**Questionnaire from the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

**January 2022**

**Contribution of the Council of Europe's Information Society Department**

The Council of Europe attaches great importance to the right to freedom of expression enshrined in Article 10 of the European Convention on Human Rights. According to the established case-law of the European Court, freedom of expression is one of the essential foundations of a democratic society, one of the primary conditions for its progress and for the development of each individual.

Based on the Convention system, the Organisation addresses the threats to the exercise of this right through various mechanisms and activities. It develops standards such as Committee of Ministers’ guidelines and recommendations on freedom of expression, media, and the protection of journalists. It also develops political commitments through the instruments of the Parliamentary Assembly of the Council of Europe. Upon request, member states are assisted in the implementation of these standards through co-operation activities which involve legal and media professionals, institutions and non-governmental organisations and associations as well as the private sector. The objective is that States adjust their policies, legislation and practice to effectively protect and promote freedom of expression and media freedom in line with Council of Europe standards.

A variety of mechanisms has been established in the Council of Europe to monitor member states’ compliance with human rights standards, including the right to freedom of expression. The European Court of Human Rights is charged with supervising the enforcement of the Convention through its judicial review. Member states have undertaken to comply with the Court's final judgments, and their execution is supervised by the Committee of Ministers of the Council of Europe. In addition, the Council of Europe's Commissioner for Human Rights is an independent and impartial non-judicial institution established to promote awareness of and respect for human rights in the member states and to assist them in their implementation. Last but not least, regarding specifically the monitoring of freedom of expression standards, the Platform to promote the Protection of Journalism and Safety of Journalists is a unique early-warning and rapid response mechanism which helps the dialogue between the governments and the organisations of journalists, aiming to improve the protection and safety of journalists.

Given the competences and work of the Council of Europe, the contribution to the Questionnaire from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression focuses on two specific issues, the key trends and challenges to freedom of expression and media freedom in Europe, as identified by the monitoring mechanisms of the Council of Europe, and the potential gaps in the European human rights' legal framework and our Organisation's efforts to fill them.

**1. a) What are the key trends, threats of challenges to the freedom, independence, pluralism and diversity of media and the safety of journalists in your region in your view?**

**b) To what extent have these threats, trends and challenges have emerged or have been aggravated because of the policies or practices of digital or social media platforms?**

**c) Please highlight the gender dimensions of the trends and their consequences for the equality and safety of women journalists as well as media freedom.**

**a) The key trends, threats of challenges to the freedom, independence, pluralism and diversity of media**

Dmitry Muratov, editor of Novaya Gazeta, and Maria Ressa, editor of Rappler, won the Nobel Peace Prize in 2021 – the first time it was awarded to a journalist since 1935 when Carl von Ossietzky won it for reporting on Germany's secret rearmament programme. Muratov and Ressa were lauded “for their courageous fight for freedom of expression” and as “representatives of all journalists who stand up for this ideal in a world in which democracy and freedom of the press face increasingly adverse conditions.”[[1]](#footnote-1)

Indeed, in terms of adverse conditions, the last four years have been a difficult for freedom of expression, media freedom and pluralism. Tolerance and broadmindedness, hallmarks of democratic society, were in retreat, as evidenced by murders and attacks on journalists and others who speak up; the public sphere became fragmented; and the economic downturn has made it harder for journalism to perform its functions as a trusted voice and public watchdog. It is true that Covid-19 has underscored the value of facts and independent news sources, but it has also exacerbated many pre-existing weaknesses, including the financially weak position of many media outlets. The Council of Europe has faced the important task of providing guidance to member states to halt the decline.

**i. Challenges to media freedom, pluralism and independence**

Throughout 2018-2021, the media has suffered from a financial and economic crisis. Media struggled to find viable business models, with sales falling and advertising diverted to social media and other online conglomerates. Smaller, regional, and local outlets suffered, and many were forced to merge, were taken over by larger conglomerates or shut down completely.

The economic crisis that accompanied the Covid-19 pandemic exacerbated this trend. While audiences flocked to the media for information, the main financial impact of this was to drive up costs: online media had to upgrade infrastructure and Covid-safe working routines drove up the production costs of traditional media. At the same time, lockdowns and the economic downturn caused by Covid-19 led to even further loss of advertising and sales, forcing media companies to continue to cut costs and laying off journalists.[[2]](#footnote-2) The only media to have fared well during the pandemic are online entertainment platforms.[[3]](#footnote-3)

Many member states responded to the emergency via financial and fiscal support packages for the media.[[4]](#footnote-4) Despite this, there is no doubt that the financial position of the media has been weakened, and a growing concern that their potential dependence on either government or owner subsidies will threaten their independence.[[5]](#footnote-5)

Media pluralism was also under threat. According to the 2020 Media Pluralism Monitor, the basic conditions that make up media pluralism (market concentration, transparency of ownership, businesses’ influence over editorial content, and the sustainability of media production) were at ‘medium’ or ‘high’ risk in all countries that were examined.[[6]](#footnote-6) The average risk score increased, indicating a growing threat. Political independence of the media and social inclusiveness were similarly under threat.[[7]](#footnote-7)

The EU Commission’s 2020 Rule of Law Report also highlighted a serious risk of politicisation of media regulatory bodies, naming Hungary, Malta and Poland in particular; and indicated that a lack of resources hampered the effectiveness of the regulatory bodies in Bulgaria, Greece, Luxembourg, Romania and Slovenia. Only the Czech Republic was commended for taking steps to strengthen the independence of the media regulator.[[8]](#footnote-8) In several countries, concern was expressed that state advertising was unfairly distributed and used as a means of exerting political pressure.[[9]](#footnote-9) At the same time, some positive developments could be noted as well, notably on the transparency of ownership.[[10]](#footnote-10)

Also 2021 brought some positive trends. Trust in traditional news media, especially radio and television news, grew, indicating that the public continues to value high quality journalism. A number of countries introduced or strengthened action plans for the protection of journalists, legislation has been introduced to protect whistleblowers, and some countries are in the process of strengthening access to information laws.

