

## ENNHRI submission to European Commission call for evidence on safeguarding media freedom and pluralism in the EU internal market (Media Freedom Act)

In the context of the [Commission work programme 2022 - Making Europe stronger together](#), the European Commission has launched [an initiative](#) to establish a common framework to increase the transparency, independence and accountability of actions affecting media markets, freedom and pluralism within the EU. This initiative is part of the EU's efforts in promoting democratic participation, fighting disinformation and supporting media freedom and pluralism as set out in the [European Democracy Action Plan](#).

[ENNHRI's](#) submission to the Commission's call for evidence provides information reported by National Human Rights Institutions (NHRIs) across EU Member States on the challenges concerning media freedom and pluralism identified at national level.

On the basis of shortcomings reported by NHRIs in the EU, ENNHRI recommends the Commission to establish a binding, legislative instrument to introduce common standards to enhance media market's transparency, pluralism and media freedom in all EU member States. Furthermore, a new EU framework for independent and pluralistic media would benefit from a governance arrangement based on the leading role of the European Commission with support of ERGA.

ENNHRI remains available to cooperate on this initiative, as well as other EU instruments related to the implementation of the Charter of Fundamental Rights and the rule of law, with a view to support and protect media freedom and pluralism in all EU member States.

### **Overview of challenges concerning the internal media market, media freedom and pluralism at national level reported by NHRIs**

Based on the monitoring and reporting conducted by NHRIs for ENNHRI's submission to the Commission's 2022 Rule of Law Report, ENNHRI would like to draw the Commission's attention to the practices and shortcomings identified by NHRIs, concerning the media market sector in their countries and their possible impact on media freedom and pluralism.

First of all, it is worth noting that ENNHRI members in several Member States pointed to a general decline in media freedom and pluralism over the past year. This was mentioned as a general concern especially by ENNHRI members in Croatia, Greece, Luxembourg, Poland, Romania, Slovakia and Slovenia.

Various problematic issues are raised by ENNHRI members as regards media freedom and independence. These range from political pressure on independent media, as reported in Poland, and on public service media, as reported in Slovenia, to weak media authorities, as ENNHRI member alerts in Ireland.

Most importantly, media freedom and pluralism are affected by high risks of concentration, also in countries with a traditionally enabling media environment such as Finland, as well as the lack of transparency of media financing and ownership, as reported in Greece, Slovakia and Slovenia. In Poland, the NHRI reports about attempts to “re-nationalise” the media market, while ENNHRI members in Finland and Hungary regret unequal conditions in the access to public service media content, in particular for minorities.

More specific information on country-specific challenges concerning the media sector in the EU is included in the Annex to this submission. The Annex consists of NHRIs’ country reports on media freedom, pluralism and safety of journalists, which will be part of the soon-to-be published ENNHRI 2022 Rule of Law Report.

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## About ENNHRI

ENNHRI is the European Network of National Human Rights Institutions. We bring together over 40 National Human Rights Institutions (NHRIs) to enhance the promotion and protection of human rights in Europe. Our network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level.

## ANNEX - Country reports on media freedom, pluralism and safety of journalists

From: ENNHRI 2022 Rule of Law Report

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### Belgium

*Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH), Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia), Federal Migration Centre (Myria) and Combat Poverty, Insecurity and Social Exclusion Service*

#### Media freedom, pluralism and safety of journalists

The Brussels Criminal Court handed down a judgment on 13 April 2021 in the case Djunga and unambiguously condemned the dissemination of hate messages online. In September 2018, Cécile Djunga, a journalist of the public television (RTBF), published a video on social networks in which she expressed her suffering following the racist messages she had been the target of since the beginning of her career. In reaction to this video, several hate messages were sent to her and her employer. The investigation identified the author of one of these messages with particularly hateful and threatening content: "[...] Africa will always welcome you with open arms if you find Belgium so unbearable! If you were to be attacked (hopefully fatally) I would not denounce your attacker I would congratulate him or her!". This was not the first time that the author had expressed himself in this way. He was therefore prosecuted both for his remarks against Cécile Djunga and for other publications with racist and antisemitic content.

Belgium is ranked 11 in the 2021 World Press Freedom Index.

#### *References*

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- (2) 2021 World Press Freedom Index – Belgium : <https://rsf.org/en/belgium>

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## Croatia

*Ombudswoman of the Republic of Croatia*

### **Media freedom, pluralism and safety of journalists**

In the opinion of the Croatian NHRI, the situation of media freedom, pluralism and safety of journalists has deteriorated throughout this past year.

In the first pandemic year (2020), journalists were less likely to be exposed to threats and physical attacks, and such excesses were mostly associated with reporting lockdown violations.

However, in 2021 not only the number of threats and attacks on journalists increased, but the motives and causes expanded as well. Although a significant number of attacks were related to media coverage of the COVID-19 virus, there were threats and intimidation towards journalists who were on different work assignments. Also, in addition to hate speech, threats, and physical attacks, in 2021 journalists were increasingly exposed to the so-called Strategic Lawsuits Against Public Participation (SLAPP).

Data published by Platform for the Protection of Journalism and the Safety of Journalists at the Council of Europe, also support the conclusion on the increase in violence against journalists and significant deterioration in their safety in 2021. Namely, while in 2019 the Platform recorded two media threat alerts, one such case was reported in 2020 and as many as eight in 2021.

Practice that continued into 2021, negatively affecting the independence of journalists and the ability to pursue their profession, are SLAPP lawsuits.

SLAPP presents a threat to public debate since intimidated targets, in this case journalists, might start to censor themselves in order to avoid new lawsuits. Such lawsuits have a negative impact on questioning, critically pondering and investigating matters of public interest, which can lead to corruption and other social illegalities and irregularities.

