission for Democracy Through Law (Venice Commission), Malta - Opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, Opinion No. 940 / 2018, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)028-e).

²²¹ European Parliament, "Rule of law: Civil Liberties MEPs to report on corruption and press freedom", 5 June 2018, available at: <https://www.europarl.europa.eu/news/en/press-room/20180605IPR05046/rule-of-law-civil-liberties-meps-to-report-on-corruption-and-press-freedom>.

²²² European Parliament, "Malta and Slovakia: serious shortcomings in the rule of law", 19 February 2019, available at: <https://www.europarl.europa.eu/news/en/press-room/20190218IPR26964/malta-and-slovakia-serious-shortcomings-in-the-rule-of-law>.

²²³ European Parliament, "Rule of Law: new mandate for MEPs to assess EU values in Member States", 16 September 2019, available at: <https://www.europarl.europa.eu/news/en/press-room/20190916IPR61124/rule-of-law-new-mandate-for-meps-to-assess-eu-values-in-member-states>. See also, European Parliament, "LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG)", available at: <https://www.europarl.europa.eu/committees/en/libe-democracy-rule-of-law-and-fundament/product-details/20190103CDT02662>.

²²⁴ Article 19, Association of European Journalists, Committee to Protect Journalists, European Centre for Press and Media Freedom, Free Press Unlimited, IFEX, Index on Censorship, International Press Institute, PEN International, Reporters without Borders, and Scottish Pen, Letter to Dr. Peter Grech, Attorney General, 5 May 2020, available at: <https://cpj.org/2020/05/malta-attorney-general-europol-murdered-daphne-caruana-galizia.php>.

²²⁵ Article 19, Association of European Journalists, Committee to Protect Journalists, European Centre for Press and Media Freedom, Free Press Unlimited, IFEX, Index on Censorship, International Press Institute, PEN International, Reporters without Borders, and Scottish Pen, Letter to Dr. Peter Grech, Attorney General, 5 May 2020.

4.5. The Netherlands

The Netherlands has a long-standing reputation for being a bastion for freedom of expression. It is ranked 5th in the Reporters Without Borders' World Press Freedom Index 2020, having been 4th in the 2019 Index and 3rd in the 2018 Index. Four alerts concerning the Netherlands have been registered on the Council of Europe Platform for the protection of journalism and the safety of journalists since 2015. 52% of the Dutch population has overall trust in the news, according to the Reuters Digital News Report 2020.

In 2018, a comprehensive study, *Securing a favourable environment for journalists in the Netherlands*, was published.²²⁶ The study's overall conclusion is that while Dutch law, policy and practice secure an environment that is by and large favourable for freedom of expression, journalistic activities and the safety of journalists, there is still room for improvement in several areas.

4.5.1. Safety and protection issues

The study, *Securing a favourable environment for journalists in the Netherlands*, concluded that adequate regulation and procedures are in place for anyone who threatens or harms journalists to be prosecuted in accordance with the rule of law. Later in 2018, however, attacks on the editorial offices of *De Telegraaf* (the country's largest daily newspaper) and *Panorama* created lots of public and political attention for the safety of journalists. The attacks added to an increasingly 'threatening climate' for journalists in the Netherlands.²²⁷ They galvanized stakeholders and the national Steering Group on Aggression and violence against journalists intensified its efforts and activities.

The dedicated Steering Group on Aggression and violence against journalists had been set up in response to increasing threats and violence against journalists.²²⁸ The Steering Group comprises representatives of the Public Prosecutor's Office, the Police force, the Dutch Association of Journalists and the Dutch Society of Editors-in-Chief. It coordinates various activities and one of its early achievements was to adopt an Agreement on the strengthening of the position of journalists against aggression and violence.²²⁹ The Agreement is supported by the Minister of Justice and Security.

²²⁶ Geert Lokhorst and Leon Trapman, *Securing a favourable environment for journalists in the Netherlands*, Institute for Information Law, University of Amsterdam, 2018, available via: <https://www.ivir.nl/projects/auditoffreedomofexpression/>.

²²⁷ M.W.A. Odekerken & A.F.M. Brenninkmeijer, *Een dreigend klimaat*, Utrecht, 2017.

²²⁸ For more information about the Steering Group, see (in Dutch): <https://www.nvj.nl/nieuws/minister-bekrachtigt-afspraken-tegen-geweld-en-bedreiging-journalisten>.

²²⁹ An (unofficial) English-language translation of the Agreement reached by the Steering Group, supported by the Minister of Justice, is available at: <https://www.ivir.nl/publicaties/download/Agreement-of-the-Steering-Group-on-Aggression-and-violence-against-journalists-EN-translation.pdf>.

Table 5: Key focuses of the Agreement on the strengthening of the position of journalists against aggression and violence

	Focus	Details
1	Increase awareness	Safety plan with a practical approach to prevention and training, but also clear procedures about which measures must be taken after an event, including the reporting of an incident or of a crime, and the aftercare
2	Collective norm	Collective labour agreement setting out different types of unacceptable and the responses to be taken by employers
3	Violence against the media app	Extension of Safety Plan, a tool providing practical information about how to report incidents and make criminal complaints
4	Public support and training programmes	Courses and trainings for journalists
5	Police and public prosecution service	Various measures, including unambiguous registration of incidents and crimes against journalists; prioritization of detection and prosecution; attention for quality of investigations; zero tolerance of violence and fast-track justice; victims and employers to be properly informed; active communication policy

Source: authors of the study.

PersVeilig ('Pressafe') is a subsequent initiative between the Dutch Association of Journalists, the Dutch Society of Editors-in-Chief, the Police and the Public Prosecution Service.²³⁰ Its aim is to strengthen the position of journalists against violence and aggression in the street, on social media and/or through legal action. It explains different types of intimidation and aggression and advises on the steps that can be taken to deal with them, including how to report incidents and how to press charges. *PersVeilig* is also a hotline for reporting aggression and violence against journalists. There were in total 39 reports in 2019: 25 reports of threats and eight reports of physical violence. Gender-specific and racist threats remain a source of concern.

The elaborate, multi-stakeholder cooperation involved in the Steering Group and *PersVeilig* is one of the unique features of the Dutch approach to the safety of journalists.

Criminal investigations into the attacks on the editorial offices of De Telegraaf and Panorama have taken place and/or are ongoing. In 2019, three men were convicted of firing a rocket launcher at the premises of Panorama. They were sentenced to four years' imprisonment. Eleven suspects are being prosecuted in connection with the attack on the premises of De Telegraaf.²³¹ The attack entailed driving a van filled with cans of petrol into the glass façade of the building and setting the van on fire, causing an explosion. Both attacks are linked to organized criminal activities, on which the media in question had been reporting prior to the attacks.²³²

²³⁰ See: <https://www.persveilig.nl/>

²³¹ 'Celstraffen tot 12 jaar geëist tegen verdachten aanslag Telegraafpand', NOS Nieuws, 16 June 2020, available at: <https://nos.nl/artikel/2337456-celstraffen-tot-12-jaar-geest-tegen-verdachten-aanslag-telegraafpand.html>.

²³² Otto Volgenant and Tarlach McGonagle, 'Kroniek Persrecht 2019', *Mediaforum* 2020-3, pp. 87-89, at p. 87.

In 2019, for the first time, an aggravated fine was imposed for threatening a journalist by telephone. The fine (500 Euros) was twice as high as usual, because the victim was a journalist.²³³

4.5.2. Legislative developments

Blasphemy has been decriminalized since 2014 and the offences of *lèse-majesté* (crime against the dignity of the sovereign ruler) and insulting a foreign head of state were also removed from the Dutch Criminal Code as of 2020. As the offences of *lèse-majesté* and insulting a foreign head of state did not provide for a public interest defense, they were not in line with the case-law of the European Court of Human Rights.

Despite the entry into force of the Journalistic Source Protection Act in 2018, a journalist working for the Dutch public service broadcaster was taken into custody in 2019 for refusing to testify as a witness about a tapped telephone conversation with a source in the context of a murder case. He was released the next day – the District Court found that the right of a journalist to refuse to give evidence must be interpreted broadly.²³⁴

In 2019, the Dutch House of Representatives adopted a bill that would make it a criminal offence to reside in an area controlled by a terrorist organisation.²³⁵ Anyone wishing to travel to such an area would require permission from the Dutch government. The Bill, which will be debated in the Senate in 2020, does not provide for an exception for journalists. There are concerns among journalists about the impact that the Bill (if adopted without amending this point) would have on their freedom of movement and freedom of expression.²³⁶

4.5.3. SLAPPS

Recent years have seen the telecom provider company Pretium taking several legal proceedings against media which have been reporting critically on its activities. In 2019, the Dutch Supreme Court dismissed Pretium's appeal that sought to have the critical online reporting (in the form of a web-book/file) removed.²³⁷

²³³ *Ibid.*

²³⁴ Otto Volgenant and Tarlach McGonagle, 'Kroniek Persrecht 2019', *Mediaforum* 2020-3, pp. 87-89, at p. 88.

²³⁵ 35 125, Amendment of the Criminal Code and the Code of Criminal Procedure to make it a criminal offence to reside in an area controlled by a terrorist organisation.

²³⁶ Lars Pasveer, 'Zonder toestemming afreizen naar terreurgedebied wordt strafbaar, ook voor journalisten', *Villamedia*, 11 September 2019, available at: <https://www.villamedia.nl/artikel/zonder-toestemming-afreizen-naar-terreurgedebied-wordt-strafbaar-ook-voor-journalisten>.

²³⁷ Otto Volgenant and Tarlach McGonagle, 'Kroniek Persrecht 2019', *Mediaforum* 2020-3, pp. 87-89, at p. 89.

4.6. Poland

4.6.1. Overview of the media landscape

Poland scored the fifth lowest among EU member states in the World Press Freedom Index in 2020.²³⁸ The Platform to Promote the Protection of Journalism and Safety of Journalists records 12 active alerts for Poland, including three new alerts in 2020.²³⁹ The partner organisations of the Platform noted in their annual report of 2020 that the situation of media freedom in Poland is the source of a “long-standing concern”.²⁴⁰ The Media Pluralism Monitor has documented a high risk of media concentration in the country, and has highlighted the increasing political influence on news outlets.²⁴¹ As reported by the International Press Institute (IPI), of particular concern has been the strong state control on public service media. After coming to power in 2015, the ruling Law and Justice party (PiS) moved to reshape public service media through changes to the appointment procedures. This has resulted in a markedly pro-government tone employed by public service broadcasters, manifested in both a dominant positive coverage of PiS, and an overwhelmingly negative coverage of opposition parties.²⁴²

The IPI has reported that biased allocation of state advertising to pro-government outlets and the decrease in subscription to critical outlets by ministries have stripped independent media of a large amount of revenues.²⁴³ Independent media have also been facing political pressure and intimidation, resulting in an increasingly hostile environment for critical journalists.

4.6.2. Strategic litigation against journalists

In recent years, independent journalists have been “flooded with lawsuits” by the government.²⁴⁴ Serious concerns about the independence of the judiciary aggravate the danger posed by such strategic litigation²⁴⁵, although most lawsuits against journalists are unsuccessful, indicating that Polish courts have so far protected the media.²⁴⁶

Pursuant to Article 212 of the Polish Criminal Code, defamation is a criminal offence, punishable by up to a year of imprisonment. Higher penalties may be applied in case of defamation of a head of state or the ‘good name’ of Poland, potentially discouraging critical reporting.²⁴⁷ Most often courts sanction

²³⁸ Reporters Without Borders, ‘2020 World Press Freedom Index’, available at: <https://rsf.org/en/ranking>.

²³⁹ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, ‘Poland’, available at: <https://www.coe.int/en/web/media-freedom/poland>.

²⁴⁰ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020, p. 41.

²⁴¹ Center for Media Pluralism and Media Freedom, ‘Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey. Country Report: Poland’ (2018), pp. 8-10.

²⁴² International Press Institute, ‘Poland’s Public Media Serve as Propaganda Tool’, 8 July 2019, available at: <https://ipi.media/new-report-polands-public-media-serve-as-propaganda-tool/>.

²⁴³ International Press Institute, ‘In Poland, Critical Press Hit by Loss of State Advertising’, 9 November 2017, available at: <https://ipi.media/in-poland-critical-press-hit-by-loss-of-state-advertising/>.

²⁴⁴ Committee to Protect Journalists, ‘Gagging Orders, Legal Action, and Communist Era Laws Used to Try to Choke Polish Press’, 10 January 2019, available at: <https://cpj.org/2019/01/gagging-orders-legal-action-and-communist-era-laws/>.

²⁴⁵ Center for Media Pluralism and Media Freedom, ‘Country Report 2017: Poland’, op. cit., p. 6.

²⁴⁶ Index on Censorship, ‘A Gathering Storm: The Laws Being Used to Silence the Media’ (2020), p. 15.

²⁴⁷ Committee to Protect Journalists, ‘Mission Journal: In Poland, Some Journalists Fear Worst is Yet to Come’, 12 March 2018, available at: <https://cpj.org/2018/03/mission-journal-in-poland-some-journalists-fear-wo/>.

journalists with fines, however, the possibility of imprisonment coupled with the growing number of defamation lawsuits engender self-censorship by independent media. In 2019, Jaroslaw Kaczyński, leader of PiS, brought a defamation suit against independent daily, *Gazeta Wyborcza*, for reporting on potential corruption in respect of the construction of a skyscraper and Kaczyński's involvement in it. *Gazeta Wyborcza* alleged that its reporting was fully substantiated, and the initiation of the lawsuit was no more than an attempt to silence critical reporting.²⁴⁸ Journalist Anna Wilk has faced a criminal defamation lawsuit for reporting on the suicide of an employee of an electric appliance company. The court of first instance sanctioned her with a three-year ban on working as a journalist.²⁴⁹

According to Article 226(3) of the Criminal Code, insulting a constitutional authority of Poland carries a maximum prison term of two years. In 2017, journalist Wojciech Czuchnowski was sued under this provision for reporting on a possible connection between the head of the Constitutional Tribunal and Poland's intelligence agency.²⁵⁰ Criminal lawsuits against journalists have also been initiated under Article 241 of the Criminal Code which prohibits the dissemination of confidential information in respect of an ongoing investigation and attaches a prison sentence of up to two years to such offence.²⁵¹ Journalists have also been sued under the Civil Code, protecting privacy, dignity and image. Journalists are often forced to reveal sources during such lawsuits, discouraging whistleblowing.²⁵² Beyond journalists, other critical voices have also been targeted by strategic litigation. A Polish constitutional law professor, known for his vocal criticism of PiS, has faced both civil and criminal defamation lawsuits for critical tweets about the governments.²⁵³ The Committee to Protect Journalists observed that the accumulation of these lawsuits demonstrate a systematic attempt to harass critical voices, paralysing the ability of civil society and the media to hold the governing power accountable.²⁵⁴

4.6.3. Discreditation of critical journalists

There has also been a demonstrable attempt by pro-government media to undermine the credibility of independent media. Independent journalists are often called traitors, anti-Polish or accused of disseminating 'fake news'.²⁵⁵ PiS has also announced its intention to 'repolonise' media in Poland by

²⁴⁸ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'Polish Party Leader Initiates Libel Charge Against Critical Newspaper', 25 February 2019.

²⁴⁹ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'Polish Court Bans Reporter Anna Wilk from Journalism for 3 years in Criminal Libel Suit', 5 June 2019.

²⁵⁰ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'Poland Opens Investigation over Article Critical of Constitutional Tribunal President', 5 February 2018.

²⁵¹ CoE Platform to Promote the Protection of Journalism and Safety of Journalists, 'Journalist Katarzyna Wlodkowska Faces Investigation Following Report on Assassination of Mayor', 19 February 2020.

²⁵² Committee to Protect Journalists, 'Mission Journal: In Poland, Some Journalists Fear Worst is Yet to Come', 12 March 2018, available at: <https://cpj.org/2018/03/mission-journal-in-poland-some-journalists-fear-wo/>.

²⁵³ European Centre for Press Freedom and Media, 'Poland: Ruling Law and Justice Party and Public Broadcaster TVP Must Drop SLAPP Defamation Lawsuits Against Law Professor Sadurski', 28 November 2019, available at: <https://www.ecpmf.eu/open-letter-urging-tvp-to-drop-slapp-lawsuit-against-polish-professor/>.

²⁵⁴ Committee to Protect Journalists, 'Gagging Orders, Legal Action, and Communist Era Laws Used to Try to Choke Polish Press', 10 January 2019, available at: <https://cpj.org/2019/01/gagging-orders-legal-action-and-communist-era-laws/>.

²⁵⁵ See for example: European Federation of Journalists, 'Polish Journalist Receives Death Threats After Public Polish TV Classifies her Remarks as "Harmful to Poland"', 18 July 2017, available at: <https://europeanjournalists.org/blog/2017/07/18/polish-journalist-receives-death-threats-after-public-polish-tv-classifies-her-remarks-as-harmful-to-poland/>.

bringing foreign-funded media under Polish ownership.²⁵⁶ As the International Press Institute noted, foreign-owned media outlets are typically the most critical in the Polish media landscape, and thus, their 'repolonisation' presents a serious risk to critical reporting and media pluralism in Poland.²⁵⁷

4.6.4. Access to information

Limiting journalists' access to information has been a further hurdle for critical media. According to the Committee to Protect Journalists, government politicians routinely refuse to give interviews to critical outlets and public authorities make it harder for critical outlets to access public sector information.²⁵⁸ Independent media are at times not invited to official press conferences or when invited, they are sometimes not allowed to ask questions.²⁵⁹

²⁵⁶ Reporters Without Borders, 'Poland's Plan to "Repolonize" Foreign-Owned Media', 23 March 2017, available at: <https://rsf.org/en/news/polands-plan-repolonize-foreign-owned-media>.

²⁵⁷ International Press Institute, 'Poland's Public Media Serve as Propaganda Tool', 8 July 2019, available at: <https://ipi.media/new-report-polands-public-media-serve-as-propaganda-tool/>.