In terms of problematic legislative developments, in 2021 criminal laws continued to be used to restrict legitimate media activity in a number of countries. In Turkey, where 41 journalists remained imprisoned by the end of 2021, the criminal law provision penalising ‘insulting the president’ continued to be used despite European Court of Human Rights jurisprudence repeatedly holding that it is incompatible with the European Convention on Human Rights.[[11]](#footnote-11) In Russia, legislation introduced at the end of 2020 requires media outlets or journalists who receive funding from abroad to mark their content as “foreign agent-produced”. In 2021, large fines were imposed on those who refused to comply; urgent applications have been made to the European Court of Human Rights to stop the practice.[[12]](#footnote-12)

Other legislation impacting on freedom of expression included a new Greek law toughening the criminal law prohibition on publishing ‘false news’;[[13]](#footnote-13) and in Albania the so-called ‘anti-defamation’ package of laws that proposes to restrict media content remained pending.[[14]](#footnote-14) In Hungary, emergency laws introduced during the Covid-19 pandemic criminalising ‘fearmongering’ were made permanent.[[15]](#footnote-15) In Germany, legislation was adopted broadening the use of surveillance and removing special protection for journalists; in Azerbaijan, Hungary, Belgium and Poland so-called ‘spyware’ was found on the computers of journalists; and the Moroccan government brought defamation cases in French and German courts over allegations regarding the use of spyware against journalists and politicians by the Moroccan authorities.[[16]](#footnote-16) A motion for a Recommendation on the issue was tabled at the Parliamentary Assembly.[[17]](#footnote-17)

In some countries, media outlets were banned or were refused licence renewals, threatening media pluralism. Hungary’s Klub Radio was refused to have its licence renewed; in Ukraine, a news website was banned; and in Poland, there was concern around the take-over of one of the country’s largest media groups by a state-controlled petrochemical company.[[18]](#footnote-18) Proposed legislation banning majority non-European ownership of media companies was vetoed by the Polish President and sent back to parliament while the Human Rights Commissioner expressed concern about two other proposed Polish laws, concerning social media regulation and advertising revenue tax on media outlets.[[19]](#footnote-19)

**ii. Threats to the safety of journalists**

The alerts on the Council of Europe Platform to promote the protection of journalism and safety of journalists have been indicative of a rise in violence against journalists and others who speak up in criticism of those in positions of power. This trend was unfortunately amplified in 2020 during the Covid-19 pandemic, when reports spiked by 60%.[[20]](#footnote-20) In 2021, the Platform recorded 263 alerts – a 31.5% increase on 2020, which had itself seen an unprecedented rise in the number of alerts on previous years.[[21]](#footnote-21)

2018-2020 saw a marked increase in violence. Seven journalists and a teacher were killed for their work, the latter explicitly for defending freedom of expression: Slovak journalist, Ján Kuciak; Saudi journalist Jamal Khashoggi (in Turkey); British journalist, Lyra McKee; Ukrainian journalist Vadym Komarov; Pakistani journalist, Sajid Hussain Baloch (in Sweden); Russian journalist, Irina Slavina; Russian journalist, Maksim Borodin; and French teacher, Samuel Paty, who was killed for showing his class cartoons depicting the Prophet Muhammad previously published in Charlie Hebdo magazine in 2012.[[22]](#footnote-22)

The downward trajectory continued in 2021, when six journalists were killed, the highest annual number to lose their lives in the course of their work in Europe since the 2015 attack on the Charlie Hebdo offices in Paris. Four were deliberately targeted: Greek crime reporter Giorgos Karaivaz was shot by two men outside his house; Turkish Radio Host Hazım Özsu was shot by a man who disliked his comments; Georgian journalist Aleksandre Lashkarava died after being beaten by anti-LGBTQI+ protesters; and Dutch journalist Peter R. de Vries was shot when he left a TV studio.[[23]](#footnote-23) Two Azerbaijani journalists died when the car they travelled in hit a landmine.[[24]](#footnote-24).

At the end of the year, 26 unresolved cases of murder against journalists remained, most of them dating back many years with little progress made in the investigations.[[25]](#footnote-25) The European Court of Human Rights affirmed the duty on States to take thorough and effective steps to investigate the murder of journalists,[[26]](#footnote-26) but during the year there was only one conviction: a retrial confirmed guilty verdicts for the murderers of Serbian journalist, Slavko Ćuruvija.[[27]](#footnote-27)

Covid-19 laid bare the fault lines. Physical attacks and violence against journalists rose across Europe, often during demonstrations or public unrest. Such attacks included physical assaults on journalists by law enforcement officers, as well as arrests, police hindrance and disruptions on reporting of protests and demonstrations.[[28]](#footnote-28) Increasingly, journalists and other media workers were also being targeted by demonstrators.

Violence often followed online threats and smear campaigns, some of which have been automated: bots are discrediting the work of journalists on Instagram and Twitter. Female journalists suffer particularly severe online abuse, often sexualised and gender-based, with threats of rape distressingly common.[[29]](#footnote-29) The European Court of Human Rights has strongly condemned such smear campaigns, describing them as “grave and an affront to human dignity”.[[30]](#footnote-30)

**b) The contribution of the digital and social media platforms to the changed communication environment**

Public opinion is increasingly shaped by personal beliefs fuelled by emotional appeals.[[31]](#footnote-31) In this connection, the digital platforms’ influential role in facilitating communication in the public sphere offers new possibilities for free expression, but also makes it easier to disseminate contentious, harmful, and illegal content. In addition to hate speech, a growing volume of disinformation contributes to “information disorder” and impacts negatively on society’s trust in the media and in democratic institutions more broadly.[[32]](#footnote-32)

These phenomena may not be readily quantifiable across Europe but based on a large body of research and the experience of numerous groups and individuals, their impact on the media and communication environment has proved both powerful and difficult. This prompted the Council of Europe member states to observe that digital technologies create new forms of interference with freedom of expression. For instance, blocking, filtering, removal, demotion or demonetisation of illegal and harmful online content can only be managed at scale with the help of algorithms that are developed and run by platforms, often with insufficient human oversight.