Prosecutors are often public figures, including judges of the national courts, in which cases journalist believe that they are in an unequal and subordinate position in the proceedings due to the inadvertent influence that the prosecutor may have on the judge handling the case. Also, the claims for damages are quite high, which is contrary to the practice of the ECtHR and national

Constitutional Court. Therefore, the Ombudswoman holds that it would be useful for the Judicial Academy to provide continuous education of judges related to SLAPP lawsuits with particular reference to the practice of the ECtHR regarding claims in such procedures and their impact on human rights.

In addition to financial exhaustion, the Croatian Institution noticed a negative precedent in the ongoing case before the Croatian court in which, within the framework of the Enforcement Law, the court imposed a temporary measure banning the journalist and the portal from publishing content, in order to protect the dignity, professional work and achievements of insurance proposers / future prosecutors. The measure is justified by the fact that the continued publication of the content would represent irreparable damage to the insurance applicant whose disputed publications violated the right to honour, reputation and dignity. At the same time, the violation of honour, reputation and dignity can be compensated and is regulated by the Civil Obligations Act.

Besides SLAPP lawsuits and other legal instruments used before the court with the negative impact on the freedom of media, in 2021 individual verbal and physical threats and attacks against journalist due to their professional work were also witnessed.

There were multiple attacks on journalists from several media outlets when reporting from a public gathering of citizens due to the introduction of COVID certificates. Due to subject attacks, the Ombudswoman issued a statement pointing out that one of the preconditions for professionally reporting and fostering the right to freedom of expression is the ability of journalists to do their job without fear of verbal and physical attacks, which is necessary and important in any democratic society.

Although a number of attacks were related to media coverage of the COVID-19 virus, verbal and physical attacks, threats and intimidation were present also against journalists who were on thematically different work assignments. One of such cases concerned online threats of violence against a journalist who allegedly trespassed on the property of a public celebrity in preparation of a work assignment. For pointing out the inadmissibility of hate speech against journalists and in general, the Ombudswoman issued a statement stressing out that we all have a role to play in combating threats and hate speech online. Therefore, it would be useful for the Ministry of Culture and Media to design and conduct a comprehensive media campaign on citizens' responsibility for published content on social networks and electronic portals.

There has also been a case of a journalist who received death threats for publishing text that was shocking and offensive to a number of citizens. When acting upon complaints submitted against

this journalist, the Council for Electronic Media pointed out the legitimacy of the text that is offensive to a large number of citizens (because used vulgarism for many citizens means profanity and gross insult), since the freedom of expression is one of the fundamental values of modern society and despite rude and offensive speech, it can represent a different way of informing through exaggeration, even profanity.

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### Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

In its annual report for 2020, the Ombudswoman reported to the public and the Croatian Parliament on the problems of media freedoms, freedom of expression and other related threats to a pluralistic society.

With public announcements published on the official website, the Croatian NHRI continuously point out the problems related to this topic and offer solutions.

The Institution of Ombudswoman also participated in a public consultation related to the adoption of the new Law on Electronic Media.

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## NHRI's recommendations to national and regional authorities

Regarding threats and hate speech to which journalists are exposed, and which can lead to violence towards journalists and media freedom, the Ombudswoman has publicly stated that such messages are incompatible with freedom of expression. Therefore, at least three conditions need to be met in order to combat hate speech on the Internet.

The first is that the competent bodies react and act within their powers in cases of hate speech, where threats addressed to journalists are considered a more serious form of the criminal offense of threat, for which a more severe punishment is envisaged.

Second is that users of social networks and visitors to the portal show personal responsibility in communication. It is also important that anyone who comes across such messages reports the illegal content.

Third is that the media and profile administrators on social networks remove all unacceptable messages in a timely manner.

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## Cyprus

*Commissioner for Administration and the Protection of Human Rights (Ombudsman)*

### **Media freedom, pluralism and safety of journalists**

We observe that journalists and media enjoy a safe space to fulfil their role and are free to criticize the branches of government and public administration. Our human rights monitoring and reporting did not find any evidence of laws, measures or practices that could restrict a free and pluralist media environment over the past year. Although, there was an incident 2-3 years ago, when the Attorney General began, after accusations by the Auditor General, an investigation for the criminal prosecution against a journalist of the newspaper "Politis", due to the content of his article in the newspaper. Eventually the relevant accusations were withdrawn and the case did not proceed.

### **NHRI's recommendations to national and regional authorities**

Generally, we recommend national and regional authorities to ensure that a strong legal framework should be implemented across Europe to ensure media freedom, pluralism and the safety of journalists.

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## Denmark

*Danish Institute for Human Rights*

### **Media freedom, pluralism and safety of journalists**

With regards to media freedom and threats to journalists, the Danish Institute for Human Rights reported the incident where the two chiefs of Denmark's two intelligence services (Danish Security and Intelligence Service and Danish Defence Intelligence Service) took initiative to meetings with CEOs and editors-in-chiefs at the largest Danish media, including Berlingske Media, JP/Politikens Hus and DR (Danish Broadcasting Corporation) in December 2021. According to news reports, the intelligence chiefs held the meetings to remind media executives that passing on classified

information might be a criminal offence, risking imprisonment for up to 12 years. The visits, which followed the arrest a few days earlier of four intelligence officers accused of leaking information in a case where charges are still secret to the public, were seen as an intimidation campaign by media executives.