²⁵⁸ Committee to Protect Journalists, 'Mission Journal: In Poland, Some Journalists Fear Worst is Yet to Come', 12 March 2018, available at: <https://cpj.org/2018/03/mission-journal-in-poland-some-journalists-fear-wo/>.

²⁵⁹ Ibid.

4.7. Slovakia

4.7.1. Media freedom and independence

Slovakia is ranked 33rd in the Reporters Without Borders' World Press Freedom Index 2020, having been ranked 35th in 2019 and 27th in 2018. The country was shocked by the murder in February 2018 of investigative journalist Ján Kuciak and his fiancée Martina Kušnírová. In January 2020, an ex-soldier was sentenced to 23 years in prison for the murder.²⁶⁰ The prosecution of the suspected mastermind of the killing and three others who have been charged with aiding in the murder is ongoing.

The European Parliament has stated that it “deplores the lack of transparency on media ownership; questions the independence and quality of the public media following the departure of several RTVS journalists”.²⁶¹ 28% of the Slovakian population has overall trust in the news, according to the Reuters Digital News Report 2020.

The European Parliament has also expressed its concern about allegations of corruption – the country was ranked 59th in Transparency International's Corruption Perceptions Index 2019 - and organised crime.²⁶²

4.7.2. Range of threats

The 11 alerts concerning Slovakia registered on the Council of Europe Platform for the protection of journalism and the safety of journalists since 2015 concern various types of threats, including: murder, threats, smear campaigns, surveillance and criminal defamation.

These threats have been referenced in the 2020 Annual Report of Partner Organisations to the Council of Europe Platform. In 2019 (the year covered by the report), the Partners were still very concerned at the prospect of impunity for the perpetrators of the killings of Ján Kuciak and Martina Kušnírová, but noted that after “lengthy delays”, progress had been made to prosecute the perpetrators.²⁶³

Another cause of concern for the Partner Organisations to the Council of Europe Platform was “an extensive surveillance operation in 2017 and 2018 against critical journalists”, including Ján Kuciak, with a view to gathering information that could be used to discredit them.²⁶⁴ Further examples of smear campaigns against journalists, including female journalists, have also been reported.²⁶⁵ More generally, the European Parliament has expressed its concern “about the statements of Slovak politicians that call

²⁶⁰ Shaun Walker, ‘Ex-soldier jailed for double murder of journalist Ján Kuciak and fiancée’, *The Guardian*, 6 April 2020, available at: <https://www.theguardian.com/world/2020/apr/06/ex-soldier-jailed-for-the-double-of-journalist-jan-kuciak-and-fiancee>. See also the updates of 2 January 2020 and 7 April 2020 on the Council of Europe's Platform.

²⁶¹ European Parliament resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová (2018/2628(RSP)), 19 April 2018, para. 45.

²⁶² *Ibid.*, paras. 13 and 14, respectively.

²⁶³ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020, p. 8.

²⁶⁴ *Ibid.*, p. 15.

²⁶⁵ *Ibid.*, p. 29.

into question the value of independent journalism and public media, such as those made by the former Prime Minister in public".²⁶⁶

4.7.3. Use of defamation law and other laws against journalists

In its major study of criminal defamation across the OSCE region in 2017, the IPI stated that in Slovakia (and in Hungary), "politicians and judges continue to turn to criminal libel as an avenue for responding to criticism".²⁶⁷ Similar claims have been made by other civil society organisations.²⁶⁸ There are, however, no specific provisions for criminal defamation of public officials.²⁶⁹

The use of data protection law to try to curb investigative journalism has also been criticized by civil society organisations²⁷⁰ and has led to questions in the European Parliament.²⁷¹ As summarized in the parliamentary questions, in December 2019, "the Slovak data protection authority (Úrad na ochranu osobných údajov) addressed a letter to the Czech Centre for Investigative Journalism in which it threatened to impose a fine of up to EUR 10 million if they did not disclose their sources and provide all information about a video released on their website 'investigace.cz'".²⁷²

4.7.4. A legally enforceable right of reply

Against this backdrop, there was much criticism – from civil society organisations and from the Office of the OSCE Representative on Freedom of the Media – of a legislative initiative by a number of Slovak parliamentarians to introduce a statutory right of reply for politicians and public officials.²⁷³ The Bill was nevertheless adopted on 17 September 2019.²⁷⁴ The Law grants "public officials and high-ranking politicians a legally enforceable right of reply in response to allegedly false statements".²⁷⁵ The opposition parties successfully introduced amendments during the legislative process to remove initial

²⁶⁶ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)), 28 March 2019, para. 46.

²⁶⁷ Scott Griffen/IPI, *Defamation and insult laws in the OSCE region: A comparative study*, OSCE Representative on Freedom of the Media, March 2017, p. 10.

²⁶⁸ Jessica Ní Mhainín, *A gathering storm: The laws being used to silence the media*, Index on Censorship, 1 June 2020, p. 17.

²⁶⁹ Scott Griffen/IPI, *Defamation and insult laws in the OSCE region: A comparative study*, op. cit., p. 208.

²⁷⁰ For example, Index on Censorship: Jessica Ní Mhainín, *A gathering storm: The laws being used to silence the media*, op. cit., p. 17.

²⁷¹ Michal Šimečka *et al.*, Subject: Abuse of power by Slovak data protection authority and threat to investigative journalism, Question for a written answer, European Parliament, 11 March 2020, available at: https://www.europarl.europa.eu/doceo/document/E-9-2020-001520_EN.html.

²⁷² Ibid.

²⁷³ Scott Griffen, '#Blog: Slovakia right of reply changes send wrong message on press freedom', IPI Blog, 19 September 2019, available at: <https://ipi.media/blog-slovakia-right-of-reply-changes-send-wrong-message-on-press-freedom/>.

²⁷⁴ Reporters Without Borders, 'RSF appelle la présidente slovaque à rejeter la réforme du code de la presse en matière de droit de réponse des hommes politiques', 17 September 2019, available at: <https://rsf.org/fr/actualites/rsf-appelle-la-presidente-slovaque-rejeter-la-reforme-du-code-de-la-presse-en-matiere-de-droit-de>.

²⁷⁵ Partner Organisations to the Council of Europe Platform, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020, op. cit., p. 21.

provisions for a right of reply in respect of opinions.²⁷⁶ Media outlets that fail or refuse to publish a reply can incur fines of up to nearly 5,000 Euros.²⁷⁷

4.7.5. Protection of journalists

The European Parliament has urged the Slovak authorities to “ensure the protection of investigative journalists from any form of intimidation, defamation charges, threats or physical attacks, and to take effective measures for the protection of those exercising their right to freedom of expression against attacks aimed at silencing them”.²⁷⁸ In its official response to an alert on the Council of Europe’s Platform about the introduction of the above-mentioned right of reply, the Slovak Government announced that: “in order to strengthen the protection of journalists the Ministry of Culture of Slovakia has set up the ad hoc working group for the protection of journalists with a view to preparing the bill on a special position of journalist from the point of view of protection of a source and of protection of a journalist himself/herself, including protection from groundless criminal proceedings for defamation or from false right privacy in relation to work performance of journalist.”²⁷⁹

²⁷⁶ Ibid.; Scott Griffen, ‘#Blog: Slovakia right of reply changes send wrong message on press freedom’, op. cit.

²⁷⁷ Meera Selva, *Fighting Words: Journalism Under Assault in Central and Eastern Europe*, Reuters Institute for the Study of Journalism, University of Oxford, January 2020, p. 19, available at: <https://reutersinstitute.politics.ox.ac.uk/fighting-words-journalism-under-assault-central-and-eastern-europe>; Jessica Ní Mhainín, *A gathering storm: The laws being used to silence the media*, op. cit., p. 17.

²⁷⁸ European Parliament resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová, op. cit., para. 5; European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia, op. cit., para. 45.

²⁷⁹ Official response of the Government of Slovakia to the alert submitted to the Platform to promote the protection of journalism and safety of journalists on 6 February 2019 entitled „Slovakia Seeks to Introduce Right of Reply for Politicians“, available at: <https://rm.coe.int/slovakia-en-reply-slovakia-seeks-to-introduce-right-of-reply-for-polit/168095d819>.

4.8. Spain

4.8.1. Media landscape

In the last five years, Spain has made a relatively steady ascent in the ranks of the World Press Freedom Index, holding the 29th position this year and last.²⁸⁰ Following the decades of state censorship and control exerted by the Franco regime, a gradual process of liberalisation led to the emergence of large and small private actors across the printed, radio and television sectors, which in concomitance with an array of public broadcasters established at national and regional level have contributed to a broader ideological spectrum in the media market.²⁸¹ However, the gradual concentration of cross-media ownership in the hands of few private groups, as well as the habitual interference of the Spanish political class in the public media sector, have raised legitimate concerns as to the preservation of the country's pluralistic information environment.²⁸² The latter problem is reflected in particular in the appointment of the editorial boards of the public service media corporation (CRTVE) and of the regulatory authority responsible for the television market (CNMC), which remains largely driven by political agendas and is often spoiled by the government's excessive discretionary power in the process.²⁸³

Moreover, the steep decline in sales in the printed press market has put several newspapers under strain, with losses peaking at 18.7% for major national dailies.²⁸⁴ As highlighted by the Madrid Press Association, unemployment has been consequently identified as a main source of risk to the journalistic profession in the country, especially among women and the younger generations, who are often forced to accept precarious and low-remunerating contracts or seek career changes.²⁸⁵ Although the level of trust in the Spanish media scores relatively low in comparison to other Western countries, legacy newspapers are still considered among the most reputable sources of information even in the era of digital media.²⁸⁶

²⁸⁰ 'Spain', *World Press Freedom Index 2020 and 2019*, Reporters Without Borders, 2019, available at: <https://rsf.org/en/spain>.

²⁸¹ Salaverria, R. and Gomez Bacereido B., 'Spain', *Media Landscapes*, European Journalism Centre, 2018, available at: <https://medialandscapes.org/country/spain>.

²⁸² Masip P. et al., 'Country Report: Spain', *Media Pluralism Monitor*, European University Institute, 2016, p. 6, available at: https://cadmus.eui.eu/bitstream/handle/1814/46812/Cover_Spain_rev2EN.pdf?sequence=1&isAllowed=y.

²⁸³ Ibid.

²⁸⁴ 'Medios Controlados', OJD, available at: <https://www.ojd.es/medios-controlados/>; Cano F., "OJD March: the Six Main Printed Newspapers Lose 90.000 Copies", *El Español*, 2016, available at: https://www.lespanol.com/invertia/medios/20190426/ojd-principales-diarios-impresos-pierde-ejemplares-difusion/393961372_0.html.

²⁸⁵ 'Annual Report on the Journalistic Profession', Madrid Press Association, 2018, available at: https://www.apmadrid.es/wp-content/uploads/2019/07/Informe-profesi%C3%B3n-2018_baja.pdf.

²⁸⁶ 'Spain', *Digital News Report*, Reuters Institute for the Study of Journalism, 2019, available at: <http://www.digitalnewsreport.org/survey/2019/spain-2019/>; 'Trust Barometer 2019', Edelman, 2019, available at: https://www.edelman.com/sites/g/files/aatuss191/files/2019-02/2019_Edelman_Trust_Barometer_Global_Report_2.pdf.

4.8.2. Journalism and corruption

According to a survey conducted by the Centre for Sociological Investigations (CIS), 17% of Spaniards perceive corruption as the country's greatest issue.²⁸⁷ Similarly, the Spanish Chapter of Transparency International admits that notwithstanding the slight improvements recorded in the last years, Spain's score in the latest Corruption Perception Index still falls short of the threshold which would be expected of the 15th economy in the world.²⁸⁸ Media coverage of corruption scandals however remains inconsistent and subject to the gatekeeping of party politics, meaning that parties will usually attempt to weaponise stories at the expense of their opponents or to suppress them if incompatible with their interests.²⁸⁹ This has consequently resulted in the development of a journalistic culture, which, rather than attributing centrality to the corruptive act, prioritises the news outlet's relation to the investigated subject to adjust the framing of the reporting.²⁹⁰ Media permeability to political influence can thus only weaken the effectiveness of investigative journalism, and contemporarily marginalise dutiful reporters, consequently more exposed to the risks of retaliation.

4.8.3. SLAPPs

Both criminal and civil law offer viable routes for the pursuit of strategic court litigation against media actors in Spain. Recourse to these so-called "honour laws" has represented regular practice among public officials to hamper journalists' investigative activities since the early days of the new monarchy. Exemplary is the case of J. L. Cebrian, co-founder of national daily *El País*, who admitted to have been subject to 200 court proceedings only during the first 14 years of the newspaper's life.²⁹¹ The risks emanating from these mechanisms are particularly reflected in the inadequacy of the Spanish framework to guarantee sufficient safeguards for reporters, exacerbated not only by the persistence of certain outdated features of defamation law, but also by more recent legislative developments impinging on press freedoms.

The Spanish Criminal Code recognises two broad categories of punishable offences: slander (Art. 205) and defamation (Art. 208), respectively defined as "accusing another person of a felony while knowing it is false or recklessly disregarding the truth" and "an action or an expression that harms the dignity of another person, undermining his reputation or attacking his self-esteem". While fines may be applied for a maximum of 12 months in case of slander and 7 months in case of defamation, both provisions prescribe harsher penalties, including imprisonment up to two years for slander, if the offence is committed via the media.²⁹² Although the law does not foresee specific punishments for defamation of public officials, defendants still bear the burden to prove the veracity of their allegations on facts

²⁸⁷ 'Three main problems that currently exist in Spain', Centre for Sociological Investigations, 2020, available at: http://www.cis.es/cis/export/sites/default/-Archivos/Indicadores/documentos_html/TresProblemas.html.

²⁸⁸ 'Spain Continues its Improvement in the Corruption Perception Index 2019', Transparency International España, 2019, available at: <https://transparencia.org.es/ipc-2019/>.

²⁸⁹ Fernandez Alvarez L. et al., 'Media Coverage of Corruption in Spain', European Journalism Observatory, 2018, available at: <https://es.ejo-online.eu/propiedad-y-concentracion-de-los-medios/corupcion-politica-espana-tratamiento-medios/>.

²⁹⁰ Martinez, F. 'Media and Corruption Scandals in Spain': Plaintiffs, Magnifiers, Accomplices?', *Revista de Ciencias Sociales*, Vol. XIII, No. 1, 2013, pp. 99-126, p. 104, available at: https://rua.ua.es/dspace/bitstream/10045/29239/1/OBETS_08_01_04.pdf.

²⁹¹ Sierra, J., 'Freedom of the Press, Expression, and Information in Spain: Challenges, and Hurdles that the Spanish Media Face in Collecting and Disseminating Information', Open Society Foundations, 2014, available at: <https://www.opensocietyfoundations.org/uploads/e15dbd1a-b2e1-4c86-8604-64cfd89090ef/freedom-press-expression-and-information-spain-es-20150128.pdf>.

²⁹² Criminal Code, Art. 206-209.

concerning the exercise of public functions or administrative violations.²⁹³ Furthermore, imprisonment is still prescribed as a possible punitive measure under Art. 490 and 491 for *lèse-majesté*, namely offences directed at the King and the royal family.²⁹⁴ However, convictions of this latter kind usually only result in the imposition of fines of several thousands of Euros.²⁹⁵

On the other hand, the introduction of Law 4/2015, also re-named by its opponents as *Ley Mordaza* (“gag law”), has been the target of hefty critique due to the heavy restrictions it applies to manifestations of civil dissent in the name of public security.²⁹⁶ Among the many controversial provisions, Art. 37 (4) criminalises any act lacking respect or consideration of a member of the State police and security forces in the exercise of her public duties, with applicable fines ranging between 100 and 600 Euros.²⁹⁷ Art. 36 (23) expands the prohibition to the realisation and dissemination of unauthorised photographic reportages, which may instead trigger fines for up to 30,000 Euros. The new regime therefore raises an additional smokescreen for journalistic enquiries on the activities of law-enforcement officials, prompting several NGOs to submit recommendations for urgent reform to the Spanish government in order to bring the law into compliance with international human rights standards.²⁹⁸ Since its entry into force, cases of journalists and photographers targeted through the law have continued to increase.²⁹⁹

Finally, civil actions for defamation also make for a dangerous tool in the hands of public officials to deter investigative journalism. The relevant legal framework, of which Law 1/1982 constitutes the main pillar, allows for a broad range of claims to be advanced against defamatory statements, including the defence of honour, personal and family intimacy, and personal image, also guaranteed under the Spanish constitution.³⁰⁰ The main issue with the law relates to the absence of sufficient safety valves, such as a cap on immaterial damages that may be awarded or a clear definition of the possible standard defenses available, which consolidates the risk of abuse to silence undesired allegations.³⁰¹

²⁹³ Criminal Code, Art. 210.

²⁹⁴ Criminal Code, Art. 490-491.

²⁹⁵ ‘Spain’ in S. Griffen/IPI, *Defamation and insult laws in the OSCE region: A comparative study*, OSCE Representative on Freedom of the Media, March 2017, p. 216.

²⁹⁶ ‘Freedom of Expression in Spain’, Amnesty International, available at: <https://www.es.amnesty.org/en-que-estamos/espana/libertad-de-expresion/>.

²⁹⁷ Organic Law 4/2015, Art. 37(4).

²⁹⁸ Article 19 et al., ‘Spain: Government should accept UN UPR Recommendations on Freedom of Expression in their Entirety’ European Centre for Press and Media Freedom, 2020, available at: <https://www.ecpmf.eu/archive/news/legal/spain-government-should-accept-un-upr-recommendations-on-freedom-of-expression.html>.

