

FREEDOM OF EXPRESSION AND MEDIA FREEDOM IN EUROPE IN TIMES OF THE COVID-19 CRISIS

| | | | |
|--|---|---|----|
| Abstract..... | 1 | II. Conclusion - What can be done further?..... | 13 |
| I. The meaning of Freedom of Expression..... | 1 | | |

-abstract-

Freedom of expression and media freedom are crucial components for the functioning of one democratic society. The restrictions imposed during the Covid 19 pandemic had impact on the media and the flow of information to the public, in a way that in numerous European states it re-opened certain pre-existing weaknesses in the legal frameworks. The limitations on freedom of movement, the measures to combat disinformation and the fall in advertising triggered a rise in incidents against journalists, protests and difficulty with access to information. The media was in particular limited on the choice of content to be published and the format of submitting questions during live press conferences, which leaves open the accuracy of the information transmitted. The support measures by the countries varied and they were mostly of legal nature, such as providing relevant information in the form of public announcements or relaxing the regulatory requirements. However, it is questioned whether there was sufficient financial support and whether certain restrictions on the media freedom were in accordance with the three-step test of the European Convention on Human Rights, in particular the necessity and proportionality criteria. The paper will analyze the handling of the crisis in several European states (members of Council of Europe), the most relevant measures taken in the context of the media, and the practice of invoking criminal proceedings, by taking the pandemic as a pretext.

I. THE MEANING OF FREEDOM OF EXPRESSION

A precondition for building and living in a free and democratic society is the possibility to enjoy a broad range of rights and freedoms, which are guaranteed in numerous international documents. A society where the freedom of a person to seek, receive and impart information is limited or where the media is suppressed in the distribution of relevant news on emerging topics that have impact on the citizens' lives is a synonym of a controlled regime. Unfortunately, this is the image of most of the European countries since the start of the Covid-19 pandemic in March 2020. The health crisis so far has triggered numerous negative practices, which have had a serious impact on the daily consumption of accurate information and that have in addition served as a pressuring tool on the mental health of every citizen. Freedom of expression serves the

* Anamarija Gjorgova, LL.M., Catholic University of Leuven, Belgium, anamarijagjorgova@yahoo.com

democratic interests of the speakers, by fulfilling their rights of self-development, criticism of the government, and the right of the recipients to be informed about all representative views in the society.¹

With the start of the sanitary crisis in 2020, the governments have immediately become aware of the necessity to distribute relevant and updated information, in order to combat the spread of the virus. Under Article 10 of the European Convention on Human Rights, the member states of the Council of Europe are bound to respect everyone's right to hold its' opinions, to express itself without interference of the government, in any form, whether written or oral, and to receive information from others. It confers on the individual a negative freedom, which is the liberty to speak and write without control and regulation by the state and without hindrance by social powers or economical monopolies. On the other side, it is a positive freedom that gives the citizens a possibility to request from the state a positive regulatory framework or speech facilities. This right can be limited by the government solely in situations where three conditions are fulfilled. Namely, where the restriction proves to be prescribed by law, there is a legitimate aim, and is necessary and proportionate to the goal to be achieved. In times of a sanitary crisis, providing effective access to information to the public includes the aspect of the government distributing updated news in a timely manner, through press briefings and public pronouncements. It includes as well the media aspect. More precisely, the role of the media is crucial in extracting information from independent news sources, and by using transparent editorial methods, in line with the predefined ethical values.²

a. Freedom of Expression in times of Covid-19

During the Covid-19 crisis the Internet has been very frequently covered with false information. The sanitary crisis has imposed severe restrictions on the freedom of movement of people that has had an impact on the work of journalists as well. The International Centre for not-for profit Law used a tracker that monitors the responses of the government to the pandemic, in order to see the effects on the rights and freedoms. In the categories divided there are 58 countries that imposed legal measures or undertook practices which had impact on the freedom of expression.³ In general, the European countries can be divided in several groups, based on the intensity of the restrictions and limitations on the freedom of expression and media freedom. The first group includes the countries with most severe limitations imposed, that have had significant impact on the daily work of the media and the form of news distribution. Therefore, several European countries are taken as examples in order to make a parallel between the severity of the rules and restrictions, and in order to see the extension of the previous negative practices in regulating the media and freedom of expression.