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## Finland

*Finnish Human Rights Centre*

*Parliamentary Ombudsman*

### Media freedom, pluralism and safety of journalists

The situation of media is relatively good and stable in Finland. However, hate speech, different type of harassment and targeting of journalists have been an alarming threat against media freedom in Finland. In addition, concentration of the national media market raises some concern.

According to a recent survey, around 42 % of journalists feel that pressure and intimidation increase the burden of work. Almost every third respondent stated that they rather not write about certain topics or perspectives because they fear they will be subjected to pressure and intimidation. Topics that caused the most intimidation were migration and asylum. Also, environmental issues caused pressure, and as a new subject causing pressure and intimidation was the COVID-19 pandemic, restrictions, and vaccinations. The gender of the journalist does not according to the survey have an impact on the amount of intimidation but is clearly visible in the severity of experienced consequences.

The Media for Democracy Monitor 2021 (MDM) contains several indicators relating to the media. To highlight some examples, according to the publication: independence of the Finnish news media from powerholders is generally strong, but it is increasingly tested; all the largest news media organisations in Finland have their own internal protocols and guidelines for protecting their journalists against external interference and harassment; the national media market remains relatively concentrated, with only a handful of companies dividing the market in each sector; dominant regional newspapers generally face no direct competition in their own market area; apart from Swedish and Sámi media content other minority and alternative media organisations are limited; independent media criticism in Finland is weakly institutionalised, and there is an existing law that, in principle, provides open access to public information, but problems remain in practice.

The limits of freedom of speech and journalists' responsibility in their work has been discussed during the reporting year. The prosecutor has in October 2021 charged three journalists of the national daily newspaper Helsingin Sanomat for revealing and for attempt of revealing a security secret. The chair of the Union of Journalists has seen the charges as one of the hardest ones in the history of Finnish freedom of speech and that it would be a "tough thought" that journalists in Finland could be sentenced, even though it could be conditional imprisonment.

The charges raised concern the publication of an article in 2017 concerning military intelligence by the Defence Forces and the activities of the Communications Experiment Centre (*Viestikoekeskus*) conducting signals intelligence. The main question of the case relates to the journalists' right not to reveal their sources.

The case has raised broader discussion on the limits of freedom of speech and on the responsibility of journalists in their work. There have also been other journalists who have either been prosecuted or convicted of defamation. In general, journalists have asked whether the justice system has a proper understanding of the profession of journalists and whether the sanctions have been just. On the other hand, on 11 January 2022, the Supreme Court overturned

the defamation sentence of a journalist in relation to commenting political action. The court thus clarified the ambit of freedom of speech, and what is allowed within the freedom of speech, which is of importance for future cases.

When it comes to the media pluralism, there are both low and high-risk areas according to the results of the Media Pluralism Monitor 2021 report. In the category of fundamental protection, the risk to media pluralism is low (28 %), however, the indicators of protection of right to information as well as universal reach of traditional media and access to the internet, present a medium risk. The market plurality on the other hand presents a high risk, of which the indicator of news media concentration presents a risk of 90 %. The category of political independence presents a medium risk, which nevertheless is mostly due to the absence of regulation preventing politicised control of the media.

As a sign of progress in the implementation of ECtHR pending cases, 11 repetitive ECtHR cases against Finland concerning freedom of speech have been closed by the Committee of Ministers in October 2021. The cases had been waiting for implementation for a long time, hence this is a welcome development. of Ministers in October 2021. During the war in Ukraine, three Nordic newspapers (the Finnish newspaper Helsingin Sanomat, the Swedish Dagens Nyheter and the Danish Politiken) publish their articles on the war in Russian language to provide Russians with impartial and trustworthy news and coverage.

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## France

*French National Consultative Commission on Human Rights*

### **Media freedom, pluralism and safety of journalists**

The law of 24 August 2021 reinforcing compliance with principles of the Republic (loi confortant le respect des principes de la République) introduces the summary trial procedure for crimes within the framework of the law of 29 July 1881 on freedom of the press (public incitement to hatred or violence, negationism, etc.). The CNCDH recalls that emergency procedures, in particular the summary trial, are not appropriate for litigation concerning abuses of freedom of expression. The CNCDH highlights that due to the complexity of the topic and the fundamental principles at stake, a specific treatment is required. The CNCDH recalls the importance of procedures that preserve the judge's intervention and guarantee more rights to the defence than in the emergency procedure.

Also, the CNCDH warns on the new dissuasive measures put in place by the authorities to prevent the presence of observers, especially journalists, at the time of evacuation operations of people exiled in Calais and Grande-Synthe. The security perimeters imposed by the police is disproportionate and hinder the observation of dismantling operations by third parties.

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## Germany

*German Institute for Human Rights*

### **Media freedom, pluralism and safety of journalists**

The Institute does not carry out systematic monitoring in this area. As mentioned in the 2021 report, it remains of concern that in the context of demonstrations against the Corona protection measures, journalists' organisations have reported an increasing number of attacks against, and harassment of, journalists by demonstrators.

## References

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## Greece

### *Greek National Commission for Human Rights*

#### **Media freedom, pluralism and safety of journalists**

The GNCHR assesses that the state of media freedom, pluralism and safety of journalists in Greece is worrying. In its annual World Press Freedom Index for 2021, Greece ranked 70th out of 180 countries, five places lower than 2020, while according to the 2021 Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom of the European University Institute, "Greece faces challenges with respect to media pluralism in all four domains under study". Since the beginning of 2021, one can see Greece featuring in numerous statements of International Press Associations on a regular basis.