²⁹⁹ Mercè Alcocer, Cristina Fallaras and Natalia Diez have all been fined under the law respectively for having approached a politician for an interview, gathering a group of protesters before the Mexican embassy, and asking questions to police officers in the streets, Bernal-Triviño, A., ‘Journalists Reported through the Gag Law’, Public.es, 2018, available at: <https://www.publico.es/sociedad/dia-mundial-libertad-prensa-periodistas-senaladas-ley-mordaza.html>; Or Mikel Sáenz who was filming with his mobile phone a police operation in a neighborhood in Vitoria, ‘Complaint filed to the Ombudsman due to Another Fine Imposed on a Journalist through the Gag Law’, PDLI, 2017, available at: <http://libertadinformacion.cc/queja-ante-el-defensor-del-pueblo-por-otra-multa-a-un-periodista-por-la-ley-mordaza/>.

³⁰⁰ Spanish Constitution, Art. 18.

³⁰¹ ‘The State of Press Freedom in Spain: 2015’, International Press Institute, 2015, p. 30, available at: https://issuu.com/internationalpressinstitute/docs/estado_de_libertad_de_prensa_en_esp.

4.8.4. Catalonia

Worrying developments for press freedoms have also arisen in light of the recent political turmoil unleashed by Catalonia's consultative referendum for independence, which was declared unconstitutional by the Spanish government and led to the prosecution of political activists in the region. Numerous threats against Catalan media actors have in fact been recorded on the Platform to promote the protection of journalism and the safety of journalists of the Council of Europe both before and in the aftermath of the referendum. For instance, the National Civil Guard raided the offices of five Catalan newspapers to deliver a judicial warrant which prohibited them from disseminating institutional advertisements in support of the referendum.³⁰² A month later, the Spanish government instead considered the possibility of assuming control of the Catalan media regulatory authority through the application of a constitutional provision, in order to limit the referendum's impact on public opinion.³⁰³ The Platform also reports a non-negligible number of threats emanating from private citizens, in particular protesters, who displayed violent conduct against reporters and camera operators working on the sidelines of the street marches on multiple occasions.³⁰⁴ Further escalations have been illustrated in the "Observatorio 1-0" created by NGO "Platform in defense of freedom of information" (PDLI), revealing an even more drastic scenario.³⁰⁵

4.8.5. Whistleblowers

In a 2013 report, Transparency International had already criticised the absence of specific legal instruments shielding whistleblowers from retaliatory measures.³⁰⁶ To date, no signs of change have been given at institutional level to increase protection for this category, apart from an attempt by the

³⁰² 'The Guardia Civil Raids Several Catalan Newsrooms', *Platform to Promote the Protection of Journalism and the Safety of Journalists*, Council of Europe, 2017, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=31219579&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.

³⁰³ 'Spanish Government Threatens to Take Over Autonomic Media in Catalonia', *Platform to Promote the Protection of Journalism and the Safety of Journalists*, Council of Europe, 2017, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=34736537&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.

³⁰⁴ 'Laila-Jimenez Assaulted by Protesters during Catalonia Independence March', *Platform to Promote the Protection of Journalism and the Safety of Journalists*, Council of Europe, 2019, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=52779426&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29; 'Several Journalists Targeted while Covering Demonstrations', *Platform to Promote the Protection of Journalism and the Safety of Journalists*, Council of Europe, 2019, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=51753735&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29;

'A Telemadrid Cameraman Assaulted by Protesters in Barcelona', *Platform to Promote the Protection of Journalism and the Safety of Journalists*, Council of Europe, 2018, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=39460575&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.

³⁰⁵ 'Observatorio 1-0', PDLI, available at: <http://libertadinformacion.cc/herramientas/observatorio-1-0/>.

³⁰⁶ Worth M., 'Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU', Transparency International, 2013, p. 79, available at: https://images.transparencycdn.org/images/2013_WhistleblowingInEurope_EN.pdf.

new parties *Podemos and Ciudadanos* to pass a legislative reform, which has been stalling since the early stages of Parliamentary proceedings in 2017.³⁰⁷ As in the past, all citizens in Spain bear an obligation under criminal law to report illicit activities to the authorities, however the requirement to personally file the allegations cannot admittedly encourage whistleblowing practice if not complemented by appropriate safeguards.³⁰⁸

By contrast, civil society groups have shown a more proactive attitude to address the institutional gaps. Notable cases are those of “Platform for Honesty” (Plataforma X La Honestidad), which among other activities provides direct assistance to whistleblowers targeted by retaliation, or the Catalan “XNet” project and “Filtro.la”, both of which committed to establish direct communication channels with the authorities for public and private employees to use in anonymised form.³⁰⁹

4.8.6. Media freedom in times of Covid-19

As highlighted by the President of PDLI, the outbreak of the Covid-19 pandemic and the pernicious effects it has had on the whole nation have accentuated the persistence of certain worrying trends for media freedoms.³¹⁰ Notably, most of these threats have originated from state authorities, in particular the government, which has leveraged the state of alarm declared by executive decree to restrict ordinary press work on several occasions.

Already at the early stages of the crisis, the administration announced the temporary freezing of all deadlines which need to be complied with by the authorities when responding to requests for access to public information.³¹¹ The measure was aimed at easing the burden imposed on public bodies under the Law 19/2013 on transparency, access to public information and good governance, with the exception of solicitations made to the authorities to obtain Covid-19 related data.³¹² A few days later, however, the decree was amended to remove the exception, fuelling the discontent of media and civil society organisations.³¹³ The lack of sufficient transparency sparked particular concerns with regard to

³⁰⁷ ‘Proposal for Integral Law on the Fight Against Corruption and Protection of Whistleblowers’, Congreso de los Diputados, 2017, available at:

http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas?piref73_2148295_73_1335437_1335437.n_ext_page=/wc/servidorCGI&CMD=VERLST&BASE=IW12&FMT=INITXDSS.fmt&DOCS=1-1&DOCORDER=FIFO&QUERY=%28122%2F000022*.NDOC.%29;

‘Whistleblowing and Protection of Whistleblowers in Spain’, Blueprint for Free Speech, 2018, available at:

<https://www.changeofdirection.eu/assets/briefings/EU%20briefing%20paper%20-%20Spain%20-%20spanish.pdf>.

³⁰⁸ Ibid.

³⁰⁹ See ‘Platform for Honesty’, Platform for Honesty, available at: <https://torturacorrupcion.com/asociacion-victimas/plataforma-x-la-honestidad/>; ‘Independent Reporting Platform to Reveal Information in the Public Interest to the Media and Civil Society Organisations in a Safe and Anonymous Manner’, Filtro.la, available at: <https://filtro.la.org/>; ‘XNet: Mailbox for Reporting Corruption’, XNet, available at: <https://xnet-x.net/en/xnetleaks/>.

³¹⁰ ‘The Pandemic has Accentuated the Problems of Freedom of Expression in Spain’, PDLI, 2020, available at: <http://libertadinformacion.cc/video-la-pandemia-ha-acentuado-los-problemas-de-libertad-de-expresion-en-espana/>.

³¹¹ ‘Transparency Curtailed: the State of Alarm Paralyzes the Right to Access Information’, Maldita.es, 2020, available at: <https://maldita.es/malditodato/2020/04/28/transparencia-confinada-estado-alarma-paraliza-derecho-acceso/>.

³¹² ‘Law 19/2013, of the 9 December 2013, on Transparency, Access to Public Information and Good Governance’ State Official Bulletin, 2013, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2013-12887>.

³¹³ ‘Transparency Curtailed: the State of Alarm Paralyzes the Right to Access Information’, Maldita.es, 2020, available at: <https://maldita.es/malditodato/2020/04/28/transparencia-confinada-estado-alarma-paraliza-derecho-acceso/>.

the assignment of large public procurements for the provision of fundamental sanitary equipment and other basic commodities.³¹⁴

Moreover, the rapid proliferation of “fake news” experienced in the last months, especially on social networks, has triggered extensive attention at institutional level for the dangers associated with online disinformation and the possible solutions to mitigate it. To this end, the State Public Prosecutor’s office led a project, under pressure of the Unidas Podemos coalition, to explore the criminal law implications of misinformative practices which could stir confusion and distort public perception of the pandemic’s reality.³¹⁵ The PDLI criticised the initiative, indicating the existence of alternative routes to deal with those limited cases which could pose a concrete threat to public order, also in light of the recent joint statement by the United Nations and OSCE discouraging the criminalisation of fake content dissemination.³¹⁶ The climate of apprehension culminated with the press conference of General José Manuel Santiago, Head of the Guardia Civil, who in illustrating the state’s commitment in the fight against disinformation, emphasised the need to reduce the social stress induced by the phenomenon as well as the importance of *minimising hostilities against the government’s crisis management*.³¹⁷

Equally alarming has been the administration’s attitude in the direct contact with the press. For instance, under the format adopted for press conferences at the early stages of the pandemic, journalists could not directly refer their queries to members of the cabinet, who instead would filter the questions in advance, and re-formulate them before reading them out loud.³¹⁸ The system was subsequently modified to accommodate more confrontational dialogues, upon receipt of an open letter signed by 300 reporters.³¹⁹

³¹⁴ ‘Transparency and Active Publicity: Covid-19 and the State of Alarm in Spain’, Transparency International España, 2020, available at: <https://transparencia.org.es/wp-content/uploads/2020/05/Transparencia-y-publicidad-activa-recomendaciones-COVID19.pdf>.

³¹⁵ The report was accessed by news organisations “El Confidencial”, which provided a summary in the following article: Garea, F., ‘The State Prosecutor Considers that the Spreading of Disinformation Can Lead to 10 Different Criminal Violations’, El Confidencial, 2020, available at: https://www.elconfidencial.com/espana/2020-04-17/fiscalia-considera-difundir-bulos-incurrir-decena-delitos_2552591/.

³¹⁶ ‘The PDLI Rejects the Criminalisation of Disinformation and Encourages to Combat it without Resorting to the Criminal Code’, PDLI, 2020, available at: <http://libertadinformacion.cc/la-pdli-rechaza-la-criminalizacion-de-los-bulos-e-insta-a-combatirlos-sin-recurrir-al-codigo-penal/>; ‘Covid-19: Governments must Promote and Protect Access to and Free Flow of Information during Pandemic, Say International Media Freedom Experts’, OSCE, 2020, available at: <https://www.osce.org/representative-on-freedom-of-media/448849>.

³¹⁷ ‘The Guardia Civil Confirms that it is Combating Disinformation on the Web to Minimise the Climate of Hostility against the Government’s Management’, Público, 2020, available at: <https://www.publico.es/politica/bulos-coronavirus-marlaska-criticas-gobierno-guardia-civil.html>.

³¹⁸ ‘The Moncloa Keeps its Format for Press Conferences and States that there is No Agreed Alternative’, Heraldo, 2020, available at: <https://www.heraldo.es/noticias/nacional/2020/04/02/coronavirus-moncloa-mantiene-su-formato-de-ruedas-de-prensa-y-alega-que-no-hay-alternativa-de-consenso-1367769.html>.

³¹⁹ ‘The Government Rectifies and Allows Direct Questions of Journalists during Press Conferences’, Heraldo, 2020, available at: <https://www.heraldo.es/noticias/nacional/2020/04/06/coronavirus-espana-gobierno-rectifica-permitira-preguntas-directas-periodistas-1368247.html>.

4.9. Sweden

Sweden was ranked fourth in the world for media freedom in the 2020 World Press Freedom Index by Reporters Without Borders.³²⁰ Sweden is considered one of the best environments for media freedom in the EU (along with Denmark and Finland), according to the study published by the expert delegation from the ECPMF, EFJ, and OBCT in May 2020.³²¹ A number of distinguishing features of Sweden's framework for protecting media freedom are important to highlight.

4.9.1. Media ownership

First, similar to Denmark, the model for media ownership is quite distinct, where there is a system of media ownership by foundations. Leona Achtenhagen, Stefan Melesko & Mart Ots have noted that foundations do not have a person as an owner, but instead, the control function is replaced by the foundation's charter.³²² Under this model of ownership, "upholding the 4th estate³²³ is an important basis for the foundations' strategic decisions, and not profitability per se; profitability is instead seen as a means to produce journalistic content."³²⁴

4.9.2. Trade unions for journalists

Second, Sweden has strong trade union representation for journalists, which assists in maintaining a "high standard of press and media freedom."³²⁵ The Union of Swedish Journalists (SJF) has 14,000 members and it is both a trade union and a professional association. The purpose of the union is to be a "protector, negotiator and watchdog of its members' interests," and to ensure "working conditions, ethics and media freedom and pluralism."³²⁶ The SJF now allows part-time employees and freelancers to join the union.

³²⁰ Reporters Without Borders, 2020 World Press Freedom Index, available at: <https://rsf.org/en/ranking>.

³²¹ Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (European Centre for Press and Media Freedom, the European Federation of Journalists, and Osservatorio Balcani e Caucaso Transeuropa, 2020), available at: https://www.ecpmf.eu/wp-content/uploads/2020/05/ECPMF-FFM-Scandinavia_2020.pdf.

³²² Leona Achtenhagen, Stefan Melesko & Mart Ots, "Upholding the 4th estate—exploring the corporate governance of the media ownership form of business foundations," (2018) 20(2) *International Journal of Media Management* 129, p. 129.

³²³ [Editorial footnote] The Fourth Estate is a term that is often used to refer to the media; it styles them as the (informal) fourth branch of government as they keep watch on the three formal branches (i.e., the executive, legislative and judicial branches).

³²⁴ Leona Achtenhagen, Stefan Melesko & Mart Ots, "Upholding the 4th estate—exploring the corporate governance of the media ownership form of business foundations," (2018) 20(2) *International Journal of Media Management* 129, p. 146.

³²⁵ Renate Schroede, "A high degree of trade union organisation helps to protect journalists and preserve professional journalism", in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 14.

³²⁶ Renate Schroede, "A high degree of trade union organisation helps to protect journalists and preserve professional journalism", in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 15.

4.9.3. Accountable journalism and monitoring journalistic ethics

A third feature is that Sweden has a “well-functioning and independent system of promoting accountable journalism and monitoring journalistic ethics.”³²⁷ In January 2020, Sweden’s Press Ombudsman became the Media Ombudsman, in addition to the Media Council, which now includes representation from the audiovisual media.³²⁸ This system is voluntary, and financed by the Swedish Media Publishers’ Association, the Magazine Publishers’ Association, the Swedish Union of Journalists, the National Press Club, Swedish Radio (SR), Swedish Television (SVT), Swedish Educational Broadcasting Company (UR) and TV4. These organisations and companies also draw up the Code of Ethics for Press, Radio and Television. The Media Ombudsman is appointed by a special committee, made up of the Chief Parliamentary Ombudsman, the chairperson of the Swedish Bar Association and the chairperson of the National Press Club; while the Media Council is chaired by four judges, and made up of 16 representatives from each of the above-mentioned media organisations, and 12 representatives of the general public. Individuals can lodge complaints about newspapers, magazine and broadcasters to the Media Ombudsman for violations of good journalistic practice. Where the evidence is “weighty enough”, the complaint may be referred to the Media Council for a decision.³²⁹ A newspaper or broadcaster company that has been found to violate good journalistic practice is expected to publish the decision of the Media Council; and must also pay an administrative fine. Crucially, as Dirk Voorhoof notes, the ethical system in Sweden means “fewer cases brought to court,” and “[l]ess fear or intimidation caused by court cases and defamation or libel lawsuits reduces the risk of chilling effects.”³³⁰

4.9.4. Safeguards for media freedom

Finally, Sweden has well-developed safeguards for protecting media freedom, particularly relating to defamation. As a recent study on criminal defamation for the OSCE Representative on Freedom of the Media has shown, criminal prosecutions for defamation involving the media are rare in Sweden.³³¹ Sweden has “extensive requirements” for conducting criminal prosecutions for defamation under the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.³³² As Voorhoof notes, defamation charges can only be brought against an editor in “very exceptional circumstances, respecting specific procedural guarantees and only insofar as a public interest is involved in the prosecution”.³³³ The court is made up of three judges and a jury. Under Chapter 1, Article 4 of the Freedom of the Press Act, the judges and jury “should bear constantly in mind in this connection that

³²⁷ Dirk Voorhoof, “Sustainable co- and self-regulatory frameworks promoting and safeguarding ethical journalism”, in in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 23.

³²⁸ Media Ombudsman, How self-regulation works, available at: <https://mediombudsmannen.se/about-the-media-ombudsman/how-self-regulation-works/>.

³²⁹ Media Ombudsman, How self-regulation works.

³³⁰ Dirk Voorhoof, “Sustainable co- and self-regulatory frameworks promoting and safeguarding ethical journalism”, in in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 26.

³³¹ Scott Griffen/IPI, *Defamation and insult laws in the OSCE region: A comparative study*, OSCE Representative on Freedom of the Media, March 2017, p. 224.

³³² Ibid. and see The Fundamental Law on Freedom of Expression, available at: <https://www.riksdagen.se/globalassets/07.-dokument--lagacr/the-fundamental-law-on-freedom-of-expression-2015.pdf>; and <https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-freedom-of-the-press-act-2015.pdf>.

³³³ Dirk Voorhoof, “Sweden: strong constitutional safeguards secure media freedom,” in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 27.

the freedom of the press is fundamental to a free society,” and “in case of doubt, acquit rather than convict.”³³⁴ Further, in relation to civil defamation, research has shown that civil proceedings for defamation are “exceptional” and “very few cases have led to the court’s finding of liability of editors, journalists or media.”³³⁵ Crucially, courts can only award damages if the defamatory statement amounts to a criminal offence, and where awards are made, the amounts are “modest, not exceeding 5.000 euros, and are much lower than the costs for litigation, including the lawyers’ fees”.³³⁶

³³⁴ Freedom of the Press Act, Chapter 1, Article 4.

³³⁵ Dirk Voorhoof, “Sweden: strong constitutional safeguards secure media freedom,” in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 27.

³³⁶ Dirk Voorhoof, “Sweden: strong constitutional safeguards secure media freedom,” in Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices* (ECPMF, EFJ, and OBCT, 2020), p. 27.

