



Restricted

**AS/Cult (2012) 29**

18 June 2012

Or. English

## COMMITTEE ON CULTURE, SCIENCE, EDUCATION AND MEDIA

### The state of media freedom in Europe

Rapporteur: Mr Mats JOHANSSON, Sweden, European People's Party Group

#### Background report

prepared by Mr William Horsley, Media Freedom Representative of the Association of European Journalists and International Director of the Centre for Freedom of the Media, University of Sheffield<sup>1</sup>

#### Table contents

1. DANGEROUS TRENDS GROW AND MULTIPLY IN A CHANGING MEDIA LANDSCAPE
2. OVERVIEW OF JOURNALISTS' DEATHS, OTHER ATTACKS AND LEGAL CONSTRAINTS
3. POSITIVE DEVELOPMENTS FOR FREEDOM OF THE MEDIA ACCORDING TO EUROPEAN NORMS AND STANDARDS
4. MEDIA LANDSCAPE: THE ENVIRONMENT FOR MEDIA FREEDOM
5. MEDIA AND ELECTIONS
6. MEASURES TO UPHOLD COUNCIL OF EUROPE STANDARDS AS A FRAMEWORK FOR PROMOTING MEDIA FREEDOM IN MEMBER STATES
7. INTERNET AND MEDIA FREEDOM
8. THE DEATHS OF JOURNALISTS IN EUROPE, OCTOBER 2009 TO MAY 2012
9. VIOLENT ATTACKS AND PROSECUTIONS OF JOURNALISTS: THE USES AND RESPONSIBILITIES OF STATE POWER
10. LIBEL LAWS
11. PUBLIC SERVICE BROADCASTING AND ALLOCATION OF COMMERCIAL BROADCASTING LICENCES
12. FREEDOM OF INFORMATION
13. OTHER CASES THAT RAISE CONCERNS ABOUT PROTECTION OF MEDIA FREEDOM
14. CONCLUSIONS

---

<sup>1</sup> The opinions expressed herein are those of the author and do not necessarily reflect the views of the Council of Europe.

## **1. DANGEROUS TRENDS GROW AND MULTIPLY IN A CHANGING MEDIA LANDSCAPE**

1. Developments during the period of almost three years since the Respect for media freedom Report was delivered to the committee in October 2009 show persistent patterns of serious violations of Council of Europe standards, including acts of violence and legal abuses directed at journalists because of their work. In a number of Council of Europe member states these patterns have taken root and threaten to stifle genuinely free and independent media in favour of a climate of censorship and intimidation.

2. Concerns have grown over the increasing control of large parts of the media landscape in the hands of political or business interests which use control of the media for partisan purposes and in ways that have allowed corruption to thrive in the absence of scrutiny from a lively and unhindered press. Democracy and the general public interest have suffered greatly as a result.

3. In spite of the growing interdependence of European states and the commitment of all to the free flow of information and opinions across borders, some states still routinely block or exclude TV and radio broadcasts from other countries. In several cases the Russian Federation has sought to expel or has excluded bona fide journalists of other European nationalities from working and reporting inside Russia.

4. Freedom House, a leading international press freedom and media monitoring organisation, concluded in its Press Freedom in 2012 report that while media freedom remained at about the same level in Western Europe during 2011, the overall assessment for Central and Eastern Europe and Eurasia was negative, as it also was in 2010.

5. Freedom House found that more than half of the populations in those regions live in states which in terms of media freedom are characterised as Not Free.

6. Freedom House identified Russia, Azerbaijan and Belarus as countries of special concern on account of the persistence of violent assaults, the failure to punish serious crimes directed at journalists, and other abuses of official authority which systematically restrict their freedom to collect and report information on matters of legitimate public interest.

7. The Democracy Index 2011 of the Economist Intelligence Unit reported that a worldwide decline in democracy in 2011 over the past two years was concentrated in Europe; it says that Western Europe has experienced a significant erosion of democracy, albeit from a relatively high base. This generalised decline was mirrored by a retreat of press freedom on account of a range of restrictions and pressures on media, especially in France and Italy, and in Turkey, where about one hundred journalists are imprisoned under laws which are criticised as failing to comply with Council of Europe standards.

## **2. OVERVIEW OF JOURNALISTS' DEATHS, OTHER ATTACKS AND LEGAL CONSTRAINTS**

8. Foremost among the threats causing real injury to the freedom of the media in Europe is the high number of murders, other targeted physical attacks and threats aimed at silencing journalists' critical and inquiring voices in Council of Europe member states.

9. Since October 2009 17 journalists or media workers have been killed in Europe in the course of their work or been abducted, of whom 14 are believed to be victims of deliberate killings. One of those violent deaths occurred in Belarus which is not a member state of the Council of Europe. Two occurred as the result of an earthquake. In addition, one journalist has been missing for two years since being abducted. The names, countries and dates of the 17 cases are:

Azerbaijan (1): Rafiq Tagi (2011); Belarus (1): Aleh Byabenin (2010); Bulgaria (1): Boris Nikolov Tsankov (2010); Greece (1): Sokratis Giolia (2010); Latvia (1): Grigorijs Nemcovs (2010); Russia (7): Olga Kotovskaya (2009); Sayid Ibragimov (2010); Shamil Aliyev (2010); Magomedvagif Sultanmagomedov (2010); Yakhya Magomedov (2011); Khadzhimurad Kamalov (2011); Anatoly Bitkov (2012); Turkey (2) Cihan Hayirsever (2009); Metin Alatas (2010)

Accidental deaths: Turkey (2) Cem Emir and Sebahattin Yilmaz (2011).

Abducted and missing: Vasyl Klementiev (Ukraine, August 2010).

The circumstances of the killings are described in more detail below.

10. A number of other journalists have met their deaths since October 2009 in circumstances linked to allegations of official culpability made by some media monitoring organisations, but conclusions about the cases remains uncertain because of lack of information about the investigations which is often aggravated by official failures or obstruction.

11. Over the past three years there have been credibly documented accounts of hundreds of individual cases in which journalists or members of their families have been made the targets of physical assaults or verbal threats on account of their work.

12. In the global context journalists in all regions of the world, including Europe, now face extraordinary risks of attack including murder because of the nature of their work. In recognition of that vulnerability and of the vital importance of journalism for societies as a whole, the United Nations drew up an Action Plan for the Safety of Journalists and the Issue of Impunity which was approved in March 2012.

13. The plan calls for regional inter-governmental organisations including the Council of Europe to contribute to improving the protection of journalists, in cooperation with relevant UN bodies including UNESCO, the agency which has a specific mandate to uphold press freedom and freedom of expression, as well as the Office of the UN High Commissioner for Human Rights and UN country missions.

14. In the European region, as in Asia, Latin America and other regions, studies show that violent crimes targeting journalists are among the cases which most often go unpunished and unresolved. With respect to violence and impunity involving journalists, the record of the 47 states in the Council of Europe area collectively is no longer significantly better than other regions.

15. In addition to the unacceptable levels of violence, free and independent reporting has been restricted by large numbers of cases of wrongful arrests and imprisonment, multiple forms of harassment and censorship pressures from public officials as well as organised crime figures and other lawless elements.

16. Such cases of physical assault or intimidation, and attempts to criminalise the work of journalists, often lead to self-censorship or exile from the country or abandonment of the individual's journalistic work.

17. From this it is clear that in the most troubled regions of Europe, independent journalists are now obliged to work in a climate of intimidation as a result of persistent threats, pressures and barriers to their work.

18. **Impunity:** The personal risks and the damage to democratic structures in the areas affected is much aggravated by entrenched patterns of impunity, when the government authorities in the relevant jurisdiction have repeatedly failed to ensure effective investigations leading to the arrest and punishment of the perpetrators and masterminds of murders and other serious attacks against journalists.

19. It is a matter of especially serious concern that in many cases public officials have been proven to abuse the trust of their office by using violent force or making false charges against reporters, editors and other media workers in order to deter critical reporting about public affairs and conceal corruption and other serious abuses of power.

20. The issue of impunity was taken up by the Committee of Ministers of the Council of Europe, who on 30 March 2011 adopted their Guidelines on the Eradication of Impunity for Serious Human Rights Violations.

21. The CM's statement acknowledged that: *"Cases of impunity are unfortunately not uncommon in Council of Europe member states, particularly as regards those committed by police and prison officers, or those directed at human rights defenders."*

22. The Guidelines emphasised the vital importance of ensuring that swift, independent and effective investigations are always conducted in cases of serious crimes related to human rights standards.

23. Unfortunately, the protections for media freedom across Europe have sometimes come under threat from within in the form of pleading by representatives of some states that drastic means of controlling the media may be justified by what is called irresponsible or unethical behaviour on the part of journalists and media organisations.

24. The International Federation of Journalists (IFJ) said in a statement by its General Secretary Beth Costa for World Press Freedom Day in May 2012 that governments should not merely pay lip service to press freedom but should live up to their international obligations to enforce journalists' rights, in particular by releasing all journalists in prison. The IFJ also protested that journalists are too often denied justice when they are attacked or wrongly accused.

25. Parliamentarians should be mindful of the Council of Europe's principles, deriving from the European Convention on Human Rights and the case law of the European Court of Human Rights, that a primary role of the media in a democracy is to act as a public watchdog, that the right to freedom of expression include statements that offend or shock, and that restrictions on freedom of expression and media freedom must be strictly limited, proportionate and only justified by a pressing need according to law.

26. Journalists do not enjoy special protections from legal action when the criminal law is broken wantonly. But the framework of legal protections for media freedom which has won international respect for European standards is based on member states' observance of accepted standards, including the jurisprudence developed by the Court.

27. The European Court of Human Rights has established criteria related to matters such as the right to publish material in the public interest and the protection of journalistic sources, in recognition of the essential role of the media in inquiring vigorously into public affairs and promoting open debate.

