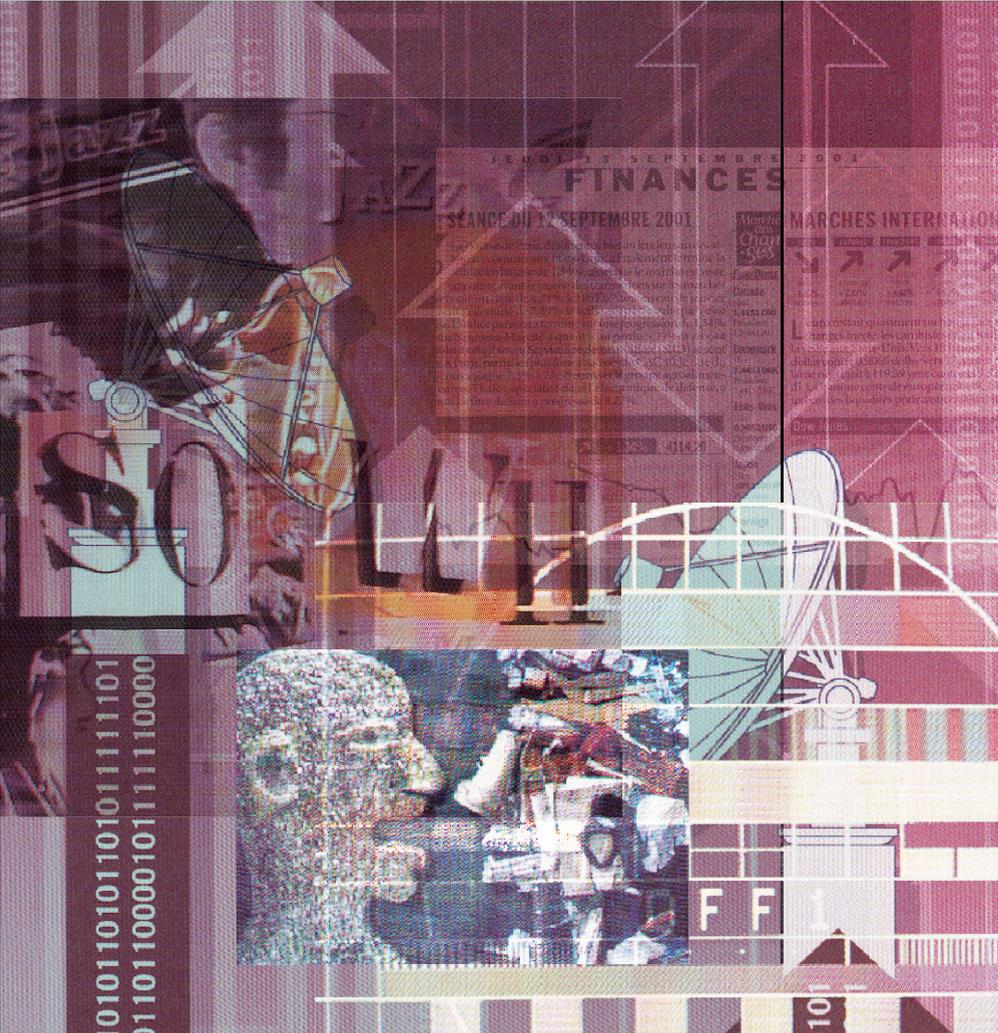


Guarding the watchdog – the Council of Europe and the media



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Kayhan Karaca

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*Everyone has the right to freedom of expression.
This right shall include freedom to hold opinions
and to receive and impart information and ideas
without interference by public authority and regardless of frontiers.*

From Article 10 of the Convention for the Protection
of Human Rights and Fundamental Freedoms

*Printing, which comes necessarily out of Writing, I say often, is equivalent
to Democracy: invent Writing, Democracy is inevitable ...
Whoever can speak, speaking now to the whole nation, becomes a power,
a branch of government, with inalienable weight in law-making,
in all acts of authority. It matter not what rank he has,
what revenues or garniture; the requisite thing is that he have a tongue
which others will listen to; this and nothing more is requisite.*

Thomas Carlyle (1795-1881)

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FOREWORD

The right to freedom of expression and information has expanded dramatically in Europe over the last decade. However, in spite of the progress made, freedom of the media still gives rise to serious concern. Public television, often the main source of news, is still under strict government control in some member states. More alarmingly, in some parts of Europe investigative journalists are being intimidated, even imprisoned for their work. In other parts, access to the Internet is restricted and there has been indiscriminate and arbitrary control of information services. Editorial independence and the representation of different groups and interests are under pressure of the growing tendency towards concentration in both the print and broadcasting media: grouping several branches of the mass media under single ownership leads to monopolisation. Furthermore, despite the case-law from the European Court of Human Rights, the right of journalists not to reveal their sources is not always respected.

The free flow of information provided by the enlarged fourth estate, now online and digital, maintains and develops a genuine public sphere of information, where an unprecedented range of information, no matter how unsettling, can be analysed and debated. This watchdog and counterbalancing function of a pluralistic press is a pillar of democracy. At the same time, there is, as much as ever, a need to protect the individual rights of those who come into the media spotlight against excesses in the form of paparazzi journalism or propaganda practices disguised as media professionalism.

Guarding the watchdog – the Council of Europe and the media, produced by the integrated project “Making democratic institutions work”, is an important tool for the understanding of today’s media policy. It gives a comprehensive view of the Council of Europe’s initiatives and involvement in shaping democratic media policy and it highlights the principles behind them. It draws attention to the clearly emerging pressures and challenges which confront media democracy today and constitute part of the Organisation’s future work.

The Council of Europe is committed to protect and promote the right of freedom of expression and media pluralism and will continue its standard setting

work by encouraging anti-concentration strategies, democratic reform and implementation of media legislation and the development of pluralistic digital broadcasting with easy access for all.

A handwritten signature in black ink, appearing to read 'Walter Schwimmer', with a long horizontal flourish extending to the right.

Walter Schwimmer
Secretary General of the Council of Europe

INTRODUCTION

In the spring of 1950, when the Council of Europe started work in its new headquarters in Strasbourg, the new building had two notable features: surprisingly modern audiovisual facilities and unusually spacious offices for its press and information services. These options reflected its awareness from the outset that limited resources would force it to rely on the media to put its message across, and also the growing importance of information in post-war Europe. Ever since then, indeed, it has insisted that freedom to inform and be informed is one of the cornerstones of democracy.

The Convention for the Protection of Human Rights and Fundamental Freedoms, known as the European Convention on Human Rights (ECHR), signed in November 1950, gave the Council the legal means to defend that freedom in practice: Article 10 of the Convention stipulates that everyone – and thus the press – has the right to freedom of expression, subject only to certain restrictions needed, for example, to protect public safety or prevent crime. The legal basis of press freedom in Europe, Article 10 of the ECHR – which follows in a direct line from Article 11 of the 1789 Declaration of the Rights of Man and of the Citizen – has been, and still is, the driving force behind a “European free expression area”, which has been expanding steadily for over half a century. Rarely invoked before the 1960s and 1970s, Article 10 has since become increasingly important, and has been used to make the point in many court cases that the right to information takes precedence over the political, legal and economic imperatives which are sometimes given as reasons for restricting it.

Constantly insisting on the primacy of free speech, the case-law based on Article 10 has gradually loosened the vice-like grip of the forces which threaten it, such as national broadcasting monopolies or the “commercial secrecy” rules used (or misused) to gag reporters. It has shown that freedom of expression also applies to information which is likely to shock, disturb or offend, and it enables journalists to play their full role as watchdogs of democracy. The relevance and effectiveness of Article 10 is demonstrated by its popularity, over the years, with media lawyers, who often use it to halt proceedings brought against their clients. It has pushed back the traditional limits of free speech in many countries, while also providing safeguards to protect society or the private life of individuals.

In a parallel process starting in the late 1950s, the Council of Europe also devised structures and tools to guarantee and strengthen freedom of expression across the continent: these have accompanied – and anticipated – all the major developments on the press and media scene. From its 1958 European

Agreement concerning Programme Exchanges by means of Television Films to its very recent Convention on Cybercrime, the Council's work has encapsulated and regulated an increasingly complex world of information, and has responded to a whole range of challenges – defending journalistic freedom, fighting racism and guaranteeing pluralism among them.

For many years, media issues were dealt with by various Council of Europe committees and departments. In 1976, however, media became a separate work area, and five years later the Council set up the Steering Committee on the Mass Media (CDMM) within its Human Rights Directorate. In consultation with that committee, the main Council bodies have published numerous recommendations, resolutions and technical papers – both on the media generally and on specific media issues.

When the Iron Curtain disappeared, the CDMM offered to help the countries of central and eastern Europe to modernise and democratise their press and media, ossified by fifty years of rigid state control. Around that time too, the Council of Europe was helping to tackle problems raised by the new audio-visual media which were starting to develop in the early 1990s. Another of its concerns was to ensure fair access for everyone to these new information sources. Finally, as war again flared in Europe, first in the former Yugoslavia and later in the former Soviet Union, the Council urged the international community to take steps to protect journalists covering crises and conflicts.

Currently, preventing terrorism is one of its absolute priorities, but it also insists that anti-terrorist initiatives must not jeopardise democracy or individual rights. With countries everywhere tightening up on security, the press – sometimes itself a target for terrorists – may be hampered in its efforts to track down the facts. And must journalists be content to parrot the information and opinions put out by governments? Questions like these, brutally highlighted since 11 September 2001, are on the Council of Europe's agenda as we move into the 21st century. The Organisation is also determined to play a central role in combating any tendency to equate terrorism with certain religions and cultures – a potentially disastrous threat to the cohesion of European societies. Depending on their own attitudes, but also on the degree of independence they enjoy, media concerns can either help different cultures to communicate or drive an even deeper wedge between them. As it has done for the last fifty years, the Council will continue to focus, in its work on terrorism, on defending free speech and the vital balances that underpin democratic societies.

Denis Durand de Bousingen
Journalist

I. PRINCIPLES AND TOOLS FOR A EUROPEAN MEDIA POLICY

Founded in 1949, the Council of Europe is the oldest of the European organisations. Based in Strasbourg, it has a current membership of forty-five countries, stretching from Iceland to the Caspian Sea. Its aim is “to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress”. Its first priority is to promote democracy, the rule of law and respect for human rights. It sees freedom of expression and information as vital to realising these principles, believing that real democracy exists only when individuals are free to say what they think, and to receive and impart information.

Acting on these basic principles, the Council has kept pace with media developments from its earliest days, and will continue to do so in the future. It has played a pioneering role in shaping European media policy and media law, and has given the development of national and European media-support policies a decisive impetus. The fifty or so declarations, recommendations and conventions on media and media law which it has produced over the decades represent European standards in this important field which serve as a guidance to member states when developing their media law and policy. Its media “philosophy” is reflected, not just in its work on media issues, but also in the principles and priorities repeatedly affirmed by the people who frame its policies.

They see the media as one of the forces that help democracy to take root and develop in any country. The media provide information which influences not only opinions and attitudes but also political choices, and this is why media freedom, pluralism and independence are essential preconditions of democracy. It is vital that independent, autonomous media should function properly and have a plurality of sources, in the interests not only of democracy but also of dialogue and international understanding. Freedom of information is not just a basic right in itself – it also facilitates the exercise of other basic rights.