Moreover, there are many challenges related to the shift from traditional to social media which affects the overall sustainability of the media ecosystem and the culture of trustworthy journalism. It is increasingly difficult for individuals to discover what is true and who to believe, which impacts on their trust in media and, in some cases, causes them to abandon news altogether. These developments are leading towards a fragmentation of the public sphere into separate “truth publics” with parallel realities and narratives. In the final instance, this can result in a loss of confidence in democratic institutions and processes.

Many concerns appear regarding the lack of democratic control and oversight over digital platforms. Search and social media platforms are taking editorial decisions through their content moderation practices. They exercise even more profound influence by their control over the availability, findability, and accessibility of content they distribute. However, so far, their content-related responsibilities have largely been a matter of their often-opaque community standards and terms of service. The Council of Europe, however, has continuously promoted the rule of law approach to the governance of platforms, with self-regulation as an important complementary component.[[33]](#footnote-33)

It has become evident that the structural transformation of the media and communication environment needs to be appropriately reflected in the regulatory approaches of our member states, which is an ongoing process. Media and communication governance needs to be modernised to appropriately address both States / public sector actors and private sector actors. In addition, it needs to include both media and platforms, as media have become intertwined with and dependent on platforms as the largest distributors of media content; the latter thus need to be made part of new regulatory regimes in an appropriate and proportionate manner. The Council of Europe

**c) The equality and safety of women journalists**

The Council of Europe *Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors* includes an explicit acknowledgment of specific gender-related dangers faced by female journalists. This includes sexist and misogynist abuse, threats, and harassment, as well as sexual aggression and violence – both offline and increasingly online. The Recommendation includes a requirement to guarantee effective protection of female journalists and from gender-related dangers in the course of their work, in legislation as well as in practice.

However, many cases of – especially online – gender-based insults and threats of a sexual nature against women journalists have been documented on the Council of Europe Platform for the safety of journalists, and they appear to be on the rise. In 2020, for example, a Brussels correspondent for the North Macedonia news agency MIA faced online harassment, including verbal abuse and death and rape threats on social networks. Two other North Macedonian journalists also received threats and gender-based insults. In Serbia, immediately after the Independent Journalists Association of Serbia issued a public statement condemning the attack and the sexist insults directed against a journalist, she received new threats. Also in 2021, a British journalist, who approached a government minister for comment, instead of a reply received accusations via Twitter posts from the minister, who labelled the journalist's query as “creepy and bizarre”. The posts sparked a flood of abuse and threats against the journalist. The Slovenian Prime Minister, on the other hand, posted a tweet in which he compared two women journalists to “worn-out prostitutes”. Several other gender-related threats have been reported on the Platform.

In this connection, it must be noted that continued harassment has severe consequences not only for the targeted journalists, but by extension also for the diversity of media offerings. Namely, in recent years several studies have documented the phenomenon of women journalists considering leaving – or in fact leaving – the profession. To counter this phenomenon, it would be important to review the legal frameworks and ensure that various types of cyberbullying are made subject to appropriate sanctions, thereby removing potential legal gaps.

Moreover, even where legal frameworks are up to date and sufficiently address these phenomena, it may be that in practice the legislation is not being applied, which can deter potential victims of gender-based attacks from making use of the available remedies. In the Council of Europe 2017 study “Journalists under pressure - Unwarranted interference, fear and self-censorship in Europe”, for example, 57% respondents did not report that they have been the targets of online violence, either because they did not consider that there was a reliable body to make a complaint to, or they feared that their employers would not let them cover certain problematic issues or work on more dangerous assignments.

**8. Do you see any major gaps in the international human rights’ legal framework? Are there any specific recommendations that you would suggest to address such gaps or to improve implementation of the existing standards?**

**a) Addressing the gaps in the Council of Europe’s standards on freedom of expression and media freedom**

In terms of gaps in human rights’ legal frameworks, the Council of Europe and its member states have identified several issues that warrant increased attention of States and other media and communication stakeholders in the coming years, addressing them in several strategic documents.

*The Strategic Framework of the Council of Europe* features an overview of the Council of Europe’s responses to the Framework’s priority of “ensuring freedom of expression, both online and offline.” These include the important role of the Platform to promote the protection of journalism and safety of journalists, strengthening of relevant standards for combating hate speech, as well as adopting common standards regarding artificial intelligence and human rights, democracy and the rule of law.

On 10-11 June 2021 the *2nd Conference of Ministers responsible for Media and Information Society* took place, bringing together speakers of the highest level, including ministers and other government representatives from over thirty-five member States, academia, civil society, media representatives, etc.

In the four Resolutions and the Final Declaration, the Conference called for political attention at the highest level and coordinated action from governments, notably to take more effective measures to strengthen the safety of journalists, as well as to reinforce the resilience - and related protection frameworks - of freedom of expression and information and media freedom in the digital age, including in times of crisis. The Conference also calls on the Council of Europe to continue to provide annual assessments of the state of freedom of expression in Europe, under the authority of the Secretary General, with concrete proposals for action, including as regards journalists’ safety, and the promotion of a favourable environment for journalism based on the standards of professional ethics in the digital age.

Based on the Conference conclusions, several standard-setting documents have been finalised. The draft recommendations listed below will be submitted to the Committee of Ministers for possible adoption in early March 2022, while the two guidance notes were adopted by the Steering Committee on Media and Information Society and constitute practical tools for States and platforms alike in formulating their content moderation and prioritisation policies and practices. The documents are considered to respond to certain gaps in the pan-European legal framework on freedom of expression and related issues:

* *Draft recommendation on a comprehensive approach to combating hate speech*

This recommendation provides guidance on a comprehensive approach to addressing hate speech within a human rights framework, building on case-law of the European Court of Human Rights and paying special attention to the online environment.

* *Draft recommendation on principles for media and communication governance*

The recommendation provides a comprehensive yet practical set of accessible and clear principles guiding legislators and policy makers in the process of enacting media and communication governance, such as transparency, accountability, inclusiveness, impartiality, strong evidence basis, and flexibility. It further indicates what needs addressing through governance instruments, articulating principles for protecting freedom of expression and media freedom, promoting pluralism, ensuring transparency of ownership and editorial processes, enforcing professional standards, preventing the abuse of market power, enacting safeguards against illegal and harmful content, avoiding risks related to algorithms, and enhancing users’ empowerment.

