



## **Global Conference for Media Freedom**

London, 10 July 2019, from 11 am to 12.20 pm

### **Workshop on “Keeping journalists safe – what international organisations can do”**

Ms Herdis KJERULF THORGEIRSDOTTIR,  
First Vice-President of the Venice Commission of the Council of Europe

Ladies and Gentlemen,

thank you for your invitation to this important event, defending media freedom and safety of journalists and other media actors.

For 70 years the Council of Europe, a pan-European organisation has been defending democracy, human rights and the rule of law in its 47-member States and beyond.

Within this organisation, the Venice Commission, the advisory body on constitutional matters to the Council of Europe, enjoys the specific mandate to defend democracy through the rule of law. Next year we will celebrate the 30th birthday of this unique mechanism with a global outreach – as the Venice Commission has 61-member States: the 47 Council of Europe member States, plus 14 other countries.<sup>1</sup> The European Commission and OSCE/ODIHR participate in the plenary sessions of the Commission. At our last plenary Canada, our oldest observer and the co-host of this important conference joined the Venice Commission as a full member.

The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European and international standards in the fields of democracy, human rights and the rule of law.

When it comes to freedom of expression, an enabling legal and regulatory environment is essential for guaranteeing this important freedom, which is a cornerstone of democracy. Part of such an enabling environment is that questions relating to the scope of the freedom of expression are decided by independent and impartial courts. The Venice Commission regularly advises its member states on how to best ensure judicial independence and we have criticised attempts in a number of countries to reduce the guarantees for the independence of the judiciary.

---

<sup>1</sup> Algeria, Brazil, Chile, Costa Rica, Israel, Kazakhstan, the Republic of Korea, Kosovo, Kyrgyzstan, Morocco, Mexico, Peru, Tunisia and the USA.

With respect to specific issues of freedom of expression, the Venice Commission has assisted its member states in this regard by recommending to Armenia, Malta and the Republic of North Macedonia to amend or repeal vague or overly broad hate speech laws or draft legislation under consideration.<sup>2</sup> These have included problematic provisions aimed at criminalising among others, “indirect calls for discrimination”, “preaching of religious fanaticism”, or forms of incitement that did not sufficiently distinguish between hate speech and merely offensive expression.<sup>3</sup>

Concerning Turkey, the Venice Commission has addressed severe shortcomings in the penal code<sup>4</sup> containing excessive sanctions and their too wide application which runs counter to freedom of expression as protected in Article 10 ECHR and the Court’s case law.<sup>5</sup>

Let me by way of example explain in more detail this assisting function of the Venice Commission with the help of the December 2018 Opinion on Malta’s constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies.

This opinion is also a good example of how the PACE and the authorities of a member state engage with the Venice Commission.

Any opinion starts with a request, in this case from the Parliamentary Assembly of the Council of Europe (PACE) (letter of 10 October 2018).

The request from the PACE originated in a proposal to seize the Venice Commission by the Rapporteur for the Assembly’s report on “Daphne Caruana Galizia’s assassination and the rule of law, in Malta and beyond: ensuring that the whole truth emerges”.

As we are all aware of, investigative journalist Daphne Caruana Galizia was assassinated on 16 October 2017 and currently three individuals are charged in court with the commission of this horrible crime. We are also aware that the alleged ineffectiveness of the domestic investigation to find the persons who ordered this assassination and the apparent culture of impunity in Malta have been criticised from various quarters. I am aware of discussions at the PACE June plenary meeting in Strasbourg that adopted a Resolution calling on the Maltese authorities to launch an independent public inquiry and subsequently the announcement of the Maltese Prime Minister to consider this proposal in line with the domestic judicial system and the on-going criminal investigation.

In addition to the PACE request to the Venice Commission, Mr Owen Bonnici, the Minister of Justice also around the same time in October 2018 requested an opinion on Malta’s legal and institutional structures of law enforcement, investigation and prosecution in the light of the need to secure proper checks and balances, and the independence and neutrality of those institutions and their staff whilst also securing their effectiveness and democratic accountability.

Following the invitation of the Maltese authorities our group of rapporteurs went to Malta in November 2018 where we met with the authorities, opposition Members of Parliament, the Ombudsman as well as with representatives of civil society, academia and professional associations. The Venice Commission’s opinion was subsequently drafted on the basis of

---

<sup>2</sup> Venice Commission Opinions No. 909/2017, 20 March 2018; No. 920/2018, 23 June 2018; and No. 915/2018, 19 March 2018.

<sup>3</sup> Ibid.

<sup>4</sup> Art. 216 (Provoking the Public to Hatred, Hostility or Degrading), Art. 299 (Insulting the President of the Republic), Art. 301 (Degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State).

<sup>5</sup> Venice Commission Opinion No. 831/2915, 15 March 2016.

comments by our rapporteurs' group including the results of the visit to Malta. (It was adopted by the Venice Commission at its 117<sup>th</sup> Plenary Session (Venice, 14-15 December 2018)).

I would like to underline that neither the PACE's nor the Maltese authorities' requests specified any legal text to be examined. Therefore, the scope of the Venice Commission opinion is confined to an examination of Malta's constitutional arrangements. The Venice Commission has neither the mandate nor the required competences to examine the effectiveness of a particular criminal investigation or the veracity of the allegations by the murdered journalist of individual cases of corruption and money-laundering.