In addition to its practical work, the Council of Europe has helped its member states to see the media for what they are, accept them more fully, and indeed

overcome any apprehensions this occasionally intimidating “fourth estate” may cause them. When the Council’s Parliamentary Assembly recently held a debate on the media, the rapporteur used a well-known anecdote to make a good point. Riding through the streets of Berlin, Frederick the Great was positively pleased whenever his eye caught one of the stray lampoons which disaffected citizens occasionally posted on the walls at night – so much so indeed that he sometimes had them moved, so that his subjects could see them better. A fervent champion of Enlightenment ideas, Frederick upheld press freedom and condemned reactionary despotism. But he also ruled the army, the administration, the education system and all the apparatus of the state with a rod of iron. With a powerful army and a tightly run system of government behind him, he had nothing to fear from a few stray posters on the streets of his capital.

The reference to the spirit of the Enlightenment is significant, since freedom of expression and the press was one of the Enlightenment’s basic demands – a demand which was widely taken up by the French revolutionaries of 1789, and first codified in Article 11 of the Declaration of the Rights of Man and of the Citizen. Today it is a principle enshrined in many national constitutions, but it is vulnerable to conflicting interpretations and has been violated repeatedly since it was first proclaimed. Inheriting the best of Europe’s liberal and intellectual tradition, the Council of Europe now sees itself as the guardian and promoter of this fundamental freedom.

First initiatives: one-off measures and committees of experts

In the first years of its existence, the Council did not treat media issues as a separate area, but dealt with them under other headings, such as culture, law, human rights and technology. Its approach was also based on the European Convention on Human Rights (ECHR), and particularly Article 10, which protects freedom of expression and information – although it was only in the mid-1970s that the Convention really started to bite in this area.

In the 1960s, copyright was one of the Council’s main concerns. It focused on encouraging exchanges between broadcasting authorities and helping to defeat the pirates, particularly the radio pirates. This was the heyday of unlicensed off-shore operators like Radio Caroline (a winner with teenagers, but a thorn in the side of governments and “official” broadcasters), which were based on platforms or ships in the North Sea. Committees of legal experts were set up to examine the problem, and produced a number of

binding agreements to protect copyright. It was at this time that the Council started working on transnational agreements, such as the European Agreement concerning Programme Exchanges by means of Television Films (1958) and the European Agreement on the Protection of Television Broadcasts (1960).¹ These provided a basis for programme exchanges within the European Broadcasting Union, and also allowed television companies to authorise or prohibit cable retransmission or broadcasting, or any other use of their programmes in signatory states.

In the 1960s, the Council of Europe's media activities developed a more cultural slant, as the Committee of Ministers, which comprises the member states' foreign ministers or their deputies, and effectively acts as the Council's executive body, adopted a series of resolutions on such issues as "cinema schools in western Europe", "the press and the protection of youth" and "educational and cultural uses of television and radio in Europe".

The recession in the 1970s prompted the Council to start looking at the economic situation of the press. It also – notably in a 1974 Committee of Ministers resolution – pioneered the concept of a right of reply in the press and on radio and television. That resolution also set out to protect the private lives of individuals against media intrusion. In 1974 too, the Council's experts broached the sensitive question of protecting journalists and their sources, although nothing came of their efforts at that time. In fact, it was not until 2000 that the Committee of Ministers adopted a recommendation on the right of journalists not to reveal their sources.

In the late 1960s and early 1970s, large-scale mergers and closures in the press sector took various titles off the market. This trend posed a serious threat to freedom of expression and information, and the Council's Parliamentary Assembly, comprising parliamentarians from all its member states, decided to act. Realising that press pluralism was at risk, it adopted a recommendation in 1975, suggesting three things: a "model statute" for journalists, guaranteeing freedom of expression and information; definition of the requirements of "a responsible information policy in a democratic society"; and the setting-up, at the Council of Europe, of an information centre to provide up-to-date data on press concentrations. However, the member states failed to agree, and the Assembly's proposals remained a dead letter.

1. See the bibliography at the back of the book for a list of the principal Council of Europe texts referred to by the author.

The Council's decision, in 1976, to treat media questions as an activity in its own right was a major turning point. It was in that year that the Committee of Ministers decided to set up a Committee of Experts on the Mass Media. New technologies – for example satellite and cable, which were starting to erode public broadcasting monopolies – were the key factor behind the decision to deal with the media separately. It was also felt that a separate unit would be better able to tackle the issues effectively. Interestingly, these discussions at the Council of Europe coincided with the Unesco debate between developing and developed countries on a “new world information and communication order”. Within the Conference on Security and Co-operation in Europe (CSCE), the western democracies and the Eastern-bloc countries were also at odds on freedom of expression. In other words, media issues were no longer just a matter for lawyers – but politically charged as well.

1981: an integrated policy for the media in Europe

The experts' work proved fruitful – so much so that the Committee of Ministers decided to up-grade their committee, give it a broader remit and make it an integral part of the Council. The result was the Steering Committee on the Mass Media (CDMM), established in February 1981 and consisting of government-nominated experts. Twenty-two years on, it is still shaping and co-ordinating the Council's media policies.

The real innovation, however, was incorporation of the CDMM into the Council's Directorate General for Human Rights. Freedom of expression and information was no longer regarded solely as one of the most important basic rights protected by the ECHR, but also as a precondition for enjoyment of all the others. Bringing media issues under the human rights umbrella also reinforced the close links between media and the fundamental values for which the Council stands.

Today, representatives of the European Commission and the Council's own Parliamentary Assembly also take part in the CDMM's work, and Belarus, Canada, the Holy See, the Nordic Council of Ministers, the OSCE, the Association of Commercial Television in Europe (ACT) the European Broadcasting Union (EBU), the European Federation of Journalists (EFJ), the European Newspaper Publishers' Association (ENPA) and the European Internet Service Providers Association (EuroISPA) have observer status with it. Similarly, a number of worldwide and European organisations and various

non-governmental organisations (NGOs) have observer status with committees which report to it.

Officially, the CDMM's current task is to "develop European co-operation on public means of communication with a view to further enhancing freedom of expression and information in a pluralistic democratic society, as well as the free flow of information and ideas across frontiers, and to fostering a plurality of independent and autonomous public means of communication reflecting a diversity of opinions and cultures".

It does this by devising joint European policy measures and special instruments, particularly statutory texts, covering questions raised by technical, economic or political developments in the media field. It deals with all aspects of mass communication: human rights, media policy and legal, cultural, economic, social, technical and sports-related aspects, as well as those concerning public health and local government. The committee systematically consults professionals in the relevant sectors, to ensure that its policies reflect their concerns and are geared to media realities.

From a European media charter to the European Convention on Transfrontier Television

In the early 1980s, the CDMM drew up a "Declaration on the freedom of expression and information", which was adopted by the Committee of Ministers on 29 April 1982 and amounted to a European media charter. In it, for the first time, the Council of Europe gave the member states comprehensive guidelines on national and international media policies.

These guidelines focused on promoting respect for Article 10 of the ECHR, doing away with censorship and arbitrary controls or constraints of all kinds, and fostering open information policies in the public sector. Other emphases included the need for a broad range of independent and autonomous media, adequate facilities for domestic and international transmission and dissemination of information and ideas, and access to these facilities. They also sought to foster the free flow of information, improve communications infrastructure and develop expertise. The declaration itself was accordingly designed, not just to protect the rights enshrined in the ECHR, but also to create a positive climate for promotion of those rights by fostering access to information and media throughout Europe. While the Convention defends freedom of information against violations, the declaration goes on the offensive and

proposes ways of developing it. In the Convention, freedom of information is one right among many, but the declaration meets the need for a dedicated text on this question. Aimed not simply at the member states, but at all states everywhere, it makes a particularly significant and constructive contribution to international discussion of media policy.

Around the same time, developments in broadcasting were foregrounding the problems of transfrontier television. The Council of Europe was anxious that its member states should harmonise their laws without delay, and produced a number of recommendations to help them do this. The topics covered included TV advertising, use of satellite capacity, copyright, measures to promote audiovisual production in Europe, and private copying of sound and audiovisual material. These recommendations fell short of their aim, however, since member states were not legally bound to observe them. Moreover, regulations differed so greatly from one European country to another that harmonising them was no easy task.

For that reason, at the prompting of the 1st European Ministerial Conference on Mass Media Policy (Vienna 1986), the Council drew up the European Convention on Transfrontier Television. This was legally binding on the states which accepted it, and set out to guarantee the free circulation of TV programmes between them as long as these programmes respect the minimum programming standards contained in the Convention. It laid down rules on protecting minors, and on advertising, sponsorship and the right of reply. It also set out to promote the production and distribution of programmes of European origin.

This convention is now recognised throughout Europe as a basic reference text on broadcasting – but drafting it proved a major undertaking. The first problem stemmed from differing approaches in the member states. France's chief concern, for example, was protecting European culture, but Germany seemed more afraid that advertising revenue might fall, depriving the press of vital income. And so the initial priority was to identify the points where the member states' interests converged.

Another problem was that, at the very same time, the European Commission was drafting a directive to co-ordinate certain aspects of the law on television in the European Community (EC) countries. In fact, the philosophies behind the two texts were different from the outset. The convention was primarily concerned with the social, cultural and political aspects of broadcasting, the

directive with economic and market imperatives. The Commission finally approved the directive on 30 April 1986 – although some EC states felt that it took insufficient account of those social, cultural and political dimensions. Belonging to the Council of Europe as well, the EC countries also feared that the directive might interfere with the Council’s work on the convention.

In the months following approval of the directive, the Committee of Ministers instructed the CDMM to make work on the European Convention on Transfrontier Television a priority. Discussions on the subject proved laborious. They also highlighted the differences between the two institutions’ approaches. How could a Strasbourg convention and a Brussels directive be prepared in parallel? Which should be adopted first? This was a central question. The Commission argued that European Community law took precedence over treaty obligations. The Council suggested that the problem could be solved by including a clause in the convention specifying that its provisions did not apply to relations between EC member states in areas covered by Community law.

At the 2nd European Ministerial Conference on Mass Media Policy (Stockholm 1988), it was decided that the convention would be concluded before the directive was adopted, and this was confirmed in the final declaration of the European Council held in Rhodes on 2 and 3 December that year. The European Convention on Transfrontier Television was finally adopted by the Council of Europe’s Committee of Ministers on 15 March 1989, and was opened for signing on 5 May 1989 – the Council’s fortieth birthday. It came into force on 1 May 1993, and was amended by a protocol in 1998, to reflect changes made in the European Union’s Television without Frontiers Directive. The revision mainly involved changing the rules on jurisdiction, extending the scope of teleshopping and ensuring the public’s free access to televised events of major public interest.

Since 1993, implementation of the convention has been monitored by the Standing Committee on Transfrontier Television. This committee consists of members appointed by parties to the convention, and observers from states which have signed the European Cultural Convention, plus an observer from the European Commission. It has adopted a number of opinions, recommendations and statements on interpretation and application of the convention, covering such questions as “the time frame for the broadcasting of cinematographic works co-produced by the broadcaster”, the concept of “retransmission”, advertising and sponsorship, freedom of reception and

retransmission, the law on “infomercials”, advertising aimed at children, and the advertising of alcoholic beverages.

Most of these opinions, recommendations and statements reflect developments in programming at European level. For example, the “Statement on human dignity and the fundamental rights of others”, adopted by the standing committee in September 2002, is specifically concerned with programmes which represent a potential threat to “human dignity and integrity”. Its obvious target is “reality TV” – shows which attract record audiences and lure participants into sacrificing privacy to hopes of fame and money. The standing committee questions the compatibility of such programmes with Article 7 of the European Convention on Transfrontier Television, which deals with the responsibilities of broadcasters. While noting that the latter are free to decide on schedules and programme content, it calls on regulatory authorities and broadcasters themselves to “avoid contractual arrangements between broadcasters and participants whereby the latter relinquish substantially their right to privacy, since this may represent an infringement of human dignity”. The debate on this question is just beginning.