* *Draft recommendation on the impacts of digital technologies on freedom of expression*

Digital technologies must operate within firm legal frameworks that help prevent unintended consequences, including over-takedown, bias and lack of transparency, and must be accompanied with effective complaint mechanisms to satisfy the standards of freedom of expression as enshrined in Article 10 of the ECHR. The Guidelines formulate principles aimed at ensuring that digital technologies reach such objectives and serve rather than curtail freedom of expression, through recommendations on how to address the adverse impacts and enhance the positive impacts of the widespread use of digital technologies.

* *Draft recommendation on electoral communication and media coverage of election campaigns*

The electoral communication and advertising increasingly move online, using techniques based on processing a large amount of personal data to deliver targeted political messages. The new information ecosystem provides tools for more effective campaigning but may also create inequalities and opacity amongst political parties and candidates. The recommendation responds to these risks by articulating principles for political advertising online, with a view to improving transparency and countering manipulative practices, intentional spread of disinformation, and abuse of microtargeting and personal data.

* *Guidance Note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation*

Drawing on good practices, this provides guidance around seven key themes and principles: (1) transparency; (2) centralising human rights by default (3) clear problem identification and targets; (4) meaningful decentralisation of decision-making; (5) communication with the user; (6) high level administrative safeguards; and (7) addressing the peculiarities of self- and co-regulation in relation to content moderation.

* *Guidance Note on the Prioritisation of Public Interest Content Online*

This Guidance Note seeks to ensure that when establishing ‘regimes of prominence’ which determine who sees what online, public interest content has due prominence. It recommends that States consider introducing new obligations for platforms and intermediaries, and also impose minimum standards such as transparency.

The abovementioned strategic documents furthermore constitute a basis for the future work of the Council of Europe in the area of freedom of expression and media freedom.

In the coming years, priorities will include increased efforts for an effective implementation of Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, also by addressing online attacks against women journalists and protection of journalists during protests. The Implementation Guide to Recommendation CM/Rec(2016)4 will be updated, in particular as regards the dimensions of ‘prevention’ and ‘promotion’ of journalists’ safety; it will also offer practical guidance on the elaboration of dedicated national action plans on the safety of journalists, one of the commitments resulting from the 2021 Ministerial conference mentioned above.

Further support will be provided to slow the spread of mis- and disinformation, by providing guidance on countering disinformation through fact-checking and platform design solutions in a human rights’ compliant manner, but also by focusing on quality journalism, collecting and sharin good practices for sustainable media financing and helping media users understand the digital media environment and navigate their choices with the help of media and information literacy tools.

The rise in abusive lawsuits aimed at silencing critical voices, also recorded in several alerts on the Platform for the safety of journalists, will be addressed through a standard-setting instrument, a recommendation on strategic lawsuits against public participation.

Finally, continuous guidance and identification of best practices on the use of artificial intelligence (AI) tools related to the promotion of freedom of expression and media freedom will be key to ensure wide access to new technologies and the skills needed to use them. The Council of Europe’s dedicated body on AI, the Ad hoc Committee on Artificial Intelligence (CAHAI), has prepared the *Possible elements for a legal framework on artificial intelligence, based on the Council of Europe’s standards on human rights, democracy and the rule of law*, which are to be followed by the development of such legal framework in the next biennium. While this work will address the horizontal aspects of AI, other Council of Europe bodies will continue working on AI-related issues at the sectoral level. In the area of freedom of expression, guidelines will be prepared on the use of digital tools including AI for journalism and by journalists.

**b) Ensuring the implementation of the existing standards – the Council of Europe’s mechanisms**

As regards the implementation of the Council of Europe’s standards, in the area of freedom of expression several mechanisms have been created for helping member states to uphold the human rights and rule of law standards enshrined in the European Convention on Human Rights and other relevant standards. They range from an early warning system, capacity and resilience-building programmes and the exchange of good practices between member states, to a judicial review by the European Court of Human Rights accompanied by the supervisory system of the execution of its judgments entrusted to the Committee of Ministers.

The Council of Europe’s Platform to promote the protection of journalism and safety of journalists was designed as an early warning and rapid response system which collects alerts to serious threats to media freedom and seeks to resolve them in their earliest stages, in dialogue with member states. Alerts on a range of threats including physical attacks, harassment and intimidation, detention/imprisonment, etc. are submitted by the fourteen partner organisations, journalists’ associations and other organisation defending and promoting freedom of expression and media freedom. Alerts are also notified to the national authorities, who are invited to reply, detailing preventive, protective or remedial action taken to address the threat. An alert is resolved if the threat ceases to exist or has been remedied.

The Platform has recorded more than 1100 alerts in the six and a half years existence, but less than 200 alerts have been resolved. A clear upward trend in the number of alerts can be observed in the last two years; 2020 saw an increase of 40% compared to 2019 (200 alerts compared to 142 in 2019) and in 2021 there was another substantial increase with 263 recorded alerts. In total, States have responded to approximately half of the alerts concerning them, a number which calls for an improvement, but in the rate and quality of responses. Namely, some responses do not address the substance of the concerned alerts but provide only the most basic information, such as that an investigation is pending or that a measure which is subject to an alert has been enacted in line with the national legislation concerned. In response, the Secretary General and the Committee of Ministers have in the past two years enhanced their dialogue with the Platform and its partner organisations, aiming to reinforce the Platform’s role and member states’ engagement in the mechanism.

Effective implementation of the existing standards of the Council of Europe remains an ongoing challenge and a long-term priority, and in this sense, it is of crucial importance for member states to comply with the rulings of the European Court of Human Rights. As stated above, it is the Committee of Ministers, assisted by the Department for the Execution of Judgments of the Court, that is vested with the power to supervise the execution of the Court’s judgments. The states have a legal obligation to remedy the violations found but enjoy a margin of appreciation as regards the means to be used. The measures to be taken are, in principle, identified by the state concerned, under supervision of the Committee of Ministers. The Court can assist the execution process, in particular through the pilot-judgment procedure (used in case of major structural problems). Measures to be taken may relate to the individual applicant or be of a general nature. General measures may pertain to the changes of legislation, case law or other measures.