The GNCHR has on several occasions expressed its deep concerns over the **safeguarding of journalists' safety in Greece** and the wide range of challenges and threats they are confronted with, including inter alia murder, kidnapping, offline and online harassment or intimidation. Media freedom in Greece was thrust into the international spotlight in April when well-known Greek crime reporter Giorgos Karaivaz was gunned down outside his house in Athens. Shortly after the murder, the Prime Minister called on the police to solve the case quickly, while the Minister for Citizen Protection promised that the investigation would be accelerated until it achieved its goal. But, since then, the police and the Ministry of Citizen Protection have provided little official information about progress in the case. Furthermore, the case has confirmed, according to RSF, the inadequacies of the measures taken by the Greek authorities to protect media personnel. When a plan to murder investigative reporter Kostas Vaxevanis was revealed in late April, RSF urged the Greek authorities to adopt measures to restore trust between the media and the police, on whom they depend for

their protection. With regard to Kostas Vaxevanis, most recently, on January 20<sup>th</sup>, 2022, 8 international media freedom and freedom of expression organisations issued a statement registering their concern over the serious criminal charges levelled against him and Ioanna Papadakou, two investigative journalists in Greece linked to their reporting on a major corruption scandal. According to the statement, the organisations are following the two legal cases with utmost scrutiny given the obvious concerns they raise with regard to press freedom, urging authorities to issue guarantees that the process is demonstrably independent and free of any political interference.

In addition, following the GNCHR's remarks on Human Rights Defenders working with migrants and refugees, the GNCHR notes also with emphasis that **journalists reporting on the contentious issue of illegal refugee "pushbacks" in the Aegean continue to face pressure from government officials and law enforcement authorities**. In the latest case, in May 2021, a reporting team from the Dutch public broadcaster VPRO was arbitrarily detained by police while trying to document an alleged "pushback" of migrants by the Greek authorities in the forest near the town of Dikaia. Police detained the reporting crew and took them to a police station for questioning, demanding access to the team's recordings.

Greece has suffered a **decline in press freedom**, according to data published by Reporters Without Borders (RSF). In its annual World Press Freedom Index for 2021, Greece ranked 70<sup>th</sup> out of 180 countries, five places lower than 2020. According to RSF, journalists had to get the government's permission before reporting in hospitals while the health ministry banned medical staff from talking to the media. RSF also expressed its serious concerns about **Law no 4855/2021** (OJ 215/A/12.11.2021) amending the Greek Criminal Code and, in particular, about the **provision amending Article 191 of** the Code aiming at preventing the spread of misinformation. Under Article 191 of the Penal Code, the dissemination, in public or online, of any information that "causes concern or fear among citizens" or "disturbs public confidence in the national economy, defence or public health" is now punishable by a prison sentence ranging from three months to five years. If the offence is committed repeatedly in the media or online, the minimum sentence increases to six months in prison. These penalties are not limited to the person who is the source of the information. They also apply to the owners and directors of the media that publish it, or simply publish links to it. Bearing in mind that the new legislation aims at expanding the definition of fake news and extending the offense of spreading fake news to any information likely to raise public concern or undermine public confidence, especially in public health, the Journalists' Union of Athens Daily Newspapers (ESIEA) had called on the Greek authorities to withdraw the specific provision, stressing that this would pose a serious threat to journalists' right to publish information in the public interest. The same concerns were confirmed by several European partners of the Media Freedom Rapid

Response (MFRR), such as *inter alia* the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ) or the International Press Institute (IPI).

The GNCHR expresses its deep concerns over the **challenges affecting media pluralism in Greece**, which seem to be increasingly worrying, according to the 2021 Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom of the European University Institute, which concludes that "Greece faces challenges with respect to media pluralism in all four domains under study". In particular, in the area of "fundamental protection", key issues are: failing to decriminalise defamation, deficiencies in domestic remedies in cases of infringement of free speech, deteriorating working conditions for journalists and ineffective tools to ensure respect for professional standards and journalistic ethics. In addition, in the area of "market plurality", a key concern remains the lack of publicly available data on a broad range of issues, from concentration trends to journalists' levels of employment and remuneration, as well as the effects of the pandemic on the latter. Data collection is piecemeal and fragmented. The Media Pluralism Monitor also stresses that, in the area of "political independence", private media are not fully shielded from political interference, while as regards "social inclusiveness" action should be taken to address gender stereotypes in news media broadcasting.

The GNCHR has been following quite closely issues such as the freedom of speech, the freedom of expression and the promotion and protection of a pluralist media environment. With regard to mainstreaming human rights, *inter alia* via the media, the GNCHR as the Greek NHRI, develops initiatives on the **sensitisation of public opinion and the mass media on matters of respect for human rights**, in accordance with its founding law. Moreover, it is to be noted with emphasis that the National Radio and Television Council (ESR) is a Member of the GNCHR. That being said, the GNCHR seeks to bring human rights issues and concerns to the attention of the broader public and provide a forum for discussion and debate through the media. For instance, national information campaigns on human rights or press conferences and other relevant events attracting publicity aim at increasing public awareness and creating a national culture in which tolerance, equality, mutual respect and human rights thrive.

The GNCHR, fulfilling its mission to promote research on human rights issues, has signed **Cooperation Protocols with ten universities and departments**, so that it can consolidate and strengthen their cooperation in both research and education fields. In that context, the GNCHR has signed a bilateral Cooperation Protocol with the Communication, Media and Culture Department of Panteion University. The GNCHR aims, among others, at putting together and proposing to the Greek national authorities an effective strategy for strengthening, on the one hand, the role of the media in promoting human rights and contributing, on the other hand, to ensuring a more independent and pluralist media sector.