The 1990s: political turmoil, technological revolution

The 1990s were dominated by radical political change in central and eastern Europe, and the development of new, global information technologies. These two “revolutions” set the course for the Council of Europe’s work on media policy during the decade. As well as giving the former Eastern-bloc countries maximum support in making the transition to democracy and pluralism, the Council spared no effort to help them develop free media. It was quick to grasp the vital role played by the media in consolidating “democratic security” throughout Europe – an aim clearly stated by its member states’ leaders at their summit meeting in Vienna in October 1993. Indeed, their final declaration insisted that “guaranteed freedom of expression and notably of the media” was a decisive criterion in assessing applications for Council membership. Various countries in central and eastern Europe got the message and at once began to bring their laws on free speech into line with Council standards.

Not content with insisting that would-be members must guarantee freedom of expression, the Council started work in 1990 on a global strategy for the development of free and independent media. This was based on a series of specific programmes, covering legal advisory missions, seminars, workshops,

training courses and study visits. Some of the fundamental texts, such as the ECHR and the European Convention on Transfrontier Television, were also translated into languages other than English or French. Information and awareness-raising activities for decision-makers, parliamentarians, civil servants and members of the judiciary were another aspect of the strategy – as was the decision taken at the 3rd European Ministerial Conference on Mass Media Policy (Cyprus 1991) to set up a training programme for media professionals in central and eastern Europe.

This programme was planned in consultation with relevant professional organisations, such as the European Broadcasting Union, the World Association of Newspapers (WAN), the International Federation of Journalists, the European Journalism Centre, the Baltic Media Centre, Circom Regional and the Alternative Information Network (AIM). It started by tackling problems of management, with a view to supporting the establishment of new, sustainable media in place of the old state monopolies. It went on to cover journalistic freedoms, racism, anti-Semitism, intolerance, minorities and xenophobia. Other topics included election coverage, guaranteed independence of public service broadcasting, and relations between the media and the judiciary.

Thanks to additional funds contributed by its member states within the Stability Pact for South-Eastern Europe, the Council of Europe further intensified its already significant assistance programme to the countries in the region. Between June 2000 and December 2001, seventy additional assistance activities were organised. The overall objective of this extensive work was to promote freedom of expression and information and media freedom in accordance with the relevant Council of Europe standards and instruments, as well as the media charter adopted within the framework of the Stability Pact. A second objective was to encourage responsible journalism and to foster the contribution of the media to the promotion of mutual understanding and tolerance in south-eastern Europe. The Council of Europe programme addressed these objectives because they are core issues for the stability and the consolidation of democracy in the region.

At the end of these quick-start package activities, there was still an urgent need to follow up on what had been accomplished in the field of media reform in the countries of south-eastern Europe in order to allow the process of democratisation and stabilisation to continue. Therefore, the Council of Europe

planned and started implementing a three-year follow-up programme (2002-04) with the following strategic objectives:

- establishing a regulatory framework for freedom of expression and for the media in line with Council of Europe standards;
- ensuring that the day-to-day implementation of the regulatory framework complies with these standards;
- facilitating the development of professional and independent media that promote a climate of tolerance and mutual understanding.

The effect of this comprehensive programme has so far been very positive. The reform of the regulatory framework for freedom of expression and for the media has been given a significant momentum. Ensuring that this framework is in line with Council of Europe standards is an important step towards the integration of south-eastern European countries into a united Europe.

The European Audiovisual Observatory

The Council of Europe's media work took a major step forward in 1992, when the European Audiovisual Observatory was established in response to specific economic and cultural imperatives. In economic terms, the audiovisual sector is one of the most dynamic in Europe, with an annual turnover of some 80 thousand million euros. Increasingly, too, it is becoming both international and integrated. The overall picture is so fluid and so complex that reliable, up-to-date data are vital for anyone wanting to keep track of it.

The Observatory's task is to provide these data. It was set up to do two things: to make Europe's audiovisual industry more "transparent", and to meet the information needs of professionals. It is, in effect, a clearing house for information. A Council of Europe body, operating under an Enlarged Partial Agreement, it now has thirty-six members – thirty-five European states, plus the European Union, represented by the Commission. Various professional organisations, including the Association of Commercial Television in Europe, the European Platform of Regulatory Authorities, the Institute of European Media Law, Eurostat, the Fédération internationale des associations de distributeurs de films, the IFJ, the World Intellectual Property Organisation, the EBU and the Union internationale des cinémas, are also represented on its advisory committee.

As well as a team of specialists, the Observatory has a 300-strong network of partner organisations, information-providers and correspondents throughout Europe – and has set up a special network to distribute its own publications. It uses these to disseminate the data it collects, but it also runs a website and organises conferences all over Europe for that purpose.

Its bulletin, *Iris*, reports monthly on significant developments in media law, covering cinema, broadcasting, new media and related issues. In *Iris Plus*, experts contribute studies on such questions as co-regulation of the media, and approaches to regulating broadcasting, telecommunications and concentration.

Other topical issues, such as “television and media concentration” or “jurisdiction over broadcasters in Europe”, have been covered in detail in the series *Iris Special*. The Observatory produces the annual *Yearbook* of statistics on the audiovisual markets and their financial situation, and has set up an integrated database system to facilitate access to the information it collects. To provide information on markets and financing, it produces two annual publications, *Eurofiction*, a study on TV fiction, and, in conjunction with the Cannes Market organisation (Marché internationale du film), *Focus – world film market trends*.

The Lumière database carries systematic data on admissions for films released in Europe since 1996, and is the product of collaboration between the Observatory and various specialised national sources, as well as the EU's Media Plus programme. The Korda database provides information on public funding for film and audiovisual production and distribution in Europe. It profiles national, regional and some pan-European funding bodies, and carries information on individual funding schemes.

The Observatory is currently setting up the Iris Merlin legal database, which will enable personalised research on all legal developments mentioned in the monthly bulletin *Iris* since 1996. Iris Merlin will also provide direct access to Internet sites where the documents it refers to can be found.

The *Yearbook*, *Iris*, Lumière and Korda together provide a major information source for Europe's audiovisual industry, which comprises some 25 thousand companies. In an increasingly globalised market, dominated by Hollywood producers and distributors, the Observatory now seems, after ten years' work, more necessary than ever to preserving cultural diversity.

Eurimages

Cultural diversity is one of the vital ingredients of European pluralist democracy – and an important economic and cultural issue in the cinema too. All of this was reflected in the Council of Europe’s launching of Eurimages in 1989, a special support fund for the co-production, distribution and marketing of European films. The fund sets out to boost the European film industry by encouraging production and distribution and fostering co-operation between professionals. When founded, it marked a response to the quickening pace of change in the information and communication technologies, and the proliferation of new transmission and distribution channels. The challenge is cultural and economic too, and is summed up in two questions. In a situation where the world film market is dominated by Hollywood producers, whose enormous technical and financial resources give all their films a head start at the box-office, how can the rich diversity of European cinema be protected? And how can producers who are not just interested in raking in the cash be helped to survive in a profit-driven environment?

These were the questions which prompted Eurimages to develop its support programmes for co-production and distribution of films in cinemas. Since it was founded, it has backed over 800 co-productions, both feature films and documentaries. These have included some notable prize-winners, such as Denis Tanovic’s *No man’s land*, which carried off the Oscar for best foreign film in 2002, and Lars von Trier’s *Breaking the waves*, which took the Grand Prix at Cannes in 1996. In addition to supporting co-productions, Eurimages has attributed over 1 000 distribution grants for some 700 European films, and subsidises 37 cinemas in 9 European countries.

At the same time, however hard it tries, Eurimages simply cannot support Europe’s whole film industry, particularly in the face of competition from Hollywood. To ensure survival of the cultural diversity which is so much a part of the European ideal, the fund’s twenty-eight members must become more creative in finding extra funds for Europe’s film-makers and distributors. More money is the first priority, but a renewed effort to make young Europeans see that cinema plays a big part in promoting cultural diversity may prove important too.

Keeping pace with new technologies

The spread of the new information technologies was the second great challenge of the 1990s. The Council of Europe has made sure that its member states realise that use of these technologies must not compromise the rights protected by the ECHR. They – and their legal, social, economic, educational and cultural implications – first became the focus of attention at the 3rd European Ministerial Conference on Mass Media Policy (Cyprus 1991). In their conclusions, the ministers insisted that a “coherent approach” to the development of these technologies was needed to prevent disparities within and between states, and between different socio-cultural groups in the same country – the “digital divide”, as it is now termed.

The Cyprus conference also took the work done on certain aspects of copyright and transfrontier television a little further, but it was not until their 5th European Ministerial Conference on Mass Media (Thessalonica 1997) that the ministers took a more searching look at the theme of “the information society: a challenge for Europe”. At the close of that conference, which focused on “the impact of new communications technologies on human rights and democratic values” and a “regulatory framework for the media”, they devised an action plan to promote freedom of expression and information as part of the pan-European development of the information society. The aim was to prevent what had been called a “division of society into information-rich and information-poor.” This was actually quite a bold initiative, since the Council’s insistence on democratic, social and cultural values could easily have been lost amid general euphoria over the Internet and its undoubted benefits. But the message got through.

Internet and digital TV: current issues

As the Council of Europe’s Group of Specialists on Media Pluralism pointed out in the report on “Media pluralism in the digital environment” which the CDMM adopted in 2000, the convergence of broadcasting and communication technologies has given us new ways of disseminating information. The new communication and data transmission services offer unprecedented access to knowledge, education and culture. The most important new media are obviously the Internet and digital television platforms (for terrestrial, satellite and cable transmission). Both have generated new public services – via television and online.

The Internet is undoubtedly one of the 20th century's greatest technological revolutions. It, and computers, have been accepted, popularised and promoted faster than any other technology – ever. Hundreds of millions of people use it daily for professional or personal purposes. As underlined in a political message to the future United Nations World Summit on the Information Society, which the Committee of Ministers adopted in June 2003, it supplies information on every conceivable subject, and is a powerful tool for participation in civic affairs, commercial transactions, research and learning. It also gives users access to news and job offers from all over the world.

In 2001, Microsoft Europe reported that it took 100 years from the invention of the telephone for 90% of the population of the United States to have one, while the number of American Internet users doubles every 100 days. The growth rate in Europe is slightly lower. The Internet is a fantastic accelerator, allowing people to communicate ever more rapidly. It not only develops fast itself – it speeds up people's lives at work and outside. In effect, the Internet is already turning mobile phones into computers. TV sets, mini-computers, electronic organisers and even pocket calculators are also linked to it. In this new environment, electronic messages, images and photographs can be exchanged, data consulted and information sought at amazing speed. In short, the Internet is making life far simpler.

Studies by Council of Europe experts show, however, that the new technologies carry certain risks. Naturally the Council believes that Europeans and their societies should get as much as they can from these technologies, and that pursuing positive objectives is the best way of minimising dangers. Nonetheless, it is concerned that the new technologies may exacerbate social divisions by strengthening the position of the already powerful and privileged, and leaving the less well-off and less educated by the wayside. The new communication services have huge benefits for individuals, groups, agencies or states – but may well make for greater inequality between those with access and those without. The starting point for the Council's work on the new information technologies is its conviction that everyone should have real access to the opportunities they offer. Its aim, which is fully in line with its mission, is to counter this new inequality factor by promoting the concept of a "universal community service". That indeed was the view of the World Wide Web's inventor, Tim Berners-Lee, who declared: "The power of the Web is in its universality. Access by everyone regardless of disability is an essential aspect."

