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**STEERING COMMITTEE ON
THE MEDIA AND NEW COMMUNICATION SERVICES**

(CDMC)

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Council of Europe**

**Report on the meeting on the operation and functioning of media complaints procedures
and media complaints bodies**

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On 13 June 2007, at its 998th meeting the Committee of Ministers of the Council of Europe gave the following ad-hoc terms of reference to the Steering Committee on the Media and New Communication Services (CDMC): “To examine and make recommendations on the operation and functioning of media complaints procedures and media complaints bodies established in member states, taking into account any difficulties faced by individuals and groups affected by statements in the media to obtain redress through these mechanisms.”¹

On 15 October 2008, the Council of Europe organised an expert meeting on the operation and functioning of media complaints procedures and media complaints bodies during which representatives from the media, media complaints bodies, legal experts, the Secretariat of the European Commission Against Racism and Intolerance (ECRI) and the CDMC Bureau discussed the state of media complaints procedures in Council of Europe member states (see list of participants in the Annex). Below follow the conclusion of these discussions, which were based on several background documents from a number of different sources.² The final part of the document sets out the group’s recommendations to different stakeholders, including the Council of Europe for possible future action.

The discussions could be summarised in the following way:

General comments on the regulation of the media

Media regulation aims to protect the media’s right to freedom of expression and the public’s right to information on the one hand and the rights of individuals and groups on the other³. It follows from the case-law of the European Court of Human Rights (ECtHR) that there should be no prior restraint in the work of the media and that state interference should be limited to very exceptional circumstances.⁴ The independent regulation of broadcast media⁵ is justified by the fact that it uses scarce resources.

The European Court of Human Rights has defined in its case-law certain cases in which a state can apply legal sanctions against media..

The Council of Europe has set out standards on media self-regulation in the following documents:

¹ cf in this context Recommendation 1768 (2006)1 of the Parliamentary Assembly of the Council of Europe on “The image of asylum seekers, migrants and refugees in the media” in which the Parliamentary Assembly recommended “that the Committee of Ministers: 8.1. invite the Steering Committee on the Media and New Communication Services (CDMC) to examine and make recommendations on the operation and functioning of media complaints procedures and media complaints bodies established in member states, taking into account any difficulties faced by individuals and groups affected by statements in the media to obtain redress through these mechanisms;”

² Cf, European Commission for Democracy Through Law (Venice Commission) “Report on self-regulation within the media in the handling of complaints” by Mrs Herdís Thorgeirdóttir (Substitute Member, Iceland); Organization for Security and Co-operation in Europe (OSCE), The Representative on Freedom of the Media (2008) “The Media Self-Regulation Guidebook”; Bertrand, Claude-Jean (2007) “M*A*S – Media Accountability Systems” published by the OSCE Mission in Serbia; European Commission Against Racism and Intolerance (ECRI) (2006) “Expert Seminar: Combating Racism While Respecting Freedom of Expression – Proceedings”; Voorhof, Dirk (2008) “Freedom of Expression, Journalists’ Rights and Duties and the Impact of Ethics and Self-regulation in the light of Article 10 ECHR”; Puppis, Manuel (2008) “Regulatory Organisations in Media Regulation: The Example of European Press Councils”

³ In particular, the rights to private and family life (Article 8 of the ECtHR), Right to a fair trial (Article 6), Article 14 (prohibition of discrimination), Protocol 12 of the ECtHR (General prohibition of discrimination)

⁴ cf in particular *Observer and Guardian v. United Kingdom* (1992), cf also in this context Thorgeirdóttir (2008)

⁵ cf. Article 10, paragraph 1

- Recommendation Rec (2004) 16 of the Committee of Ministers on the right of reply in the new media environment, and Article 8 (right of reply) of the European Convention on Transfrontier Television, which sets out standards for the protection, redress and remedies for persons confronted with information and publications containing inaccurate facts about them;
- Resolution 2 of the 4th European Ministerial Conference on Mass Media Policy (Prague, 7 to 8 December 1994) in which the participating Ministers agreed that the maintenance and development of genuine democracy requires the existence and strengthening of free, independent, pluralistic and responsible journalism and that all those engaged in the practice of journalism have the right to elaborate self-regulatory standards which describe how their rights and freedoms are to be reconciled with other rights, freedoms and interests with which they may come into conflict, as well as their responsibilities;
- Resolution 1003 (1993) of the Parliamentary Assembly of the Council of Europe on the ethics of journalism which sets out ethical principles for journalism which it believes should be applied by the profession throughout Europe;

Standards for the independent regulation of broadcast media are set out in Recommendation (2000)23 of the Committee of Ministers on the independence and functions of regulatory authorities in the broadcasting sector. In the appendix to the Recommendation standards for the monitoring of the broadcast media's compliance with national legislation and license conditions are defined. It is recommended that the broadcasting regulator accepts complaints from the public as part of the monitoring process.