Finally, the GNCHR, in its **Recommendations on the Constitutional Review (2019)**, recommended the revision of Article 15 of the Greek Constitution, aiming at strengthening the guarantees of pluralism in radio and television. In particular, the GNCHR proposed the extension of the guarantees of transparency and pluralism, in accordance with Article 14(9) of the Constitution, to radio and television, as enshrined in Article 15 of the Constitution, in combination with the strengthening of the National Radio and Television Council (ESR) as the independent administrative authority, in order to ensure the objectivity, equality and quality of all types of broadcasts. The aim is to prevent the gathering of media by the same person or entity.

### References

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### NHRI's recommendations to national and regional authorities

Bearing in mind that a safe environment is essential for journalists to perform their role as watchdogs of democracy, which is essential not only for journalists' working conditions, but also for citizens' access and right to information, the GNCHR urges European and national authorities to **create a safe environment for journalists** and, in particular, for those reporting on the humanitarian situation in Greece. In this regard, it is essential to **continue to fight disinformation and hate speech targeting migrants and asylum seekers**, contributing to fuelling the tensions at the crossing points. To this end, it is essential to deploy all available means to avoid impunity for crimes that are linked to journalism.

In addition, if **political pluralism** is to be achieved, mechanisms should be put in place, and effectively implemented, in order to prevent all political actors from undue interventions in the media market, and from attempts to influence editorial decisions or public opinion more directly, among others through the services of online platforms.

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## Hungary

### *Commissioner for Fundamental Rights*

#### **Media freedom, pluralism and safety of journalists**

In Report No. AJB-422/2021, the CFR summarised the results of his inquiry into the issuance of a normative order by a mayor pertaining to the communications of the executive managers of the commercial companies owned by the local government. According to the CFR, the order violated freedom of expression insofar as, exceeding Hungarian labour law regulations, prohibited to employees to communicate anything that would “cause a moral, economic or professional disadvantage” or would “shake the inhabitants’ trust in the local government”. The Ombudsman emphasized that the normative order in question, worded in a way that it could be applied not only to the executives but comprehensively to the entire staff of the companies, may give rise to an interpretation which may – extensively and in a preventive manner – restrict the freedom of expression of the employees affected due to the negative labour law and civil law consequences therein implied. After his inquiry into a case, the CFR pointed out that the person exercising executive power is entitled to act against the expression of any opinion by the employees that violates or threatens the employer’s specific interests. According to the CFR, however, in the actual implementation, complying with the statutory regulations, the enforcement of the principles of the rule of law and the obligation to respect the fundamental right to freedom of expression, as well as the observation of the appropriate formal requirements, are also fundamental constitutional principles whose observance must be ensured. The CFR requested the mayor to repeal the instruction raising concerns, and to take the necessary measures to ensure redress against any prejudice suffered by the employees, from a labour law perspective, as a result of the application of the contested instruction.

Within the framework of monitoring the enforcement of the rights of national minority communities to preserve their cultural identity, the Deputy Commissioner for the Rights of National Minorities examined the current situation of the availability of national minority public service radio broadcasts in 2021. In her General Comment No. 2/2021, the Deputy Commissioner outlined how the reception options of national minority public service radio broadcasts are affected by the fact that the digital radio broadcasting using the so-called DAB+ technology was switched off in Hungary in September 2020. Indeed, the bodies responsible for public service radio broadcasting previously considered this technology as the solution for the broadcasting of nationality radio programmes with adequate quality and availability. As it is elaborated in the

General Comment, the Deputy Commissioner underlined the importance to make sure that the technical conditions for receiving public service radio programmes be equally available to both users from national minorities and the majority population.

### NHRI's recommendations to national and regional authorities

The Deputy Commissioner considers it appropriate for the relevant Ministry to develop a long-term strategy for the broadcasting conditions of radio programmes addressed to national minorities, based on a real dialogue between the management of the public service media provider and the elected representatives of the nationalities in Hungary.

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## Ireland

### *Irish Human Rights and Equality Commission*

#### Media freedom, pluralism and safety of journalists

In the 2021 Rule of Law report, the Commission referred to its submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill, which will transpose the revised Audiovisual Media Services Directive into Irish law. In its observations, the Commission recommended that the financial independence of the Media Commission, to be established under the Bill, be strengthened by ensuring that grants for budgetary allocation to the Media Commission should be subject to a separate vote in the Oireachtas. The Commission also recommended that the Bill be amended to exclude reference to removal of members of the Media Commission in the interests of the effective and economic performance of the functions of the Commission. To support a pluralist media environment, the Commission has called for the membership of the Media Commission to reflect the nature and diversity of Irish society.

The final report of the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill presented a number of recommendations on amendments to the Bill, which relate to the concerns raised by the Commission, including:

- highly precise detail is given as to the roles and responsibilities of the Media Commission and of the Online Safety Commissioner;
- no possible source of infringement of independence should be placed upon the Media Commission or upon the Online Safety Commissioner;
- any provision allowing for the removal of commissioners, either by the Minister or by the Department, be removed from the General Scheme of the Bill;
- the Media Commission and the Online Safety Commissioner are satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement;
- there is a pluralistic and diverse-oriented approach taken during the legislative process for the present Bill and during the regular work of the Media Commission and the Online Safety Commissioner, with full participation sought from all sects of Irish society, including liaising with vulnerable groups to ensure that their lived experience is reflected.