This was also the thinking behind the recommendation which the Committee of Ministers used to launch the concept of a “universal community service” in 1999. In fact, the resolution adopted at the 5th European Ministerial Conference on Mass Media Policy had already defined that concept as the principle:

whereby, to the extent possible given the different national and regional circumstances and resources, the new communications and information services shall be accessible at community level by all individuals, at an affordable price and regardless of their geographic location. (Resolution No. 1)

The ministers’ recommendation sets out this principle and indicates how it can be implemented. It should be noted that “universal community service” has a wholly new meaning in this context. It does not mean a universal telecommunications service, which is another thing entirely. Its basic idea is that access can often be developed more easily at community level – which is why the recommendation urges member states to provide and maintain “public access points”. It suggests government service offices, libraries, schools, colleges, public housing developments, shopping centres, post offices, underground and railway stations, airports and hotels as typically suitable locations.

The recommendation imposes no conditions on the member states, leaving them to decide how best to implement it. The commonest ways of doing that are to incorporate it into domestic law and practice, introduce voluntary self-regulation or other initiatives by the providers of the new services, and adopt suitable regulations on the functioning of market forces.

As well as introducing the concept of a universal community service, the Council of Europe has adopted a number of legal and political instruments to meet the regulatory challenges of the Internet. For example, a further recommendation, adopted in 2001, deals with self-regulation of cyber-content – that is, the problems of illegal and generally harmful website content – and argues that self-regulation is the best way of protecting freedom of expression and other fundamental values. In this text, the Council of Europe first calls on member states to promote the setting-up of associations of Internet service providers, content providers and users, and encourage these associations to introduce regulatory mechanisms – particularly codes of conduct – and monitor compliance with them. It also asks member states to encourage media organisations which already have self-regulatory standards to apply them to the new services. Another thing it advocates is content descriptors, agreed

with representative organisations, giving users an objective indication of content and allowing them to make up their own minds. It suggests that descriptors should indicate, for example, violence and pornography, anything that encourages smoking, drinking or gambling, and anything that allows unsupervised, anonymous contacts between minors and adults. Finally, it urges the need for content selection tools and content complaints systems. Another example is the Convention on Cybercrime, which makes it possible for states to help one another in combating certain types of computer-based crime.

A world first: the Convention on Cybercrime

In a report adopted in April 2002, the Council of Europe's Parliamentary Assembly noted that the new information technologies were helping computer crime to spread and making it harder to tackle. This becomes truer with every year that passes. The digital revolution and the Internet have not only encouraged criminals – they have also inspired new forms of crime.

Worldwide research clearly shows that the growth of cyberspace has stimulated – and is stimulating – the development of organised crime. Computer-related crime is a threat to the world, democracy and, of course, business. One only has to think of the runaway “I love you” virus and its impact on the world economy. Hard-disk files were destroyed, address lists were hijacked and the result was chaos on a global scale. Data collected by the Council of Europe indicate that the virus – launched from the Philippines on 4 May 2000 – infected countless companies throughout the world, and particularly in the United States, where 65% of businesses are thought to have been hit. Experts put the cost of the damage at billions of dollars.

Computer viruses are one thing, but the Internet is also used as a vehicle for paedophile crime, for racist, anti-Semitic and xenophobic propaganda, and for fraud, piracy and counterfeiting. In France, the police department which deals with crimes against persons and property (DNRAPB) estimates that some 500 thousand paedophile photographs are circulating on Web message services, while the German Federal Police (BKA) reports that paedophilia has actually become a mass crime. The situation is the same with racist crime in cyberspace. Certain experts currently count around 4 000 “racist” websites which preach violence openly.

Yet the danger is even greater than one might think. Some governments, particularly in the industrial countries, are already planning “shields” around their IT systems, to protect their administrative institutions and their water, gas and electricity distribution systems. The vulnerability of these systems is also being discussed by G7, the group linking the world’s most developed countries.

Given all these dangers, security professionals see the Internet as the world’s major growth area for crime. With computer crime on the upsurge, the Council of Europe member states decided to co-operate closely in tackling it. Work began in 1997 with the decision to draw up an international convention against cybercrime. This was to be a legally binding instrument, dealing with the types of crime committed, the situation in criminal law, police powers at national and international level, and the problem of who should tackle these offences.

The text, drafted by the Committee of Experts on Crimes in Cyberspace, was approved by the Committee of Ministers on 8 November 2001, and opened for signing in Budapest on 23 November. As of June 2003, thirty Council of Europe member states had signed it, as have the United States, Canada, Japan and South Africa – and South Korea is likely to be joining them soon. The convention is expected to come into force in 2003, when at least ten of the signatories have ratified it.

The convention is intended to close the gap between law and reality in the war against cybercrime, and enable the signatories to work closely together in waging it. It sets out to harmonise definitions of online crime in national law, find investigation and prosecution methods which reflect the globalisation of networks, and establish a rapid and effective system of international co-operation.

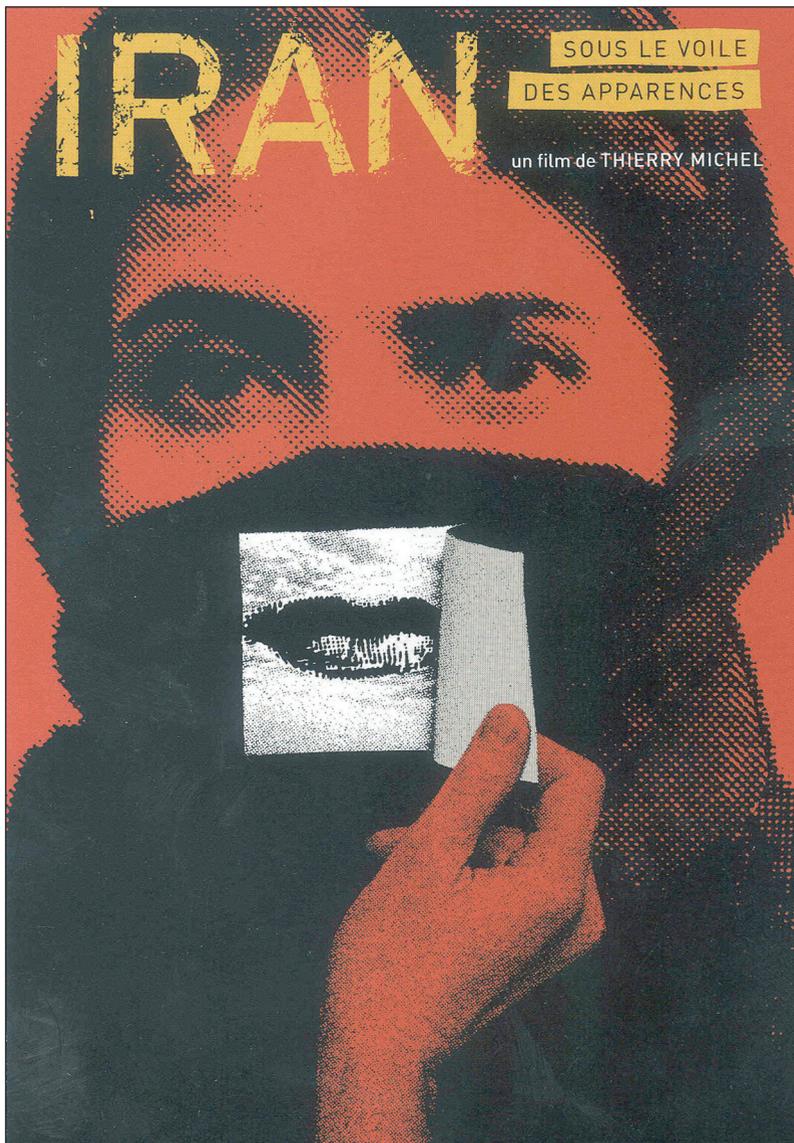
Clearly, it is far too soon to say whether the convention will be effective against cybercrime. True, it is the first international legal text on the subject – but, since the Internet itself is universal, it is reasonable to ask whether any legal text can be useful, unless every country in the world has signed it. Nonetheless, the convention has had a very positive reception, and is already regarded (at least in Europe) as a model text for the world fight against cyber-crime.

Once the convention comes into force, the Council of Europe will have to set up a monitoring system to ensure that it is applied in practice. This will entail

persuading the signatories to bring in new laws and new legal instruments, with a view to combating cybercrime and working together for that purpose. Everyone realises, however, that laws on their own are not enough. The real challenge will be dialogue with the private sector – winning telecommunications operators and online service providers over and persuading them to co-operate with the police.

The fight against cybercrime also poses another type of problem: how can we ensure that the measures we take to curb it are compatible with basic values? In fact, its potential for damage is so great that some governments are already limiting or controlling Internet access in ways which conflict with international – and especially Council of Europe – standards on free speech and freedom of information. In May 2003, the Committee of Ministers reacted to these developments by adopting a declaration, in which it roundly condemned these restrictions and controls. This declaration insists that restrictions on Internet content must not be more stringent than those applying to the older media, and opposes special or additional controls for online services.

The declaration states that governments should seek to block undesirable content in special cases only, for example, in schools and libraries, when this is necessary to protect minors. It also states that the absence of prior controls should not debar governments from taking steps to suppress or block access to certain content, once national authorities rule that it is illegal or potentially damaging to private or public interests. In such cases, it asks member states to ensure that any control measures are compatible with Article 10 of the ECHR.



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Sous le voile des apparences (*Iran: veiled appearances*) a Belgian-French full-length documentary film on the complexities of life in Iran, supported by the Council of Europe's Eurimages. Photo courtesy of the co-producers.



© Council of Europe

The *Oslobodenje* newspaper office in Sarajevo, summer 1993. During armed conflict, media are one of the first targets. After the bombing of the premises, the staff continued printing out of the basement.



© FoNet News Agency

Radio B92 Belgrade is one of many examples of how committed journalists can bypass a government's suppression of information and play a key role in developing democracy. Shut down by authorities two years after its founding in 1989, it formed an independent association with other Serbian stations in a fight for freedom of information. Shut down several other times in the 1990s and often broadcasting from hidden studios, it launched Belgrade's first Internet server, which, with over 1 million hits a day, provided unofficial news bulletins to Yugoslavs and the outside world during the Nato air-raids.



© ARTE/Martin Bernhart

Arte is a Franco-German public-service cultural channel, with 22% of its programmes originating from other countries, representing 200 languages and dialects. Besides highlighting cultural diversity, it is also one of the rare channels to broadcast societal debates live. *De quoi j'me mêle*, broadcast live on a monthly basis, is a programme covering current affairs and major political, economical and scientific issues.

II. CORE ISSUES FOR THE MEDIA: THE COUNCIL OF EUROPE'S RESPONSE

The Council of Europe's key values, such as gender equality and rejection of intolerance and racism, are reflected in its work on media content. It possesses various tools, mostly incentive-based, to defend these values. With the right legal framework, however, it can also make them more binding – always remembering that freedom of expression is itself such a value. Working in the spirit of Article 10 of the European Convention on Human Rights, it has developed a coherent framework for meeting these many requirements.

Gender equality

Equality between the sexes means equal visibility, independence, responsibility and participation in all spheres of public and private life for women and men. It means rejecting inequality – though not difference – between the sexes. Although the legal status of women in Europe has improved in the last fifty years, real equality is still a long way off. Still subjected to violence, women are also marginalised in politics and public life, are paid less for the same work, and are likelier than men to be poor or unemployed.