5. MISUSE AND ABUSE OF THE LAW

This chapter provides an overview and analysis of selected types of laws that are susceptible to misuse and abuse and thus have a chilling effect on journalists and other media actors, and on public debate more generally. Attention will be paid to defamation law, SLAPPs – which by their nature are seen as threats to journalists and other media actors, and other types of laws, such as anti-terrorism and national security laws.

5.1. Defamation law

A defamatory statement is a false or untrue statement of fact that harms the reputation or good name of a living person. The purpose of defamation laws is to protect the reputations of individuals from injury. The protection of reputation is one of the permissible, legitimate grounds for limiting the right to freedom of expression set out in Article 10(2), ECHR. Nevertheless, monitoring exercises show that defamation laws are often mis-used, in particular by politicians and government ministers to silence critical voices.³³⁷ Defamation laws are susceptible to misuse if they lack the necessary checks and balances to protect freedom of expression and the public's right to receive information on matters of general interest to society. For instance, prior to the introduction of key reforms a few years ago, Greece's Press Law was widely known as the "press killer" because of the ease with which its provisions for defamation could be turned against the media.³³⁸

In order to avoid a "chilling effect", it is very important that any measures or remedies interfering with the right to freedom of expression are governed by the principle of proportionality. Criminal measures have far-reaching consequences for those affected by them. Thus, by their very nature, criminal measures have a "chilling effect" on public debate. A prison sentence for a press offence will be compatible with freedom of expression only in exceptional circumstances, namely when other human rights have been seriously impaired, for instance in cases of hate speech or incitement to violence.³³⁹

This principle reflects the belief that criminal sanctions should only be deployed as an ultimate remedy. That is why only specific extreme types of expression – with motives that go against the fundamental values of the Convention – are explicitly mentioned as categories of expression which would be appropriately subject to criminal law.

In those cases where legal measures are deemed necessary to limit the right to freedom of expression, civil-law measures will, generally-speaking, be much more proportionate than criminal-law measures. A fine or a prison sentence of short duration or a suspended or conditional prison sentence may well appear to be a less severe sanction than a lengthy actual prison sentence. However, the Court has

³³⁷ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Democracy at risk: Threats and attacks against media freedom in Europe*, Annual Report 2019,, p. 12, which documents examples in Italy, Malta and Slovakia.

³³⁸ Lambrini Papadopoulou, 'How a €3 million libel suit led a Greek journalist to fight for legal change', IPI Newsroom, 14 September 2016, available at: <http://www.freemedia.at/how-a-e3-million-libel-suit-spurred-greek-journalists-campaign-for-legal-change/>.

³³⁹ ECtHR, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, 17 December 2004. See also, ECtHR, *Gündüz v. Turkey*, no. 35071/97, ECHR 2003-XI.

repeatedly recognised that the limited nature of a sanction is not necessarily determinative; what matters is that a journalist has been convicted at all.³⁴⁰ The mere fact of a criminal conviction itself can have a chilling effect on freedom of expression. Indeed, it has even found that the “fear of such a sanction inevitably has a chilling effect on the exercise of journalistic freedom of expression”.³⁴¹

Remedies for defamation, including an award of damages, must always bear a reasonable relationship of proportionality to the injury to reputation suffered. Arbitrary and/or disproportionate awards of damages which could have a chilling effect on freedom of expression.

Politicians (including heads of state and government and members of government), public officials or public figures (including business people and even celebrities) must tolerate higher levels of criticism than other individuals.³⁴² By deciding to enter public life, they knowingly lay themselves open to close scrutiny of their words and actions.³⁴³ While they are entitled to protection of their reputation, even when they are not acting in a private capacity, the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.³⁴⁴

A 2017 study by the International Press Institute for the OSCE Representative on Freedom of the Media offers a very detailed examination of the criminal law landscape of all OSCE participating States and thus also all EU Member States.³⁴⁵ A key general finding of the study is that criminal defamation and insult laws exist in 42 of the 57 OSCE Participating States and these laws are applied “with some degree of regularity”, including against the media. Among EU Member States, it singles out Italy and Greece as “particularly troubling” in this regard.³⁴⁶ It also points to cases of criminal defamation in Portugal, as well as some instances in recent years in Denmark, Finland and Germany.³⁴⁷ According to the study, only 15 States “have repealed all general provisions on criminal defamation and insult”.³⁴⁸ Those states include the following current EU Member States: Cyprus, Estonia, Ireland and Romania.

These laws “commonly” do not require the defamatory content to be false and there is provision for a sanction of imprisonment in “the vast majority of cases”. According to the study, of the countries which still have criminal defamation laws, the only EU Member States that do not provide for imprisonment as a sanction are Bulgaria, Croatia and France.³⁴⁹ A particularly controversial feature of criminal defamation laws is the focus that they often contain on insulting public figures and/or (domestic and/or foreign) heads of state. The study refers to Hungary and Slovakia as EU Member States in which politicians and judges continue to have recourse to criminal defamation to respond to criticism.³⁵⁰ According to the study, 15 OSCE States provide for criminal liability for insulting public officials and

³⁴⁰ ECtHR, *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298.

³⁴¹ ECtHR, *Fatullayev v. Azerbaijan*, no. 40984/07, § 102, 22 April 2010. See also, ECtHR, *Cumpănă and Mazăre v. Romania* [GC], § 113 and ECtHR, *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, § 49, 18 December 2008.

³⁴² ECtHR, *Lingens v. Austria*, 8 July 1986, Series A no. 103.

³⁴³ *Ibid.*

³⁴⁴ ECtHR, *Von Hannover v. Germany*, no. 59320/00, ECHR 2004-VI; ECtHR, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, ECHR 2012.

³⁴⁵ Scott Griffen/IPI, *Defamation and insult laws in the OSCE region: A comparative study*, OSCE Representative on Freedom of the Media, March 2017, available at: <https://ipi.media/criminal-defamation-unduly-limits-media-freedom/>. For the overall analysis, see pp. 7-34; for a tabular overview, see pp. 32-33.

³⁴⁶ *Ibid.*, p. 10.

³⁴⁷ *Ibid.*, p. 10.

³⁴⁸ *Ibid.*, p. 8.

³⁴⁹ *Ibid.*, p. 8.

³⁵⁰ *Ibid.*, p. 10.

nine OSCE States punish defamation “more harshly” if the victim is a public official. Nearly half of OSCE States offer special protection for the reputation and honour of the head of state and 18 OSCE States have special laws protecting foreign heads of state.

Although the European Court of Human Rights has not unequivocally called for the decriminalisation of defamation, it has repeatedly “further observe[d] that the Parliamentary Assembly of the Council of Europe in its Resolution 1577 (2007) urged those member States which still provide for prison sentences for defamation, even if they are not actually imposed, to abolish them without delay”.³⁵¹

The Committee of Ministers describes libel tourism as “a form of “forum shopping” when a complainant files a complaint with the court thought most likely to provide a favourable judgment (including in default cases) and where it is easy to sue”.³⁵² The Committee of Ministers sees libel tourism – with the intention of exploiting favourable national defamation laws to stifle critical opinions – as a threat to freedom of expression. With the worldwide reach of the internet, discrepancies between national defamation laws give rise to a problematic level of unpredictability.³⁵³ The Committee of Ministers has therefore called on Council of Europe Member States to align their defamation laws with the case-law of the European Court of Human Rights.

From a European Union law perspective, defamation should be considered against the backdrop of the Charter of Fundamental Rights of the European Union and the Brussels regime on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.³⁵⁴ The E-Commerce Directive, which contains important provisions concerning the role of, *inter alia*, social media service providers, when it comes to the dissemination of defamatory content through their services, is also part of the relevant regulatory framework. Such service providers play a key role in enabling the wide circulation of content in the online environment.

5.2. SLAPPs

Independent, investigative journalism plays a vital role in informing the public on issues of general interest in society, such as social developments, public figures, corruption and wrongdoing. Strategic Lawsuits Against Public Participation (‘SLAPPs’) pose a serious ongoing threat to the safety of journalists, quality journalism and, more generally, everyone who seeks to contribute to public debate.

³⁵¹ See, for example, ECtHR, *Mariapori v. Finland*, no. 37751/07, § 69, 6 July 2010. ; For details of relevant case-law, see: Tarlach McGonagle, (with the collaboration of M. McGonagle and R. Ó Fathaigh), *Freedom of expression and defamation: A study of the case-law of the European Court of Human Rights*, Council of Europe Publishing, Strasbourg, 2016..

³⁵² Committee of Ministers of the Council of Europe, Declaration on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, “Libel Tourism”, to Ensure Freedom of Expression, 4 July 2012, para. 5.

³⁵³ For broader perspectives on defamation and jurisdictional issues, see: Study on forms of liability and jurisdictional issues in the application of civil and administrative defamation laws in Council of Europe member states, Doc. No. DGI(2019)04, prepared by the Expert Committee on human rights dimensions of automated data processing and different forms of artificial intelligence (MSI-AUT), Rapporteur: Emeric Prévost, Council of Europe, 2019.

³⁵⁴ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJEU L351/1 of 20 December 2012. It should be noted that defamation is excluded from the scope of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJEU L 199, 31.7.2007, p. 40–49 (see Article 1.2(g)).

SLAPPs also indirectly pose a threat to the public's right to be properly informed on matters of interest to society.

5.2.1. Working definition of SLAPPs

The term and acronym SLAPP were coined and popularized by George W. Pring and Penelope Canan. According to them, a SLAPP has to primarily “involve communications made to influence a governmental action or outcome, which, secondarily, resulted in (a) a civil complaint or counterclaim (b) filed against nongovernment individuals or organizations (NGOs) on (c) a substantive issue of some public interest or social significance”.³⁵⁵ A SLAPP is thus designed purely for suppressing political opposition and effectively reducing future public participation, which distinguishes it from an everyday retaliatory lawsuit.³⁵⁶

Although Pring and Canan's definition dates from the 1990s and it is quite layered, it remains a dominant reference point in relevant scholarship. Various authors stress the importance of different definitional elements. Fiona Donson, for instance, has underscored two essential elements of a SLAPP: “the case is aimed at public participation and the plaintiff's action should be seen as lacking merit”.³⁵⁷ Experience shows that the plaintiffs (filers) use the lawsuits to silence critical debate rather than aiming for the win. Even if the filers have a poor case, which happens most of the time, they still have the resources to prevail.³⁵⁸

5.2.2. The dangers of SLAPPs

The influence of a SLAPP depends on various factors such as the legal costs, the elasticity of laws and the existence of safeguards. Therefore, SLAPPs can be more or less dangerous depending on the country.³⁵⁹ However, the dangerous consequences of SLAPPs in general cannot be underestimated.

A fundamental aspect of a SLAPP is the inequality of resources between the filer and the target, leading to an imbalance of power in favour of the filer. The filer also takes advantage of ambiguous legal provisions and open norms. Filers often rely on defamation law to limit the freedom of expression of journalists. Because of their lack of merits, many SLAPPs are often dismissed. Nevertheless, a SLAPP typically takes a long time, involves high (legal) costs for the target and often results in reputational damage for the target. The filer typically uses the process to try to bankrupt the target.³⁶⁰ This results in

³⁵⁵ G. Pring and P. Canan, *SLAPPs: Getting Sued for Speaking Out*, Temple University Press, Philadelphia, 1996, p. 8.

³⁵⁶ *Ibid*, pp. 8-11.

³⁵⁷ F. Donson, 'Libel Cases and Public Debate – Some reflections on whether Europe should be concerned about SLAPPs', *Review of European, Comparative & International Environment Law (RECIEL)*, Vol. 19, No. 1, 2010, available at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9388.2010.00666.x>.

³⁵⁸ O. Castendyk, E.J. Dommering and A. Scheuer (eds.), *European Media Law*, Kluwer Law International, Alphen aan den Rijn, the Netherlands, 2008, p. 870.

³⁵⁹ S. Verza, 'SLAPP: the background of Strategic Lawsuits Against Public Participation', available at: <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>.

³⁶⁰ P. Rosa and C. Pierobon, 'SLAPPs: strategic lawsuits against public participation', available at: <https://www.balcanicaucaso.org/eng/ECPMF/ECPMF-news/SLAPPs-Strategic-Lawsuits-Against-Public-Participation-198695>.

a chilling effect on the freedom of expression and access to information due to the inhibitive costs of litigation.³⁶¹

Furthermore, the chilling effect has consequences for the public's ability to receive information on matters of general interest to society, as guaranteed by Article 10 ECHR. When journalists engage in self-censorship, i.e., when they refrain from reporting on issues of public interest out of fear for the consequences, the public is deprived of the resources to properly inform themselves. This chilling effect prevents journalists from fulfilling their role as public watchdogs. Moreover, SLAPPs are frequently used to blackmail journalists; instead of draining journalists by high costs of litigation and long court processes, the filer sometimes asks the journalist explicitly to give up their civil right of freedom of expression in exchange for lifting the lawsuit.³⁶² Again, this has a direct chilling effect on freedom of expression and access to information.

5.2.3. The difference between the filers and the targets

A SLAPP lawsuit is filed by a powerful individual or organisation such as high profile business individuals and public officials (governors, legislators and even judges)³⁶³ The targets of the lawsuit are individuals and organisations who speak out about matters of public interest, i.e., journalists, NGOs, local communities, lawyers, academics, trade unionists, human rights defenders, whistle-blowers and others who contribute to public debate.³⁶⁴

As the safety of journalists in the EU is the main focus of this study, it will not elaborate in detail on other actors that contribute to the public debate and are challenged by these vexatious lawsuits. It is however important to bear in mind that the imposed problem of these lawsuits go beyond the media and journalism. The struggle that many investigative journalists go through because of these lawsuits can be illustrated by a few examples. First, the Italian investigative journalist Amalia De Simone – who received the title 'Knight of the Italian Republic' for her reporting on public matters – has been fighting against these vexatious lawsuits for years.³⁶⁵ A well-known example is the case the British investigative journalist Carole Cadwalladr, who has won many prestigious journalism prizes for her work. She was sued by a high-profile businessman for defamation.³⁶⁶ Before she was murdered in October 2017, the Maltese journalist Daphne Caruana Galizia was battling against 47 civil and criminal defamation lawsuits filed by business people and politicians.³⁶⁷ Besides journalists, the non-governmental organizations Sherpa and ReAct were sued by the Bolloré company "to stop them from reporting

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ S. Verza, 'SLAPP: the background of Strategic Lawsuits Against Public Participation', available at: <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>.

³⁶⁴ E. Aba, 'Lawsuits by companies seek to silence accountability advocates', *Business & Human Rights Resource Centre*, n.d., available at: <https://www.business-humanrights.org/en/lawsuits-by-companies-seek-to-silence-accountability-advocates>.

³⁶⁵ S. Verza, 'Vexatious cases hindering investigative journalism in Italy', 27 March 2018, available at: <https://globalfreedomofexpression.columbia.edu/updates/2018/03/vexatious-cases-hindering-investigative-journalism-italy/>.

³⁶⁶ D. Pegg, 'Judge makes preliminary ruling in Carole Cadwalladr libel case', *The Guardian*, 12 December 2019, available at: <https://www.theguardian.com/law/2019/dec/12/judge-makes-preliminary-ruling-in-carole-cadwalladr-libel-case>.

³⁶⁷ J. Garside, 'Murdered Maltese reporter faced threat of libel action in UK', *The Guardian*, 1 June 2018, available at: <https://www.theguardian.com/world/2018/jun/01/murdered-maltese-reporter-faced-threat-of-libel-action-in-uk>.

human rights abuses in Cameroon".³⁶⁸ All targets can be seen as the eyes and ears of the democratic society, critically reporting on matters of public interest.

Defamation, libel and slander are the most common charges in SLAPPs. However, in practice, the defamation claims in SLAPPs mostly concern critical writings about the filers, which is often of great importance to the public. These defamation claims and other types of laws that are mis-used for similar purposes will be outlined when illustrating the examples of SLAPPs in different EU Member States. Filers are typically corporations or high-profile business figures or public officials, with personal and/or institutional resources and well-placed to "strategically assess the merits of the lawsuit".³⁶⁹

5.2.4. Examples of SLAPPS in different EU Member States

The 2020 annual report by Partner Organisations to the Platform draws attention to several SLAPPs in different European countries, including Croatia, Malta, France and Belgium.³⁷⁰ The Platform received warnings about more than 1,100 pending lawsuits in Croatia.³⁷¹ These lawsuits are filed by politicians, public figures and corporations involving compensation claims which defines them as a SLAPPs. In Belgium, investigative journalists David Leloup and Tom Cochez underwent various meritless claims by companies and individuals. Furthermore, as already mentioned, the British investigative journalist Carole Cadwalladr was sued by businessman Arron Banks for her report on his Leave.UK campaign. In this report Cadwalladr suspected involvement of the Russian Federation.³⁷² Other sources have also reported the strategic use of libel actions that never reach court (so-called "frozen cases") in Greece.³⁷³ These lawsuits all had the aim of silencing critical journalists.

Finally, the Platform classified Daphne Caruana Galizia's assassination as an impunity case since the Maltese authorities were unsuccessful in bringing the perpetrator(s) to justice.³⁷⁴ The motive of the murder has been linked to Caruana Galizia's reporting on corruption and organized crime in Malta. Before her death, there were over 40 pending libel cases aimed to intimidate and silence her. After the murder, a Maltese Member of the European Parliament (MEP), David Casa, called for the introduction of anti-SLAPP legislation in Europe.³⁷⁵ This kind of European regulation will be explained in the next sub-section.

³⁶⁸ Ending Gag Lawsuits in Europe: Protecting Democracy and Fundamental Rights, 8 June 2020, available at: <https://www.greenpeace.org/eu-unit/issues/democracy-europe/3965/ending-slapps-strategic-lawsuits-against-public-participation/>.

³⁶⁹ B. Sheldrick, *Blocking Public Participation: The Use of Strategic Litigation to Silence Political Expression*, Wildfrid Laurier University Press, Waterloo, Ontario, 2014, p. 24.