The Commission has emphasised that a strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents, meaning it is imperative that media professionals adhere to journalistic ethics and codes of practice, and that such codes of practice are responsive to the modern media environment. The Commission has called for the Press Council of Ireland's Code of Practice, which prohibits the publication of material intended or likely to cause grave offence or stir up hatred based on protected characteristics, to be updated in light of ongoing developments in respect of the legislative framework on hate speech. African-Irish young people report that negative narratives and stereotypes in the media are a pervasive barrier to integration, whereas authentic representation facilitates inclusion and has a significant impact on emotional wellbeing. More diverse representation within the media professions will help to ensure more authentic representation, for example, by promoting more inclusive editorial decision making.

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### **NHRI's recommendations to national and regional authorities**

- The Commission recommends that the National Action Plan Against Racism includes an action for a strategy to encourage the media to promote diversity within its professions, increase the visibility and positive representation of ethnic minorities, and better equip people to discuss issues concerning race, racism and anti-racism.
- The Commission recommends that the State ensure the proposed Media Commission is structurally and financially independent, and that its membership reflects the diversity of Irish society.

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## Luxembourg

### *Consultative Human Rights Commission of Luxembourg*

#### **Media freedom, pluralism and safety of journalists**

In the opinion of the Consultative Human Rights Commission of Luxembourg, the situation of media freedom, pluralism and safety of journalists in Luxembourg deteriorated comparing to 2020 and is worrying.

The situation is getting worse for journalists, especially those who are working on Covid-19. They are victims of verbal attacks and threats. Also, they are subjected to alleged “legal harassment”. Opponents of the government’s Covid-19 strategy have (mostly verbally) attacked journalists. A politician of a far-right political party has shared the private phone number of a journalist on a social media platform. Members of that same political party are suing journalists for criticizing them.

Furthermore, as mentioned above, the right to access to information for journalists is still not fully respected.

#### **Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression**

The CCDH has raised these issues in its various opinions and repeatedly advocated in favour of a right to access to information for journalists.

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## NHRI's recommendations to national and regional authorities

- Right to access to information for journalists
- Transposing the Whistleblower Directive
- Protection against SLAPPs

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## Netherlands

*The Netherlands Institute for Human Rights*

### Media freedom, pluralism and safety of journalists

Safety of journalists is a relevant theme in the Netherlands, particularly after the assassination of the well-known crime journalist Peter R de Vries. The Netherlands Institute of Human Rights will dedicate its next annual report to this theme for that reason.

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## Poland

*Commissioner for Human Rights*

### Media freedom, pluralism and safety of journalists

Concerns raised in last year's report as regards pressure on and safety of journalists remain outstanding.

These include reports of attacks, arrests and police brutality against journalists covering public demonstrations as well as, more recently, journalists reporting on the situation at the Polish-Belarus border (1).

As of 2 September 2021, a state of emergency was introduced in the areas bordering Belarus. This decision was justified by the authorities by a particular threat to the security of citizens and public order in connection with numerous attempts to illegally cross the border. This crisis was triggered by the actions of the Belarusian authorities. By means of a regulation, the Council of Ministers introduced restrictions on freedom of assembly, a ban on organising mass events, a ban on people who do not live there residing in the area covered by the state of emergency, as well as restrictions on the right of access to public information. Among others, reporters and aid workers were banned from the 3km (2 miles)-wide border zone, where dozens of asylum seekers who manage to cross from Belarus go in hiding. On 18 January 2022, Poland's Supreme Court stated that the governmental regulation preventing journalists from accessing the border with Belarus is

incompatible with current Polish law, including the Polish Constitution, and also violates European and International law. (2) The Commissioner for Human Rights also pointed out that the complete restriction of journalists' access to the area covered by the state of emergency and the complete exclusion of the right of access to public information raise doubts. The Commissioner pointed out that it would be reasonable to introduce a mechanism for granting passes to journalists entering border areas. The authorities have not taken account of the Commissioner's recommendations in this regard (3).

Legal proceedings which may be qualified as SLAPPs are also been reportedly brought against investigative journalists. A study published in June 2021 by the Polish Society of Journalists noted at least 66 instances of SLAPPs brought to silence journalists between 2015 and 2021, with public institutions, state-owned bodies, and politicians and their relatives among those who most frequently launched these legal actions. Prominent cases have also been denounced by international press freedom groups, such as proceedings brought against *Gazeta Wyborcza* reporter Katarzyna Włodkowska (4) and the criminal defamation claims brought against *Polityka* journalist Ewa Siedlecka, who was convicted of criminal defamation (5).

On a positive note, following concerns raised by national media and civil society, as well as EU and other regional and international bodies, the ruling party partly backed on its efforts to “re-Polonize” the domestic media. In 2021, the government’s suspended its plans to introduce a new tax on the media levied on income from advertisements and the Polish President vetoed the controversial media bill known as “Lex TVN”, that would have tightened the rules on foreign ownership of media in the country. The CHR has on numerous occasions presented his opinion (both to the Senate in the legislative procedure on the bill as well as in response to National Radio and Television Council letter) that such changes would substantially undermine the freedom and plurality of media in Poland and, as such, would be in blatant contradiction with the freedoms and rights enshrined in the Polish constitution and violate Poland’s obligations under EU law. The bill has been afterward vetoed by the President of the Republic.

At the same time, however, the situation in the public media sector has not improved.

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- (3) <https://bip.brpo.gov.pl/pl/content/rpo-senat-ustawa-granica-panstwowa-uwagi>
- (4) <https://rsf.org/en/news/will-poland-be-only-eu-country-jail-journalist-doing-their-job>
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## Portugal

### *Portuguese Ombudsman*

### Media freedom, pluralism and safety of journalists

The situation in Portugal and the Portuguese Ombudsman's activities regarding the area of media freedom, pluralism and safety of journalists remains the same as it was described in the previous ENNHRI Rule of Law Reports.