28. **The Arab spring:** Europe's influence with respect to the spread of legitimate media freedoms in its wider neighbourhood was put to the test during the popular movements for more political openness and an end to censorship which are known as the Arab spring. International television broadcasts, social networks and Internet posts of many kinds enabled information and pictures to be transmitted and widely shared live or within minutes of the events witnessed.

29. The Middle East and North Africa region has seen a rapid expansion in the growth of diverse news and information media, combined with popular demand for the legal safeguards for free expression and free media that exist in the European Convention and other democratic structures.

30. But the popular revolts against autocratic regimes which had sought to maintain an iron grip on their national media as instruments of repression also drew attention to the record of European countries in giving support and comfort to those regimes, by means that included providing technologies for surveillance and information control.

31. **Russia** is the most dangerous place in Europe to be a journalist. In view of its large population and geographical size the repression of free and independent media there exerts a wide and negative influence, especially on many of the neighbouring states.

32. In spite of pledges of effective counter-measures by senior political leaders, the Centre for Journalism in Extreme Situations reported that, in addition to the seven killings documented here, other attacks against journalists have continued at the rate of about one per week throughout the past three years.

33. Many assaults by police and other security personnel on reporters and TV teams have been documented. On 16 and 17 May 2012 a Kommersant reporter, Aleksandr Chernykh, was one of several journalists beaten by police while covering public demonstrations in Moscow protesting at the installation of President Putin for a third term of office. Reporters Without Borders said the police had behaved with shocking brutality against journalists who were carrying press cards.

34. After the December 2011 Duma elections many reporters were also detained at protests in the capital and in St Petersburg.

35. In 2010 the official Investigating Committee responsible for the judicial follow-up after the killings of journalists and others announced it was re-opening five unsolved murders from past years but little progress has been made.

36. It is welcome that a law was passed designating crime against journalists as a category of offence attracting higher penalties than others, but positive effects have not yet become evident.

37. The remedies for the chronic level of violence against the media in Russia lie principally in the hands of the state. The government has the power to ensure that law-enforcement agencies uphold journalists' rights and refrain from interfering in their work and to order the judicial authorities to investigate crimes against journalists effectively.

38. The authorities may also repeal arbitrary and punitive laws, including those giving the executive powers to penalise media organisations which are deemed to support extremism without proper judicial process or the right of appeal.

39. The state could greatly invigorate free and independent media in Russia, too, by releasing control of the bulk of the mainstream media in the country that has come under the direct or indirect ownership of regional or state governments or their surrogates.

40. The long-standing practice of senior editorial staff of state-controlled TV stations attending weekly meetings with senior government officials where they reportedly receive guidance on coverage of forthcoming events contradicts the spirit and letter of European norms for free and independent media and demeans the professionalism of the journalists who cooperate in the system.

41. Exceptionally, in response to evident public anger against censorship and alleged election fraud, it was noted that for some days after the parliamentary elections in December 2011 Russian state TV channels covered the large-scale protests in a way that showed viewers the large size of the demonstrations against the way the poll was conducted. The practices at other times of concealing facts and opinions from the population and excluding critics of the authorities by means of blacklists represents an unacceptable breach of European standards.

42. In the North Caucasus region several journalists have been killed in an environment where both the writ of Russia's federal government and the rule of law have significantly broken down. However, even in situations where armed militants use violence for their own ends the national and regional state authorities have exclusive authority and power to maintain security and justice, and must adhere to the standards and norms of the European Convention as well as the laws of the state.

43. **The South East Europe Media Organisation, SEEMO**, which monitors 20 states in eastern and south-eastern Europe, said in its Press Freedom 2012 report that as a consequence of physical and verbal attacks on journalists a large number of detentions, and destruction of media property by order of state officials "pressure on journalists continues and self-censorship appears to be the norm."

44. Journalists in Bulgaria, Greece, Kosovo<sup>2</sup>, Latvia, Romania and Serbia have been subject to persistent cases of harassment, assaults or lack of proper legal protection.

45. SEEMO deplores the frequent use of rough police methods seen in many parts of South East Europe towards reporters covering demonstrations and protests.

46. In Romania on 15-16 January 2012 several media workers from Mediafax news agency, Antena 3 TV and the DC News website were assaulted by police while covering anti-government protests in Bucharest, despite reportedly identifying themselves as journalists.

47. In Greece in April 2012 police deliberately attacked a number of journalists and photographers during street protests in Athens, causing injuries. One of them, the head of the Greek Photojournalists, Mario Lolos, suffered a fractured skull when he was beaten by riot police in the centre of Athens. Several journalists were beaten and suffered injuries during earlier street protests in central Athens during 2011.

48. Several weeks before the elections on 6 May 2012 which saw members of the right wing Golden Dawn party elected to parliament, a website linked to the party carried an anonymous threat against Xenia

---

<sup>2</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Kounalaki, the foreign news editor of the leading daily Kathimerini, who had written a damning article about the party.

49. Physical and verbal threats, SEEMO says, have intensified incrementally during pre-election periods. Undue political and business pressure is exerted through verbal attacks, direct threats, the withdrawal of advertising and the use of bribery.

50. In Serbia, as in Bulgaria, Romania, Montenegro and elsewhere in the rest of the region, shadowy informal networks are known to link powerful organised crime groups with leading political and business figures, and many of the documented assaults on journalists are carried out by criminal elements in the societies.

51. In Serbia in July 2010 an influential columnist for the weekly Vreme, Teofil Pancic, suffered concussion and serious injuries when he was attacked on a bus in Belgrade by two masked assailants who beat him using metal bars and then fled. Colleagues believe he was targeted for his writings.

52. Three murders of Serbian journalists dating back to the 1990s, those of Dada Vujasinović, Slavko Ćuruvija and Milan Pantić, remain unsolved and the perpetrators have never been caught.

53. In Bulgaria in May 2012 Lidia Pavlova, a journalist for Struma newspaper known for investigating organised crime, was threatened and her car was reportedly destroyed on two occasions. Her son, who is a witness in a criminal trial against the leaders of a well-known organised crime syndicate, was severely beaten in 2008 and again in 2010, and his car has also been set on fire.

54. In 2011 a leading Serbian journalist, Veran Matic working for the popular news-breaking Serbian radio station B92, described the situation in his country and much of the region, saying that wealthy oligarchs and tycoons have taken control of influential media to make them serve their political or business interests. In those circumstances, he said, journalists are frequently pressured to act as their mouthpieces.

55. States also retain control of most or all major television channels. Even in public service media political interference is rife and is often practised by rival political parties, even when power changes hands after elections.

56. The non-transparency of media ownership in many parts of South East Europe is the source of a serious erosion of media freedom and independence, as the absence of clear ownership records makes the enforcement of laws and legal redress in cases of litigation difficult.

57. Major international media groups including Westdeutsche Allgemeine Zeitung (WAZ) and News Corporation, which invested heavily in the region's media in past years, have reduced or abandoned their presence there, partly on account of the weaknesses in legal structures and the growing influence of organised crime networks.

58. Against this background some governments as well as oligarchs and media owners have become aggressively intolerant of criticism in the media and have been seen to use unscrupulous means to suppress it.

59. In 2010 the Romanian government was criticised for drawing up a National Defence Strategy which described the media as a security threat for Romania because of press campaigns spreading false information about the activities of government agencies.

60. In "the former Yugoslav Republic of Macedonia" the media landscape has been impoverished and media freedom diminished by the withdrawal of the broadcasting licence of the leading privately-owned TV station, A1 and the closure of three newspapers including the country's most widely read daily Vreme, all as a consequence of punitive actions by the authorities.

61. The closures followed a long-running investigation into the owner of the media group which controlled TV A1 and the newspapers for alleged tax irregularities and money-laundering and demands for repayment of a large sum of outstanding debts.

62. Reporters Without Borders criticised the government for taking arbitrary actions to silence some of the few critical media still active in the country.
63. Media owners, publishers and editors are subject to heavy pressure from political, corporate and even crime lobbies. Journalists' groups protest that owners as well as powerful outside figures employ threats and pressure to force them to compromise journalistic and ethical principles. Inducements including bribes are often involved when media are misused to denigrate or slander chosen targets.
64. **Turkey** is now estimated to have more journalists in detention than any other state in the world. In April 2012 as many as 95 journalists were in jail awaiting trial or serving sentences after being convicted, according to a detailed report published by the OSCE Representative on Freedom of the Media.
65. The list of names of all those individuals is published on the website: <http://www.osce.org/fom/89371>
66. The majority have been charged or convicted under laws related to terrorism or incitement to violence or hatred, or insulting the Turkish nation or institutions of the state, which fail to meet Council of Europe standards on the protection of free expression and media freedom.
67. Many of the imprisoned journalists were arrested and charged in connection with the long-running Ergenekon investigation into an alleged plot in 2003 to overthrow the government. Others are being prosecuted over the issue of the Kurdish struggle for more autonomy. A number of those convicted have been sentenced to jail terms of more than 50 years.
68. The Commissioner for Human Rights, Thomas Hammarberg, wrote following a visit to Turkey in July 2011 that the large number of journalists in jail is a symptom of a systemic dysfunction in the workings of the Turkish judicial process and current practices have a distinct chilling effect on freedom of expression. Since that time, however, the number of journalists in Turkish prisons has almost doubled.
69. The Commissioner specified to the Turkish authorities a number of fundamental changes to the country's laws and practices that are necessary to bring them into compliance with the ECHR and the case law of the European Court of Human Rights. Among the changes required are that prosecutors should be more restrained in deciding to file criminal cases and making arrests; that laws should provide for the legal defences of truth and public interest; and that public figures should endure a higher level of scrutiny and criticism because of their positions in society.
70. In addition to those jailed, many hundreds of other journalists have recently been subjected to apparently speculative or unfounded criminal investigations, often resulting in the loss of employment or severe interruption of their professional work. The situation has been characterised as the stifling of free and independent media, in stark contradiction to Turkey's claim to represent a modern and transparent democracy.
71. There is concern that the writer Orhan Pamuk was convicted in 2011 and forced to pay a substantial fine after a private lawsuit was brought against him by a group of individuals using Article 301, the law which makes an offence of insulting the Turkish nation. The six plaintiffs won the case, claiming that they had suffered personal insult from an interview Pamuk had given to a Swiss newspaper in which he spoke about the unwillingness of people in Turkey to talk about the large-scale killing of Armenians and Kurds.
72. In **Hungary** the package of media laws enacted in late 2010 by a newly-elected government enjoying a commanding two-thirds majority in parliament raised acute concerns on the part of Council of Europe experts as well as the OSCE Representative on Freedom of the Media, European Union bodies, academic opinion and representative journalists' groups.
73. Experts of the Council of Europe's advisory body on constitutional matters, the Venice Commission, concluded that the new media laws, together with constitutional amendments to the country's judicial system giving sweeping powers to the president of a new National Judicial Office, amounted to a threat to fundamental democratic freedoms.
74. The concerns centred on the evident failure to guarantee the political independence of media regulators, new powers to regulate media content, including that of print media, and to demand so-called balanced reporting, and the erosion of journalists' right to protect their sources.