The media can either be a force for change or help to sustain the status quo – which is why the Council of Europe has been looking at things they can do to promote gender equality. The first seminar on this subject took place in Strasbourg in June 1983, and was sponsored by the Committee for Equality between Women and Men and the CDMM. Topics covered included media employment policy from the standpoint of equality, and the image of women in advertising. A year later, the Committee of Ministers adopted a recommendation insisting on the need to foster equality between women and men in the electronic media and the press. The aims specified included “an equitable proportion” of women in media supervision and management bodies and a greater female presence in broadcast talks and discussion programmes.

This theme recurs in the European Convention on Transfrontier Television, which seeks to ensure (Article 7) that the presentation and content of all trans-frontier programmes respect human dignity and fundamental rights. It also

stipulates that transfrontier services should not present audiovisual material of an indecent or pornographic nature.

The development of new communication technologies from the 1990s on spurred the Council of Europe to look ever more closely at the way in which the media represent women. Indeed, the 3rd European Ministerial Conference on Equality between Women and Men (Rome 1993) was entitled *Strategies for the Elimination of Violence against Women in Society: “the Media and other Means”*. A CDMM contribution focused on the extent to which the principles of freedom of expression and information, including the principle of editorial freedom, limit the scope of political initiatives designed to steer media professionals towards promoting gender equality.

Another seminar, *Human Rights and Gender: the Responsibility of the Media*, co-organised in Strasbourg in 1994 by the CDMM and the Steering Committee on Equality between Women and Men, came up with a series of proposals to improve the image of women purveyed by the media, the main suggestion being adoption by the media of self-regulation and professional standards. In September 1998, the two committees ran a workshop for media representatives from various European countries, highlighting “good” and “bad” approaches to portraying women in the media. Also in 1998, the “Plan of action to combat violence against women” called on European governments to develop “public education and awareness-raising [to promote this policy] using a range of media”.

In a Committee of Ministers recommendation on the protection of women against violence, adopted in 2002, member states are told to encourage the media to promote a non-stereotyped image of women and men based on respect for the human person and human dignity and to avoid programmes associating violence and sex.

Minorities

The Framework Convention for the Protection of National Minorities, which entered into force in 1998, pays particular attention to media issues. Its provisions envisage special measures with the dual aim of facilitating access to the media for persons belonging to national minorities and promoting tolerance and cultural pluralism in the media. Such measures could, for example, consist of funding for minority broadcasting or for programme productions

dealing with minority issues and/or offering a dialogue between groups, or of encouraging, subject to editorial independence, editors and broadcasters to allow national minorities access to their media.

In the context of the monitoring of the implementation of this treaty, the advisory committee on the framework convention, composed of eighteen independent experts, has through its country-specific opinions, repeatedly addressed media questions in the state parties. It has, for example, criticised extensive state language quotas in broadcasting media in certain countries. It has also underlined that the availability of foreign broadcasting in a language of a national minority does not eradicate the need for, and importance of, domestically produced broadcasting in that language. Furthermore, the advisory committee has in a number of opinions called for additional training and other measures to avoid reporting that fosters negative stereotypes concerning Roma/Gypsies and other national minorities.

Violence

As early as 1983, a recommendation on manifestations of violence in modern society, adopted by the Council's Parliamentary Assembly, was condemning the increasing "emphasis on violence in the media", and particularly the visual media (television, video, film, advertising, comics and still photography). The Assembly warned that prolonged exposure to media violence could have direct and cumulative effects on children and a minority of adults, and a growing effect on society's accepted values.

It accordingly recommended that the Committee of Ministers ask broadcasting bodies to help draft codes of conduct or guidelines on the portrayal of violence (including terrorism), and apply them as widely as possible in Europe. It also suggested that setting up new and independent structures to work on these codes would be the best approach.

This recommendation marked the start of intensive work by the Council of Europe on the links between media and violence. The relevant European ministers and the Parliamentary Assembly suggested various measures to halt the trend, both generally and in specific areas (for example video content of a brutal, violent or pornographic nature). In 1985, the Ministers responsible for Youth asked the Council to step up its work on pornography, brutality and violence in the media, and proposed that a convention be prepared to protect

young people against them. Certain types of violence connected with sport were another of the Council's concerns: the Assembly's 1986 Recommendation on the dangers of boxing made it clear that media coverage must make a sharp distinction between sport and the behavioural excesses that sometimes went with it.

At around the same time, the Council of Europe began to consider the problem of pornography involving children and young adults. In April 1989, the Committee of Ministers adopted a recommendation on the distribution of violent, brutal or pornographic videos. This focused on counter-measures, and asked the member states to encourage the professional sectors concerned to adopt codes of conduct and self-regulation systems.

Soon after their appearance in the early 1990s, the new telecommunication technologies were already being used for pornographic and criminal (particularly racist) purposes. In 1992, the Committee of Ministers declared that racist video games conveyed "a message of aggressive nationalism, ethnocentrism, xenophobia, anti-Semitism or intolerance in general", and urged member states to review their laws on racial discrimination, race-hatred, violence and the protection of young people, and ensure that they applied without restriction to the production and distribution of such video games.

Transfrontier programmes of a violent nature were also considered in the European Convention on Transfrontier Television, which insisted that transfrontier services must respect human dignity and fundamental rights, and must not "give undue prominence to violence or be likely to incite to racial hatred". Mounting concern over violence in the media, and particularly TV, inspired the Committee of Ministers' "Strategic action plan for promoting the media in a democratic society". The aim here was to produce – in close cooperation with media professionals and regulatory authorities – guidelines on media portrayal of violence.

The CDMM responded, in 1995, by setting up the Group of Specialists on the Portrayal of Violence in the Media, whose work led to the adoption of a recommendation in 1997. This sets out a series of measures which member states should take or encourage in the various sectors concerned, while paying special attention to the basic principle of editorial freedom. One of the guidelines contained in the text says that Article 10 of the ECHR must be taken as "the general legal framework" for tackling issues relating to violence

in the media. In other words, although freedom of expression covers the right to impart and receive information and ideas which involve portrayal of violence, gratuitous portrayal may sometimes be restricted – provided that any restrictions are “prescribed by law” and “necessary in a democratic society”.

Intolerance

Combating intolerance, racism, xenophobia and anti-Semitism is a vital part of the Council of Europe's work. At their first summit (Vienna, 1993), the leaders of the Council's member states reacted to a disturbing increase in all these threats since the 1980s by adopting a special declaration and action plan to deal with them. They noted that the media could stoke ethnic hatred – but could also contribute to dialogue and mutual acceptance. This was why it was important that they should combat racism and xenophobia, and also promote respect and understanding.

This concern led to the adoption by the Committee of Ministers in 1997 of two recommendations concerning the fight against hate speech and the contribution of the media to mutual understanding.

The European Commission against Racism and Intolerance (ECRI) was also set up by the Council of Europe in response to the decisions taken at the Vienna Summit. Its brief is to combat racism, xenophobia, anti-Semitism and intolerance throughout Europe, and from a human rights standpoint. Its work covers all the measures needed to oppose the violence, discrimination and prejudice to which individuals or groups are exposed on account of their race, colour, language, religion, nationality, and national or ethnic origin.

Collecting examples of good practices deployed by member states is one of its activities. In 2000, it published a brochure giving examples of media action to counter racism and intolerance in Europe. A case in point is Greek State Radio (ERT/ERA), which has daily programmes in twelve languages (Albanian, German, English, Arab, Bulgarian, Spanish, French, Polish, Romanian, Russian, Serbo-Croat and Turkish), which are made for migrants by migrants, and deal with the needs of minorities. Another initiative cited is the training provided for media professionals and student journalists by the Centre for Independent Journalism in Hungary. The aim here is to support the independent media and promote ethical and unbiased reporting. A special emphasis is placed on community radio and television, which play a key role

in reinforcing local democracy. Other good practices listed include a number of prizes, for example the Civiis Prize against racism and intolerance, awarded by ARD-WDR in Germany, the Iris European Media Award for Equality and Tolerance, sponsored by the Council of Europe and the European Union, and the International Federation of Journalists (IFJ) Prize for Tolerance in Journalism.

As indicated above, awareness-raising and training activities are also organised or sponsored by the Council of Europe within the framework of its assistance activities in order to promote the contribution of the media to mutual understanding in those regions of Europe where ethnic tensions exist, for example in south-eastern Europe and in the Transcaucasus.

Children and young people

As early as 1967, a Committee of Ministers resolution on the press and the protection of youth, addressed the impact of the press on children and adolescents. It called on member governments to commission research on the influence of the mass media on juveniles, and to bring the importance of observing certain educational standards firmly home to the producers of publications for young people.

In a 1984 recommendation on principles of television advertising, the Committee of Ministers also called on governments to ensure that advertising aimed at children or using them contained nothing which might harm them, and respected their physical, mental and moral integrity.

The European Convention on Transfrontier Television includes similar provisions. Article 7, for example, which defines the general responsibilities of broadcasters, states that programmes which may impair the physical, mental or moral development of children must not be scheduled at times when they are likely to watch them. Article 11 takes up the question of advertising aimed at children or using them, and states that this must contain nothing potentially harmful to children, and must allow for their special susceptibilities.

Racist video games are regrettably available in certain countries, and can use violence or ridicule to propagate aggressive nationalism, ethnocentrism, xenophobia, anti-Semitism or intolerance. The Council of Europe has tackled this problem in its recommendation – referred to already – on video games with racist content.

Clearly, the influence of the media on the behaviour of children and young people is not merely negative. In a 1990 recommendation, the Committee of Ministers urged the need for national measures to involve more young people in cinema, one example being effective systems for the production, distribution and funding of films for young people. The Ministers suggested that member states should encourage film shows for young people “by providing financial support and/or tax benefits”, to offset any losses incurred. Member states were also asked to promote action to ensure that films for young people got maximum media coverage.

Currently, the Council of Europe is developing a handbook on Internet literacy which will be designed to help teachers and youth trainers promoting a safe and critical use of the new technologies. This handbook will supplement two other practical initiatives which have been taken by the CDMM to promote self-regulation by the Internet industry in order, in particular, to protect minors from illicit and harmful content. These initiatives are an information cyberforum on existing self-regulatory initiatives in Europe and an information forum which in November 2001 brought together representatives of the Internet industry and related circles from all over Europe.

Tobacco, alcohol and drugs

The problems of dependence on alcohol, tobacco and drugs led the Council of Europe to study the key role which the media and other opinion-formers can play in alerting the public to the need for prevention and health education. The primary aim of the guidelines adopted by the Committee of Ministers in 1986 was to get the media to encourage individuals and the community to do more for their own health, and to increase the impact of health education campaigns. Media participation in the planning and development of campaign strategies was one of the approaches recommended.

The Council thought it important to minimise contradictions between information disseminated by the media and health authority policies – and particularly to ensure that the media did not glamourise users of tobacco, alcohol or drugs. In fact, media and health has been a specific theme at workshops run by the Council's Health Division since 2002. As well as working to prevent dangerous behaviour, these workshops address the broader question of providing medical information for the public at large, using the new electronic media among others.

Lastly, the European Convention on Transfrontier Television has a health dimension too. It prohibits advertising and teleshopping for tobacco products, and severely restricts them for alcohol, a key aim being to protect minors. It also prohibits the advertising of prescription-only medical treatment or drugs.

Local authorities

The Council of Europe sees local and regional democracy as crucially important in an increasingly integrated Europe. Its European Charter for Regional and Minority Languages, which came into force in 1998, includes a specific article on the media. States which accept the charter undertake to ensure, encourage and/or facilitate the creation of media in regional or minority languages in areas where those languages are used. They also undertake to guarantee that radio and television programmes in languages identical or similar to those used in certain regions or by certain minorities can be freely received from neighbouring countries, and not to prevent their retransmission. They further promise to ensure that no restrictions are placed on freedom of expression and the free circulation of information in such languages in the print media. As of June 2003, the charter had so far been ratified by seventeen European states and signed by a further thirteen Council member countries.