Rule of Law Index 2021 for Portugal in the subject of freedom of expression is estimated at 80%.

### References

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## Romania

*Romanian Institute for Human Rights*

### Media freedom, pluralism and safety of journalists

The Romanian Institute for Human Rights assessed that the situation concerning media freedom, pluralism and safety of journalists in Romania has deteriorated this year.

The legislative framework has not changed much with regards to the media environment. However, there were a series of intimidations (1) and assaults on journalists (2), especially investigative journalists. Such a situation refers to two journalists who reported on irregularities related to public funds and tenders in a Bucharest district, which was followed by a criminal complaint submitted by the mayor. A known case of assault was the one suffered by investigation journalists who were documenting illegal lodging in Suceava county who were attacked and beaten by several persons. At the same time, a report coordinated by the Center for Independent Journalism (3) states that the number of lawsuits against journalists has risen.

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## Slovakia

*Slovak National Centre for Human Rights*

### Media freedom, pluralism and safety of journalists

The rise in hostility and violence against journalist remains concerning, especially in connection with the COVID-19 pandemic as well as the anti-corruption framework. For example, in July 2021, journalists were attacked and insulted during a demonstration against new COVID-19 rules in front of the Parliament in Bratislava.

#### Freedom of media and safety of journalists

According to the 2021 World Press Freedom Index published by Reporters Without Borders evaluating the freedom of media, Slovakia ranks 35 out of 180 in the world ranking, decreasing its position as compared to 2020.

As regards criminal investigations against journalists, according to the Council of Europe's Platform to promote the protection of journalism and safety of journalists, there have been several alerts relating to the safety of journalists and freedom of media in Slovakia also in 2021. In September 2021, two journalists were charged with revealing the identity of a former intelligence agent, who acted as a secret witness in the investigation into the murder of investigative journalist Ján Kuciak and his fiancée. In September 2021, the Bratislava Prosecutor's Office ordered the police to press charges, which came just weeks before the expiration of statutory time limit on the original criminal complaint filed by the secret witness in 2018, which was initially rejected by the police. The journalists were charged with revealing confidential information pursuant to Section 353 of Act No. 300/2005 Coll. Criminal Code, as amended ("Criminal Code"). The charges were met with widespread public outrage. After the Prosecutor General instructed to review the charges' legality and grounds, the Regional Prosecutor's Office in Bratislava overturned the decision, dismissing the charges.

The Ministry of Culture of the Slovak Republic ("Ministry of Culture") has previously reported to be preparing a media legislative package, which should enhance the constitutional protection of journalists in the exercise of their profession, especially in the protection of their resources. As of December 2021, no legislative proposals have been presented yet. Nonetheless, the Ministry of Culture has introduced a package of media laws, which, among others, are intended to increase

the transparency of media financing and the transparency of the ownership. All media will have to register in the public sector partners and publish all donors who donate more than 1200 Euro during the year.

The Media Legislative Package contains various laws, including Media Act, Authors Act and Publication Act. The Media Act introduces various rights and duties for audiovisual media. Among other amendments, it requires media to disclose their owners, introduces new advertisement rules and offers better protection for underage viewers. As of January 2022, the Act was passed to the second reading in the Parliament. The Authors Act intends to help authors, by for instance introducing a bestseller clause, support research and restrict technological giants. The Act was enacted by the Parliament on 16 February 2022.

### Freedom of Information Act

The Ministry of Justice has proposed amendments to the Freedom of Information Act, with the stated intention to bring more transparency to the public sector. The Act is divided into two parts. The first one is based on requests included in the Political Manifesto, such as expanding the obligations arising from the Freedom of Information Act on state-owned companies and their subsidiary companies. The second part is based on Directive 2019/1024 (“EU Open Data Directive”). The Act is considered a very sensitive topic and many expressed concerns about this amendment. Civil society organizations including Via Iuris, Transparency International Slovakia and the Fair-Play Alliance criticised the Act for being too narrow, arguing that a more comprehensive reform is needed to address all the issues people face when trying to access public interest information. Civil society actors put forward 22 suggestions to achieve this aim, looking at the most problematic procedures and practices of authorities when dealing with requests for information.

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## Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

Within its monitoring and reporting activities, the Centre focused in great detail on existing challenges and the implementation of related recommendations in the area of freedom of media and safety of journalists in its Individual submission on mid-term review of the fulfilment of recommendation from the third cycle of the Universal Periodic Review of the UN Human Rights Council by the Slovak Republic submitted in November 2021. The submission highlighted the alarming threats that remain regarding the safety of journalists, as well as the overuse of criminal procedures and measures regarding the reporting of journalists.

In November 2021, the Centre organized a roundtable with representatives of the media and experts as well as staff members of the Centre on the issue of improving the public debate on human rights violations and discrimination. According to the outcomes of the discussion, the sensitization of certain facts and news on media often leads to the stigmatization of vulnerable groups and thus contributes to further polarization of society. On the contrary, their overuse contributes to a decline in public trust in institutions and mechanisms designed to protect rights.