75. Amendments were subsequently made to several elements of the media laws in response to rulings by the Hungarian constitutional court, as well as requests from the European Commission. However in May 2012 a further assessment by Council of Europe experts identified several key elements which fail to meet Council of Europe standards.

76. The Council of Europe has called for further revisions, especially relating to political interference with the regulatory authorities, the licensing and regulation of content for print and online media, the right of freelance journalists to protect the confidentiality of their sources, and the requirement for public service media to take their news programmes exclusively from only one provider, the National News Agency.

77. In **the UK** the issues of press standards and ethics, and of the relationship between the media and public officials including politicians and police are being examined by a judge-led public inquiry which is to report during 2012. The inquiry was opened following the scandal over revelations of large-scale phone-hacking by employees of the News of the World newspaper to hear mobile phone messages left for public figures, celebrities and private persons, and alleged unlawful payments to public officials including police.

78. The exposure of these practices by segments of the UK media led to dozens of arrests of editors and journalists as well as some public officials. It brought accusations of improper, collusive relations between the press and government officials, senior politicians and police officers, and of influence-peddling which may have improperly affected the outcomes of regulatory decisions, including ones affecting the concentration of media ownership.

79. The inquiry has attracted international attention as an example of how a country with a highly-developed media sector proceeds to deal with key issues of regulation and self-regulation of the media. Proposals for reforms include passing a law to give a new regulatory body powers to investigate breaches of the Editors' Code and impose fines for violations. Defenders of press freedom argue that if the criminal law is properly applied no major changes are needed and that self-regulation by the media is the only way to protect freedom from damaging interference.

80. Serious concerns were raised about a chilling effect on investigative journalism when in September 2011 Amelia Hill, a journalist on The Guardian, which had helped to expose the story, was told by police that she may be charged with breaching a rarely used law on aiding and abetting misconduct in public office. She denied paying police for information about the hacking of messages from the mobile phone of Milly Dowler, a missing schoolgirl who was later found to have been murdered.

81. In May 2012 Hill was told that no charges would be brought against her for disclosing confidential information in her articles. New interim guidelines have been made public which state that in cases of alleged criminality involving journalists the public interest served by their actions is a relevant factor in deciding whether or not they should be prosecuted. Much press comment in leading British media deplored the lack of legal protections for the media, in spite of the substantial record of investigative journalism in Britain.

### **3. POSITIVE DEVELOPMENTS FOR FREEDOM OF THE MEDIA ACCORDING TO EUROPEAN NORMS AND STANDARDS**

82. Significant positive developments during this period include the conviction of suspects after prolonged investigations into two criminal cases involving the murders of journalists, and the decriminalisation of libel in several European states.

83. Several states, including Armenia, Serbia and Russia have adopted laws providing for additional penalties for crimes of violence or intimidation directed against journalists. They are welcome as an indication of official concern about the safety of journalists and will be significant if it is shown that they are effective as part of a coherent strategy to deter and punish those offences.

84. In November 2010 a court in Croatia convicted six people over the 2008 car bombing which killed Ivo Pukanic, the owner and editorial director of the political weekly Nacional and Niko Milovanovic, its marketing director. The court said the motive of the bombing was to prevent the paper from publishing information in its possession exposing the practice of illegal tobacco smuggling in the Balkans.

85. In Serbia, following threats of violence against them, three journalists -- Brankica Stanković, Vladimir Mitrić, Veran Matić – are reported to have been given close police protection. In Croatia the police have



provided protection for Duško Miljuš and Berislav Jelinić. In Italy a number of journalists, including Roberto Saviano have been in hiding or otherwise protected from the threat of attack by Mafia criminals.

86. In Russia, in April 2011 two men described as ultranationalists were convicted and sentenced to lengthy prison terms for the murders on a Moscow street in 2009 of the young journalist Anastasia Baburova and human rights lawyer Stanislav Markelov.

87. However, the Committee to Protect Journalists noted that in only two of 20 work-related targeted killings of journalists it has been able to verify since 2000 have the perpetrators been convicted.

88. Limited progress was made in 2011 in the judicial follow-up to the 2006 killing of Anna Politkovskaya, the investigative journalist who worked for Novaya Gazeta and reported on torture and other extreme human rights abuses in Chechnya. In September a retired senior Moscow police officer was charged in connection with the murder, and prosecutors announced the arrest of a group of suspected collaborators.

89. The identity of the mastermind of the killing, however, is still unknown. An earlier trial of several men accused of the murder collapsed in 2009 for lack of evidence amid allegations of official obstruction of the investigation.

90. Since 2010 several Council of Europe states including the Russian Federation, Montenegro and Armenia have re-categorised defamation as a civil offence instead of a criminal one, bringing the number of countries that have taken that step to twelve. However, journalists have continued to report many cases of attempts by public figures to suppress information about their activities through use of civil libel suits.

91. In a number of cases national courts and the European Court of Human Rights have struck down states' attempts to force journalists to disclose the sources of reports containing information which the authorities wished to keep hidden.

92. In September 2010 the European Court of Human Rights ruled against the Netherlands over a case in which police searched the offices of Autoweek car magazine for information about illegal street races. The Court ruled that law-enforcement officers may only search journalists' premises and seize materials in exceptional circumstances.

93. In 2011 in France, a court ruled that the security services acted unlawfully when they sought secretly to spy on journalists investigating an issue concerning a political party funding scandal. They intended to identify the source of information published by Le Monde journalist Gerard Davet.

94. Another French court rejected a lawsuit against a journalist, Augustin Scalbert, for handling and publishing a video which showed the then French president Nicolas Sarkozy angrily berating journalists about their coverage of his campaign.

95. Since 2010 the Council of Europe Commissioner for Human Rights and the OSCE Representative on Freedom of the Media have both identified the increased threats to the lives and work of journalists as a special priority for their offices. The Commissioner for Human Rights Thomas Hammarberg stated that "if murders, assaults and treats against journalists prevail, the media cannot be free, information cannot be pluralistic and democracy cannot function."

96. At a hearing in Strasbourg on 5 October 2011 convened by the Commissioner a number of participants expressed grave concern that in the aftermath of the murders, over the past decade and more, of some of Europe's most celebrated journalists, including Georgiy Gongadze (Ukraine, 2000), Elmar Huseynov (Azerbaijan, 2005), Anna Politkovskaya (Russia, 2006) and Hrant Dink (Turkey, 2007), the identity of those who ordered the killings is still not publicly revealed, very likely because of fear of reprisals among those who have information on those cases.

97. At the meeting parliamentarians from various member states called for a renewed determination on the part of the Council of Europe, acting in concert with other inter-governmental organisations including the OSCE to restore safeguards for media freedom in law and practice in parts of Europe where it had been largely stifled.

98. Special thanks were expressed for the effective work of Thomas Hammarberg in this field of activity during his tenure as Commissioner, and the hope was expressed that his successor would continue that important work. Nils Muiznieks took over the Commissioner's role in April 2012.

99. Significantly, the OSCE Representative on Freedom of the Media, Dunja Mijatovic, has pointed to the paramount responsibility borne by all national governments to ensure safe environment for journalists, as well as others who monitor public affairs and who speak their mind freely.

100. She emphasised to OSCE participating states that they should not seek to use any shortcomings in the level of professionalism of media to demand "responsible journalism which means no criticism, no satire, no provocation and no differing voices."

101. The Parliamentary Assembly of the Council of Europe may encourage full and genuine compliance with Council of Europe norms for media freedom by adopting a Resolution which can lead to effective and sustained actions by member states and through Council of Europe programmes. At the end of this Report a number of options for appropriate responses are set out for consideration.

#### **4. MEDIA LANDSCAPE: THE ENVIRONMENT FOR MEDIA FREEDOM**

102. The dramatic changes in the media landscape in Europe, resulting from Internet, mobile and interactive technologies, have expanded the variety of flow of information to an astonishing degree.

103. The Internet has made possible an exponential increase in self-publishing and increased popular participation in public debates, greatly raising public expectations for access to official information and knowledge about how governments take decisions, and transforming the relationship between governments and citizens.

104. In countries where independent media face regular harassment from government authorities, journalists and others have often been better able to evade censorship and disseminate news, information and opinion more freely as web-based news providers. Blogs, chat rooms and social network media have also provided a limitless sphere beyond the easy reach of government.

105. But website-based media have often struggled to generate the revenues needed to replicate the organised newsgathering and editorial structures of the traditional forms of mainstream media, to enable them to establish themselves and grow.

106. In Azerbaijan and Turkey bloggers and Internet users are among those who have been prosecuted and jailed in connection with their writings or speech.