The Europa Prize, established by the Council's Congress of Local and Regional Authorities of Europe (CLRAE), the European Cultural Foundation in Amsterdam and Circom, an organisation of regional and local television states, should also be mentioned. This goes to the best local, regional and national TV productions in Europe, and is designed to highlight the diversity of Europe's cultural identity. It is currently the most prestigious and widest European competition in the broadcasting field.

The CLRAE is particularly attentive to regional media. In a resolution on "the state of regional print media in Europe", adopted in 2002, it insists on "the importance of regional coverage of political, social, economic and cultural life and the role played by regional media in fostering and supporting a pluralistic democratic system", and encourages regional and local media to co-operate across borders. As examples of good practices, it cites the review for journalists and decision-makers involved in cross-border co-operation published by the German-Polish press club, *Against Stereotypes*,

and the *Dreilandzeitung*, a transfrontier newspaper published in north-west Switzerland and neighbouring regions in France and Germany.

Good examples there may be – but regional and local media still have problems. That same resolution regrets that reader interest in developments in neighbouring regions, either in other countries or at home, is declining. It also sees the growth of regional press monopolies and concentrations in many European countries as a serious threat to media diversity and pluralism. The CLRAE insists that the subsidies and other means, which national, regional and local authorities use to sustain or promote media diversity must be applied in a non-discriminatory and transparent manner, and respect editorial freedom. It also calls for courses on journalistic standards and ethics for reporters, as a way of improving the quality of the regional press.

Wars and conflicts

In any situation, the journalist's first duty is to supply information. This is particularly difficult in conflict or wartime situations, when journalists are not infrequently kidnapped, murdered or taken hostage – and also manipulated. Conflicts and wars – in the Balkans and Chechnya, to take only the latest examples – threaten their physical safety, and their access to information too.

According to the Parliamentary Assembly recommendation on freedom of expression and information in the media in Europe, adopted in 2001, increasing competition on the media market has been a factor in the deaths of certain journalists in conflict situations. The Assembly says that the media are under growing pressure to report direct from combat zones, and are often represented by “young and inexperienced freelance journalists”, who risk their lives in the hope of making a name for themselves.

Censorship is another problem which journalists face in conflict situations, where they often have no way of checking information supplied by the combatants. The International Press Institute (IPI) declared, for example: “an examination of the media war in Kosovo provided a terrible insight into the way the media might be treated in future wars. The entire media profession was in danger of being co-opted to act as an extension of government information departments”. This statement was prompted in particular by Nato's information policy during the conflict in Kosovo.

Against this background, the Council of Europe’s Committee of Ministers adopted a recommendation on “the protection of journalists in situations of conflict and tension” in 1996. This text makes the important point that journalists working in these situations are entitled to the full and unconditional protection of international law, as enshrined in the ECHR and other international human rights agreements. It also sets out a number of principles applying to their physical safety, rights and working conditions, which states should observe.

As pointed out by Council’s Deputy Secretary General Maud de Boer-Buquicchio at the Media in a Democratic Society Conference (Luxembourg, 2002): “There are still cases in Europe of media professionals being harassed, and sometimes even beaten or killed, when reporting on matters of public interest”. Her suggestion that negotiations between the European Union and countries wishing to join should take into account judgments given by the European Court of Human Rights under Article 10 of the ECHR, and also the various legal and policy texts in which the Council of Europe lays down basic principles for freedom and independence of the media, has the support of many journalists’ associations. She also floated the idea that international organisations should set up an “emergency response mechanism” to provide rapid help for journalists persecuted in the course of their work.

The fight against terrorism

The fight against terrorism also poses serious problems for journalists. Most governments would like editors to refrain “voluntarily” from covering terrorist attacks, in order to rob terrorists of propaganda gains – but can they really be asked to do this? How can information and propaganda be kept separate? And how can terrorism be covered without endangering reporters themselves?

At a Council of Europe conference on Media, Terrorism and Anti-terrorist Activities (November 2002), the BBC’s editorial policy controller Stephen Whittle gave the example of BBC coverage of events in Northern Ireland. He spoke of pressure exerted by the British Government when “the law forbade us to broadcast the words spoken by members of the IRA”, and of the bomb attack by unknown persons on the BBC TV Centre in London in March 2001. A case in which Luxembourg police had had no hesitation in posing as members of a TV crew, in order to get a hostage-taker out of a nursery school

– an action roundly condemned by the IFJ as endangering the journalist's profession – was also mentioned.

However, the main problem with media coverage of terrorism lies in the fact that the term itself is highly controversial, meaning different things to different people in different contexts and circumstances. As Alessandro Silj, Secretary General of the Italian Council of Social Sciences, told the conference, there are no merely rational answers:

It is ... a highly emotional, politically sensitive issue, fraught with ambiguities. To say that "one man's terrorist is another man's freedom fighter" is a truism that sums up the problem ... Many individuals who were branded as terrorists in their early days are today heads of state or hold other important public positions. Some have even been awarded the Nobel Peace Prize, including a former chief of staff of the IRA. The main thing the two categories [terrorists and freedom fighters] have in common is violence as a means of achieving their objectives. It is significant that until today social scientists and the international community have failed to come up with a comprehensive definition of terrorism.

It is true that terrorism is a kind of political manifesto, and that it threatens the stability of the countries it targets. That is why it is – as the Council of Europe has emphasised in its work on measures against it – democracy's "worst enemy" and must be resisted. But fundamental values must also be respected, and freedom of expression is clearly an important one. In its case-law on Article 10 of the ECHR, the European Court of Human Rights has ruled that the public must be able to request and receive information on terrorism and related issues, and that the media must be able to supply it. The Court acknowledges that freedom of expression and information may be restricted, but only in very exceptional cases, and only when such restrictions are lawful and reflect a "pressing social need".

These principles are set out in the *Guidelines on human rights and the fight against terrorism*, adopted by the Council's Committee of Ministers in July 2002. These indicated that states have an obligation to protect everyone against terrorism – but they also say that anti-terrorist measures must be lawful. The Council insists above all that state action against terrorism must always be law-based, that is never arbitrary. The guidelines also prohibit the death penalty.

The Parliamentary Assembly's report on "Freedom of expression in the media in Europe", adopted in January 2003, makes the point that recent terrorist

attacks in various parts of the world “could become a pretext for restrictions” on freedom of expression and information throughout Europe. The report cites the Russian Duma’s recent adoption of media law amendments and a new law on combating terrorism – a law subsequently vetoed by the Russian President, who insisted that it must be reworded.

In response to these concerns, the Steering Committee on the Mass Media (CDMM) embarked in 2002 on the drafting of a Committee of Ministers declaration which would define fundamental principles that states should respect in their fight against terrorism, so as to preserve freedom of expression and information. It is expected that the declaration will be ready for adoption by the Committee of Ministers at the beginning of 2004.

Globalisation and market concentration

In the media market, as in every other economic sphere, globalisation has brought radical changes. It has spawned numerous new alliances and mergers between traditional media and new service providers, the AOL-Time Warner hook-up being just one example. A report submitted to the Parliamentary Assembly in 2001 points out that these mergers meet a double need – the Internet companies’ need for more media content, and the traditional media bodies’ need for wider distribution. By concluding alliances and mergers, the traditional media hope to maintain or strengthen their position in specific market sectors and, in so doing, to achieve economies of scale or scope.

The same report speaks of a clash between American and European views on media globalisation. America sees the media in mainly economic terms, and argues that the concentration or buying-up of businesses should be subject only to general anti-trust legislation. Europe, on the other hand, sees the media as a special kind of cultural and democratic resource, and feels that they should be protected as such.

The CDMM has also pointed out that technological convergence and new delivery systems, including digital platforms, are accelerating the trend towards vertical integration, with the same groups controlling both the technology and the content of TV broadcasting – that is the whole range of services and facilities, from transmission networks to set-top boxes, from content production to distribution. In fact, multimedia groups which control the whole chain of audiovisual products and services, including rights

management, production, broadcasting and distribution, are not uncommon nowadays. The same report notes that a dominant market position is likelier to be abused when a single operator owns the technical means of transmission, and is also involved in making and distributing programmes.

Reorganisation of the market seems to be producing a situation where the global media system is dominated by fewer than ten international groups, with some fifty other companies occupying regional and specialist markets. This constitutes a serious threat to media diversity and pluralism.

Basically, Europe wants to see the media from a cultural and democratic standpoint, but even in Europe the American conception seems to be taking over – a fact reflected in the changing practices of journalists, and of those from whom they take their orders. Thanks to integration and convergence of the new information technologies, immediacy now counts for more than analysis. Media competition and the ever-growing emphasis on live coverage are preventing journalists from probing deeply. Mobile-phone access to text and image data (UMTS) and interactivity are likely to increase the public's hunger for “breaking news”.

It also makes good commercial sense to maximise audiences and minimise costs, and media companies obviously welcome the ease and speed with which the new technologies can generate information. The CDMM notes that newspaper groups are increasingly investing in the electronic media, not just for commercial reasons and because this is a growth sector, but also with a view to securing advertising revenue and delivering content via other platforms, by co-operating or merging with broadcasting companies or online service providers. Inevitably, this trend gives rise to multimedia companies, many operating transnationally and covering numerous areas of content production and distribution.

How should the Council of Europe respond to concentration, which appears to be an unavoidable aspect of economic globalisation? Its concern here is to preserve political and cultural pluralism and media diversity. The Committee of Experts on Media Concentrations and Pluralism, which it set up in 1991, concluded that internationalisation and the trend towards ever-larger media concerns were making it harder to trace the owners and sources of information. The committee accordingly drew up a set of guidelines to promote media transparency, and these were adopted by the Committee of Ministers in 1994

in the form of a recommendation on legal measures which member states should take for this purpose.

Questions covered by the guidelines include: public access to information on the media, exchanges of information on media transparency between national authorities, disclosure of information before and after the award of broadcasting franchises, the functioning of bodies responsible for supervising transparency in broadcasting, and specific measures to guarantee transparency in the print media.

Media transparency is a question that goes to the heart of the Council of Europe's work to secure media pluralism and diversity throughout Europe. In the future, it will certainly work even harder to promote stronger laws at national level and update international guidelines in co-operation with the European Union. Like the Council of Europe, the EU has realised that genuine media competition holds the key to guaranteeing freedom of information and expression – and it has a positive duty to ensure that dominant market positions or mergers do not extinguish media markets or threaten that freedom in Europe.

III. THE EUROPEAN COURT OF HUMAN RIGHTS: MEDIA DEMOCRACY THROUGH LAW

The European Convention on Human Rights (ECHR) was signed on 4 November 1950, came into force on 3 September 1953 and has been ratified by the forty-five states which are currently members of the Council of Europe. Article 10, which covers freedom of expression and information, states that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 10 is widely regarded as one of the most important in the Convention. It is based on Article 19 of the Universal Declaration of Human Rights of 10 December 1948, and is itself echoed in Article 19 of the International Covenant on Civil and Political Rights of 16 December 1966. A core provision, it guarantees that freedom of expression and information which is vital to debate in a democratic society.