In its 2008 Declaration on the independence and functions of regulatory authorities in the broadcasting sector, the Committee of Ministers examined the implementation of Recommendation (2000)23 in Council of Europe member states. The appendix to the Declaration gives the detailed assessment of the functioning of monitoring and complaints mechanisms of broadcasting regulators in member states.⁶ The participants therefore concluded that it was not necessary to make an additional examination into the functioning of complaints mechanisms concerning the broadcast media.

As regards online media, the discussion could not establish clear criteria of which output can be considered media and therefore according to which standards it should be (self-/co-) regulated, making it difficult to assess the functioning of complaints mechanisms for this, even though apparently some countries have started to admit complaints about output of online versions of newspapers in their work.

In light of the above, the participants decided that the discussions should concentrate only on self-regulatory bodies for written and broadcast media and their online equivalents.

⁶ Cf. Appendix to the Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector (Adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies) §§ 32 -36 Problems were identified in member states' legislation and practice, which did not always seem to be in line with the recommendations of Recommendation (2000)23: e.g. Not all systems allowed for a complaints mechanism, monitoring was not always done consistently and sanctions were not always effective or proportionate.

Effective and independent media self-regulatory complaints bodies for written and electronic media

The experts tried to define the criteria for an effective and independent media complaints body:

Mandate: A complaints body should act as a mediator in the public interest, helping the media to fulfil its public watchdog role. The complaints body should aim to solve (amicably between the media and complainant, if possible) alleged wrongs by the media. The body has to make informed and justified decisions based on an agreed set of standards.

Principles and standards for professional ethics: Whereas it is important to stress that each self-regulatory body should be free to determine its own standards and that rules and standards have to take into account national legislation and national and cultural settings, these standards should be based on the principles on freedom of expression and information established by the European Court of Human Rights' case-law on Article 10.

Representation: Since the complaints body works in the interest of the public, members of the board should be nominated in a democratic manner. It might be considered that representatives of the public and/or certain interest groups are represented by a member or at least that they are duly considered in the decision making.

Accessibility: Complainants should be able to know that the complaints body exists as a remedy for alleged media wrongs. The complaints body should function in a way that makes it easy for the complainant to lodge a complaint. If necessary, support should be given to the complainant to learn about their rights and to inform them about the functioning of the complaint system. Regard should be had to persons with specific needs or who do not speak the majority language.

Transparency: The decision-making should be justified and decisions should be made public.

Flexibility: The functioning and the standards of complaints bodies should be able to answer to changes in society, e.g. changes in moral sensibilities. The functioning of the complaints body should be reviewed regularly to ensure that it still provides the best possible means of fulfilling its mandate

Effectiveness: A complaints body should be accessible, transparent and flexible in the way described above. It should be able to give support to complainants and defendants, as well as providing members support to make informed decisions. The body should therefore have sufficient means to comply with all these tasks.

Sanctions: Complaints bodies mostly apply moral sanctions. It is considered that victims usually feel satisfied by an apology and correction.

Problems in attaining these standards of independence and effectiveness in practice

To answer the question on whether complaints mechanisms in Council of Europe member states function well and whether individuals or groups have difficulties in gaining redress through these mechanisms in practice, the participants heard the representative of the ECRI Secretariat who confirmed that ECRI in its monitoring often heard from certain groups that are being discriminated against in the media, that they do not feel that their complaints are heard.

At the same time the experts noted that, the media has developed an almost unlimited number of possible media self-regulatory, or media accountability systems. Many of these mechanisms are very simple and un-costly, , such as a ‘corrections’ section in a newspaper.⁷ The press council is more difficult to set up and to maintain but best practice examples for the setting-up and functioning of a press council can be collected from the many successful press councils that exist in Europe. The experts then asked why it is still not possible to give adequate redress to complaints if the medi so many possibilities for self-regulation at their disposal.. Are these media accountability mechanisms not used enough or not in the right way?

The experts agreed that it is difficult to find a general methodology for assessing the functioning of complaints mechanisms in Europe. Statistics on the number of press councils in Europe⁸ do not necessarily show whether these bodies can actually guarantee redress for complainants in practice. Also, self-regulation might function through self-regulatory mechanisms other than press councils. For example the French media have not established a press council but are trying to ensure accountability through a media ombudsperson.

Studies exist on the scope of and means available to certain press complaints bodies⁹ but it might be argued that the functioning of a complaints body has to be seen in the national context and the fact that one press council does not have the same financial means or competencies as another equivalent body in a different country does not necessary allow a judgement on whether this council can effectively handle complaints.

Another way of assessing the effectiveness of complaints bodies are the number of the complaints a complaints body receives and is able to decide on. However, there could be numerous reasons why a complaints body only deals with a limited number of complaints: The complaints body could be unable to handle a large number of complaints, and could then be considered as ineffective. However, it might simply not receive many complaints. A complaints body might receive many complaints but decide that not all of them are well-founded and therefore decides not to deal with them.