107. The power of the Internet has also brought challenges for the traditional media, whose privileged role between government decision-makers and the public is less obvious in an age of so-called citizen journalists and self-publishing.

108. The media transformation has also resulted in a sharp loss of revenues from advertising and sales to many established media, especially newspapers, which has driven them to shrink their workforce and in many cases to narrow the range and depth of their reporting.

109. Partly as a consequence of these changes the market value of original journalism delivered in traditional forms has fallen, sometimes drastically. And in some countries there are signs of a decline in the capacity of the media as a whole to report adequately on public affairs and to scrutinise the actions of government authorities.

110. In the short term this is widely seen as having diminished the overall capacity of the news media for high quality news provision. Some experts are concerned about the possibility of a long-term decline of fact-based, professionally-edited and properly-resourced providers of news and information.

111. There is also evidence, as noted above, that media organisations have increasingly become battlegrounds themselves for the exercise of significant political and economic power.

112. That phenomenon has been described as the fusion of political power and media power, in which powerful media owners increasingly make deliberate use of media holdings as an instrument of political power, and sometimes unscrupulous pursuit of commercial and business advantage.

113. The ease and speed with which Internet posts of all kinds can reach a wide public has resulted in an increase in state and private legal actions on grounds of infringements of privacy, defamation, hate speech and incitement to violence.

114. This has brought new challenges for the protection of media freedom and the proper protection of other, sometimes conflicting rights, including state security, ownership and privacy.

115. In Bulgaria in 2011 an investigative journalist Mirolyuba Benatova from the leading private TV channel bTV was the target of a barrage of hate speech online. Press reports said that Benatova was subjected to a deliberate hate campaign by Facebook users and her page was suspended after a group branded her as an enemy of the Bulgarian People.

116. Significantly, the level of public trust in news media among the populations of Europe has not risen in line with the increase in the flow of information and the range of sources of news and opinion.

117. A Eurobarometer poll published in 2011 showed that in the 27 member states of the EU the average level of trust in the written press is 43% (distrust = 51%), although 57% professed to trust radio and 53% trusted television. Only 37% said they generally trusted the Internet. Similar views were found in the countries which are preparing to accede to the EU.

118. Eurobarometer figures also show the decline of print media at the expense of others including the Internet. In the latest published poll TV remained the most popular and influential media, with 87% of respondents across the EU saying they watched it daily or almost every day, compared to figures of 51% for radio, and 48% for the Internet, well above the 36% (a drop of 2% compared to a year before) who read printed newspapers or magazines on most days.

119. **Media Freedom as a core issue for the Council of Europe: The damage to media freedoms in some parts of Europe are a symptom and a cause of erosions of their fundamental rights and freedoms.**

120. The importance of media freedom and freedom of expression as a factor enabling the enjoyment of other basic freedoms was underlined in a new and authoritative report on the relevance of international law on freedom of expression which was issued by the UN Human Rights Committee in 2011 (General Comment 34 on Article 19 of the International Covenant on Civil and Political Rights).

121. Those authoritative international legal experts indicated that freedom of expression is of exceptional importance and should be considered as a founding right or "meta-right". They advised that to protect it all states should review their legislation and practices to ensure compliance with their commitments, and take proactive steps to protect journalists and others exercising their right to free speech from attack and other forms of interference.

122. The events examined here demonstrate the fundamental and close connection between freedom of expression including press freedom and effective institutions underpinning the rule of law: judicial independence, free and fair elections, freedom of assembly for peaceful protests, and accountable government with independent oversight by parliaments and regulatory bodies which operate without pressure or coercion of any kind.

## 5. MEDIA AND ELECTIONS

123. Barriers and threats to media freedom have in some cases distorted the process of elections so that they may not be considered free and fair. Interference in the freedom and independence of the media has contributed to the discrediting of elections since 2010 in **Russia, Armenia, Ukraine, Azerbaijan and Belarus.**

124. In **Russia**, the final report by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the presidential election on 4 March 2012 found that a clear bias on state-controlled television channels in favour of the winning candidate, the then prime Minister Vladimir Putin, played a significant part

together with the exclusion of rival candidates and the partisan use of other state resources in skewing the result in his favour.

125. ODIHR reported that a combination of factors led to an atmosphere of intimidation of the media. The election period coincided with a notable increase in the number of detentions, assaults and threats against journalists in 2011, the year of parliamentary elections, and in the period before the presidential election. And journalists and media outlets faced an increased number of criminal investigations by government agencies.

126. Among the recommendations made was that in future an independent media council, made up of diverse members from the media, civil society, judicial bodies and a range of political parties, should be set up with a mandate to oversee free, equal and fair access to state broadcasters; and that the government should transform the state-controlled broadcasters into independent public service media that would provide citizens with impartial and politically balanced information.

127. In the case of the **Armenian** parliamentary elections on 6 May 2012, a joint delegation of international election observers of the OSCE, the PACE and the European Parliament reported (in preliminary findings) a general lack of public confidence in the integrity of the election process. In the media, the practice by several TV channels of using material taken from paid political advertisements in some of their news coverage damaged the credibility of their reporting.

128. Armenian Journalists' groups, including the Investigative Journalists NGO, reported that the media's political independence and capacity to report freely on important issues in the campaign, including allegations of corruption, were seriously hampered by pressures for self-censorship.

129. Investigative Journalists NGO also reported that incidents of intimidation including personal threats directed at journalists reached the exceptionally high number of 33 between January and September 2011. Three physical assaults on journalists were recorded in the first five months of 2012, including two during the parliamentary elections.

130. Journalists have also faced dozens of libel suits brought by politicians and other public figure, and the 2010 Law on TV and Radio, which gave regulators new powers to award and revoke broadcasting licences, intensified the pressures of broadcasters to avoid or tone down criticism of those in authority.

131. Journalists' groups say that in recent years the growing politicisation of the media has made genuinely independent reporting close to impossible. In practice almost all parts of the press are subject to excessive influence either from the government or from one of the opposition parties.

132. In **Ukraine**, the presidential election of January and February 2010 was marred by blatantly partisan coverage by various media favouring one or other of the two main rival candidates, Viktor Yanukovich and Yulia Tymoshenko. TV channels allowed candidates to pay to appear and to place pre-recorded material on news and current affairs programmes, undermining the principle of media independence and objectivity.

133. The ODIHR election observation mission noted that regional media consistently showed a bias in favour of the regional party or parties in power in each case.

134. ODIHR recommended that rules on coverage of government ministers or others holding public office should forbid broadcasters from giving them privileged treatment in coverage during campaign periods. It also called for the state National Television Company of Ukraine to be transformed into a public service broadcaster. The government has initiated moves to do so and every effort should be made to implement the proposal without delay and in line with Council of Europe standards on impartiality and independence.

135. The conviction and imprisonment after the election of the losing candidate Ms Tymoshenko was widely condemned by the European Union and other European institutions as politically motivated.

136. Critics also accused the authorities of seeking to censor reporting of popular protests and moves for Tymoshenko's release. The Telekritika website, which monitored the news programmes of the TV channel Euronews' broadcasts in the Ukrainian language, reported that unlike the international English version of the output the coverage was altered to play down the size of the protests and the impact of the politician's imprisonment.

137. **Azerbaijan:** The final report of the ODIHR election observer mission to the Azerbaijan parliamentary elections on 7 November 2010 found that the strong pro-government bias of the great majority of media had impaired voters' ability to make an informed choice. The observers concluded that the situation with regard to freedom of expression in the media had deteriorated. All the main TV channels, which are under government control or influence, had given its candidates extensive and positive coverage, while opposition views were largely absent.

138. In particular, the media's freedom to report had been reduced, as the observers wrote "due to violence, detentions, defamation lawsuits and other forms of pressure, as well as impunity for those who commit such acts."

139. Elmar Huseynov, a leading journalist of Monitor magazine was murdered in 2005 and Rafiq Tagi in 2011. Both were known as outspoken critics of the government.

140. A number of physical assaults against media workers have been reported every year. Among those cases, in June 2011 two foreign women reporters, Amanda Erickson who is an American freelance and Celia Davies Briton working for the Institute for Reporters Freedom and Safety were attacked and beaten outside a Baku apartment bloc

141. Two video bloggers, Emin Milli and Adnan Hajizade, were detained in 2009 and remained in jail for over a year on charges including hooliganism after satirising leading politicians in a video posted on the Internet.

142. The International Freedom of Expression exchange (IFEX) in May 2012 reported that seven journalists and two bloggers were detained or serving jail sentences in Azerbaijan on spurious charges.

143. International election observer missions represent an important element in evaluating the condition of media freedom in countries at election times. It should be noted that explicit criticism was voiced by a civil society organisation, the European Stability Initiative (ESI), after a more ambiguous preliminary conclusion was issued in a joint statement on 8 November, a day after the poll, by ODIHR together with the observer teams of the OSCE parliamentary assembly, the PACE and the European parliament.

144. The joint statement concluded that "[while] the election had been characterised by a peaceful atmosphere and all opposition parties participated in the political process, the conduct of these elections overall was not sufficient to constitute meaningful progress in the democratic development of the country."

145. ESI, a non-profit research and policy institute, questioned the basis on which that judgement was made in view of the violations observed and recorded in the management of the election, the manipulation of the media and alleged fraud in the voting itself.

146. In the **Belarus** presidential election in December 2010 the state's overwhelming dominance of mainstream media including TV and newspapers and relentless harassment of critical and independent journalists as well as other civil society representatives and political opponents, led to an international judgement that the election had failed every major test of fairness.

147. Media monitoring organisations including the Committee to Protect Journalists reported two waves of repression against its public critics and the media, aimed at crushing protests against the election fraud and censoring media coverage of events inside the country. In December 2010, immediately after the voting, six members of the independent Belarus Association of Journalists (BAJ) were indicted on what were seen as politically-motivated charges of organising mass protests against election fraud.