For example, by way of execution of the judgment of the European Court of Human Rights in the case of *Gongadze against Ukraine* (no. 34056/02, judgment of 8 November 2005), where the Court found that the authorities had failed to protect the life of the applicant's husband, a journalist known for his criticism of those in power, in 2008 the Ukrainian authorities convicted three police officers for the kidnapping and murder of the journalist. Nevertheless, an appeal to one of the convictions appears to have still been pending in 2020. In addition, in 2019, parliamentary hearings on the safety of journalists took place. The parliamentary hearings recommended the creation of a national rapid response mechanism for the protection of journalists, including a government hotline. The modalities of such a mechanism, including an online platform, were discussed in more detail in 2020. A specialised training for judges, prosecutors and police officers on the protection of journalists has been developed jointly by the National School of Magistrates, the Prosecutors' Training Centre and the National Academy of the Interior, and with the support of the Council of Europe.

On the other hand, the Committee of Ministers noted that only a low number of investigations regarding crimes against journalists appear to lead to concrete results and there is not enough evidence of an improvement in their effectiveness. The Ukrainian authorities were invited to enhance their efforts in this area and, if necessary, adopt additional targeted measures to complement their legislative framework and adjust it to the Council of Europe standards, in particular, the Committee’s Recommendation CM/Rec(2016)4 to member States on the protection of journalism and safety of journalists and other media actors, without limiting the protection to those formally recognised as journalists.

Indeed, many cases requiring a major overhaul of the respondent states' legislation, policies and practices tend to extend the execution period to a number of years, and the general measures are too often implemented at a slow pace. Therefore, the Committee of Ministers has repeatedly warned that member states' capacity for rapid, full and effective execution of the Court’s judgments needs to be strengthened and accompanied by further high-level political commitment as well as support from the Council of Europe.

**Appendix – summaries of the recent and upcoming instruments of the Council of Europe**

* **Draft recommendation of the Committee of Ministers to member States on combating hate speech**

The draft recommendation proposes a comprehensive set of principles, directed at States and other relevant actors, with a view to **providing guidance to all actors who are faced with the task of combating hate speech, including in the online environment**.

Hate speech is a deep-rooted, complex and multi-dimensional phenomenon whose impact on those targeted can take various forms and levels of severity. Although not intrinsically different, online hate speech can quickly disseminate, go viral and remain available for a long time. Several stakeholders play a crucial role to ensure that hate speech is effectively prevented and combated, therefore the recommendation **primarily addresses the governments of member States but also lists principles and standards applicable to other relevant actors**, includingpublic officials, elected bodies and political parties, internet intermediaries,media and civil society organisations.

The recommendation builds on the case law of the European Court of Human Rights and draws upon existing Council of Europe standards related to addressing hate speech. In lack of a common understanding of the term ‘hate speech’ at the European and international levels, the guidelines **provide a definition for the purposes of the recommendation** which covers a range of hateful expressions requiring different and properly calibrated measures. Member States of the Council of Europe and key actors, as appropriate, must put in place legislative and other measures, including criminal, civil and administrative law provisions, self and co-regulatory models for addressing hate speech expressions online and off line, awareness-raising, education, training and counter- and alternative speech, provide support to those targeted by hate speech, monitor and analyse development of hate speech and step-up efforts to enhance national coordination and international cooperation.

All such measures must be well-founded and proportionate. In their development and implementation, **considerable attention should be given to the careful balancing of the rights involved**, in particular to private life (Article 8 of the Convention), to freedom of expression (Article 10 of the Convention) and to be free from discrimination in respect of protected Convention rights (Article 14 of the Convention). A comprehensive and multi-stakeholder approach, within a human rights framework, may prove essential to identify and implement measures to prevent and combat hate speech, to promote a culture of inclusiveness and help those targeted by hate speech to assert their rights.

* **Draft Recommendation of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression**

Freedom of expression, as protected by Article 10 of the European Convention on Human Rights, is not only a fundamental individual right. It is also a means to protect and enhance democracy and other rights through open and public debate. Digital technologies can and indeed must support this right and serve this purpose.

The **Guidelines** appended to the draft recommendation are designed to assist States and public and private actors, in particular internet intermediaries, as well as media, civil society organisations, researchers, educational institutions, and other relevant actors in their independent and collaborative efforts to protect and promote freedom of expression in the digital age. The Guidelines formulate principles aimed at ensuring that digital technologies serve rather than curtail such freedom. They also provide recommendations on how to address the adverse impacts and enhance the positive impacts of the widespread use of digital technologies on freedom of expression in human rights compliant ways.

This is accomplished by looking at the issue under several headings:

The first section seeks to define **Foundations for Human Rights-Enhancing Rulemaking**. It distinguishes 11 guiding principles that should underpin any regulatory initiatives. In particular, it calls for *clear and unambiguous objectives* for policymaking, for *focus on processes* rather than content, and for effective *protection* for users; addresses the need for *graduated response* to undesirable or problematic online content by considering alternatives to deletion (which is particularly important when content is not illegal); accentuates the foundational role of *legality, necessity and predictability* of regulation, as well as its *precision*; the *proportionality* of requirements addressed to private actors; compliance with *privacy* and data protection standards. It also stresses the importance of *human rights impact assessments*, *user empowerment* and *multistakeholder collaboration*.

The second section looks at **Digital Infrastructure Design**. Such infrastructure in democratic systems should be designed in a way that enables and promotes human rights, openness, interoperability, transparency of ownership structures and fair competition.

The third section addresses the crucial issue of **Transparency**. This includes transparency about the design and implementation of key policies, transparency regarding data held by platforms about their users, and about content moderation and curation techniques and processes employed.

The fourth section deals with **Accountability and Redress** for content moderation and curation decisions, including the issue of remedying the situations when damaging information has been spread through a platform.