It also underwrites other basic rights guaranteed by the Convention. Freedom of association and freedom of conscience, for example, are not easily imagined without free speech. Small wonder, then, that resolution on journalistic freedoms and human rights adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, 1994) insisted that:

The practice of journalism in the different electronic and print media is rooted in particular in the fundamental right to freedom of expression guaranteed by Article 10 of the European Convention on Human Rights, as interpreted through the case-law of the Convention's organs. (Resolution No. 2)

The case-law generated by this article (European Court and Commission of Human Rights) is unusually extensive. Over the decades, it has – with the

Council's whole policy in this area – done much to shape the media landscape in Europe. Since 1960, the Court has given some 100 judgments under Article 10, which has also been the subject of numerous reports and observations. The issues covered in cases before the Court have included: criticism of politicians, defamation, breaches of the confidentiality of judicial investigations, insults to government, revelation of police brutality, racist propaganda, disclosure of information sources, convictions for libel, alleged attempts to influence criminal proceedings, propaganda threatening the integrity of the state or national security, and partisan publications by illegal organisations.

The Court's judgments are based on a number of key principles, which define the bounds of freedom of expression. The Court sees freedom of expression as, first and foremost, "one of the basic conditions for the progress of democratic societies" – and so journalists have a vital part to play in law-governed states. In fact, the Court has spoken of the press as democracy's "watchdog", and as an essential "mediator" of information and ideas. It has also declared that freedom of expression extends not only to such information and ideas as are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.

The second paragraph of Article 10 also makes it clear, however, that freedom of expression and information is not absolute, and that states may restrict it on certain, specified conditions – namely, when this is necessary to protect the general interest or individual rights, or to maintain the authority and impartiality of the judiciary. Such restrictions must always, however, be "prescribed by law", and, above all, be "necessary in a democratic society", that is, respond to a pressing social need.

Case-law based on Article 10

The first case concerned with freedom of expression came before the European Court of Human Rights in 1960, but it was not until 1979 that the Court delivered a judgment in which it found that Article 10 had actually been violated. This judgment was given in the *Sunday Times v. United Kingdom* case. This was concerned with a court order, forbidding the newspaper in question to publish an article on the plight of women who, having taken a thalidomide-based medicine while pregnant, gave birth to children with severe deformities. Once the product's harmful effects had become known

and it had been withdrawn, a number of families claimed damages from the manufacturer between 1962 and 1966. This marked the start of a long process of negotiation between the two sides. The *Sunday Times* published an article, “Our thalidomide children: a cause for national shame”, on 24 September 1972 – and announced a follow-up article, tracing the story of the tragedy. Publication of this second article was prohibited by the courts, however, on the ground that it might influence negotiations on the level of damages due. The European Court of Human Rights, which began considering the case in 1974, did not agree. It found that it was “not necessary in a democratic society” to ban publication of the article on the drug, its harmful effects and the legal proceedings. In its judgment, it declared that Article 10 guaranteed “not only the freedom of the press to inform the public but also the right of the public to be properly informed”.

The right of the press and the media in general to inform the public thus falls within the guarantee provided by Article 10 of the ECHR. But what about personal opinions and value judgments? The Court’s case-law is very clear on these too. In a case concerning an Austrian journalist, Michael Lingens, the Court found that:

Whilst the press must not overstep the bounds set, *inter alia*, for the “protection of the reputation of others”, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest.

This case originated in a libel action brought by former Austrian Chancellor Bruno Kreisky against Mr Lingens, who had published articles criticising his tactless treatment of victims of Nazism, and accusing him of protecting a political party leader who had been in the SS. The Austrian courts had found Mr Lingens guilty of defamation. In its 1986 judgement on the case, the European Court of Human Rights declared:

Freedom of the press ... affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

It found that:

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.

In other words, Article 10 protects the reputation of everyone. This extends to politicians, even when they are acting in their public capacity – but, in such cases, the requirements of protection must be weighed against the need for open discussion of political issues. In its case-law on defamation, the Court makes a distinction between facts and value judgments. As it pointed out in the Lingens judgment, “The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof”.

The Court gave a similar judgment in the case of *Colombani and others v. France*, in which the French courts had found against *Le Monde* for publishing an allegedly offensive article about the King of Morocco. The front-page article, headed “Morocco – the world’s leading exporter of hashish” and published in 1995, accused the Moroccan authorities of involvement in the export of hashish to Europe. When King Hassan II of Morocco sued in France, Jean-Marie Colombani, publisher of *Le Monde*, was found guilty of offences against a foreign head of state and ordered to pay the King one franc in damages. In its judgment of June 2002, the Court of Human Rights repeated that political figures inevitably and knowingly laid themselves open to close scrutiny by journalists and the public, and so must display a greater degree of tolerance – particularly when they themselves made public statements which were open to criticism.

However, in another case concerning defamation – this time defamation of a judge by a publisher and a journalist – the Court found that the national authorities’ response had been justified and necessary in the public interest. In that case (*Prager and Oberschlick v. Austria*), the Court ruled in 1995 that the applicant could not “invoke compliance with the ethics of journalism” to justify his very serious attacks on the personal and professional integrity of a member of the judiciary, and found that Austria’s interference with freedom of expression had been in due proportion to the need to protect a person’s reputation and maintain the judiciary’s authority. However, it also made the point that journalistic freedom might sometimes extend to a degree of exaggeration or even provocation.

Cases where the issue is libelling or insulting governments, politicians or heads of state also account for a significant proportion of the Strasbourg Court’s case-law on freedom of expression. *Castells v. Spain* is one example. The applicant in that case, a Basque activist and Spanish MP, had been convicted of insulting the government in an article accusing it of supporting or tolerating attacks on Basques by armed groups. In its 1992 judgment, the

Court ruled that press freedom allowed the public to ascertain the ideas and attitudes of political leaders and form opinions on them. It also allowed politicians to “reflect and comment” on matters of public concern. In other words, as the Court sees it, freedom of expression enables everyone to participate in the free political debate which is vital to a democratic society.

Defamation proceedings, particularly in the countries of central and eastern Europe, are also a matter of concern to the Parliamentary Assembly. In the report on “Freedom of expression and information in the media in Europe”, which it discussed in plenary session in 2001, it made the point that interpreting restrictions on freedom of expression in a non-discriminatory way, and taking care not to abuse them, was one index of a nation’s “democratic culture”.

We must remember that the limits of privacy are highly controversial, both legally and politically. In a 1970 resolution, the Parliamentary Assembly defined the right to privacy as “the right to live one’s own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially.” The Strasbourg Court’s case-law in this area is fairly fluid. It sees “private life” as meaning different things at different times, and in different settings and societies. In spite of the Assembly’s attempt to pin it down, producing a universally acceptable definition is today well-nigh impossible.

In its January 2003 report on “Freedom of expression in the media in Europe”, the Assembly declared that protecting journalistic sources was “the main battle”, which the free and independent media had still to win completely. The Court of Human Rights has a remarkable body of case-law on this question. In its Goodwin judgment of 1996, it found that protection of journalistic sources was “one of the basic conditions of press freedom”. In that case, the British courts had forbidden William Goodwin, a journalist, to publish details, supplied by an informant, of a company’s confidential draft development plan. They had also ordered Goodwin to hand over his notes, revealing his informant’s identity. The company claimed that, if the plan were made public, it might well forfeit the confidence of its creditors, customers and suppliers. The courts eventually fined Goodwin £5 000 for refusing to disclose his sources. The Court of Human Rights found, however, that failure to protect journalistic sources would threaten “the vital public watchdog role

of the press” and its ability to provide accurate and reliable information. It held that there was not “a reasonable relationship of proportionality between the legitimate aim pursued by the disclosure order and the means deployed to achieve that aim”. Both the order requiring Goodwin to disclose his sources and the fine imposed on him for refusing to do so thus violated his right to freedom of expression under Article 10.

This judgment created an important case-law precedent, and the right of journalists not to disclose their sources was further reinforced by a recommendation, adopted by the Committee of Ministers in 2000, which suggested that member states should explicitly and clearly protect, both in law and in practice, the journalist’s right not to disclose information identifying a source, in accordance with Article 10 of the ECHR and the Court’s case-law. The European Federation of Journalists (EFJ) welcomed the recommendation warmly, while regretting its failure to establish clearly that disclosure orders must be used only in exceptional circumstances. In its view, the text had two significant weaknesses. Firstly, the text had not been the object of a convention, which the member states would have been obliged to implement. Secondly, it did nothing to protect “whistleblowers”, that is public servants who leaked information to journalists in the public interest. The EFJ insisted that whistleblowers must be protected against dismissal or other disciplinary action by employers. However, the Council has not yet dealt with the issue of whistleblowers.

Several Assembly reports on the media speak of another legal problem in some countries – the requirement that defendants in defamation cases must prove the truth of their allegations. In its 1999 judgment in the Dalban case, the European Court of Human Rights ruled that the criminal conviction, on a charge of defamation, of a Romanian journalist who had published a number of articles accusing various public figures of fraud, violated Article 10. It also found that: “It would be unacceptable for a journalist to be debarred from expressing critical value judgments unless he or she could prove their truth.” In another judgment, however, *McVicar v. the United Kingdom* (7 May 2002), the Court found that placing the burden of proof on the defendant did not violate Article 10.

The Court’s case-law also covers the way in which journalists handle information on such sensitive issues as racist or xenophobic propaganda. In the *Jersild* case, for example, a Danish journalist had been convicted of aiding and abetting, on the strength of an interview in which a group of youths had

expressed racist views. While agreeing that opposing all forms of racism was vital for democracy, the Court held that the aim of the interview had not necessarily been racist. It ruled that “the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question”. The judgement, given in 1994, made the further point that “it is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists”. It accordingly found that the conviction had breached Article 10.

The Court has also given judgment in a number of cases in which journalists had been convicted by national courts for publishing articles which might influence the outcome of criminal proceedings. It has ruled that, when journalists “overstep the bounds” necessary for the proper administration of justice, their conviction does not violate Article 10. In the *Worm v. Austria* case, for example, it ruled that the rights of a journalist, fined for publishing an article which might have influenced criminal proceedings against a former minister, had not been violated. In its 1977 judgment, it found that “reporting, including comment, on court proceedings, contributes to their publicity in consonance with Article 6 [of the ECHR, on the right to fair trial]”. It ruled, however, that the article complained of in this case had overstepped the bounds, since it could have influenced the outcome of the trial.

Does the need to combat terrorism give states the right to restrict freedom of expression, particularly in the case of groups associated with what are regarded as terrorist organisations? A close look at a number of cases concerned with events in south-east Turkey in the 1990s helps to answer this question. For example, in its judgment of March 2000 in the case of *Özgür Gündem* – a pro-Kurd daily, banned for carrying “terrorist propaganda” – the Court found that the government’s argument that *Özgür Gündem* and its staff supported the separatist PKK organisation did not justify its “failing to take steps effectively to investigate and, where necessary, provide protection against unlawful acts involving violence”. It decided that banning the paper and arresting its senior editorial staff on suspicion of being PKK associates had been “disproportionate to the aim pursued”, namely the defence of law and order, since the ban and the arrests interfered seriously with production of the newspaper – and this had not been shown to be necessary. The allegedly subversive nature of articles in the paper (one of the grounds for the ban) did not – given their content, tone and context – constitute incitement to violence. The Court found

that neither interviews with a member of a banned organisation, nor harsh criticism of government policy, nor use of the term “Kurdistan” in a context which implied that this was not part of Turkey could justify interference with the newspaper’s right to freedom of expression. Only three articles were deemed to constitute incitement to violence, and the measures taken by the authorities regarding them were considered compatible with Article 10.

Conversely, in another case concerning the PKK – the Zana v. Turkey case of 1997 – the Court ruled that Article 10 had not been violated. At the time of the events in question, the applicant, Mehdi Zana, had been mayor of Diyarbakir, the largest town in south-east Anatolia. The Court found that his conviction for supporting the PKK in an interview was compatible with Article 10, since the aim of the interference had been to guarantee national security and public safety. Insofar as the applicant had not dissociated himself clearly from acts of violence perpetrated by the PKK in south-east Turkey, the penalty imposed could be regarded as proportionate to the legitimate aims pursued and as answering a pressing social need.