148. The offices of the opposition website Charter 97 were raided and computers and files were seized. Its editor, Natalya Radina, was detained for 39 days following her arrest on 19 December 2011 and then fled the country. This severe harassment of Charter 97 editorial members followed the suspicious death in 2010 of Aleh Byabenin, the website's then editor.

149. Andrzej Poczobut, a correspondent for the Polish newspaper Gazeta Wyborcza, was convicted on charges of insulting the Belarus president Alexander Lukashenko and a prominent Belarus journalist Irina Khalip was found guilty of organising protests. Both were given suspended prison terms.

150. Between May and July 2011 at least twelve reporters and media workers were detained or beaten by police while covering a fresh series of popular large-scale peaceful street protests, and police also seized cameras and broadcasting equipment.

## **6. MEASURES TO UPHOLD COUNCIL OF EUROPE STANDARDS AS A FRAMEWORK FOR PROMOTING MEDIA FREEDOM IN MEMBER STATES**

151. The damage caused by attacks on the lives and rights of free and independent media has been acknowledged by the Parliamentary Assembly and the Committee of Ministers, the Secretary-General and other Council of Europe authorities, as well as by the OSCE, the European Union and the UN Human Rights Committee, independent monitoring bodies and stakeholders such as journalists' associations across Europe.

152. Yet the pledges of member states have so far not resulted in effective action to counter and end persistent abuses. The European Federation of Journalists and other stakeholders are expressing increasing levels of frustration.

153. It is necessary to recall the steps taken so far, which have led to at best disappointing results.

### **Previous steps by the Committee of Ministers and the Assembly, and ECHR jurisdiction on the "positive obligations" of states**

154. It will be recalled that on 13 January 2010 the Committee of Ministers adopted the Declaration on measures to promote the respect of Article 10 (freedom of expression) of the European Convention on Human Rights.

155. It acknowledged that in addition to redress for violations, which can be won by successful applications to the European Court of Human Rights, "other means for the protection and promotion of freedom of expression and information and of the media" are essential for any strategy to strengthen democracy.

156. The Committee of Ministers asked the Secretary General to make arrangements for improved collection and sharing of information and enhanced coordination among various Council of Europe institutions, which were to be reviewed after three years.

157. However, two full years have passed without significant actions to follow up the statement of intent by the Committee of Ministers.

158. Fresh moves towards a more effective response were made between December 2011 and March 2012, when the Committee of Ministers, at the request of Austria, held three thematic debates on media freedom.

159. The Secretary-General used the occasion to acknowledge that amid current signs of repression and violations of the rights of media in Europe, media freedom is often a victim of political tensions and conflicts.

160. He also referred to the fact that media associations, among others, have criticised the Council of Europe for being too slow and toothless in the defence of media rights.

161. Of special note was that in December 2011, at the request of the Committee of Ministers, the European Court of Human Rights issued a Research Report on the Positive obligations under Article 10 to protect journalists from violence.

162. It noted: "The Court has held that although the essential object of many provisions of the Convention is to protect the individual against arbitrary interference by public authorities, there may in addition be *positive* obligations inherent in an effect respect [sic] of the rights concerned. Genuine, effective exercise of certain freedoms does not depend merely on the State's duty *not* to interfere, but may require positive measures of protection even in the sphere of relations between individuals."

163. The resulting Decisions of the Ministers' Deputies declared that the Council of Europe should strengthen the visibility and impact of its activities in the field. It called for a toolkit of assistance measures in the field of media freedom to be available on request to member states and to neighbouring countries, and

for a compendium of relevant Council of Europe standards, to be prepared by the Steering Committee on Media and Information Society (CDMSI).

164. These elements, in the view of relevant civil society groups and organisations promoting media freedom and freedom of expression, again fell short of delivering support for practical and tangible programmes and the allocation of significant resources to achieving the goals.

165. The Committee of Ministers has also issued its Declaration and Recommendation (2012) on public service media governance, Recommendation CM/Rec (2011) 8 on the protection and promotion of the universality, integrity and openness of the internet; Guidelines on protecting freedom of expression and information in times of crisis (2007); Declaration on the protection and promotion of investigative journalism (2007); and the Declaration on measures to promote Article 10 (2010).

166. **PACE:** Over recent years the Parliamentary Assembly of the Council of Europe (PACE) has adopted several Resolutions and Recommendations related to media freedom, each of which acknowledged and sought to address the risks and dangers to free and independent journalism in the face of pressures for censorship, interference in the protections for media freedom, or important changes in the environment in which journalists work.

167. In January 2010 the PACE adopted its Recommendation 1897 to the Committee of Ministers on Respect for Media Freedom.

168. Among the specific recommendations were for the Secretary-General to allocate resources to a system of collating information from media freedom organisations identifying violations of media freedom in printed reports and online, in order to focus the attention of the governments and parliaments of member states on important matters requiring remedy.

169. The PACE also called for action to remove significant barriers to the exercise of media freedom in a number of member states, including actions in the field of legislation on counter-terrorism and defamation, fair coverage of elections in the media, the protection of journalists against violent threats, and ensuring that the murders of critical journalists are investigated and those responsible are brought to justice.

170. Among the other texts adopted were Resolution 1877 and Recommendation 1998 (2012) on the protection of freedom of expression and information on the Internet and online media, Recommendation 1950 (2011) on the protection of journalists' sources and Recommendation 1878 (2009) on the funding of public service broadcasting.

171. Earlier the Assembly had adopted Resolution 1535 and Recommendation 1783 of 2007 on threats to the lives and freedom of expression of journalists; Resolution 1438 and Recommendation 1702 (2005) on freedom of the press and the working conditions of journalists in conflict zones

172. The Indicators for Media Freedom in a Democracy, adopted in PACE Resolution 1636 (2008), remain relevant and valuable. They represent a broad guide to the safeguards and protections necessary for free and independent media to flourish, including protection from physical attacks, intimidation and all forms of undue interference and pressure; the maintenance of adequate laws and practices by governmental authorities to ensure freedom of expression and access to information, plurality of the media and the free exchange of information and opinion regardless of borders.

173. Still lacking are effective steps by member states and Council of Europe bodies to achieve the expected compliance with Council of Europe norms and standards which have been accepted but are often not observed.

## **7. INTERNET AND MEDIA FREEDOM**

174. The Council of Europe affirm that rights to freedom of expression apply on the Internet as they do in traditional forms of communication; and that restrictions on that right may only be justified according to strict criteria of necessity in a democratic society, proportionality, and limited duration.

175. The Council of Europe has adopted an important set of Internet Governance principles, which say that the Internet must remain open to innovation and free flow of information and be guarded against the growing trend for it to be used as tool of political repression.

176. However in practice cases of unwarranted blocking and filtering of sites and denial of access to Internet resources have grown more common in many European states.

177. In Turkey as many as 5000 sites were estimated by the OSCE FROM to have been blocked by order of the authorities between 2008 and 2010 in the attempt to enforce restrictions under an array of laws on terrorism, state security and insult which have been very widely criticised as outdated and contrary to European human rights standards.

178. For a matter of years the government ordered Internet Service Providers to block the Youtube site after videos were posted there which denigrated the state's founding figure Mustafa Kemal Ataturk and the Turkish flag. Google and other popular sites were also blocked.

179. In all parts of Europe, in addition to government interventions, ISPs and search engines have increasingly been placed in a position where they can or must monitor, filter and take down controversial or contested content. Often they decided to self-regulate to pre-empt government regulation.

180. The Internet has also opened the way for new forms of unwarranted and sometimes secret surveillance, by states as well as commercial and other interests.

181. The 2006 EU Data Retention Directive prescribes surveillance at regional level in public interests in national laws. It calls on the 27 EU member states to require their telecommunications service providers to retain data records for a minimum of six months, to enable investigations into illegal or criminal content, and for terrorism-related and security purposes. The directive has faced legal challenges in a number of states.

182. Attempts to extend international legal protections of intellectual property rights on the Internet have raised serious concerns among organisations which defend freedom of expression.

183. The Anti-Counterfeiting Trade Agreement (ACTA), which is described by proponents as an important global anti-piracy measure, has been signed by more than 20 European states. It aims to harmonise international rules that protect the rights of films, music, fashion and products such as pharmaceuticals that may fall victim to intellectual property theft.

184. But critics, including the international freedom of expression organisation Article 19, contend that ACTA and similar agreements may encourage governments and commercial interests to increase unwarranted surveillance of internet users, and that the agreement will restrict freedom of expression by imposing drastic penalties for even the most trivial infringements.

## **8. THE CIRCUMSTANCES OF THE KILLING OF JOURNALISTS IN EUROPE, OCTOBER 2009 TO MAY 2012**

185. There follows a summary of the circumstances surrounding the killings of journalists in Europe since October 2012. In many cases the victims had earlier been threatened with violence or faced prosecution or jail for their work.

186. Azerbaijan 23 November 2011: Rafiq Tagi, an outspoken critic of radical Islamic practice and governments of Azerbaijan and of Iran, died four days after suffering multiple stab wounds in an attack outside his home in Baku. He had reported for Radio Free Europe/Radio Liberty and several newspapers. He had previously received threats to his life and had been jailed in 2007 on charges of inciting religious hatred.

187. Belarus 3 September 2010: Aleh Byabenin, the director of the critical news website Charter 97, was found hanged at his summer house outside Minsk. His family reported signs of serious injuries on his body and rejected the official explanation of suicide. Byabenin had reported on cases of corruption and human rights abuses. He had previously received threats. In 2011 the Charter 97 website was reportedly one of those which were blocked by order of the government.