The fifth section looks at **Education and Empowerment** of users, with the aim of enhancing their capacity to use digital tools in the exercise of freedom of expression and other human rights autonomously, in full awareness of pertinent risks - including those related to their privacy and personal data - and ways to avoid them or to seek remedy for any resulting harms. This includes promoting digital literacy programmes and public debate.

The sixth and final section looks at the promotion of **Independent Research for Evidence-Based Rulemaking** - in particular research that discloses the individual and societal impacts of digital technologies for freedom of expression. This section identifies conditions under which researchers should have access to data held by internet intermediaries, in full compliance with the Convention 108 + and other applicable international data protection standards.

Each section offers guidance to States and other stakeholders on how to fulfil their human rights obligations and responsibilities with regard to freedom of expression, combining legal, regulatory, administrative and practical measures.

Throughout the text, **multi-stakeholder decision-making** is accommodated and promoted as a cross-cutting perspective.

* **Draft recommendation of the Committee of Ministers to member States on principles for media and communication governance**

Democratic societies are confronted with a structural transformation of the public sphere. Therefore, media and communication governance needs to be modernised. It needs to include both media and online platforms to guarantee a level playing field, an appropriate level of protection from undue interference and to provide States and relevant media stakeholders with a clear indication of their duties and responsibilities, in line with Council of Europe standards and values. To this end, the Recommendation contains fifteen procedural and substantive principles that should inform media and communication governance in the Council of Europe member States.

Procedural principles include “**transparency and accountability**” to enable public scrutiny of State and private sector activities in this field and “**openness and inclusiveness**” to enable various groups and interests in society to be heard in the governance processes. Principles also include “**independence and impartiality**” to avoid undue influence on policymaking or preferential treatment of powerful groups; “**evidence-based and impact-oriented governance choice**” to show the need for intervention and ensure an appropriate response respecting the roles of different media and communication stakeholders, and “**agility and flexibility**” to ensure the effectiveness of governance.

The overarching substantive principle applicable to all stages of the communication process, namely production, dissemination, and use, involves “**promoting human rights and fundamental freedoms in communication**”.

Substantive principles regarding production of media and communication include “**securing media freedom**”, including editorial independence and operational autonomy of a diversity of media, and “**promoting media pluralism and safeguarding the sustainability of journalism**” through broad market access, regulation of competition and ownership concentration, independent and adequately funded public service media, subsidies for professional journalism, and support for community media. Production related principles also involve “**ensuring transparency of content production**” and “**ensuring compliance with content obligations and professional standards**”.

Substantive principles regarding dissemination require “**ensuring functioning markets and protecting personal data in content dissemination**”, including by appropriate electronic communication infrastructure, fair market access and safeguards against a negative impact of platforms’ market power. They also require “**responding to the risks caused by platforms disseminating illegal content as well as legal but harmful content**”, particularly by ensuring human rights compliant content moderation and measures to mitigate the potential negative effects of disinformation, and “**mitigating the risks posed by algorithmic curation, selection and prioritisation**” by enhancing the transparency and explainability of algorithmic systems and the accountability of the actors developing and implementing them, as well as by taking measures to enhance exposure diversity.

Finally, substantive principles regarding use involve “**guaranteeing human rights and fundamental freedoms in media and platform use**”, including by ensuring the availability, accessibility, and affordability of content for all groups of the population, as well as protecting users’ privacy and personality rights from unjustified interference by both public and private sector actors. They also involve “**empowering users and fostering responsible use**” of media and platforms, through media and information literacy initiatives and additional empowerment measures, such as labelling reliable content, ensuring the transparency of commercial content and political advertising, etc.

* **Draft recommendation of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns**

Free, fair, and trustworthy information is essential to guarantee the integrity of the electoral process. Electoral communication and advertising increasingly move online; consequently, in addition to political parties, politicians and media, online platforms and other new actors have assumed an important role in the way individuals gain access to information on political matters. Online advertising techniques differ from the traditional ones; they are based on processing a large amount of personal data to deliver targeted political messages adapted to individual voters’ interests and preferences.

This new information ecosystem provides tools for more effective campaigning but may also create inequalities and opacity amongst political parties and candidates. It may involve abuse of microtargeting and personal data, abusive use of bots and algorithms as well as disinformation campaigns, aimed at persuading the voters based on their emotional rather than informed choice. Also, funding of electoral campaigns and expenditure of political actors may be conducted less transparently online.

This Recommendation thus seeks to assist member States **in addressing the concerns for the fairness and legitimacy of the electoral processes** that have emerged because of the new formats and digital techniques of online campaigning.

As regards the **governance of online election campaigning**, its specificities call for **co-regulatory approaches**. States, online platforms and civil society organisations should collaborate to develop appropriate and proportionate solutions, accompanied by **independent oversight mechanisms** **and effective sanctions for non-compliance**. States should also consider introducing rules on political advertising outside of election periods, where appropriate, to respond to the permanent political debate enabled by the online environment.

**Political and electoral advertising online**, including **financing and electoral spending**, should be subject to the **principle of transparency**. The Recommendation calls for labelling the advertising materials and identifying the campaigners, as well as for a requirement for political parties and online platforms to keep archives of the advertisements placed and distributed online. In addition, transparency of income and expenditure by political parties and other actors should be required by introducing appropriate disclosure obligations. Transparency obligations should also apply to algorithms used for ranking the campaigning material and those used in content moderation practices.

In terms of **ensuring trustworthy and pluralistic electoral content online**, **safeguards** should be introduced **against misrepresentation and intentional spread of electoral disinformation**, while ensuring full respect for the right to freedom of expression. Any restrictions of content should be carried out in a transparent, proportionate, and non-discriminatory manner. The role of media in electoral process should be protected in line with the principles set out in Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns, such as **protecting media independence** or **providing equal conditions for campaigning in the audiovisual media**.

Finally, national **data protection laws** applied in the electoral context should comply with the international frameworks of data protection such as the Convention 108 and 108+. Citizens should receive information from online platforms on **why they are targeted with political advertisements**, and they should have the **possibility to opt out** from such advertising.