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## NHRI's recommendations to national and regional authorities

The Centre recommends:

1. To the Ministry of Culture of the Slovak Republic to complete, without undue delay, the work on the preparation and enactment of a constitutional act on increasing the safety of journalists, as well as enlarge the participatory process of the creation of the constitutional act.
2. To all public figures to refrain from legislative harassment practices such as using strategic lawsuits against public participation or cases of defamation of journalists.
3. To law enforcement authorities to refrain from practices using criminal procedures with the aim to detract journalists from reporting and promptly, impartially, independently and effectively investigate all crimes against journalists and to state authorities to take an active role in prevention of attacks against journalists

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## Slovenia

*The Human Rights Ombudsman of the Republic of Slovenia*

### Media freedom, pluralism and safety of journalists

The Human Rights Ombudsman has noticed a deterioration of media freedom, pluralism and safety of journalists in Slovenia, assessing the overall environment as currently worrying. The European Parliament also adopted on 16 December 2021 a dedicated resolution on the rule of law in Slovenia, mentioned above, which raises, among others, issues relating to media freedom, pluralism and safety of journalists. (1)

Regarding freedom of expression, the Ombudsman has kept a focus on the issue of hate speech in the Republic of Slovenia. The Centre for Human Rights (an organisational unit of the Ombudsman) has in May 2021 concluded its Analysis of the prosecution of a criminal offense under the first paragraph of Article 297 (Public incitement to hatred, violence, and intolerance) of the Criminal Code of the Republic of Slovenia, which is the first analysis giving an inside look to the Public Prosecutors' as well as, to a certain extent, to the courts' practice over the period from 2008 to 2018. An English summary of conclusions is available at pages 9-10 of the analysis.

(2). The Ombudsman made also a public presentation of the analysis in June 2021 (3).

The situation in the field of freedom of expression (and media freedom) remains strongly linked to current social developments – both numerically and substantively – as well as to the epidemic situation. The Reporters without borders ranked Slovenia at the 36th place in 2021, which is 4 places lower than in 2020 (4).

In the above-mentioned resolution of the European Parliament of 16 December 2021, the European Parliament expresses its deep concern “about the level of public debate, climate of hostility, distrust and deep polarisation in Slovenia, which has eroded trust in public bodies and between them”.

The European Parliament also called on the Government to resume state funding and to make these payments regularly and in full accordance with national law, while guaranteeing the Slovenian Press Agency’s (STA) editorial independence. On 8 November 2021 the new Director of STA and director of the Governmental Communication Office signed the agreement on the STA’s public service for 2021 (5), however there have been concerns raised on the future financing and editorial independence of the STA (6).

The mentioned resolution also addresses the issues of media ownership and smear campaigns, slander, criminal investigations, as well as strategic lawsuits against public participation (SLAPPs) brought by prominent public figures and politicians, including members of the Government

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- (3) See: <https://www.varuh-rs.si/sporocila-za-javnost/novica/analiza-kazenskopravnega-pregona-sovraznega-govora-v-sloveniji-in-razprava/>
- (4) See: <https://rsf.org/en/slovenia>
- (5) See: <https://www.sta.si/2963984/kadunc-in-urbanija-podpisala-pogodbo-o-opravljanju-javne-sluzbe-za-letos> and <https://english.sta.si/2964066/sta-signs-deal-on-public-service-with-ukom-valid-until-end-of-the-year>
- (6) See for example: <https://www.sta.si/2964027/dns-in-sindikatski-novinarjev-s-previdnostjo-spremljata-podpis-pogodbe-med-sta-in-ukomom>

## Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

The Ombudsman made in the past a recommendation on the effective enforcement of the provision concerning the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act), and proposed that the Ministry of Culture does everything possible within its power to identify the appropriate approach to protect public interest (inspection and minor offence supervision); to adopt measures to eliminate irregularities (e.g. immediate removal of unauthorized content); and to determine sanctions for the media that fail to curb the spread of hate speech (recommendation No. 64 (2019) and No. 14 (2018) (1). The Ombudsman however notes that these recommendations have not yet been implemented and that is also not clear whether and when relevant action would be considered by the Ministry of Culture (2).

## References

- (1) See: [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2019/Annual\\_Report\\_2019.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf) , at pages 154 and 155
- (2) See: [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2020/Letno\\_porocilo2020\\_-\\_pop.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf) , at page 263.

## NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendation to national and regional authorities on how to better ensure media freedom, pluralism and the safety of journalists in Slovenia is the following:

1. The Ministry of Culture should do everything possible within its power regarding the realisation of the provision on the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act) to determine 1. the manner of protecting public interest (inspection and minor offence supervision); 2. measures to eliminate irregularities (e.g. immediate removal of unauthorised content); and 3. sanctions for the media that allow the publication of hate speech.

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## Spain

### *Ombudsman of Spain*

## Media freedom, pluralism and safety of journalists

The Ombudsman of Spain states that there are no problems in Spain concerning the exercise of freedom of expression in its different manifestations, covered by the Constitution. Besides, traditional plurality of Media has been complemented by digital tools and social networks where citizens can freely express their opinions.

The Ombudsman's human rights monitoring led to the conclusion, though, that the Organic Law 4/2015 of 30 March on the protection of Citizen Security, provoked protests from civil society since its promulgation.

The Ombudsman has expressed concern and made recommendations in relation to external body searches on public roads, offences in the context of meetings and demonstrations, or the use of images or data by the police.

The annual reports of the Ombudsman in recent years have gathered its performance concerning this issue.

In its annual reports the Ombudsman in recent years have advocated for the reform of some aspects of this Law, seeking the right balance between security and freedom. The recommendation concerning journalists is that the violation of article 36.23 does not hinder freedom of expression and the right to information.

This year, however, the Ombudsman has still received complaints about the right of access to public information, not by journalists but by general public. The position of the Ombudsman has been to ask the administrations to comply with the resolutions of the Transparency and Good Governance Council, and consequently to send the interested party the information whose access has been authorized by said body as soon as possible. Nowadays, a clear political will to reform this law is acknowledged, which will hopefully soon be carried out.

## References

- (1) <https://www.defensordelpueblo.es/resoluciones/solicitud-de-acceso-a-una-informacion-municipal/>