188. Bulgaria 5 January 2010: Boris Nikolov Tsankov, a journalist and author specialised in reporting on organised crime, was shot and killed by gunmen on a busy Sofia street. Two of his companions, believed to be bodyguards, were also wounded. His killing followed the murder of the author of books about the Bulgarian crime underworld, Georgi Stoev, who was killed in 2008. Tsankov had received death threats and had reportedly survived two bomb attacks on his home several years earlier.
189. Greece 19 July 2010: Sokratis Giolia, the director of the radio station Thema 98.9 FM and manager of a popular political blog Troktiko was shot several times by unidentified men outside his Athens home after being lured outside. The authorities cast suspicion on an extremist revolutionary sect. Colleagues of Giolia reportedly stated their belief that he was killed because of his investigative journalistic work.
190. Latvia 19 July 2010: Grigorijs Nemcovs, the publisher of the investigative Russian language newspaper Million and a local politician, was shot and killed in a café in Daugavpils in a suspected contract killing. He had previously received death threats and his home had been attacked by arsonists in 2007.
191. Russia (Kaliningrad) 16 November 2009: Olga Kotovskaya, long-time director of the independent TV and radio company Kaskad died when she fell from the 14th floor of a building,. At the time she was involved in a court battle over control of the company. The Glasnost Defense Foundation reported that her death occurred soon after her legal challenge was upheld, and that her colleagues believe she was murdered.
192. Russia (Dagestan) 11 May 2010: Shamil Aliyev, the director of the popular radio stations Pribol and Batan and of TNT-Makhachkala TV network was shot dead by unknown gunmen at a site where a new facility was under construction. A man identified as a bodyguard was also killed.
193. Russia (Dagestan) 21 May 2010: Sayid Ibragimov, director of a local TV station, TBS, was killed together with four technicians while driving to carry out engineering work on a transmitter. His car was ambushed and a group of suspected militants set off an explosion and attacked with firearms.
194. Russia (Dagestan) 11 August 2010: Magomedvagif Sultanmagomedov, a Muslim scholar and head of Makhachkala TV and the Nurul Irshad (Light of Truth) publishing house was fatally injured when unidentified gunmen opened fire on his car while he was driving through the streets of Makhachkala, the capital of Dagestan. He was described as a vocal opponent of Wahhabism, and had reportedly survived an attempt on his life in 2008.
195. Russia (Dagestan) 8 May 2011: Yakhya Magomedov, a journalist and editor of the Avar language Islamic newspaper As-Salam, died when he was shot four times by unidentified persons in the Khasavyurt district.
196. Russia 22 June 2012: Anatoly Bitkov, chief editor of Kolyma Plus, a regional TV company, was found dead with multiple stab wounds at his home in Magadan on the Sea of Okhotsk in the Russian Far East.
197. Russia (Dagestan) 15 December 2011: Hadzhimurad Kamalov, founder and writer on the independent daily newspaper Chernovik, was shot several times and killed by an unidentified gunman late at night when leaving his office. He was a well-known critic of official abuses and corruption, and was murdered on the date set aside to commemorate all Russian journalists who have died because of their profession. He and other Chernovik journalists had been threatened, and several of its other journalists had been charged with extremism after accusing regional authorities of corruption and abuses.
198. Turkey 18 December 2009: Cihan Hayirsever, the editor of the daily Guney Marmara'da Yasam was shot three times near his office in Istanbul and died from his wounds later in hospital. Colleagues said he had been threatened because of his reports about corruption.
199. Turkey 4 April 2010: Metin Alatas, a reporter for the Azadiya Welat newspaper was found hanged from a tree in the district of Adana in the mainly Kurdish south-eastern region of Turkey. Colleagues reportedly disputed the official presumption of suicide. Alatas had received threats and had been attacked and injured by a group of men the previous year.
200. Turkey 9 November 2011: Cem Emir and Sebahattin Yilmaz, two Turkish journalists working for the Dogan News Agency, died when an earthquake caused the collapse of the hotel where they were staying while on assignment in the city of Van in eastern Turkey, covering the devastation caused by an earlier earthquake in the area.

201. Ukraine 11 August 2010: Vasyl Klementiev, editor of the Kharkiv-based newspaper *Novy Stil*, was investigating a case of alleged corruption when he was apparently abducted. Only his mobile phone was found in a reservoir near where he was last seen alive.

## 9. VIOLENT ATTACKS AND PROSECUTIONS OF JOURNALISTS: THE USES AND RESPONSIBILITIES OF STATE POWER

202. While the number of journalists' deaths linked to their work is not greater than in the previous three-year period, 2007-2009 (when 20 journalists were killed, including 4 during the 2008 armed conflict between Russia and Georgia on Georgian territory) the incidence of non-fatal attacks is similar or higher.

203. Some cases which have been followed closely by the PACE exemplify the way in which patterns of violence against journalists have frequently been followed by inadequate investigations or none at all, leading to renewed journalistic pressures and a fresh round of clashes between media and governments or other vested interests, a loss of trust in rule of law, and to further assaults aimed at silencing the questions and criticism.

204. **Russia:** In November 2010 Oleg Kashin, a reporter for the independent business daily *Kommersant*, was brutally beaten by two men outside his home in Moscow. His attackers struck him with full force on the head and body with metal bars for over a minute before escaping. The attack was recorded on a video which was later widely circulated, and it drew widespread public condemnation, including from the then Russian President Dmitry Medvedev.

205. The case was widely seen as a test of the ability of Russia's political leaders and the investigatory authorities to fulfil their public pledges to bring Kashin's attackers to justice.

206. Reports about the investigation pointed to possible links with organisations associated with the federal and local government authorities, including a youth group known for staging provocative events in support of the governing party and the federal government leadership. Yet more than a year after the attack no progress had been announced, leading monitoring organisations to allege that powerful figures in the Russian political establishment were being protected from investigation.

207. Kashin is one of a number of journalists who have been assaulted in the Khimki area (Moscow region) after reporting on allegations of corruption among various regional government officials, including those related to a highway construction project through the Khimki natural forest. He had previously been threatened with violence. Despite the severity of the attack Oleg Kashin was not permanently disabled.

208. In 2008, however, Mikhail Beketov, a journalist working in Khimki for the *Khimkinskaya Pravda* newspaper, suffered disabling injuries in an attack by a group of men wielding metal bars who broke his skull, smashed the fingers of both his hands and broke several of his bones.

209. The appalling injuries meant that he suffered the amputation of a leg and was left unable to speak. The authorities failed to arrest and charge Beketov's attackers, but the journalist himself was convicted in a court for slander against Khimki's mayor, whose resignation Beketov had called for before he was attacked. His attackers have not been identified or caught.

210. In April 2012, Elena Milashina, a journalist for the opposition publication *Novaya Gazeta*, was brutally beaten on her way to her apartment. Her work often focused on exposing the operations of the Russian government in the Caucasus.

211. On 29 May 2012 Sergei Aslanyan, a radio journalist for *Mayak* radio, was stabbed several times in the neck and body by a masked man outside his southern Moscow home.

212. **Azerbaijan:** The case of Eynulla Fatullayev, the editor of *Realny Azerbaijan*, who was jailed from 2007 to 2011 on what the European Court of Human Rights ruled in 2010 to have been fabricated charges, points to the long-term damage associated with entrenched patterns of impunity, the repeated failure to bring perpetrators of abuses to justice. It can generate a cycle of repression, marked by further confrontations and reprisals, leading to what human rights experts see as a systemic breakdown of necessary safeguards for free speech and media freedom.

213. In 2007 Fatullayev published an article about the murder in 2005 of his former colleague Elmar Huseynov, the editor of Monitor magazine and a well-known critic of government policies. In his article Fatullayev accused the authorities of obstructing the investigation and raised allegations of official complicity in the death of Huseynov.

214. Afterwards Fatullayev and members of his family received death threats. Later in 2007 he was sentenced to jail, initially on libel charges and later on other charges including terrorism. In March 2010 the European Court of Human Rights ruled that all the charges against him were unfounded, that his rights to a fair trial and to freedom of expression had been violated, and that he must be released at once.

215. However the Azerbaijan authorities kept Fatullayev in prison for another year on new and unconvincing charges related to the possession of drugs. He was released in May 2011 following the announcement of a pardon by the country's president.

216. Throughout the past seven years journalists' organisations and others including the OSCE Representative on Freedom of the Media have called for accountability for the killing of Huseynov. The International Freedom of Expression Exchange (IFEX) says that violent attacks against journalists have continued to grow since his death in 2005 and that the authorities bear responsibility for failing to bring the perpetrators of those attacks to justice.

217. The hosting of the Eurovision Song Contest in Baku May 2012 brought renewed international attention to Azerbaijan's failures to comply with European norms and standards.

218. Article 19 reported that at least 6 journalists were detained without proper cause at the time of the event, together with several human rights defenders and government critics.

219. On April 18 2012, a few weeks before the prestigious international event, a serious assault occurred when security staff of the state oil comp SOCAR beat 5 reporters including Idrak Abbasov, who works for the newspaper Zerkalo and the Institute for Reporter Freedom and Safety, a Baku NGO, as they covered the demolition of houses in a Baku suburb on land owned by the company – although they identified themselves as press.. Abbasov suffered concussion and facial injuries.

220. The Eurovision contest took place while the government enforced drastic and forceful measures to prevent protests from being seen by large numbers of foreign visitors and a mass television audience.

221. The European Broadcasting Union (EBU) was severely criticised by a group of international press freedom and human rights organisations, including Article 19, for what they said was the EBU's failure to use the occasion to challenge the Azerbaijani government over its repression of free media in the country or to secure commitments to remedy the persistent violations of press freedom.

222. The EBU's General Assembly in 2010 adopted a Declaration on freedom of expression, media independence and democracy which was conveyed to President Ilham Aliyev in person. However the Azerbaijani authorities publicly refused to enter into a meaningful dialogue about the well-documented record of abuses, rejecting the criticisms as inaccurate and merely as smear campaign against Azerbaijan.