³⁷⁰ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020, pp. 23-24.

³⁷¹ For analysis of the broader context (including a historical perspective) in which these lawsuits have been filed, see: Z. Peruško, 'Critical junctures, media freedom, and illiberal turns', in D. Čepo (ed.), *European Values and the Challenges of EU Membership: Croatia in Comparative Perspective*, Center for Democracy and Law Miko Tripalo, Zagreb, 2020.

³⁷² B. Sheldrick, *Blocking Public Participation: The Use of Strategic Litigation to Silence Political Expression*, op. cit., p. 23.

³⁷³ Lambrini Papadopoulou, "'Frozen cases" aim to chill investigative reporting in Greece', IPI Newsroom, 10 October 2016, available at: <http://www.freemedia.at/frozen-cases-aim-to-chill-investigative-reporting-in-greece/>.

³⁷⁴ Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Hands off press freedom: Attacks on media in Europe must not become a new normal*, Annual Report 2020.

³⁷⁵ E. Allaby, 'After journalist's murder, efforts to combat SLAPP in Europe', *Columbia Journalism Review*, 24 April 2019, available at: <https://www.cjr.org/analysis/slapp-daphne-caruana-galizia-malta.php>.

As attacks on journalists are becoming more common, the question arises what legal systems facilitate these attacks and therefore keep the concept of SLAPPs 'alive'. European countries have different legislative frameworks, which are susceptible to misuse in different ways by the rich filers of such lawsuits. As briefly mentioned above, defamation is most often used to silence journalists. In many EU member states, defamation is a criminal and/or a civil offence which can be punishable by a fine or a prison sentence. Remedies and penalties for defamation differ greatly between countries. For example, Croatia and Estonia do not have provisions for imprisonment as a sanction.³⁷⁶ However, most EU Member States do, and in the Czech Republic, defamation claims can reportedly even lead to a ban on exercising a specific profession.³⁷⁷ Criminal sanctions are particularly used to silence the critical journalists and other actors. These criminal sanctions, compared to civil remedies, have a great power to generate a chilling effect on the media.³⁷⁸ Furthermore, in some countries – nine of the OSCE participating States – defamation claims provide for higher sanctions if they are aimed at public officials instead of a private persons.³⁷⁹ This includes Andorra, Bulgaria, France, Germany, Italy, Monaco, the Netherlands, Portugal and Turkey.³⁸⁰ This sits uneasily with the approach of the ECtHR, which has concluded in the *Lingens v. Austria* and *Artun and Günvener v. Turkey* cases that public officials should tolerate a high degree of criticism³⁸¹ and a state's interest in protecting the head of state "cannot justify conferring on him or her a privilege or special protection vis-à-vis the right to report and express opinions about him or her. To think otherwise would be to depart from today's political practice and conception".³⁸² Nevertheless, 24 of the 57 OSCE states – among which, Belgium, Denmark, Greece, Germany and Italy – do still offer special protection to the reputation of the head of state.³⁸³ Moreover, criminal laws that ban the insult of the state, are implemented in at least 14 OSCE participating States, including, Germany, Austria, Spain and Turkey.³⁸⁴

Many countries use case law of the ECtHR in their application, which can be protective of the freedom of expression of journalists. Besides defamation laws, the Radio and Television Act, different national media laws – the 1881 Media Act in France criminalises defamation and is very 'filer-friendly' – and the statutory right of reply also provide grounds for vexatious lawsuits against journalists. Moreover, constitutional laws, which can include the right of reply or the right to dignity and reputation, are a way for the filer to defend him- or herself against public criticism.³⁸⁵ As is evident, the law of defamation is a key component of the threats and actions against journalists. However, according to Gill Phillips, culture, which shapes the law, should also be taken into consideration.³⁸⁶

³⁷⁶ J. Ní Mhainín, 'A gathering storm: the laws being used to silence the media', Index on Censorship, 1 June 2020, available at: <https://www.indexoncensorship.org/campaigns/the-laws-being-used-to-silence-media/>.

³⁷⁷ J. Ní Mhainín, 'A gathering storm: the laws being used to silence the media', Index on Censorship, 1 June 2020, available at: <https://www.indexoncensorship.org/campaigns/the-laws-being-used-to-silence-media/>.

³⁷⁸ S. Griffen/IPI, 'Defamation and Insult Laws in the OSCE Region: A comparative study', Commissioned by the OSCE Representative on Freedom of the Media, March 2017, p. 7, available at: <https://ipi.media/criminal-defamation-unduly-limits-media-freedom/>.

³⁷⁹ Ibid., pp. 12-13.

³⁸⁰ Ibid., p. 13.

³⁸¹ ECtHR, *Lingens v. Austria*, no. 9815/82, 8 July 1986.

³⁸² S. Griffen/IPI, 'Defamation and Insult Laws in the OSCE Region: A comparative study', op. cit., p. 15, citing ECtHR, *Artun and Günvener v. Turkey*, no. 75510/01, 26 June 2007.

³⁸³ Ibid., p. 16.

³⁸⁴ Ibid., p. 19.

³⁸⁵ Ibid.

³⁸⁶ J. Ní Mhainín, 'A gathering storm: the laws being used to silence the media', Index on Censorship, 1 June 2020, available at: <https://www.indexoncensorship.org/campaigns/the-laws-being-used-to-silence-media/>.

5.2.5. Examples of anti-SLAPP legislation in different EU Member States

Anti-SLAPP legislation is common in the United States and parts of Canada and Australia, but largely alien to EU Member States. In other words, there is no sign of direct legislation and the majority of European judges often lack experience with SLAPPs.³⁸⁷ However, this might change now that different individuals and organisations are calling for anti-SLAPP legislation. The goal of anti-SLAPP laws would be to prevent the plaintiff from filing a lawsuit through the opportunity of early dismissal of such a lawsuit, financial fines and awarding the defendants costs.³⁸⁸

5.2.6. The Council of Europe

It is worth recalling that European and international human rights law provide sufficient grounds for anti-SLAPP rules.³⁸⁹ The European Court of Human Rights has not used the term Strategic Lawsuits Against Public Participation or the acronym SLAPPs yet, but a number of its key principles offer push-back against SLAPPs.

The Court has held that it is “central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court [...] and that he or she is able to enjoy equality of arms with the opposing side”.³⁹⁰ Moreover, “in a democratic society even small and informal campaign groups [...] must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment”.³⁹¹ This commitment to equality of arms and to making sure individual voices have a place in public debate is designed to prevent David versus Goliath types of contests in discussions of matters of importance for society.

A chilling effect may arise, in the words of the Court, where a person engages in “self-censorship”,³⁹² due to a fear of disproportionate sanctions³⁹³ or a fear of prosecution under overbroad laws.³⁹⁴ This chilling effect “works to the detriment of society as a whole”.³⁹⁵

When considering a fine for defamation, the Court has shown itself to be wary of whether the size of the fine is “such as to threaten the economic foundations of the applicant company in any way”.³⁹⁶ In another case, where a fine for defamation led to the newspaper having to close down, the Court took note of the “chilling effect on the applicant newspaper, and that [the imposition of the fine] was

³⁸⁷ E. Allaby, ‘After journalists murder, efforts to combat SLAPP in Europe’, *Colombia Journalism Review*, 24 April 2019, available at: <https://www.cjr.org/analysis/slapp-daphne-caruana-galizia-malta.php>.

³⁸⁸ S. Verza, ‘SLAPP: the background of Strategic Lawsuits Against Public Participation’, available at: <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>.

³⁸⁹ S. Verza, ‘SLAPP: the background of Strategic Lawsuits Against Public Participation’, available at: <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>.

³⁹⁰ ECtHR, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II.

³⁹¹ *Ibid.*, § 89.

³⁹² ECtHR, *Vajnai v. Hungary*, no. 33639/06, § 54, 8 July 2008.

³⁹³ ECtHR, *Cumpănă and Mazăre v. Romania* [GC], op. cit., § 114.

³⁹⁴ ECtHR, *Altuğ Taner Akcam v. Turkey*, no. 27520/07, § 68, 25 October 2011.

³⁹⁵ ECtHR, *Cumpănă and Mazăre v. Romania* [GC], op. cit., § 114.

³⁹⁶ ECtHR, *Błaja News Sp. z o. o. v. Poland*, no. 59545/10, § 71, 26 November 2013.

capable 'of discouraging open discussion of matters of public concern' [...] by silencing a dissenting voice altogether".³⁹⁷

Although it does not use the precise term, SLAPPs, the Committee of Ministers clearly has SLAPPs in mind in Recommendation CM/Rec(2016)4, when it spells out the threats for journalists and media actors and freedom of expression more generally when legislation is misused or abused. Its detailed explanation of the relevant principles reads as follows:

*"Actual misuse, abuse or threatened use of different types of legislation to prevent contributions to public debate, including defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws can prove effective as means of intimidating and silencing journalists and other media actors reporting on matters of public interest. The frivolous, vexatious or malicious use of the law and legal process, with the high legal costs required to fight such law suits, can become a means of pressure and harassment, especially in the context of multiple law suits. The harassment can prove particularly acute when it concerns journalists and other media actors who do not benefit from the same legal protection or financial and institutional backing as those offered by large media organisations. In this respect, it should be recalled that it is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side. States are therefore required to take appropriate measures, which could include the institution of a legal aid scheme, in order to ensure that each side is afforded a reasonable opportunity to present his or her case."*³⁹⁸

Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries does, however, use the term. One of its Guidelines is that: "State authorities should consider the adoption of appropriate legislation to prevent strategic lawsuits against public participation (SLAPP) or abusive and vexatious litigation against users, content providers and intermediaries which is intended to curtail the right to freedom of expression".³⁹⁹

5.2.7. The European Union

In 2018 a group of MEPs called on the European Commission to draft an anti-SLAPP EU Directive. To tackle the issue, companies involved in these SLAPPs could face financial fines and journalists should have the right to appeal that a defamation lawsuit be expediently dismissed. Furthermore, a financial support fund for journalists facing these lawsuits should be created and the MEPs are also calling for a new EU register that would 'name and shame' companies that go after these abusive lawsuits.⁴⁰⁰ Indeed, the European Parliament has repeatedly and with growing insistence been calling on the

³⁹⁷ ECtHR, *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 39, 27 November 2007.

³⁹⁸ Appendix to Recommendation CM/Rec(2016)4, II. Principles, para. 36.

³⁹⁹ Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, 7 March 2018, para. 1.3.4.

⁴⁰⁰ EFJ, 'Six MEPs call for new EU directive against lawsuits targeting journalists, 23 February 2018, available at: <https://europeanjournalists.org/blog/2018/02/23/six-meps-call-for-new-eu-directive-against-lawsuits-targeting-journalists/> and https://www.europarl.europa.eu/doceo/document/TA-8-2018-0204_EN.pdf.

European Commission to take legislative action to counter SLAPPs at the European level, such as an anti-SLAPP Directive.⁴⁰¹

Following these calls, some European countries have started decriminalising defamation. For example, after Daphne Caruana Galizia's murder, Malta decriminalised defamation.⁴⁰² Among the other countries that have decriminalised defamation are Ireland, Estonia and Cyprus – which actually did not decriminalise defamation, but changed it from a criminal offence to a civil offence. This means that the filer must prove a reputation injury or that there has been hostility.⁴⁰³ The decriminalisation of defamation does not immediately solve the problem of SLAPPs, however. For example, the European Parliament is still concerned about fundamental shortcomings in the rule of law of Malta.⁴⁰⁴ In Romania, there have been proposals to recriminalize defamation laws.⁴⁰⁵

In Italy defamation is still a crime, however there are four draft bills in the Italian parliament that discourage SLAPPs. Instead of going to prison for a defamation crime, Italy wants to use fines. Additionally, there will be punitive damages for the filer when acting in bad faith.⁴⁰⁶ Although these drafts open the way to a safer environment for journalists, the situation in Italy, and also in Greece is particularly worrying. The IPI study refers to some recent investigations which point out that 'both states continue to sentence journalists to prison for defamation, even if these sentences are in practice converted into criminal fines'.⁴⁰⁷ In Scandinavia, the situation is different; although Denmark and Sweden do not have any anti-SLAPP regulations, strategic lawsuits hardly exist. Reasons for this could be the journalism-friendly environment, low compensation awards in tort law and high trust levels in the media.⁴⁰⁸ Moreover, Lithuania is speedy at resolving litigious civil cases. The country is one of the fastest in the EU since for the court to reach a decision takes less than 100 days. This could potentially solve the problem of long, money-draining procedures.⁴⁰⁹ Another positive outcome is that while in many countries which do have imprisonment as a punishment for defamation, journalists are almost never brought to court on such charges.⁴¹⁰

⁴⁰¹ European Parliament resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová (2018/2628(RSP)), 19 April 2018, para. 6; European Parliament resolution of 3 May 2018 on media pluralism and media freedom in the European Union (2017/2209(INI)), 3 May 2018, para. 20; European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)), 28 March 2019, para. 48.

⁴⁰² E. Weber, 'Malta: defamation no longer a crime, but new law has critics', ECPMF, 7 May 2018, available at: <https://www.ecpmf.eu/archive/news/legal/malta-defamations-no-longer-a-crime-but-new-law-has-its-critics.html>.

⁴⁰³ J. Ní Mhainín, 'A gathering storm: the laws being used to silence the media', Index on Censorship, 1 June 2020, available at: <https://www.indexoncensorship.org/campaigns/the-laws-being-used-to-silence-media/>.

⁴⁰⁴ European Parliament Press release, 'Malta and Slovakia: serious shortcomings in the rule of law, 19 January 2019.

⁴⁰⁵ Ibid.

⁴⁰⁶ P. Rosa and C. Pierobon, 'SLAPPs: strategic lawsuits against public participation', available at: <https://www.balcanicaucaso.org/eng/ECPMF/ECPMF-news/SLAPPs-Strategic-Lawsuits-Against-Public-Participation-198695>.

⁴⁰⁷ S. Griffen/IPI, 'Defamation and Insult Laws in the OSCE Region: A comparative study', *op. cit.*, p. 10.

⁴⁰⁸ P. Rosa and C. Pierobon, 'SLAPPs: strategic lawsuits against public participation', available at: <https://www.balcanicaucaso.org/eng/ECPMF/ECPMF-news/SLAPPs-Strategic-Lawsuits-Against-Public-Participation-198695>.

⁴⁰⁹ J. Ní Mhainín, 'A gathering storm: the laws being used to silence the media', Index on Censorship, 1 June 2020, available at: <https://www.indexoncensorship.org/campaigns/the-laws-being-used-to-silence-media/>.

⁴¹⁰ Ibid.

5.2.8. Civil society advocacy

Civil society organisations have been campaigning – individually and collectively – for a set of anti-SLAPP measures at the European level. On 27 January 2020, 27 NGOs called on the Vice-President of the European Commission, Vera Jourová, to include anti-SLAPPs legislation in the EU legislative framework.⁴¹¹ On 20 May 2020, a group of NGOs wrote an open letter to the European Commission,⁴¹² accompanied by an 'Advice concerning the introduction of anti-SLAPP legislation to protect freedom of expression in the European Union'.⁴¹³ The key points of advice are:

- amendment of the Brussels I Regulation (recast) "with a view to grounding jurisdiction in the domicile of the defendant in matters relating to defamation";
- inclusion in the Rome II Regulation of "a new rule which would require the application of the law of the place to which a publication is directed";
- adoption of a new Directive "to introduce procedural safeguards with a view to limiting the availability of SLAPPs against journalists, activists and citizens", and
- "budgetary measures to morally and financially support all SLAPPs victims".

In June 2020, a policy paper, *Ending Gag Lawsuits in Europe: Protecting Democracy and Fundamental Rights*, was endorsed by over 119 civil society organisations.⁴¹⁴ Its key recommendations are consistent with other civil society advocacy endeavours, homing in on the need for a new EU Directive; reform of Brussels I (recast) and Rome II Regulations, and support for all victims of SLAPPs (especially with legal defence).

The increasing calls for anti-SLAPP measures at the European level have yet to bear fruit, but they are clearly building up a tremendous head of steam. In the meantime, criminal defamation laws remain in place across the EU.⁴¹⁵ Intimidation and violence against journalists is even at risk of becoming the norm.⁴¹⁶ Many cases, including SLAPPs, threaten the right to 'freely report, independent, diverse and reliable information'. The Covid-19 crisis highlights these cases even more, which calls for developments crucial for the future of journalism.⁴¹⁷

⁴¹¹ Letter to the Vice-President Vera Jourová, 27 January 2020, available at: <https://storage.googleapis.com/planet4-eu-unit-stateless/2020/01/20200127-Letter-to-Commissioner-Jourova-SLAPPs.pdf> or at: <https://www.ecpmf.eu/archive/news/ecpmf/letter-to-ec-vp-vera-jourova-on-anti-slapp-legislation.html>.

⁴¹² Available at: <https://www.ecpmf.eu/wp-content/uploads/2020/05/EC-Advice-concerning-the-introduction-of-anti-SLAPP-legislation-to-protect-freedom-of-expression-in-the-European-Union.pdf>.

⁴¹³ Justin Borg-Barthet, *Advice concerning the introduction of anti-SLAPP legislation to protect freedom of expression in the European Union*, 19 May 2020, available at: <https://www.ecpmf.eu/wp-content/uploads/2020/05/EC-Advice-concerning-the-introduction-of-anti-SLAPP-legislation-to-protect-freedom-of-expression-in-the-European-Union.pdf>.

⁴¹⁴ *Ending Gag Lawsuits in Europe: Protecting Democracy and Fundamental Rights*, 8 June 2020, available at: <https://www.greenpeace.org/eu-unit/issues/democracy-europe/3965/ending-slapps-strategic-lawsuits-against-public-participation/>.

⁴¹⁵ See generally: S. Griffen/IPI, 'Defamation and Insult Laws in the OSCE Region: A comparative study', *op. cit.*

⁴¹⁶ G. Phillips, 'How the free press worldwide is under threat', *The Guardian*, 28 May 2020, available at: <https://www.theguardian.com/media/2020/may/28/how-the-free-press-worldwide-is-under-threat>.