The fact that a complaints body might only receive (and therefore deal with) a limited number of complaints does not necessarily prove whether it manages to give redress to alleged media wrongs. Individuals and groups might not be aware of the possibilities of the complaints mechanism or might find it difficult to access it. The complaints mechanism would then have failed in its mission (see also criteria for effectiveness above). However, a society might also simply accept that the media can also, in certain cases, resort to provocation or shocking speech, and individuals and groups might feel less compelled to ask for redress. It might likewise be the case that there is not much tolerance for any wrong caused by the media, even in cases where according to Article 10 case-law an interference would not be justified.

Little tolerance for the media’s right to offend might, however, also incline individuals and groups to reject a complaints mechanisms that can only offer a moral sanction and to go directly to court. A high number of complaints against the media might be an indication on whether self-regulation has failed. But again, the single cases and the specific situation in the country would have to be assessed in order to determine if people simply do not know about

⁷ Cf. for example in this context Bertrand, Claude-Jean (2007).

⁸ Cf. OSCE (2008) “Press councils in the OSCE area” pp48-49; according to this overview, as of January 2008 about a third of Council of Europe member states do not have a press council.

⁹ Cf. e.g. Puppis (2008)

the complaints mechanism, whether the mechanism does not work, or whether simple moral sanctions are not accepted as redress by the complainants.

Notwithstanding these difficulties in finding an exact methodology for assessing the good performance of complaints bodies in Council of Europe member states, the experts could agree on a number of problems that media which are trying to set up complaints mechanism do meet and why complaints bodies in many Council of Europe member states fail to be effective and independent:

Economic: Difficult working conditions in the media make journalists vulnerable and dependent. An increasing number of journalists nowadays is employed on short-term contracts, receive low wages and have little or no social rights. They are therefore more vulnerable to financial pressure and might not feel strong enough to defend professional standards. Also, many journalists receive little or no training on journalism ethics.¹⁰

Political: Pressure on the media can also be political. The media in certain countries and complaints mechanisms established by them are not independent from political actors and they might feel obliged to compromise professional standards when put under pressure.¹¹ In other cases, the media might not receive the support they need from politicians to create an environment that is favourable to self-regulation and that allows the media and journalists to work independent of economical or other pressures.

Legal: In certain countries, attempts are made to regulate all or most media wrongs or breaches through legislation¹² and/or courts are willing to also hear cases of alleged rights violations that could be adjudicated by complaints bodies.

Cultural: Journalists might reject complaints bodies, for example, because they are wary of any sort of regulation and fear that their professional liberties will be infringed even by a self-regulatory mechanism. They might also be unwilling to set up a complaints mechanism because negative experiences with the setting up of a similar body have made them cynical about the success of complaints mechanisms.¹³

Whereas it is understood that not all of these problems exist, or exist to the same degree, in all member states, the different stakeholders should ensure that where these issues persist, they are addressed in order to allow for the (better) functioning of complaints mechanisms.

Proposals for action

In light of the above, the participants concluded that the following actions should be taken:

The media should ensure that journalists are aware of and are able to apply professional standards by providing training on codes of ethics and other legal documents; such training should be both initial and ongoing (i.e. life long) .

Both journalists, editors and media owners should assume their responsibility in ensuring the public watchdog role of the media in society. They should commit to self-regulation and develop a complaints mechanism that fits the legal and cultural environments of their country

¹⁰ European Federation of Journalists (2007) "Why a Declaration on Media and Democracy in Europe?" <http://europe.ifj.org/en/articles/why-a-declaration-on-media-and-democracy-in-europe>

¹¹ OSCE (2008) p. 50

¹² Ibid

¹³ Ibid

and that can ensure the rights of individuals and groups and the general public's and the media's right to freedom of expression and information.

Civil society should raise awareness of and inform the public about their right to complain should their rights be infringed by media and on how they can get redress through the complaints mechanisms.

Complaints mechanisms should adhere to the above mentioned criteria of an independent and effective functioning. They should regularly adapt their standards and working methods so as to best fulfil their mandate. Moreover, complaint mechanisms should be transparent and easily accessible.

Governments should commit themselves not to interfere with the media's independence and right to self-regulate. They should create a legal and regulatory framework that ensures journalists and the media's independence and gives them the freedom to set up self-regulatory mechanisms. (Governments might consider giving complaints bodies financial support to allow them to carry out their functions properly). Governments should also support media literacy to allow the public to better understand the rights and responsibilities of the media and their rights to complain.

The Council of Europe should support media self-regulation by assisting the media in achieving or preserving editorial independence and encouraging the development and exchange of best practices on the good functioning of media complaints bodies amongst European media. The Council of Europe should also further explore together with the media and civil society representatives how to improve the protection of victims of media wrongs, in particular as regards online content.

ANNEXE I

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