223. The episode highlights the responsibility of international public and professional organisations to speak out and to press consistently for states and public bodies to honour commitments on media freedom and freedom of expression.

224. **Turkey:** In Turkey the repercussions of the 2007 murder of Hrant Dink, a celebrated Turkish journalist of Armenian origin, have continued to be felt because of multiple failures of the subsequent investigation and severe weaknesses of the judicial process. The Committee to Protect Journalists and other monitoring organisations consider that the Turkish authorities have allowed impunity to flourish by failing to exercise due diligence in the investigation and prosecution in order to ensure that the masterminds and key accomplices in the carefully-planned killing are caught and punished according to law.

225. The Turkish state has faced intense criticism in recent years for using a large number of controversial national laws to prosecute journalists on charges related to terrorism, membership of illegal organisations and insulting Turkish state institutions (Article 301). Hrant Dink had himself been prosecuted and convicted under Article 301 before his death.

226. In September 2010 the European Court of Human Rights ruled against Turkey for failing to meet its “positive obligation” under the European Convention to protect Hrant Dink against the fatal attack, despite repeated threats of violence directed against Dink. The Court also found that Dink’s right to freedom of expression under Article 10 of the convention had been violated because his conviction for “denigrating Turkishness” had added to a public perception of him which had led to his murder by an extreme nationalist.

227. In July 2011 a young man of known nationalist views was sentenced to a prison term of over 20 years for shooting Hrant Dink; but Dink’s family and human rights groups maintain that justice has not been done because the masterminds of the killing have not been convicted.

228. A number of police, security officials and others were prosecuted for various degrees of involvement in the murder, but the judicial and disciplinary punishments imposed on some of them were light or trivial, while others escaped without any penalty.

229. **In Ukraine** the disappearance and suspected abduction in 2010 of Vasyl Klementiev has refocused attention on the evident fragility of the country’s judicial system, especially in cases involving attacks on journalists.

230. In spite of statement soon afterwards by President Yanukovich that everything must be done to find those responsible for kidnapping Klementiev, the investigation has still not led to any arrests.

231. The independence and competence of Ukraine’s judicial system have been placed in doubt over the continuing failure to properly investigate the murder and decapitation in 2000 of Georgiy Gongadze, an investigative journalist and founder of the *Ukrainska Pravda* (Ukraine Truth) website.

232. Although three former police officers were jailed in 2008 after being convicted in connection with the killing, the Ukrainian authorities have consistently faced accusations of obstruction and delays which have served to keep the identity of the masterminds of the crime hidden.

233. In 2005 the European Court of Human Rights ruled against Ukraine for failing to protect Gongadze’s life or to investigate his death. A Ukrainian parliamentary committee recommended that a criminal case should be opened against the country’s former president Leonid Kuchma was not actively followed up; and an important witness, a former interior minister Yuri Kravchenko, was found dead in suspicious circumstances before he could be questioned about the case.

234. In March 2011 Leonid Kuchma was indicted on charges of abuse of office, based on secretly taped conversations between him and others. But in December 2011 that case against Kuchma was dropped, on the grounds that the evidence was not admissible.

235. Meanwhile in April 2011 the trial began in Kiev of Olexiy Pukach, a former Interior Ministry official, who had reportedly confessed to playing a direct part in the murder of Gongadze. But journalists and other members of the public have been barred from the proceedings.

236. The Committee to Protect Journalists (CPJ) described the secrecy and irregularities in the Pukach trial and the previous failures to deliver prompt and impartial justice as significant setbacks in the fight against impunity.

237. The CPJ reported that in 2011 journalists in Ukraine continued to face persistent danger from threats and physical attacks, and suffered censorship.

238. In March 2010 Vasyl Demyaniv, the editor of independent newspaper *Kolomoyskiy Vestnyk*, suffered a fractured skull and knee injuries when he was attacked in a public street. Two defendants were convicted and the motive was said to have been robbery, but Demyaniv stated that the two convicted men were innocent and that he had been attacked in retaliation for critical reporting on local government issues.

239. The Institute of Mass Information, a Kiev-based media monitoring organisation, reported that at least 25 physical assaults took place against journalists because of their work during the period from 2010 to 2011. The IMI disputes a claim by the Interior Minister that the great majority of those attacks against journalists are unrelated to their work. The IMI says that in at least ten cases the perpetrators were law-enforcement agents or other public officials.

## 10. LIBEL LAWS

240. **Libel and insult laws:** A majority of states in all quarters of Europe, including France, Germany and the Scandinavian and Nordic states which associate themselves publicly with the principle of media freedom still maintain criminal laws on defamation, despite the international consensus that libel and insult laws should only be treated as civil offences and should never by themselves attract a custodial sentence.

241. Even if such provisions may not have been used for many years, their continued existence on the statute book of the state sets a negative example to other states where journalists and others face the real danger of being criminally charged, and so forced to suspend or interrupt their professional work, or of being jailed because of criminal libel or insult laws.

242. UK libel laws have been strongly criticised as being overly favourable to plaintiffs and against defendants – often from the media -- because it was believed that the burden of proof is placed too heavily on the defendant, and the costs of litigation are prohibitively high. The UK has earned the reputation of being the libel capital of the world, as wealthy and powerful figures from other countries sought and were permitted to have their lawsuits heard in London courts.

243. A recent Oxford University study stated that the average libel lawsuits cost defendants 140 times more in England than in other parts of Europe. In May 2012 a bill for fresh libel legislation was announced which campaigners for reform say includes improvements but may still be unsatisfactory.

244. In many parts of Europe libel laws represent one of the major causes for the stifling of free and inquiring journalism because of journalists' fear of criminal or civil legal actions which may lead to negative or even catastrophic consequences.

245. In Turkey, even after some limited legislative reforms, criminal laws which give special protection to state officials, the armed forces and other national institutions are routinely used to prosecute and imprison journalists, writers and others, in violation of European standards.

246. Criminal suits for libel are also common in Azerbaijan.

247. In Armenia, professional journalism continues to be severely handicapped by the country's legal regime regarding insult and defamation, despite the decriminalisation of libel in 2010. The change in the law was followed by more than 30 civil defamation cases, many brought by senior officials or politicians against the media. Journalists' organisations have protested that the new law fails to meet Council of Europe standards and makes it hard for journalists to investigate and expose official corruption and other abuses.

248. A number of Armenian cases resulted in newspapers being ordered to pay very high fines and damages. In the case of Haykakan Jamanak (Armenian Times) the newspaper had to pay 6 million Armenian dram (US \$ 16,000) to each of three MPs who sued it successfully. The paper was able to pay the fines with the help of donations from its readers.

249. In Bulgaria government officials have brought several defamation cases against journalists who reported on issues of corruption or mismanagement, and fines are often punitively high - up to 20,000 lev (10,000 euro), in a country with an average monthly salary of 300 euro.

250. In Italy in 2009 the then prime minister Silvio Berlusconi opened libel suits against the newspapers La Repubblica, L'Unita, El Pais and Le Nouvel Observateur over their coverage of scandals related to his personal conduct.

251. In Moldova several civil defamation cases against the Ziarul de Garda newspaper were won in August 2011 by prosecutors who sued the paper (€ 30,000) over its reporting about their alleged wrongdoings. The verdict was criticised for failing to take account of the public interest defence provisions in the country's recently-enacted Law on Freedom of Expression. An appeal was lodged with Moldova's Supreme Court.

## 11. PUBLIC SERVICE BROADCASTING AND ALLOCATION OF COMMERCIAL BROADCASTING LICENCES

252. The Council of Europe sets high store by Public Service Media (PSM) as a public source of unbiased information and diverse political opinions which should serve to strengthen democracy.

253. In their Declaration on public service media governance of 15 February 2012 the Ministers' Deputies called for PSM to achieve high standards of impartiality, objectivity and fairness, with clear safeguards enshrined in the rules for PSM governance to ensure that appointments are not politically motivated and that they serve the needs of all, including minorities. To succeed, it is essential that they remain independent from any political or economic interference.

254. In reality public service broadcasting organisations in many parts of Europe have experienced political pressures or interference to varying degrees, which have called their independence into question and in some cases undermined public trust.

255. Systematic political interference, together with intense competition from some 7000 privately-owned TV channels and other broadcasters as well as shortages and insecurity of funding have in some cases placed the viability of public service broadcasting in doubt.

256. In France there was serious concern about deepening political interference when in 2009 President Sarkozy forced through strict limits on its on-air advertisements in the face of journalistic protests and took over the power to appoint the directors of the public TV stations including the flagship France 2 himself.

257. In Italy concerns about political interference in RAI, the public broadcasting service, were present especially during Prime Minister Berlusconi's term of office over most of the past ten years. They were based on the fact of the influence exerted by his party on senior editorial appointments and his public pronouncements denouncing media that were critical or hostile to himself. The favourable coverage of Mr Berlusconi in some of RAI's output pointed to a pattern of editorial interference; and in 2011 shortly before he left office he was accused of pressuring the broadcaster to stop broadcasting a highly critical programme, Annozero.

258. Experts have stated that in central and eastern Europe politicians treat public service television as their "personal property", and that political interference has become endemic in some EU states through party influence on television, the most important media in the region.