⁴¹⁷ RSF, '2020 World Press Freedom Index: 'Entering a decisive decade for journalism, exacerbated by coronavirus', available at: <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>.

5.3. Selected other types of legislation that are susceptible to misuse

Vague and/or overbroad laws criminalizing the glorification or indirect incitement of terrorism can also have a chilling effect on freedom of expression. The same is true of legislation in which key terms and concepts are either not defined or defined with insufficient precision. The problematic nature of such laws has been highlighted and addressed by the Council of Europe, for example in the case-law of the European Court of Human Rights,⁴¹⁸ in standard-setting work by the Committee of Ministers⁴¹⁹ and at the Ministerial Conference in Reykjavik in 2009. Standards and safeguards developed by the European Court of Human Rights can offer useful guidance for anti-terrorism legislation and its application.⁴²⁰ In a Resolution adopted at the Reykjavik Conference, participating Ministers stated their resolve “to review our national legislation and/or practice on a regular basis to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards, with a particular emphasis on the case law of the European Court of Human Rights”.⁴²¹ The reviews of national laws and practice, envisaged under CM/Rec(2016)4, include existing and draft laws on “terrorism, extremism and national security, and any other legislation that affects the right to freedom of expression of journalists and other media actors [...]”.⁴²²

⁴¹⁸ See, for example, ECtHR, *Leroy v. France*, no. 36109/03, 2 October 2008.

⁴¹⁹ Committee of Ministers Declaration on freedom of expression and information in the media in the context of the fight against terrorism, 2 March 2005.

⁴²⁰ See generally, European Court of Human Rights Press Unit, Factsheet – Terrorism and the European Convention on Human Rights, February 2020, available at: https://www.echr.coe.int/Documents/FS_Terrorism_ENG.pdf.

⁴²¹ Resolution, Developments in anti-terrorism legislation in Council of Europe Member States and their impact on freedom of expression and information. See also: David Banisar, *Speaking of terror: A survey of the effects of counter-terrorism legislation on freedom of the media in Europe*, Council of Europe Media and Information Society Division, 2008, available at: http://www.coe.int/t/dghl/standardsetting/media/doc/SpeakingofTerror_en.pdf.

⁴²² Appendix to Recommendation CM/Rec(2016)4, Guideline 3.

6. MEDIA PLURALISM AND TRANSPARENCY OF MEDIA OWNERSHIP

6.1. European frameworks

Media freedom and pluralism have been aptly described as “crucial corollaries of the right to freedom of expression”. Threats to either can quickly undermine public debate. The ability of the media to influence the collection, production and presentation of information allows them to exert considerable influence over the formation of public opinion. When media ownership becomes concentrated in the hands of a small elite, the ability to steer public debate and ultimately public opinion becomes similarly concentrated. The concentration of media ownership can threaten the plurality of opinions and range of news and other information at the most vulnerable point: the source.⁴²³

Notwithstanding obligations for States under European law to safeguard media pluralism, (legislative) measures are not always in place at the national level to effectively prevent concentrations of media ownership and/or to ensure high levels of transparency about media ownership.

The Charter of Fundamental Rights of the European Union provides, in Article 11(2) that “The freedom and pluralism of the media shall be respected.” This provision is not particularly strongly-worded, but it does have binding legal character and it serves as a central reference point for a range of EU activities and initiatives, such as the High Level Group on Media Freedom and Pluralism.⁴²⁴

The European Court of Human Rights has consistently held that the State is the “ultimate guarantor” of pluralism, especially “in relation to audio-visual media, whose programmes are often broadcast very widely”.⁴²⁵ The State’s role as ultimate guarantor of pluralism implies that it “must ensure, through its law and practice, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting *inter alia* the diversity of political outlook within the country and that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment”.⁴²⁶ This entails “a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism”.⁴²⁷

Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership seeks to operationalize these key principles of the European Court of Human Rights. The Recommendation puts forward a set of Guidelines for Council of Europe member states, which are divided into five main sections: A favourable environment for freedom of expression and media freedom; Media pluralism

⁴²³ The [Hutchins] Commission on Freedom of the Press, *A Free and Responsible Press* (University of Chicago Press, Chicago, 1947), p. 124.

⁴²⁴ High Level Group on Media Freedom and Pluralism, *A free and pluralistic media to sustain European democracy*, Final Report, January 2013.

⁴²⁵ ECtHR, *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 38, Series A no. 276; ECtHR, *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, §§ 44-47, ECHR 2001-VI. In subsequent case-law, the Court has held that the State is also the “ultimate guarantor” of “a free and pluralist debate” – ECtHR, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 112, ECHR 2013.

⁴²⁶ ECtHR, *Manole & Others v. Moldova*, no. 13936/02, § 107, ECHR 2009.

⁴²⁷ ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 134, ECHR 2012.

and diversity of media content; Regulation of media ownership: ownership, control and concentration; Transparency of media ownership, organisation and financing, and Media literacy and education.

The Recommendation recognises that a favourable environment for media pluralism must include national legislative and policy frameworks to guarantee the independence of all media, including public service media, as well as effective safeguards for the independence of national media regulatory authorities.

The Recommendation suggests different types of measures that States should take to prevent or restrict concentrations of market power, at national and sub-national levels, and in specific individual and multiple media markets. It also identifies and addresses legislative blind-spots and loopholes that exist in some countries by focusing specific attention on the need for clear rules and transparency to govern politics and media ownership, beneficial ownership and foreign ownership.

The Recommendation pushes for a regime of transparency with specific disclosure requirements, enhanced by inter-agency coordination, databases and reporting. A key passage sets out the features of the desired transparency regimes and explains its importance in democratic societies:

“States should promote a regime of transparency of media ownership that ensures the public availability and accessibility of accurate, up-to-date data concerning direct and beneficial ownership of the media, as well as other interests that influence the strategic decision making of the media in question or its editorial line. This information is necessary for media regulatory and other relevant bodies to be able to conduct informed regulatory and decision-making processes. It also enables the public to analyse and evaluate the information, ideas and opinions disseminated by the media.”⁴²⁸

It also offers additional details about the features of the envisaged transparency databases and reporting.⁴²⁹

The Recommendation sees media literacy and education as vital tools for helping the public to properly understand where media content is coming from and how its development has – or may have - been influenced by ownership structures. The Recommendation calls for the development of national media literacy policies and coordinated networks. It also pushes for adequate financial resources to realize media education and for it to be appropriately embedded in educational establishments and curricula.

6.2. National frameworks

There is great diversity in the range of national regulatory and policy frameworks dealing with questions of media pluralism and transparency of media ownership. This explains repeated calls in relevant reports and policy instruments for systematic, regular/ongoing (academic) research into, and reporting on, national systems. It is challenging to gather and analyse detailed, contextualised volumes of specific information within given timeframes. It takes time to process the information and unless the resources are available for multi-annual research and reporting, the data will lose its currency quickly. A leading cross-country research project into transparency of media ownership in 2012 generated a

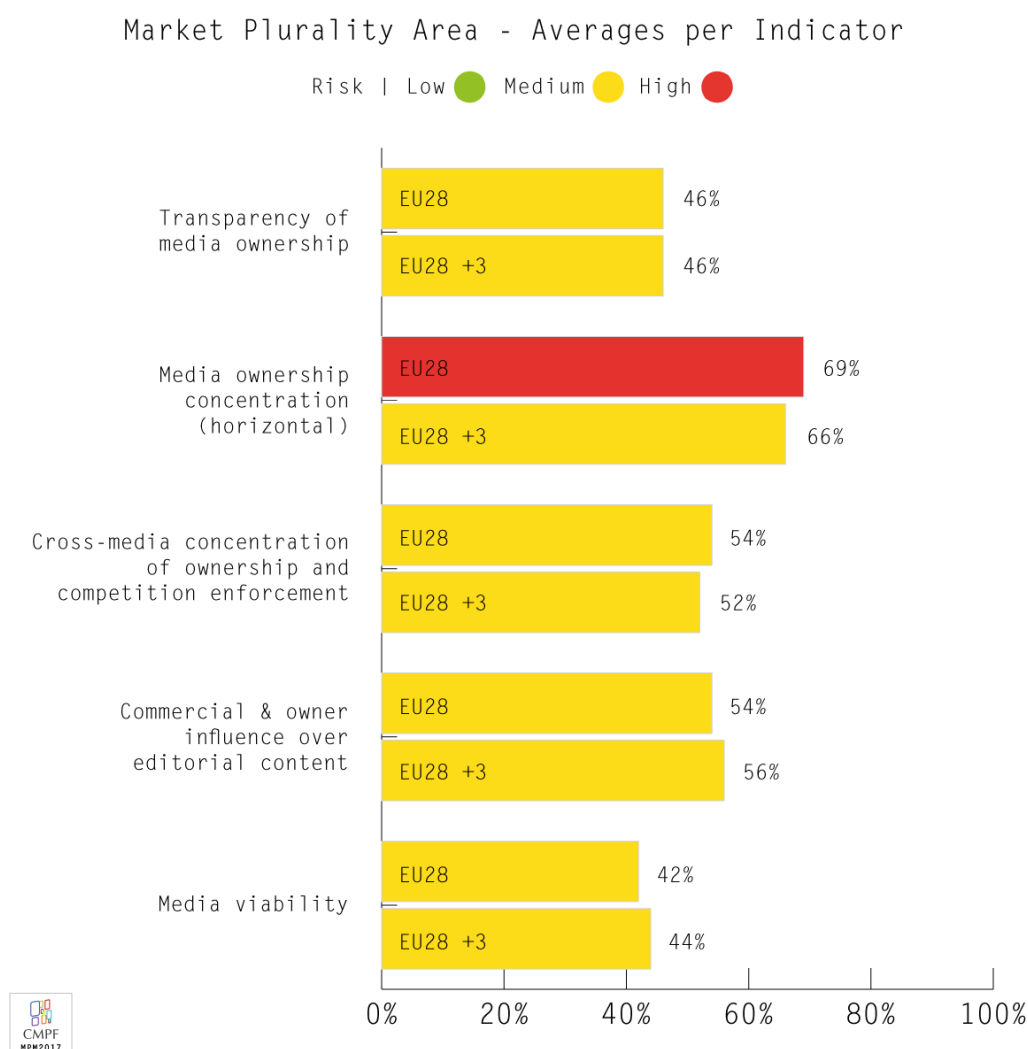
⁴²⁸ Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership, op. cit., para. 4.1.

⁴²⁹ See *ibid.*, paras. 4.8 and 4.9, respectively.

wealth of information, analysis and policy recommendations, but the data on which the study is based has become outdated in many respects.⁴³⁰

The Media Pluralism Monitor (MPM) provides a valuable service and uses a rigorous, tried-and-trusted methodology. For MPM 2017, 'Market plurality' was examined in terms of the following indicators: transparency of media ownership; media ownership concentration (horizontal); cross-media concentration of ownership and competition enforcement; commercial and owner influence over editorial content, and media viability.⁴³¹

Figure 6: Media Pluralism Monitor 2017: Market Plurality Area – Averages per Indicator



Source: Media Pluralism Monitor 2017 – Brogi et al. (see footnote 431), p. 29

⁴³⁰ Rachael Craufurd Smith and Yolande Stolte, *The Transparency of Media Ownership in the European Union and Neighbouring States*, Open Access Europe and Open Society Foundation, 2014, available at: https://www.access-info.org/wp-content/uploads/Transparency_of_Media_Ownership_in_the_EU-09-26-2014.pdf.

⁴³¹ Elda Brogi, Iva Nenadic, Pier Luigi Parcu and Mario Viola de Azevedo Cunha, *Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey*, Policy Report 2018, CMPPF, Florence, p. 7, available at: <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2017-2/>.

Table 6: Media Pluralism Monitor 2017: Media Plurality Indicators – Levels per Country

Indicator	Low	#	Medium	#	High	#
Transparency of media ownership	Austria, Belgium, Bulgaria, Cyprus, France, Germany, Lithuania, Portugal, Slovakia and Spain	10	Croatia, Denmark, Estonia, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Sweden, the United Kingdom	11	Slovenia, Hungary, Romania, the Netherlands, Greece, Finland and the Czech Republic	7
Media ownership concentration (horizontal)	N/A		Croatia, Cyprus, France, Germany, Greece, Italy, Malta, Slovakia, Slovenia, Spain, and the United Kingdom	11	Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania and Sweden	17
Cross-media concentration of ownership and competition enforcement	Germany, the United Kingdom, France, Greece, Slovakia, Cyprus, Italy	7	Hungary, Croatia, Ireland, the Netherlands, Portugal, Austria, Latvia, Lithuania, Sweden, Slovenia, Belgium, the Czech Republic and Finland	13	Romania, Malta, Spain, Denmark, Bulgaria, Estonia, Poland and Luxembourg	8
Commercial and owner influence over editorial content	The Netherlands, France, Portugal, Cyprus, Denmark	5	Austria, Germany, Luxembourg, Estonia, Slovakia, Spain, Italy, Belgium, Croatia, Greece, Ireland	11	Finland, Hungary, Sweden, the United Kingdom, the Czech Republic, Latvia, Lithuania, Slovenia, Malta, Poland, Romania and Bulgaria	12
Media viability	Germany, France, Luxembourg, Lithuania, Spain, the United Kingdom, the Netherlands, Portugal, Italy, Sweden, Denmark, Austria, Ireland and Belgium	14	Finland, Croatia, Malta, Bulgaria, Latvia, Slovenia, Slovakia, Cyprus, the Czech Republic and Poland	10	Estonia, Hungary, Romania and Greece	4

Source: Media Pluralism Monitor 2017 - data extracted from Brogi et al. (see footnote 431)

7. CORONAVIRUS CRISIS

The outbreak of the Covid-19 pandemic has intensified existing issues and challenges faced by journalists across Europe. Within a relatively short amount of time, several European states introduced emergency measures which restrict the capabilities of journalists to inform the public on the pandemic. While this unprecedented public health crisis necessitates serious responses, it is alarming when emergency measures are exploited to legitimise excessive restrictions on press freedom. Disproportionate restrictions on disinformation, curbs on access to information and expansive surveillance measures which ostensibly contribute to the containment of the virus can have devastating long-term effects on media freedom.

The need for the public to receive trustworthy information is all the more pressing during a global health crisis such as Covid-19. Access to quality news is imperative in order to mitigate the impacts of the pandemic, ensure accountability for measures taken to slow down the spread of the virus, and challenge the corrosive misinformation that sustains the pandemic. But precisely when quality reporting is needed the most, the work of journalists is hampered by disproportionate emergency measures, a new wave of verbal and physical attacks and the lack of sufficient funding.

7.1. Monitoring restrictions on media freedom

Several organisations have set up special monitoring mechanisms to provide clarity about restrictions on press freedom during the pandemic. Index on Censorship has documented restrictions on press freedom on a regularly updated interactive map.⁴³² The International Press Institute (IPI) has launched the Press Freedom Tracker to record coronavirus inspired media freedom violations around the world.⁴³³ Reporters Without Borders (RSF) has introduced the Tracker_19 monitoring tool in order to evaluate the pandemic's impact on journalism.⁴³⁴ These extensive monitoring activities have revealed an appalling image of the impact of Covid-19 on media freedom. The following provides a brief overview of government responses to the pandemic that restrict press freedom in EU member states. While most of the measures are temporary in nature, they will potentially have long-lasting effects on the state of media freedom in Europe.⁴³⁵

7.1.1. Restrictions on disinformation

Under the pretext of the coronavirus crisis, some EU member states have moved to restrict the dissemination of disinformation relating to Covid-19. A report by Article 19 aptly illustrates the interface between misinformation and the coronavirus.⁴³⁶ According to the report, while

⁴³² Available at: <https://www.indexoncensorship.org/disease-control/>.

⁴³³ Available at: <https://ipi.media/covid19-media-freedom-monitoring/>.

⁴³⁴ Available at: <https://rsf.org/en/tracker19-Coronavirus-Covid19>.

⁴³⁵ While best efforts have been made in order to identify whether the measures described here are still in place, it is possible that some of the measures have already been withdrawn.

⁴³⁶ Article 19, 'Viral Lies: Misinformation and the Coronavirus', March 2020.

disinformation may disrupt efforts to contain the spread of the pandemic, vague and repressive disinformation laws afford state authorities with an overly broad discretion in relation to the types of information they deem fit to restrict. It is concerning when disinformation laws trigger disproportionate sanctions, including imprisonment, which induce severe chilling effects on communication.

In Hungary, the government has criminalised the spreading of false or distorted statements that may hinder the fight against the pandemic, with up to five years of imprisonment.⁴³⁷ In Romania, the emergency decree includes a provision on countering the dissemination of pandemic related ‘fake news’, authorising the National Authority for Administration and Regulation in Communications to remove reports or entire websites that contain ‘fake news’.⁴³⁸ In Spain, criminal proceedings have been initiated under the Penal Code against people sharing false information or jokes about Covid-19.⁴³⁹ The Bulgarian government also sought to criminalise the spreading of coronavirus related ‘fake news’ with up to three years of imprisonment but this provision has been vetoed by the President.⁴⁴⁰

Such excessive restrictions on disinformation can, as Article 19 put it, “stifle the type of public reporting that can lead to early detection and effective mitigation efforts”.⁴⁴¹ Instead, Article 19 envisages less restrictive measures to address the mounting tide of disinformation, including the promotion of verified news and transparency about state responses to the pandemic.