* **Guidance Note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation**

The Guidance Note looks at the existing frameworks for content moderation, in order to provide a mapping and guidelines for member states on building approaches to content moderation that are both human rights-compatible and apt to achieve public policy objectives. It explores, among others, broader issues such as developing a better understanding of the specific problems that content moderation seeks to address; clarifying the concepts of self- and co-regulation and where they may best be applied; ensuring appropriate accountability for restrictions on human rights and defining the characteristics of transparency tools that are fundamental to ensuring that goals are set and achieved.

The **Guidance note** offers orientation and a selection of practice-oriented guidelines to member states and other relevant actors, such as internet intermediaries. It is accompanied by an **Explanatory memorandum** that supports and explains the provisions, concepts and terminology contained in the guidance note and is intended to be used extensively for reference in the process of its implementation. It builds on an impressive body of work on various aspects of content moderation already produced by a range of institutions.

The Guidance note and the explanatory memorandum have mostly parallel structures that include the following main sections:

The **Problem definition** section explains that content moderation is not one challenge, but several. Different types of harmful content have different origins and different characteristics and require tailored responses. It advises that states should have a clear, public methodology for categorising different types of content and developing adequate and human rights compliant responses, and regularly adjust policy responses based on the outcomes of continuous assessment of the development of the problem.

It further clarifies that self- and co-regulation are not two separate and distinct approaches, but notions that indicate the degree of state involvement in content moderation. States should be mindful that their positive and negative human rights obligations arise also from content moderation performed within self- and co-regulatory frameworks.

The section dedicated tothe **Affected rights** reaffirms the need for a human-rights focused approach to content moderation and looks at the potential of different approaches (regulatory, self-/co-regulatory) to ensure due redress. The Explanatory memorandum additionally provides practical case studies with regard to impacts of content moderation on most frequently affected human rights.

A separate section examines **Purposes and drivers of content moderation**. The document distinguishes between content moderated for public policy reasons (also identifying several categories of such content) and content that may be problematic for the business model of online companies and is therefore moderated for “business purposes”. Additionally, the Explanatory memorandum takes a closer look at business interests and business models and offers ways to distinguish different types of content based on a range of criteria (legality/illegality, context, intent, other).

The **Structures for content moderation** section explores the potential of different regulatory mechanisms. The Guidance note advises that co-regulation is often more suitable for content moderation aimed at the achievement of pubic policy objectives, while self-regulation would usually be more fitted for content moderation by internet intermediaries for reasons directly related to their business model. Based on an overview of examples of self- and co-regulation in different spheres (provided in the Explanatory memo), the document outlines the characteristics of successful approaches: transparency, meaningful objectives and benchmarks, accountability and objective evaluation, oversight.

The **Transparency** section emphasises that transparency and regular review of approaches are key for human rights complaint content moderation; transparency is absolutely essential to ensure accountability of all stakeholders and non-discrimination. The cost of self-regulation is a reduction in accountability and democratic legitimacy. The key benefit of self- and co-regulatory approaches in general is that they are flexible (which is particularly valuable in the online environment). However, without meaningful transparency, it is not possible to identify and assess changes, nor make corresponding adjustments. Therefore, without transparency, society loses one of the key benefits of self- and co-regulation, while still incurring their cost. The section further provides orientation for identifying necessary transparency data and for uncovering the positive and negative incentives created by transparency metrics.

Additionally, the Explanatory memorandum offers to policy-makers a compilation of **Key principles for a human rights-based approach to content moderation:**

1. Transparency
2. Human rights by default
3. Problem identification and targets
4. Meaningful stakeholder engagement
5. Communication with the user

a) Clarity and accessibility of terms of service

b) Clarity on communication with users whose content is removed including counternotice possibilities when feasible

6. High level administrative safeguards

a) Supervision to ensure human rights compliance

b) Evaluation and mitigation of “gaming” of complaints mechanisms

c) Ensuring consistency and independence of review mechanisms

d) Recognising the human challenges of human content moderation

7. Recognising the peculiarities of self- and co-regulation in relation to content moderation

* **Guidance Note on the Prioritisation of Public Interest Content Online**

Platforms, intermediaries and States are establishing ‘regimes of prominence’ which determine who sees what content online.

These regimes have a potential for promoting trusted news and authoritative information, as well as for widening the diversity of content consumed online. They can, however, also be exploited for censorship or propaganda, so they have implications for democracy and human rights.

States should act to make public interest content more prominent, including by introducing new obligations for platforms and intermediaries, and also impose minimum standards such as transparency.

1. Nobel Peace Prize 2021 announcement: <https://www.nobelprize.org/prizes/peace/2021/press-release/> [↑](#footnote-ref-1)
2. 43% of independent media expected to lose up to 30% of revenue over 2020; 36% even more: <https://reutersinstitute.politics.ox.ac.uk/few-winners-many-losers-covid-19-pandemics-dramatic-and-unequal-impact-independent-news-media>. As reported to the Council of Europe, around 30 UK publishers suspended titles and broadcasters made budget cuts of £245m; French broadcaster M6 was made €100m budget cuts. See also Nielsen, Covid-19: Tracking the Impact on Media Consumption, 16 June 2020: <https://www.nielsen.com/us/en/insights/article/2020/covid-19-tracking-the-impact-on-media-consumption/>. [↑](#footnote-ref-2)
3. See, e.g., ‘Netflix pulled off a showstopper early in the pandemic, but will the sequel deserve the price?’ Marketwatch, 16 July 2020: <https://www.marketwatch.com/story/netflix-in-the-age-of-covid-19-streaming-pioneer-may-have-new-edge-on-competition-2020-04-07>. [↑](#footnote-ref-3)
4. A list of support packages has been compiled by the EFJ:

   <https://europeanjournalists.org/blog/database/covid-19-what-financial-support-has-the-media-and-journalists-received-in-europe/> [↑](#footnote-ref-4)
5. E.g. concerns raised in the European Commission’s 2020 Rule of Law Report. [↑](#footnote-ref-5)
6. The Media Pluralism Monitor is a scientific tool devised to survey media pluralism: <https://cmpf.eui.eu/mpm2020/>. [↑](#footnote-ref-6)
7. *Ibid*. [↑](#footnote-ref-7)
8. 2020 Rule of Law Report, 30 September 2020. [↑](#footnote-ref-8)
9. For example, In Hungary, state advertising was reportedly used to exert political influence over the media (EU Commission, 2020 Rule of Law Report). [↑](#footnote-ref-9)
10. The European Commission’s 2020 Rule of Law Report commented positively on disclosure of ownership requirements in Germany, France and Portugal (in the latter, the Constitution requires transparency of media ownership). [↑](#footnote-ref-10)
11. E.g. Alert 135/2021, Turkish Journalist Hakkı Boltan Sentenced to 2 Years and 17 Days in Prison for Insulting President and Prime Minister; and Alert 218/2021, Dimokratia Journalists Charged in Turkey with “insult to the President”. The ECHR standards are stated in *Pakdemirli v. Turkey*, application no. 35839/97, 22 February 2005; *Vedat Şorli v. Turkey*, 19 October 2021, application no. 42048/19 [↑](#footnote-ref-11)
12. Alert 6/2021, Russian Regulator Announces Fines for RFE/RL Outlets under Expanded ‘Foreign Agent’ Law; Alert 173/2021, Dozhd TV and IStories Tagged as “Foreign Agents”; Alert 79/2021, Ministry of Justice Labels Outlets Meduza and PASMI as “Foreign Agents”. [↑](#footnote-ref-12)
13. Alert 243/2021, New Law against Disinformation Threatens Press Freedom. [↑](#footnote-ref-13)
14. During a visit of the OSCE Media Freedom Representative, Albanian authorities reiterated they would revise the draft laws: <https://www.osce.org/representative-on-freedom-of-media/500902> [↑](#footnote-ref-14)
15. Commissioner for Human Rights, Memorandum on freedom of expression and media freedom in Hungary, 30 March 2021 [↑](#footnote-ref-15)
16. Alert 122/2021, German Law Increases Government Surveillance and Hacking Powers, Removes Protection for Journalists; Alert 225/2021, Journalist Małgorzata Warzecha’s Computer Hacked; Alert 187/2021, Journalist Peter Verlinden Targeted with Pegasus Spyware; Alert 148/2021, Journalists targeted with Pegasus spyware; Alert 147/2021, Journalists targeted with Pegasus spyware; Alert 155/2021, Morocco Sues Several Media Outlets in France Following Pegasus Revelations. [↑](#footnote-ref-16)
17. Pegasus and similar spyware and secret state surveillance, Motion, 21 September 2021 [↑](#footnote-ref-17)
18. Council of Europe Commission on Human Rights, Memorandum on freedom of expression and media freedom in Hungary, 30 March 2021; Alert 161/2021, Ukrainian News Website Strana.ua Banned; Alert 205/2020, Orlen’s Takeover of Polska Press Exposes Media Pluralism. [↑](#footnote-ref-18)
19. Alert 143/2021, Bill to Ban Non-European Media Ownership; and letter from the Council of Europe Commission on Human Rights, 8 March 2021. [↑](#footnote-ref-19)
20. Of a total of 104 incidents reported on the Platform in the first half of 2020, 32 were COVID-19 related. In the equivalent period of last year, 64 incidents were registered. The increase is largely due to COVID-19-related incidents, including incidents of violence as well as arrests and detentions of journalists. [↑](#footnote-ref-20)
21. This represents a 19% increase on the previous year and a 67% increase on 2019. [↑](#footnote-ref-21)
22. It should be noted that the police investigations are ongoing. [↑](#footnote-ref-22)
23. As reported on the Safety of Journalists Platform: <https://fom.coe.int/listejournalistes/tues?years=2021> [↑](#footnote-ref-23)
24. *Idem*. [↑](#footnote-ref-24)
25. For detail see <https://human-rights-channel.coe.int/end-impunity-for-crimes-against-journalists-en.html> [↑](#footnote-ref-25)
26. *Estemirova v. Russia*, 31 August 2021, application no. 42705/11 [↑](#footnote-ref-26)
27. MFRR welcomes renewed convictions for murder of Slavko Ćuruvija: <https://www.ecpmf.eu/serbia-mfrr-welcomes-renewed-convictions-for-murder-of-slavko-curuvija/> [↑](#footnote-ref-27)
28. 2020 Annual Report by the partner organisations to the Council of Europe Platform. Cases were recorded in countries including France, United Kingdom, Spain, Turkey, Albania, Azerbaijan, and Russia. In this connection, in 2020 the Venice Commission issued, together with the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE, the third edition of the Guidelines on freedom of peaceful assembly. They contain a chapter on the “Duty to protect and facilitate the work of journalists and media personnel” and particularly recommend that no media credentials should be required to cover an assembly. The duty of law enforcement authorities to protect media professionals from violence emanating from third people, but also to refrain from interfering with the work of journalists is valid irrespective of whether they represent national of foreign media; this duty also covers the freedom of media representatives from arbitrary arrest or detention in connection with their coverage of an assembly. [↑](#footnote-ref-28)
29. As documented by, among others, the Council of Europe Commissioner on Human Rights and the OSCE Representative on Freedom of the Media: <https://www.osce.org/fom/safety-female-journalists-online>. [↑](#footnote-ref-29)
30. *Khadija Ismayilova v. Azerbaijan*, application nos. 65286/13 57270/14, 10 January 2019. [↑](#footnote-ref-30)
31. D. Tambini, Media Freedom, Regulation and Trust: A Systemic Approach to Information Disorder, Background Paper, Ministerial Conference, Cyprus 2020, February 2020. [↑](#footnote-ref-31)
32. Ibid. [↑](#footnote-ref-32)
33. In 2018, the Council of Europe adopted Recommendation CM/Rec(2018)2 of the Committee of Ministers to member states on the role and responsibilities of internet intermediaries, which acknowledges the curatorial and editorial roles of various platforms and calls on states to assign to them corresponding responsibilities. [↑](#footnote-ref-33)