259. Two staff members of the international organisation Article 19, Boyko Boev and Barbora Bukovska, writing in the book *Human Rights and a changing media landscape*, published by the Council of Europe in December 2011 under the direction of the Commissioner for Human Rights Thomas Hammarberg, cited examples from a recent study by the Institute of European Media Law which indicate that:

260. *Technological developments and the liberalisation and opening up of the airwaves to commercial and community broadcasting have not significantly lessened government control over PSM supervisory bodies.*

261. *The study revealed political influence on the Albanian public broadcaster RTSH especially during election periods. In Bosnia and Herzegovina political parties attempt, in parliament, to appoint "their people" to the steering boards of PSM. In Kosovo<sup>3</sup>, the deputy head of the government influenced the nominations for elections to the board of RTK, the public service broadcaster, by taking part in the last round of nominations discussed by the responsible parliamentary committee.*

262. *In Romania, PSM are controlled by the parties with a majority in parliament; the latter can dismiss the PSM board by not approving an annual activity report, and can both nominate and elect the board, whose chairman is also an executive director of PSM.*

263. In May 2012 Croatia HRTV, staff of the public service television broadcaster and international NGOs protested against plans by the management to dismiss several highly-regarded journalists. The OSCE Representative on Freedom of the Media, Dunja Mijatovic, criticised the threats of dismissal and accused the

---

<sup>3</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Croatian national broadcaster of using draconian means to dismiss journalists critical of the media freedom situation in Croatia, and so silence critical voices.

264. In Hungary the Media Council set up under the controversial new media laws announced its decision in 2011 to withdraw the FM broadcasting licence of the leading independent radio station Klub Radio. Klub Radio later won an appeal to overturn the decision in court.

265. In Ukraine an appeal has been lodged at the European Court of Human Rights against a decision to withdraw broadcasting licences from the independent channels TVi and Channel 5 had frequencies. Critics maintain that the decision was motivated by an improper intention to benefit a rival company in which a senior security official has a personal interest.

266. Ukraine has said it wishes to transform the state broadcasters into public service media and should be assisted to do so for the benefit of the whole society.

267. In Armenia the Law on TV and Radio tightened control broadcast media on the grounds that new measures were needed during the digital switchover. The revoking of the licence of the opposition-supporting TV station A1 led to a judgement from the European Court of Human Rights which was critical of the state's handling of the matter.

268. In "the former Yugoslav Republic of Macedonia" the authorities' harsh treatment of A1 Television, which established a large audience after becoming the first privately-owned channel in the country after the end of communism and which has now been closed down, was seen in part as a device to stifle opposition voices for electoral advantage.

269. The report of the international election observer mission to the early parliamentary elections in "the former Yugoslav Republic of Macedonia" on 5 June 2011, made up of delegations from ODIHR, the OSCE parliamentary assembly and the PACE, mentioned that several ODIHR observers had concerns about the freezing of the bank accounts of A1 Television and the three newspapers in the same media group. Many perceived the investigations as politically motivated, they said.

270. These examples suggest that concerted efforts need to be made to make sure that the external governance of PSMs operates in a way which is genuinely independent from the state and from all political or other vested interests.

271. It is also necessary to improve and maintain professional quality and a public service ethos, and secure system that may provide adequate long-term funding for public service television and radio broadcasters.

272. The most appropriate action by states which maintain ownership or control of news media is to end all forms of state direction or control to genuine public service media, with editorial and operational independence from the state.

## **12. FREEDOM OF INFORMATION**

273. Council of Europe states should follow best international practice by placing government information of public interest in the public domain, together with the necessary procedures to meet requests for access to the information, with only strictly limited exceptions.

274. The majority of European countries have enacted freedom of information laws but many of them are too restrictive to advance the cause of open government significantly. Others, such as that in the UK, give an Information Commissioner substantial powers to adjudicate on the release or otherwise of sensitive documents kept out of the public domain by government.

275. The European Convention on Access to Official Documents was opened for signature in 2009 but fewer than half of the member states have signed it.

## **13. OTHER CASES THAT RAISE CONCERNS ABOUT PROTECTION OF MEDIA FREEDOM**

276. What follows is a summary of some other cases which raise concerns about barriers to media freedom and freedom of expression within European states or across borders:

277. In Austria a discrepancy between the criminal law codes of two states has led to a situation where two journalists have for two years faced the threat of being sent to jail although they have broken no law in their own country and claim that their reports were in the public interest.

278. The journalists of the news magazine "profil" have been named as criminal suspects by Austrian prosecutors after German justice authorities indicted them for breaking a German law against quoting from official documents in a judicial process, although such an offence does not exist under Austrian law. The magazine asserts that the public has a right to be informed about the case, which concerns allegations of fraud at a bank that was bailed out with public funds. The case remains unresolved.

279. Bulgaria: Journalists' groups and media monitoring organisations report that large parts of the Bulgarian media have become corrupted by the practice of publishing "paid-for" stories, including during election periods, as normal news reports designed to advance the interests of the sponsor or to denigrate a rival. Those who commonly pay for favourable coverage include political and business leaders and organised crime groups.

280. In 2011 the Bulgarian section of the Association of European Journalists conducted a survey of over 100 active journalists which found that more than half of them had experienced undue political pressure about the content of their reports. Most also indicated that they believed advertisers were able to influence media outlets not to report in a critical way about their business activities.

281. In Cyprus the stalemate in attempts to reach a long-term settlement between the Greek and Turkish Cypriot communities is negatively affecting cross-border contacts among journalists on each side of the divide, a situation which in turn makes it harder for the populations on both sides to understand each other's concerns and to conduct a fruitful dialogue.

282. Turkish journalists are routinely prevented from entering the Republic of Cyprus from the self-styled Turkish Republic of Northern Cyprus in the northern part of the island, and Greek Cypriot journalists are unwelcome in Turkey. Thus the deeply unsatisfactory situation which emerged on the island after the 2004 referendum vote -- in which the Republic of Cyprus (the Greek Cypriots) voted to reject the UN settlement plan while the Turkish Cypriots strongly endorsed it -- still persists. This is to the detriment of the important objective of removing longstanding barriers to free movement of media staff and free and open reporting of the affairs of both communities there.

283. In Germany, the importance of effective legal protection for whistle-blowers as a safeguard for the public interest was illustrated by the case of a nurse who suffered the loss of her job after she exposed the fact of persistent maltreatment of elderly patients. Birgitte Heinisch failed to win recognition of the rightness of her action in the German courts but in July 2011 the European Court of Human Rights ruled in her favour.

284. Those in authority at all levels -- as members of governments and officials, legislators, supervisory authorities and supervisory regulators as well as the media -- must be alert to the need to maintain formal procedures for reporting abuses and to support all those who disclose any form of abuse or corruption, as a matter of public interest.

285. Spain: The Federation of Spanish Journalists in 2012 demanded an end to the growing practice by political parties and others of holding press conferences and other working events for the media at which no questions are allowed. In some cases the journalists are obliged to receive prepared video material from their key political sources, with no chance to do their own filming and reporting.

286. Those are practices that violate the right of journalists to gather material for their reports freely as they choose, and deny the public the right to multiple sources of information on matters of public importance.

287. Journalists groups including the AEJ say that quality journalism has suffered deeply from the growing politicisation of what the media report, under pressure from owners who use the news organisations they control to promote their own political or business interests.

288. UK: Concerns were raised over official barriers placed in the way of reporting on state involvement in unlawful renditions by the American CIA, and allegations of torture of terrorism suspects in US custody in third countries.



289. Several TV channels unsuccessfully contested demands by police to hand over unused video footage of scenes during the violent rioting and looting that took place in several UK cities in August 2011. The companies argued that if they consented to do so camera crews and reporters would in future be seen as informants on behalf of the police, which might make them targets of hostility or violence in future. The authorities argued that public interest required all available evidence to be gathered.

#### 14. CONCLUSIONS

290. The Committee's activities and work in the field of the protection of media freedom could be enhanced and strengthened by requesting more frequent situation reports for its consideration; the collection and presentation of updated information related to violations of all kinds from journalists' organisations and expert non-governmental organisations; and more regular hearings and discussions on political actions.

291. On the basis of these findings the PACE Committee on Culture, Science, Education and the Media may wish to consider these points in connection with further responses to the threats to media freedom in Europe:

- (1) The European Court of Human Rights affirms the key importance of freedom of expression as one of the preconditions for a functioning democracy and the vital role of the media as a public watchdog
- (2) There is a need, as the Committee of Ministers has recognised, for additional measures to protect the safety of journalists, media freedom and freedom of expression besides the redress available from the European Court of Human Rights.
- (3) The measures adopted until now have not been effective in significantly improving the situation of journalists' protection from physical harm or arbitrary arrest and prosecution.
- (4) Rulings of the European Court of Human Rights have established that effective exercise of certain freedoms does not depend merely on the State's duty *not* to interfere, but may require positive measures of protection.
- (5) Media freedom is truly effective only in an environment where other fundamental rights are protected; the judiciary and public bodies act in a genuinely independent way, and government authorities are accountable to the public through free and fair elections.
- (6) The safety and rights of journalists are safeguarded by measures which ensure that laws on state security and counter-terrorism also take due account of the provisions of Article 10 of the ECHR protecting freedom of expression.
- (7) Member states (with one derogation) pledged at the 2009 Ministerial conference in Reykjavik in 2009 to review national anti-terrorism laws to ensure they conform with the obligation under the ECHR to uphold freedom of expression; that undertaking has should be fulfilled.
- (8) Civil society representatives and professional associations should be consulted and their views taken into account more fully in response to urgent and persistent needs, all the more so in the age of the Internet and in view of the need for Council of Europe member states to function as open and responsive democracies.
- (9) In line with the recommendation of the Venice Commission (Report of March 2012 on measures to improve the democratic nature of elections in Council of Europe member states), state-owned media should be subject to rules of equity and equality in the way they report elections; the Commission states that is currently one of the most violated of principles.
- (10) The European Court of Human Rights has stated that Freedom of Expression is an essential foundation of democratic society and the media have a vital function as a "public watchdog" by virtue of their role imparting information and ideas of public interest. So any restrictions to freedom of the press have to be justifiable in pursuit of a very limited number of other things needed for a democratic society, and the reasons must be compelling and narrowly interpreted.

(11) The Council of Europe promotes free and inquiring journalism which serves the public interest by scrutinising the actions of government authorities and promoting an informed public debate. In accordance with the case law of the European Court of Human Rights, member states also acknowledge that there is a public interest in freedom of expression itself.