7.1.2. Extension of deadlines for freedom of information requests

As a response to the pandemic, access to information held by public authorities has been curbed. For example, deadlines to respond to freedom of information requests have been extended in various EU member states. In Romania⁴⁴² and Bulgaria⁴⁴³, the response time allowed has been extended from 30 days to 60 days, while in Hungary,⁴⁴⁴ it has been extended to 90 days. In Poland, the Coronavirus Act has introduced limitations on access to public sector information, with the possibility to access information essentially contingent on the “goodwill” of public authorities.⁴⁴⁵

As Article 19 asserted in its report on ensuring the public’s right to know, these measures are counterproductive to the efforts of containing the pandemic. There is a risk that such measures are introduced in order to limit scrutiny of the government’s actions addressing the pandemic or conceal corruption and human rights abuses.⁴⁴⁶

⁴³⁷ Available at: <https://ipi.media/crisis-point-covid-19-intensifies-challenge-for-independent-media-in-hungary/>.

⁴³⁸ Available at: <https://europeanjournalists.org/blog/2020/03/29/covid-19-restrictions-on-access-to-information-in-romania/>.

⁴³⁹ Available at: <https://www.article19.org/resources/spain-penal-code-used-to-criminalise-jokes-and-misinformation-about-coronavirus/>.

⁴⁴⁰ Available at: <https://ipi.media/media-freedom-violations-in-the-eu-under-covid-19/>.

⁴⁴¹ Article 19, ‘Viral Lies: Misinformation and the Coronavirus’, March 2020, 10.

⁴⁴² Available at: <https://europeanjournalists.org/blog/2020/03/29/covid-19-restrictions-on-access-to-information-in-romania/>.

⁴⁴³ Available at: <https://ipi.media/wp-content/uploads/2020/04/Briefing-Press-freedom-suffers-in-Council-of-Europe-member-states-under-COVID-19.pdf>.

⁴⁴⁴ Available at: <https://ipi.media/crisis-point-covid-19-intensifies-challenge-for-independent-media-in-hungary/>.

⁴⁴⁵ Available at: <https://www.article19.org/resources/advances-in-freedom-of-information-under-threat-during-coronavirus-pandemic/>.

⁴⁴⁶ Article 19, ‘Ensuring the Public’s Right to Know in the Covid-19 Pandemic’, May 2020.

7.1.3. Restrictions on press conferences

The ability of journalists to gather information has also been curbed by restrictions on official press conferences. In Spain, journalists had to submit their questions in writing prior to governmental press conferences and these questions were filtered through government officials.⁴⁴⁷ The government faced considerable pressure to withdraw this measure and it has done so in April. In Hungary, several journalists have reported that questions by independent media are systematically ignored on the daily press conferences about the pandemic.⁴⁴⁸ In Belgium, an editor of a media outlet has been banned from governmental press conferences after he highlighted conflicts of interest among several members of the expert group advising the government on Covid-19.⁴⁴⁹ In Greece, journalists cannot be present at the press conferences held by the Ministry of Health, and they can only submit one question in advance to the conference.⁴⁵⁰ Such restrictions prevent journalists from holding those in power accountable, and undermine transparency about the actions taken by the government to halt Covid-19.

7.1.4. Expansive surveillance measures

The pandemic has also seen the expansion of digital surveillance measures. Mobile phone location data is increasingly demanded by governments in order to trace recent contacts of those infected with Covid-19 and track the spread of the pandemic. In Bulgaria, the police has been authorised to access location data of those who disregard the lockdown restrictions.⁴⁵¹ In Germany and Austria, governmental bodies have been allowed to analyse aggregated and anonymised location data.⁴⁵² Excessive surveillance measures have inspired concerns about privacy, freedom of expression and the protection and anonymity of journalistic sources.

7.1.5. Verbal and physical abuse

During the pandemic, journalists face a fresh storm of verbal and physical abuse. In Italy, various journalists have been attacked while reporting on coronavirus measures.⁴⁵³ An Italian journalist has received threats after reporting on the mafia taking advantage of the pandemic to increase its influence.⁴⁵⁴ In Slovenia, an investigative journalist has been targeted by a government propagated hate campaign after he submitted a freedom of information request in respect of Covid-19 measures to the public authorities.⁴⁵⁵ In Germany, journalists were subject to a series of physical attacks in May.⁴⁵⁶

⁴⁴⁷ Available at: <https://rsf.org/en/news/coronavirus-spanish-government-yields-pressure-journalists-and-agrees-live-press-conferences-0>.

⁴⁴⁸ Available at: <https://ipi.media/crisis-point-covid-19-intensifies-challenge-for-independent-media-in-hungary/>.

⁴⁴⁹ Available at: <https://www.indexonensorship.org/disease-control/>.

⁴⁵⁰ Ibid.

⁴⁵¹ Available at: <https://ipi.media/media-freedom-violations-in-the-eu-under-covid-19/>.

⁴⁵² Available at: <https://rsf.org/en/news/coronavirus-state-measures-must-not-allow-surveillance-journalists-and-their-sources>.

⁴⁵³ Available at: <https://ipi.media/media-freedom-violations-in-the-eu-under-covid-19/>.

⁴⁵⁴ Available at: <https://ipi.media/media-freedom-violations-in-the-eu-under-covid-19/>.

⁴⁵⁵ Available at: <https://www.ecpmf.eu/seven-organisations-call-on-the-slovenian-government-to-stop-harassing-an-investigative-journalist/>.

⁴⁵⁶ Available at: <https://www.ecpmf.eu/attacks-against-journalists-in-berlin-facts-and-trends/>.

In Spain, the far-right party, VOX, has intensified its online harassment of critical journalists.⁴⁵⁷ In Poland, an independent journalist was detained at a police station for two hours for filming a small protest against the governing party, under the pretext of violations of lockdown measures.⁴⁵⁸ This illustrates how the coronavirus crisis is exploited by various actors, alarmingly also state authorities, to intimidate journalists into self-censorship.

7.2. Advocacy by press freedom organisations during the pandemic

The table below provides an overview of activities and initiatives launched jointly by civil society organisations in response to Covid-19. These initiatives address various aspects of the impact of Covid-19 on press and media freedom. The following subsection discusses some of these initiatives in more detail.

Table 7: Overview of joint civil society activities/initiatives in response to COVID-19 measures

Date	Joint civil society activities/initiatives in response to COVID-19 measures	Focusses
25 March 2020	Call on Europe's leaders to protect free flow of information to tackle COVID-19 ⁴⁵⁹	Free flow of information, access to information, enhanced surveillance
31 March 2020	Open letter to the Secretary General of the Council of Europe and President of the Committee of Ministers ⁴⁶⁰	Press freedom, access to information, enhanced surveillance
2 April 2020	Call on states to respect human rights while introducing digital surveillance measures to tackle COVID-19 ⁴⁶¹	Digital surveillance, right to privacy
6 April 2020	Call on governments to ensure and strengthen whistleblower protection ⁴⁶²	Whistleblower protection, accountability of public institutions

⁴⁵⁷ Available at: <https://rsf.org/en/news/platforms-urged-prevent-harassment-journalists-covering-covid-19>.

⁴⁵⁸ Available at: <https://rsf.org/en/news/repressive-laws-prosecutions-attacks-europe-fails-shield-its-journalists-against-abuse-covid-19>.

⁴⁵⁹ Available at: <https://ipi.media/europes-leaders-must-protect-free-flow-of-information-to-tackle-covid-19/>.

⁴⁶⁰ Available at: <https://europeanjournalists.org/blog/2020/03/31/covid-19-council-of-europe-must-ensure-press-freedom-is-protected/>.

⁴⁶¹ Available at: <https://www.article19.org/resources/covid-19-states-use-of-digital-surveillance-technologies-to-fight-pandemic-must-respect-human-rights/>.

⁴⁶² Available at: <https://europeanjournalists.org/blog/2020/04/06/coalition-to-make-whistleblowing-safe-during-covid-19-and-beyond/>.

16 April 2020	Open letter to President von der Leyen and President Michel ⁴⁶³	Democracy, misuse of emergency measures
22 April 2020	Call on social media operators to preserve data on content moderation during COVID-19 ⁴⁶⁴	Automated content moderation
5 May 2020	COVID-19: Emergency appeal for journalism and media support ⁴⁶⁵	Protection of journalism, financial support for media
18 June 2020	Open letter ahead of Germany's Presidency of the Council of the European Union ⁴⁶⁶	SLAPPs, financial support for media, rule of law

Source: authors of the study

Civil society organizations have repeatedly called on those in power to uphold fundamental rights, including freedom of expression, in their efforts to contain the pandemic. The Emergency Appeal for Journalism and Media Support, signed by more than 125 organisations, has issued an urgent call on those in position of power to support independent journalism. It has urged governments to respect, safeguard and enable press freedom and ensure that journalists have access to accurate information on the pandemic in order to inform the public.⁴⁶⁷ The coalition to make whistleblowing safe during Covid-19 has emphasized the vital nature of transparency and accountability during the global health crisis, and accordingly has urged public authorities to protect those who expose wrongdoings and mismanagement during the pandemic.⁴⁶⁸ The European Broadcasting Union has highlighted how a record number of citizens turn to public service media to seek reliable information on the pandemic, and has urged governments to ensure the independence of public service media.⁴⁶⁹ A coalition of civil society organisations have also issued a statement to governments to ensure that digital surveillance technologies introduced to fight the pandemic respect fundamental rights. The statement demands that any surveillance measure is lawful, necessary, proportionate, time-bound and used only for the

⁴⁶³ Available at: <https://www.ecpmf.eu/open-letter-eu-must-not-sit-idly-by-while-democracy-is-in-jeopardy/>.

⁴⁶⁴ Available at: <https://www.article19.org/resources/coronavirus-75-organisations-call-on-social-media-platforms-to-preserve-publish-content-moderation-data/>.

⁴⁶⁵ Available at: <https://europeanjournalists.org/blog/2020/05/05/covid-19-emergency-appeal-for-journalism-and-media-support/>.

⁴⁶⁶ Available at: <https://www.ecpmf.eu/open-letter-ahead-of-germanys-presidency-of-the-council-of-the-european-union/>.

⁴⁶⁷ Available at: <https://europeanjournalists.org/blog/2020/05/05/covid-19-emergency-appeal-for-journalism-and-media-support/>.

⁴⁶⁸ Available at: <https://europeanjournalists.org/blog/2020/04/06/coalition-to-make-whistleblowing-safe-during-covid-19-and-beyond/>.

⁴⁶⁹ Available at: <https://www.ebu.ch/news/2020/04/coronavirus-crisis---ebu-calls-on-governments-to-uphold-independence-of-public-service-media>.

purposes of responding to the pandemic.⁴⁷⁰ RSF has specifically called on governments that contemplate the introduction of contact tracing applications to guarantee the anonymity and protection of journalistic sources.⁴⁷¹

Civil society organisations have also turned to leaders of European institutions to voice their concerns about the impact of the coronavirus crisis on press freedom. An open letter, addressed to the Secretary General of the Council of Europe, urges the Council of Europe to engage in a dialogue with governments that have implemented emergency measures that detrimentally affect press freedom.⁴⁷² Civil society organisations have urged leaders of EU institutions to unequivocally condemn the misuse of the coronavirus crisis to erode democratic values and declare the free flow of information to be essential for Europe's efforts to halt the pandemic.⁴⁷³

The International Federation of Journalists (IFJ) has emphasized the need for the media to report responsibly during the pandemic. Calling on media to report on facts and reliable sources, IFJ noted that responsible reporting is "the best antidote against misinformation, fake news and conspiracy theories".⁴⁷⁴ RSF has expressed its concern about the increasing online harassment of journalists during the pandemic and has called on social media platforms to adopt transparent content moderation policies and step up efforts to protect journalists online.⁴⁷⁵

7.3. 'Best practices' for journalism during the pandemic

7.3.1. Understanding Journalism during the pandemic

As journalists have been facing a new wave of challenges during the coronavirus crisis, it has been crucial to understand their experiences in order to identify points for improvement and 'best practices'. For this purpose, the Committee to Protect Journalists (CPJ)⁴⁷⁶, the European Federation of Journalists (EFJ)⁴⁷⁷ as well as the IFJ have launched surveys to understand how the pandemic impacts journalists' rights and working conditions. CPJ has also initiated regular Q&As where journalists share their experiences⁴⁷⁸, and a similar initiative was launched by IPI.⁴⁷⁹ These enquiries have revealed that journalists are not only facing increased censorship and harassment, but their work is also challenged by strictly enforced lockdown measures. Journalists have, furthermore, suffered job losses and pay cuts

⁴⁷⁰ Available at: <https://www.article19.org/resources/covid-19-states-use-of-digital-surveillance-technologies-to-fight-pandemic-must-respect-human-rights/>.

⁴⁷¹ Available at: <https://rsf.org/en/news/coronavirus-state-measures-must-not-allow-surveillance-journalists-and-their-sources>.

⁴⁷² Available at: <https://europeanjournalists.org/blog/2020/03/31/covid-19-council-of-europe-must-ensure-press-freedom-is-protected/>.

⁴⁷³ Available at: <https://www.ecpmf.eu/open-letter-eu-must-not-sit-idly-by-while-democracy-is-in-jeopardy/>; <https://ipi.media/europes-leaders-must-protect-free-flow-of-information-to-tackle-covid-19/>.

⁴⁷⁴ Available at: <https://www.ifj.org/media-centre/news/detail/category/guidesmanuals/article/ifj-urges-media-to-report-responsibly-on-coronavirus-crisis.html>.

⁴⁷⁵ Available at: <https://rsf.org/en/news/platforms-urged-prevent-harassment-journalists-covering-covid-19>.

⁴⁷⁶ Available at: <https://cpj.org/2020/05/surveys-seek-to-understand-impact-of-covid-19-on-j/>.

⁴⁷⁷ Available at: <https://europeanjournalists.org/blog/2020/05/01/workers-day-efj-calls-for-more-support-and-solidarity-for-journalists-during-covid-19/>.

⁴⁷⁸ Available at: <https://cpj.org/covid-19/>.

⁴⁷⁹ Available at: <https://ipi.media/meet-our-members/covid-19-how-ipi-members-face-the-challenge/>.

and are exposed to increased stress and anxiety. Moreover, the physical wellbeing of journalists who continue reporting from the 'frontline' is under enhanced danger.⁴⁸⁰

7.3.2. Highlighting 'best practices'

To tackle these challenges, a number of 'best practices' have been identified. Free Press Unlimited has launched the campaign 'Together for Reliable Information' in which it highlights inspiring initiatives that ensure the circulation of reliable news during Covid-19.⁴⁸¹ IFJ has been publishing weekly newsletters reflecting on 'best practices' safeguarding quality journalism during the pandemic.⁴⁸²

As the presence of journalists on governmental press conferences has been a pressing issue across Europe during the pandemic, EFJ has drawn up a list of 'good practices' for this purpose. It emphasizes that while it may be justified to restrict the physical presence of journalists, opportunities to ask questions live must be provided. EFJ draws on the current practices in governmental press conferences in Denmark and Spain, and the press conferences of the European Commission to show how the possibility to ask questions live could be ensured while restricting physical presence of journalists.⁴⁸³

7.3.3. Physical safety of journalists

A further pressing issue has been to ensure the physical safety of journalists who continue 'first-hand' reporting. CPJ⁴⁸⁴ and IFJ⁴⁸⁵ have both launched a special Safety Advisor tool, while RSF⁴⁸⁶ and the International News Safety Institute⁴⁸⁷ have also provided practical advice to journalists preparing for an assignment during the pandemic. These include recommendations on how to reduce the risk of infection, for example through minimising visits to high-risk locations, and the use of appropriate personal protective equipment. The need to address the emotional pressure associated with reporting on the pandemic has also been stressed.

7.3.4. A gender-sensitive approach to reporting during the pandemic

The IFJ has found that female journalists face considerably higher levels of stress and anxiety due to Covid-19 than their male counterparts.⁴⁸⁸ The study shows that two-thirds of women journalists, as opposed to half of men, experience increased anxiety and stress. This is further demonstrated by the International Women's Media Foundation, who set up a new 'Covid-19 Relief Fund' during the pandemic. According to the foundation, there has been a surge of relief requests during the pandemic

⁴⁸⁰ Available at: <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/exposed-the-crisis-facing-journalism-in-the-face-of-covid-19.html>.

⁴⁸¹ Available at: <https://www.freepressunlimited.org/en/covid19>.

⁴⁸² Available at: <https://www.ifj.org/media-centre/newsletters.html>.

⁴⁸³ Available at: <https://europeanjournalists.org/blog/2020/04/15/good-practices-for-press-conferences-during-pandemic/>.

⁴⁸⁴ Available at: <https://cpj.org/2020/02/cpj-safety-advisory-covering-the-coronavirus-outbr/>.

⁴⁸⁵ Available at: https://www.ifj.org/fileadmin/user_upload/IFJ_Coronavirus_Safety_Advisory_-_English.pdf.

⁴⁸⁶ Available at: <https://rsf.org/en/Tracker19-recommendations-coronavirus-Covid19>.

⁴⁸⁷ Available at: <https://newssafety.org/news/insi-news/insi-news/detail/coronavirus-reporting-from-contaminated-environments-2131/>.

⁴⁸⁸ Available at: <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/women-journalists-are-suffering-greater-stress-due-to-covid-19-ifj-study-says.html>.

due to the increased lack of assignments, layoffs and furloughs experienced by women journalists.⁴⁸⁹ While these figures indicate the need to consider a gendered approach to evaluating the exacerbation of threats due to the coronavirus, current reports do not adequately research the gender dimensions. The 2020 Reporters Without Reports Index, for example, has highlighted that the coronavirus exacerbates an already 'decisive decade for journalism,' without reflecting on the gender-related threats that are fundamental to the future of journalism.⁴⁹⁰

At the same time, female voices are heavily underrepresented in the media coverage of the pandemic. To remedy this, Free Press Unlimited has proposed a set of recommendations in order to promote a gender-sensitive approach to reporting during the pandemic. In particular, it has highlighted the need to produce gender-sensitive content on Covid-19 and ensure equal participation of women in the media.⁴⁹¹

Laura Addati, a policy specialist in women and economic empowerment for the International Labor Organization, notes that the 'challenge of the emergency really puts additional strain on existing inequalities,' and these existing inequalities place an extra burden on women to cope with the crisis.⁴⁹² The economic fault lines are also put under further pressure as a result of the pandemic. While everyone's income and job security are affected by the crisis, 'men's income returned to what they had made pre-outbreak faster than women's income.'⁴⁹³ In social and economic aspects, there is a clear distinction on how the coronavirus has an impact on different genders.