However, the Venice Commission insists on the positive obligations of the Council of Europe Member State to secure to everyone within their jurisdiction the rights protected under the European Convention of Human Rights and the European Court of Human Rights case-law, such as the right to life and freedom of expression.<sup>6</sup>

Preventive and strict measures are required to fight corruption. The Venice Commission in an opinion on Romania stressed in this respect "that a State is under a positive obligation to ensure that its criminal system is effective in the fight against serious forms of crime, that criminal law constitutes a strong deterrent to commit such offences, and that perpetrators of such offences do not enjoy impunity".<sup>7</sup>

Effective criminal investigations are essential to end impunity, which leaves victims without justice and creates an environment that enables abuse. In the last two years, a number of journalists investigating corruption have been brutally killed on European soil. The double murder of investigative journalist Jan Kuciak and his fiancée Martina Kušnířova a year ago shocked the continent just like Daphne Caruana Galizia's assassination in Malta a few months earlier. The European Court of Human Rights, in a judgment concerning the investigation into the 2006 murder of Russian investigative journalist Anna Politkovskaya, held that while the authorities had found and convicted a group of men who had directly carried out the contract killing of Ms Politkovskaya, the authorities had failed to take adequate investigative steps to find those who had commissioned the murder<sup>8</sup> – and furthermore that an investigation ought to establish whether there is link between the violence against the journalist and the material covered in contributing to the public debate.<sup>9</sup>

---

<sup>6</sup> See CDL-AD(2018)021, paragraph 29 and ECtHR 17 July 2018, *Mazepa a.o. v. Russia* (appl. no. 15086/07) concerning the murder of journalist Anna Politkovskaya.

<sup>7</sup> CDL-AD(2018)021, Opinion on amendments to the criminal code and the criminal procedure code of Romania, para. 31.

<sup>8</sup> ECtHR, *Mazepa and Others v. Russia*, 17 July 2018., Judgment of July 2018 of the European Court of Human Rights in the case of the Russian investigative journalist Anna Politkovskaya known for her fierce criticism of the role of the Russian authorities in the Chechen conflict. Here, the Strasbourg Court held, that it was of utmost importance to examine a possible connection of her killing to the investigative journalist's work. The Court stated that there was an "absence of genuine and serious investigative efforts taken with the view to identifying the intellectual author of the crime, that is, the person or people who commissioned the assassination". The European Court of Human rights was "not persuaded that the investigation into Politkovskaya's killing has met the adequacy requirement" and that the "domestic authorities' scrutiny in the case concerning a contract killing must aim to go beyond identification of a hit man."

<sup>9</sup>Referring to the 2016 Committee of Ministers Recommendation on the protection and safety of journalists emphasising that "the conclusions of an investigation must be based on a thorough, objective and impartial analysis of all the relevant elements, including the establishment of whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or contributing in similar ways to public debate." Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (Adopted by the Committee of Ministers on 13 April 2016 at the 1253<sup>rd</sup> meeting of the Ministers' Deputies), Para. 19.

It is in the interest of any state to pursue an independent effective investigation with utmost vigour, not to risk its reputation as a functioning democracy governed by the rule of law.

We are aware that the press has special duties as the Public's Watchdog; among them the duty to expose corruption and to inform the public in order to hold authorities accountable – and for this task journalists need special protection.<sup>10</sup>

Impunity for crimes against journalists is an obstacle to upholding the rule of law. To be effective in practice the rule of law must be rooted in principles such as transparency, impartiality and equality. The Venice Commission in its Malta opinion stressed that a solid system of checks and balances must be in place – institutional settings such as an independent judiciary and an independent public prosecutor are essential to end impunity which remains one of the most serious threats to free expression and journalists' safety.

The police force plays a crucial role for the safety of all citizens and is of particular importance for the safety of journalists. It is important that in a democratic society the police force has the confidence of the general public and is perceived as politically neutral in the service of the State and the professional, unbiased, enforcement of the law and the protection of the citizen. Therefore, the Venice Commission opinion on Malta recommended that there should be a public competition for the post of Police Commissioner and the appointing authority (Prime Minister or President) should be bound by the results of the evaluation of that competition, even though they might have a power of veto against the candidate selected.

I wish to underline that critical, investigative journalism is crucial for democracy. During the Venice Commission delegation's visit to Malta we got the impression that self-censorship was prevailing within the media and civil society.<sup>11</sup> Even when it is stressful for power holders to endure harsh criticism, from the media – authorities have the duty to ensure that the media and civil society can freely express themselves - as the magnificent writer, George Orwell, said and those words are on a poster outside this room: "Freedom of the Press, if it means anything at all, means the freedom to criticise and oppose".

Thank you for your attention!

---

<sup>10</sup> H. Thorgeirsdottir, *Journalism Worthy of the Name: Freedom within the Media and the Affirmative Side of Article 10 of the ECHR*, p. 297, Kluwer Law International (2005). Case of *Erdogdu and Ince v. Turkey*.

<sup>11</sup> Some interlocutors of the Commission even referred to a prevailing "law of *omertà*".