The Court’s case-law has made it clear that Article 10 protects not only press freedom and freedom of information but also the public interest. This principle has been confirmed in cases from various European countries.

Handyside v. the United Kingdom certainly produced a landmark judgment here. The issue in that case, heard in the mid-1970s, was whether the British authorities’ banning of *The Little Red School Book* under the Obscene Publications Act had violated Article 10. The book was considered a “non-conformist” book on sexuality, aimed at young people, written by two Danes and already published in a number of Council of Europe member states. The Court had to decide whether the ban was necessary to protect morals in a democratic society. In its 1976 judgment, it held that freedom of expression was “one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment”. Subject to the restrictions permitted by Article 10, this freedom applied “not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb” the state or any section of the population. Such, the Court declared, were “the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”. Nonetheless, the Court upheld the British courts’ verdict, and ruled that the ban did not breach Article 10.

The Ekin Association case was also concerned with public interest. In 2001, the Court of Human Rights ruled that a ministerial order banning the circulation, distribution and sale in French territory of a book on various aspects of Basque culture and identity violated Article 10. The ban had been imposed under a French law which gave the Minister of the Interior power to prohibit the circulation of any printed matter in a foreign language or of foreign origin. The Court ruled that prior restraints on publication were not incompatible with the ECHR, but might only be imposed within a legal framework which ensured “both tight control over the scope of bans and effective judicial review to prevent any abuse of power”. In view of the publication’s content, it also found that there were no public safety or public order reasons to justify this very serious interference with the applicant association’s freedom of expression – and accordingly ruled that this interference was not “necessary in a democratic society”.

The Court has also given a number of judgments on the audiovisual media, and particularly the regulation of broadcasting. Its first such judgment was given in the *Groppera Radio AG and Others v. Switzerland* case in 1990. The Swiss authorities had prohibited the retransmission of programmes from Italy by Swiss cable network operators, who claimed that this violated Article 10. The Court disagreed. It held that the Swiss authorities had not overstepped the margin of discretion allowed them by Article 10, and that the measure applied to a station which they could reasonably regard as Swiss, and as operating from outside the country for the sole purpose of evading the regulations governing telecommunications in Switzerland.

Public broadcasting monopolies have sometimes been the issue too. In *Informationsverein Lentia and Others v. Austria*, the Court opposed state monopolies, finding that the monopoly in this case interfered with the applicants’ rights in a way which was not “necessary in a democratic society”. It also emphasised the importance of pluralism in a democratic society and found, lastly, that the restrictions imposed on freedom of expression by public monopolies were so far-reaching that only a “pressing social need” could justify them.

In June 2001, the Court gave judgment in the *VgT Verein gegen Tierfabriken v. Switzerland* case, which concerned the Swiss authorities’ refusal to allow Swiss Radio and Television to broadcast a commercial which attacked factory farming, because of its “clear political character”. The authorities claimed that the ban was intended to prevent financially powerful groups from securing a

competitive political advantage. The Court took issue with this, making the point that the ban applied only to certain media, and did not match any particularly pressing need.

The Court also has case-law on commercial information, which cannot – in its view – be excluded from the scope of Article 10. In November 1989, for example, it found that Article 10 had not been violated in the *Markt Intern Verlag GmbH and Klaus Beermann v. Germany* case. The applicant publishers had claimed that the federal court had violated Article 10 by forbidding them, under the Unfair Competition Act, to repeat criticisms aimed at the commercial practices of a certain mail-order company in a specialised information bulletin. The Strasbourg Court found that the federal court's ruling had not overstepped the discretionary power which Article 10 gives national authorities to subject the exercise of freedom of expression to certain formalities, conditions, restrictions or penalties.

Article 10 of the ECHR applies to advertising, as well as other types of information. In February 1994, in the *Casado Coca v. Spain* case, the Court ruled that a disciplinary sanction imposed on a Spanish lawyer for advertising his professional services was compatible with Article 10. It pointed out that rules on the advertising of lawyers' services varied from one country to another. As a result of social change and the growing role of the media, most European countries were tending to relax their rules, although the existence of different regulations and approaches complicated the whole question. The Court held that national Bar associations and courts were better placed than an international court to strike the right balance between the proper administration of justice, dignity of the legal profession, everyone's right to receive information on legal assistance, and allowing members of the Bar to advertise their practices. It decided that, at the time (1982-1983), the disciplinary sanction could not be considered disproportionate to the aim pursued.

The Court's case-law on Article 10 has also helped to extend freedom of expression in the case of certain professions. In October 2002, for example, the Court ruled that a doctor had not broken the rules against advertising by doctors by presenting the results of his work in the press. In 1995, Dr Miro Stambuk, a German ophthalmologist, gave an interview to a daily paper, in which he explained how new techniques had enabled him to treat over 400 patients successfully. A professional disciplinary board ruled that he had violated the doctors' code of conduct, since the article amounted to advertising for his practice. The European Court of Human Rights admitted that

the article highlighted Dr Stambuk's skills, but decided that its primary aim was to inform: both the interview and the accompanying photograph of Dr Stambuk were a necessary part of explaining the subject in journalistic terms and did not, as the disciplinary board had concluded, constitute advertising. This being so, the German courts' strict interpretation and the original ruling had in effect deprived the doctor of the freedom of expression guaranteed by Article 10 of the ECHR.

Lastly, with regard to labour law, the Court ruled in February 2000 that Article 10 had been violated in the Fuentes Bobo case. This concerned the sacking of a programme-maker for offensive comments on the heads of a Spanish public broadcasting station made in two interviews. The Strasbourg judges pointed out that Article 10 applied to all employer-employee relationships, including those covered by private law, and that the state sometimes had a positive duty to protect the right to freedom of expression.

CONCLUSION

The Council of Europe has made a remarkable contribution to freedom of expression, freedom of the press and media pluralism. Yet the battle is far from over, and many problems remain unsolved. It is a sad fact that serious violations of press freedom still occur in Europe. Journalists are still being physically attacked or imprisoned, subjected to legal harassment, sued for libel, massively fined and ordered to disclose their sources. There are still media laws which allow governments to interfere directly. And there are still threats to media pluralism. These are just some of the issues we need to consider when we talk about press freedom in greater Europe in 2003.

As the Parliamentary Assembly's latest report on the subject pointed out, it is now more vital than ever to monitor freedom of expression and media pluralism throughout Europe, and defend the basic standards and principles actively. These standards and principles must be fully and effectively applied in the forty-five Council of Europe countries. But – just as the Council is campaigning for universal abolition of the death penalty, and just as its Cybercrime Convention has been signed by non-member countries like the United States, Japan and South Africa – so its basic standards and principles on freedom of expression and information can serve as a model worldwide, starting in the Mediterranean countries and the Central Asian republics.

This is one political question. Another is where the Council's media policy stands in relation to that of the European Union. From 2004 on, twenty-five of its forty-five members are likely to be in the EU as well, and the EU has its own media policy. The example of the Convention on Transfrontier Television has already shown us how differences and rivalries can develop between the two institutions – which is why their respective roles in European media policy need to be examined. If respect for freedom of expression and information is to progress, it is important that those roles be clearly defined and complementary. When accessions to the EU are being negotiated, the Council has suggested that the would-be members' acceptance of the Strasbourg Court's case-law on Article 10 of the ECHR, and the Committee of Ministers' recommendations on freedom of expression, should be

considered – and this could mark the start of a new form of co-operation between Strasbourg and Brussels.

In the years ahead, the impact of the new communication technologies on freedom of expression and information will remain a major challenge for the Council of Europe. These technologies have generated new information sources, new kinds of dialogue, new ideas and opinions – until very recently, all beyond the reach of the old-style media. One effect of this has been to make freedom of expression, information and the press even more directly important for the public, particularly in connection with proliferating online discussion forums. More research is needed on ways in which the new technologies have changed the media. The Council of Europe may very well step up its efforts in this area, for example by appointing European experts to assess the status of digital TV in Europe, or helping service providers to see that their operations must respect European democratic standards and principles. Concerning the media's place in the information society, the Council's primary task is – and will be – to create the conditions needed to ensure that independent, professional journalism, respecting recognised rules of conduct, remains as important as ever.

Media concentration is another challenge the Council will face in the years ahead. This is seen as a serious problem by journalists' associations, and also the Parliamentary Assembly in its reports on freedom of expression, and is – quite simply – a threat to media pluralism. Developments in the communications sector, economic globalisation and the large-scale restructuring that goes with it, are all boosting the trend towards concentration – which is why the effects of media monopolies and oligopolies on freedom of expression and information will have to be looked at more closely.

Ever since it was founded, the Council of Europe has kept pace with change on the European media scene. As well as responding to the problems posed by new technologies, it has proved equal to the enormous challenge which confronted it just over ten years ago, when the Iron Curtain disappeared and the former Eastern-bloc countries rejoined the European democratic family. Now, at a time when terrorism is poisoning the geopolitical climate, and when new challenges and problems are emerging, it must show that its instruments and expertise will not simply help us to achieve a concerted response to the tests we face in the new century – but are actually vital to our doing so.

APPENDIX

Declaration on the freedom of expression and information

*(Adopted by the Committee of Ministers on 29 April 1982,
at its 70th Session)*

The member states of the Council of Europe,

1. Considering that the principles of genuine democracy, the rule of law and respect for human rights form the basis of their co-operation, and that the freedom of expression and information is a fundamental element of those principles;
2. Considering that this freedom has been proclaimed in national constitutions and international instruments, and in particular in Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights;
3. Recalling that through that convention they have taken steps for the collective enforcement of the freedom of expression and information by entrusting the supervision of its application to the organs provided for by the convention;
4. Considering that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community;
5. Convinced that the continued development of information and communication technology should serve to further the right, regardless of frontiers, to express, to seek, to receive and to impart information and ideas, whatever their source;
6. Convinced that states have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions;

7. Noting that, in addition to the statutory measures referred to in paragraph 2 of Article 10 of the European Convention on Human Rights, codes of ethics have been voluntarily established and are applied by professional organisations in the field of the mass media;

8. Aware that a free flow and wide circulation of information of all kinds across frontiers is an important factor for international understanding, for bringing peoples together and for the mutual enrichment of cultures,

I. Reiterate their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralist society;

II. Declare that in the field of information and mass media they seek to achieve the following objectives:

a. protection of the right of everyone, regardless of frontiers, to express himself, to seek and receive information and ideas, whatever their source, as well as to impart them under the conditions set out in Article 10 of the European Convention on Human Rights;

b. absence of censorship or any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information;

c. the pursuit of an open information policy in the public sector, including access to information, in order to enhance the individual's understanding of, and his ability to discuss freely political, social, economic and cultural matters;

d. the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions;

e. the availability and access on reasonable terms to adequate facilities for the domestic and international transmission and dissemination of information and ideas;

f. the promotion of international co-operation and assistance, through public and private channels, with a view to fostering the free flow of information and improving communication infrastructures and expertise;

III. Resolve to intensify their co-operation in order:

a. to defend the right of everyone to the exercise of the freedom of expression and information;

- b.* to promote, through teaching and education, the effective exercise of the freedom of expression and information;
- c.* to promote the free flow of information, thus contributing to international understanding, a better knowledge of convictions and traditions, respect for the diversity of opinions and the mutual enrichment of cultures;
- d.* to share their experience and knowledge in the media field;
- e.* to ensure that new information and communication techniques and services, where available, are effectively used to broaden the scope of freedom of expression and information.

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