7.4. Financial and other support measures

The coronavirus crisis has had a devastating economic impact on the media sector. Thousands of people working in the media sector have lost their jobs or have experienced significant pay cuts. Freelance and self-employed journalists face heightened economic risks as they often have no available social benefit to fall back on. Without financial stability, journalists are struggling to fulfil their much-needed public watchdog role during the pandemic. While fears over the economic sustainability of media have long been voiced, the coronavirus crisis has amplified the financial vulnerability of the news industry.

Financial and other support measures are vital in order to sustain the media sector during the crisis. The EFJ has repeatedly called on governments to provide economic and social relief packages to the media sector, with special attention to freelancers and self-employed journalists.⁴⁹⁴ The EFJ has also urged the EU to include the creative and cultural sectors as 'priority sectors' in its Recovery Plan.⁴⁹⁵

⁴⁸⁹ International Women's Media Foundation COVID-19 Relief Fund, 28 May 2020.

⁴⁹⁰ RSF World Press Freedom Index 2020: "Entering a decisive decade for journalism, exacerbated by coronavirus".

⁴⁹¹ Available at: <https://www.freepressunlimited.org/sites/freepressunlimited.org/files/gem-twopager-def.pdf>.

⁴⁹² Janet Paskin, 'Women Are Bearing the Brunt of Coronavirus Disruption', *Bloomberg*, 11 March 2020; Alexandra Villarreal, 'Coronavirus pandemic exacerbates inequalities for women, UN warns' *The Guardian*, 11 April 2020, available at: <https://www.theguardian.com/world/2020/apr/11/un-coronavirus-pandemic-gender-inequalities-women>.

⁴⁹³ Aisha Haridasani Gupta, 'Why Women May Face a Greater Risk of Catching Coronavirus', *The New York Times*, 12 March 2020.

⁴⁹⁴ Available at: <https://europeanjournalists.org/blog/2020/04/08/efj-calls-on-eu-and-governments-to-fight-the-covid-19-crisis-in-the-media-sector/>.

⁴⁹⁵ Available at: <https://europeanjournalists.org/blog/2020/05/05/we-call-for-ambitious-eu-budgetary-measures-to-get-through-the-covid-19-crisis/>.

Upon the launch of the Recovery Plan by the European Commission, civil society organisations issued a joint statement to call on member states to use the opportunities offered by the proposed Multiannual Financial Framework and Next Generation EU instruments to channel targeted financial support to the media sector.⁴⁹⁶

7.4.1. Support measures from governments

Several European governments have introduced relief packages specifically aimed at the media sector. The Dutch government has set up a temporary fund of 11 million euros to which local journalists and broadcasters can apply. Funding is allocated on the basis of the size of the audience of the applicants.⁴⁹⁷ The Swedish government first announced an aid package for the media sector of 18 million euros in April 2020 but this has been widely criticised for being insufficient. In May 2020, the Swedish government allocated an additional 47 million euros to the media aid package. While this has been welcomed by press organisations, IFJ warned that freelance journalists are not sufficiently covered by the package.⁴⁹⁸ Denmark has also set up a special support package for the media sector and has allocated the aid on the basis of the lost advertising revenues of publishers. While the Danish relief measure has been cited as a model for other countries, it has also received criticism for solely focusing on lost advertising revenues and in this way ignoring media portals that exclude advertisement from their business models.⁴⁹⁹ The Austrian government has also established a special fund for the media sector, comprising of 32 million euros allocated on the basis of circulation figures. Austrian organisations have criticised the circulation criteria and demanded that quality is also taken into account when allocating the funding.⁵⁰⁰

Regrettably, some other European countries have not yet provided special support measures to the media sector. As IPI reported, the Hungarian government has no intention to save the already struggling independent media in the country.⁵⁰¹ In Croatia, the media sector has reportedly been explicitly and systematically excluded from all government relief packages.⁵⁰²

7.4.2. Other support initiatives

Beyond governmental initiatives, a range of organisations have set up special funds and support mechanisms to aid the media sector during the coronavirus crisis. IPI and CPJ have both provided a regularly updated list of such initiatives on their websites.⁵⁰³

⁴⁹⁶ Available at: https://www.freepressunlimited.org/sites/freepressunlimited.org/files/statement_mff_june_2020.pdf.

⁴⁹⁷ Available at: <https://nos.nl/artikel/2329725-minister-slob-geeft-lokale-kranten-en-omroepen-11-miljoen.html>.

⁴⁹⁸ Available at: <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/sweden-union-welcomes-new-support-package-for-the-media-industry.html>.

⁴⁹⁹ Available at: <https://niemanreports.org/articles/government-funding-should-support-innovation-not-prop-up-dying-business-models/>.

⁵⁰⁰ Available at: <https://europeanjournalists.org/blog/2020/04/22/journalists-unions-urge-covid-19-recovery-plans-to-sustain-the-media-sector-now-and-into-the-future/>.

⁵⁰¹ Available at: <https://ipi.media/crisis-point-covid-19-intensifies-challenge-for-independent-media-in-hungary/>.

⁵⁰² Available at: <https://www.ifj.org/media-centre/news/detail/category/covid-19-report-safely/article/croatia-unions-raise-the-alarm-about-the-covid-19-impact-on-journalism.html>.

⁵⁰³ Available at: <https://ipi.media/covid-19-funding-opportunities-for-journalism/>; <https://cpj.org/covid-19/>.

The Rory Peck Trust has launched the Covid-19 Hardship Fund, providing practical and financial support specifically for freelance journalists who face financial struggles due to Covid-19.⁵⁰⁴ The European Journalism Centre and the Facebook Journalism Project have set up the three million dollar European Journalism Covid-19 Support Fund to support community, local and regional news organisations around Europe.⁵⁰⁵ Google has created a similar fund for small and medium news organisations struggling during the pandemic.⁵⁰⁶ The Covid-19 Emergency Fund launched by National Geographic awards grants between 1,000 and 8,000 dollars to journalists around the world covering the pandemic.⁵⁰⁷ Focusing on the special hardship faced by female journalists during the pandemic, the International Women’s Media Foundation has set up a Journalism Relief Fund, awarding grants of up to 2,000 dollars for women-identifying journalists in dire situations.⁵⁰⁸

The Digital Freedom Fund (DFF), which supports strategic litigation to advance digital rights in Europe, has set up a Covid-19 Litigation Fund to “support strategic cases challenging digital rights violations committed in the context of the COVID-19 pandemic”.⁵⁰⁹ More specifically, the Fund is focused on “strategic cases challenging the gravest digital rights violations committed in the context of the COVID-19 situation that are either a direct result of responses to the pandemic or are demonstrably linked to and exacerbated by it”.⁵¹⁰ This scope would include, for example, tracking of citizens’ movements, communications or health data in relation to the pandemic; online censorship, ostensibly to prevent the spread of misinformation about the virus, and the use of artificial intelligence to combat the virus, with little/no oversight.⁵¹¹ Under the Fund, the DFF will further “prioritise applications that focus on addressing the negative impact felt by the most vulnerable groups in society, who generally will have limited access to justice and experience particular hardship due to the already existing ‘digital divide’”.⁵¹²

⁵⁰⁴ Available at: <https://rorypecktrust.org/news/covid-19-fund/>.

⁵⁰⁵ Available at: <https://europeanjournalism.fund/>.

⁵⁰⁶ Available at: <https://newsinitiative.withgoogle.com/journalism-emergency-relief-fund#application-eligibility-requirements>.

⁵⁰⁷ Available at: <https://www.nationalgeographic.org/funding-opportunities/grants/what-we-fund/covid-19-emergency-fund/>.

⁵⁰⁸ Available at: <https://iwmf.submittable.com/submit/41e7f7ce-db40-4ff6-873f-e24450e27497/journalism-relief-fund-english>.

⁵⁰⁹ Available at: <https://digitalfreedomfund.org/covid-19-litigation-fund/>.

⁵¹⁰ Ibid.

⁵¹¹ Ibid.

⁵¹² Ibid.

8. CONCLUSIONS

Recent years have seen an unprecedented expansion and intensification of efforts to monitor threats to, and violations of, freedom of expression and media freedom in Europe. This trend is a necessary response to the growing range and number of threats and attacks on journalists and other actors who contribute to public debate. These monitoring efforts have been spearheaded by civil society organisations, who have been forging ever-stronger alliances, and institutional players such as the Council of Europe, the European Union and the OSCE. Constructive collaboration between intergovernmental, governmental and non-governmental actors has been another positive feature of these monitoring mechanisms and processes.

This historical high water-mark of monitoring has produced a huge amount of detailed information that helps to accurately map the scope of threats and attacks on journalists, the media and other actors contributing to public debate. In fact, it underscores the expanding nature and growing urgency of the problem. Nevertheless, there remains a need for greater disaggregation of data, e.g., gender-specific data and details of the provenance of threats and attacks (beyond State/non-state actors). Granular information provides a valuable information basis for law- and policy-making initiatives at both the national and European levels.

Ongoing monitoring exercises reveal that long-standing threats to the safety of journalists are persisting: threats and acts of violence against journalists; impunity for crimes against journalists and the vexatious use of litigation against them, especially on the basis of defamation laws. In addition, other threats are emerging or are starting to receive more attention than in the past: gender-related threats, especially online; Strategic Lawsuits Against Public Participation (SLAPPs); restrictions on media freedom and (access to) information in the context of Covid-19 measures. The urgency of these threats to journalism, journalists and other actors demands explicit prioritization in ongoing and forthcoming law- and policy-making initiatives, as well as in relevant funding schemes, at the national and European levels.

With so many threats to be countered, it can seem challenging to see the wood for the trees and to channel limited resources into specific lines of action. It can thus be useful to first take one step back, and then take a more systematic approach. States have a positive obligation under the European Convention on Human Rights to secure a safe and favourable environment in which everyone can participate in public debate without fear. The safe and favourable environment (or enabling environment) has become a metaphor of choice for various European bodies. But it is more than just a useful metaphor; it is an obligation that States must honour and therefore operationalize.

In democratic societies, journalists and the media are the public watchdogs *par excellence*. But public debate also benefits from the contributions of citizen journalists, bloggers, whistleblowers, human rights defenders, NGOs, academics, trade unionists, and ordinary individuals. The safe and favourable environment must apply to *everyone* – not only to journalists and the media. Other actors, who lack the shield of institutional resources and support, may be particularly vulnerable to threats and attacks related to their contributions to public debate. This point is well illustrated by the chilling effect of SLAPPs on individuals or small NGOs who lack the financial resources to defend themselves against such lawsuits.

A systematic approach also creates space to address the different, inter-related dimensions of safety of journalists: safety and protection issues; media pluralism and transparency of media ownership and the broader conditions needed for quality journalism to flourish, including working conditions and support

measures in the face of massive losses of revenue. This broader perspective is necessary in order to be able to identify the interplay between different types of threats and how their combined effects can be aggravated. This differentiated approach is being taken by the Council of Europe's Committee of Ministers and the European Parliament in their engagement with these topics.

In terms of core safety and protection issues, the Council of Europe's Committee of Ministers' Recommendation CM/Rec(2016)4 to member States on the protection of journalism and the safety of journalists and other media actors is a central reference point for all EU Member States. The European Parliament has called for the effective implementation of the Recommendation. States authorities need to be more resolute in giving effect to their international obligations: States are the source of the vast majority of the alerts registered on the Council of Europe Platform by the Partner Organisations.

CM/Rec(2016)4 gives extensive guidance to States on how to raise their game in strengthening the protection of journalism and journalists. The guidance focuses on the prevention, protection, prosecution (including a specific focus on impunity) and information- and awareness raising measures that States must, should or could adopt in order to fulfil their relevant obligations under the European Convention on Human Rights.

The Recommendation envisages an independent review mechanism and the European Parliament has called for a similar exercise in its 2018 Resolution. The specific media chapter in the EU Rule of Law Mechanism offers a timely formal opportunity to contribute to detailed, contextualized examination of freedom of expression and media freedom in EU Member States. Such review mechanisms help to identify best or promising national practices for possible replication in other countries. They also help to identify legislative loopholes or other shortcomings or problematic trends or outcomes in the application of legislation.

This study has revealed a number of positive and promising practices in various EU Member States. Denmark and Sweden present well-rooted cultures of political and societal appreciation of independent media and journalism, in which autonomous systems of journalistic ethics feature strongly. This is also true of the Netherlands, which additionally has an advanced model of cooperation by a range of key stakeholders (journalists, editors, the police force, the public prosecutor's office and the government) around issues concerning the safety of journalists.

Some problematic practices can also be detected across the European Union, such as threats to media pluralism and freedom in Hungary and Poland; a high incidence of SLAPPs in, for instance, Malta (where there are also concerns about impunity and the rule of law), Italy and Spain (where the absence of legislative protection for whistleblowers remains a concern); heavy reliance by politicians on defamation laws to stifle critical reporting, such as in Slovakia (where the discrediting of journalists, including by smear campaigns, is also a problem).

9. POLICY RECOMMENDATIONS

Continued vigilance is required to ensure effective protection of journalism and the safety of journalists and all other actors who contribute to public debate, paying due attention to the emergence of new threats and the aggravating impact of combinations of threats.

A systematic approach is needed to effectively counter the range of threats. Member States are called on to fully and effectively implement the Guidelines appended to Recommendation CM/Rec(2016)4 of the Committee of Ministers of the Council of Europe. They are called on, in particular, to review their national laws, policies and practice, and revise them as necessary, to ensure their compatibility with the standards developed under European human rights law.

In ensuring a favourable environment for freedom of expression and public debate, Member States are reminded of their obligations under European human rights law to put in place and effectively implement comprehensive legislative and policy frameworks. Such frameworks should include adequate safeguards for access to information; fully independent media regulatory authorities and public service media; protection for whistleblowers and journalists' source protection.

The announced dedicated chapter on media freedom and pluralism in the EU Rule of Law Mechanism provides a golden opportunity to conduct extensive country-by-country reporting and analyses, which would in turn inform EU-level law- and policy-making. Inspiration for the specific focuses can be gleaned from, inter alia, Recommendation CM/Rec(2016)4, civil society suggestions such as those outlined in *From Blueprint to Footprint*, the Media Pluralism Monitor, and the Dutch research project, *Audit of freedom of expression in the Netherlands*. The European Commission is invited to reflect further on how to enhance existing reporting and research initiatives in this area, unlock synergies between them and put them on a more sustainable footing.

Combating impunity for murders and other serious crimes against journalists and other media actors must continue to have the highest political and legal priority. The European Parliament should continue to exert its influence and pressure to ensure that independent investigations are pursued to ensure that the perpetrators and masterminds behind the murders of Daphne Caruana Galizia in Malta and Ján Kuciak and his fiancée Martina Kušnírová in Slovakia, due to their investigative work, are brought to justice.

The widely-documented and growing problem of SLAPPs calls for urgent legislative action at the national and European levels. The European Commission is encouraged, building on calls by the European Parliament and civil society organisations, to accelerate its work on a comprehensive legislative package to prevent SLAPPs in Europe. This should comprise appropriate amendment of the Brussels I Regulation (recast) and Rome II Regulation, as well as the drafting of a dedicated anti-SLAPP EU Directive. Any legislative reform should be carefully aligned with the principles established by the European Court of Human Rights in its case-law on freedom of expression and defamation. This legislative process would benefit from and should include active participation by a range of stakeholders.

Concentrations of media ownership and a lack of transparency concerning media ownership can threaten media pluralism and the diversity of opinions in public debate. Member States are called upon to fully and effectively implement the Guidelines appended to Recommendation CM/Rec(2018)1 of the Committee of Ministers of the Council of Europe to Member States on media pluralism and transparency of media ownership.

The Covid-19 crisis has underscored the need for quality, reliable information and commentary on matters of importance to society and the need to protect all individuals and organisations seeking to provide such information and commentary and/or otherwise serve as public watchdogs. The crisis has also provided a pretext for some governments to adopt emergency measures with a restrictive impact on access to information and media freedom. Member States are called upon to strictly adhere to their obligations under European human rights law, in particular in the context of emergency measures, and to at all times uphold their positive obligation to ensure a favourable environment for everyone to participate in public debate.

The Covid-19 crisis has had a profound economic impact on the already precarious journalism, media and cultural sectors: EU Member States and the Commission are called upon to invest heavily in these sectors in national and European support and recovery packages. This should be seen as an opportunity to contribute to the sustainability of quality journalism in an increasingly digitalized age - a vital public good. These support and recovery packages should be developed in close consultation with representative bodies of these sectors, in order to ascertain as accurately as possible the precise needs of the range of actors implicated, including gender-specific needs and perspectives. There is a need, as the Parliament has already pointed out, for the creation of a permanent European fund for journalists in the framework of the next Multiannual Financial Framework (MFF) (2021-2027), as redrafted following the Covid-19 crisis, offering direct financial support for independent journalists and media outlets, freelancers and self-employed media workers.

The next MFF should also provide for the creation of a permanent fund to further support capacity-building by civil society organisations specializing in freedom of expression, information and public participation in public debate and affairs. To ensure their continued effectiveness and enduring impact, the crucial monitoring, reporting, support, defence, training, advocacy and other activities should not be at the mercy of scarce or short-term funding.

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Journalism and journalists face a growing range of threats, including violence and harassment; the misuse of defamation and other laws against them, and restrictive measures on freedom of information and expression adopted in response to the Covid-19 crisis. States must ensure a safe and favourable environment for journalists to perform their public watchdog function. This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, examines the overall chilling effect of crimes and threats against journalists and explores various regulatory and other measures to counter them.

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