Hungary is one of the countries that is taken as an example and analyzed in order to conclude the intensified level of suppression on the freedom of expression. Although it is a member of the Council of Europe and the European Union, there have been numerous reports over the years of violations of the freedoms of expression, media and access to information, among others, even

¹ Council of Europe 'State of Democracy, Human Rights and the Rule of Law, Report of the Secretary General' (COE 2021) 37, 049021GBR

² To learn more, read Council of Europe 'Freedom of Expression and Information' <[Freedom of expression and information \(coe.int\)](https://www.coe.int/en/freedom-of-expression-and-information)> accessed 17 September 2021

³ International Centre for not-for-profit law 'Covid-19 Civic Freedom Tracker' <[COVID-19 Civic Freedom Tracker \(icnl.org\)](https://www.icnl.org/covid-19-civic-freedom-tracker)> accessed 19 September 2021

long before the Covid-19 outbreak. During the sanitary crisis, in Hungary the journalists were required to submit their questions prior the press conferences and the most suitable ones were later pre-selected by the government. What gave Hungary a flexibility and indefinite freedom to regulate the media field, was the passage of a law in March 2020 that predicted sanctions for the spread of false information over the virus or the government measures. It provided a punishment up to five years in prison.⁴ That has so far intensified the already existing media suppression, in a way that new negative practices that paralyze the work of journalists have surfaced. For example, the Hungarian journalists complained in an open letter that they were not allowed to enter hospitals and conduct interviews with the medical personnel.⁵ Several doctors that spoke to the media under duty of anonymity, complained about the numerous Covid-19 cases and the limited capacities of the hospitals, which created a huge burden on the healthcare system. However, in the media the situation was portrayed as “normal” and “kept under control”. In this regard, the Council of Europe issued a Memorandum in which it referred to the specific situation in Hungary.⁶ The European Commissioner for Human Rights put an accent on the reasons for the generally negative media environment, which is a combination of a politically controlled media regulatory authority and a limitless intervention by the state. Actually, the Hungarian government has since 2010 significantly and constantly undermined independent, professional journalism, which has resulted in preventing the free exchange of divergent opinions and news. Especially, in the Memorandum was raised a concern on the frequent campaigns against the investigative journalists and human right defenders. The aforementioned campaigns were clearly shaped with the aim to send a warning that there will be a counter-attack in case of criticism of the government. It was also stated that the Hungarian government often disregarded national and international judgments, and not adhering to the law does not fulfill the precondition for an effective implementation of the freedom of expression. Furthermore, in Hungary the national Media Council’s members are chosen by the ruling party, which unsurprisingly results in a media environment that is devoid of liberty.

In Poland the government introduced a complete ban on public assemblies, as part of the Covid-19 restrictions. That lasted for a few months, as it later decided to permit assemblies with a limited number of participants.⁷ However, as noticed by Amnesty International, during the protests there were multiple cases of human rights violations. The police once issued disproportionately heavy fines against peaceful activists, gathered to protests against the “postal vote” system for the then upcoming presidential elections. In May 2020, in multiple occasions the police unreasonably fined protesters who were against the passive behavior of the government to small businesses and who sought judicial independence. Apart from that, there were more than hundred people who were arrested for participating in a peaceful assembly, and

⁴ International Federation of Journalists ‘Hungary: Deterioration of press freedom under the pretext of Covid-19’ (IFJ, 17 June 2021) <<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/hungary-deterioration-of-press-freedom-under-the-pretext-of-covid-19.html>> accessed 19 September 2021

⁵ Marton Dunai ‘Hungarian journalists say state conceals impact of world deadliest Covid-19 outbreak’ (Reuters, 31 March 2021) <<https://www.reuters.com/article/us-health-coronavirus-hungary-media/hungarian-journalists-say-state-conceals-impact-of-worlds-deadliest-covid-19-outbreak-idUSKBN2BN0XI>> accessed 19 September 2021

⁶ Commissioner for Human Rights ‘It is high time for Hungary to restore journalistic and media freedom’ (Council of Europe, 30 March 2021)< <https://www.coe.int/en/web/commissioner/-/it-is-high-time-for-hungary-to-restore-journalistic-and-media-freedoms>> accessed 20 September 2021

⁷ Amnesty International ‘Poland: Covid-19 is no excuse to crack down on protests’ (Amnesty International, 29 May 2020) <[file:///C:/Users/Anamarija/Dropbox/My%20PC%20\(LAPTOP-NM5TI8NJ\)/Downloads/EUR3724212020ENGLISH.pdf](file:///C:/Users/Anamarija/Dropbox/My%20PC%20(LAPTOP-NM5TI8NJ)/Downloads/EUR3724212020ENGLISH.pdf)> accessed 20 September 2021

the police used violence, such as tear gas against protesters. What has been noticed is that in Poland in 2010 there were two systems for imposing fines in cases of non-compliance with the sanitary measures and they were both used by the authorities, based on their discretion in a case by case basis. The restrictions on the rights and freedoms under the European Convention of Human Rights can be necessary in emergency situations, but they need to be framed in a way that will comply with the requirements of legitimate aim, necessity and proportionality. The use of force by the police, the disproportionate fines and the dispersals of the assemblies are questionable from the perspective of proportionality, as the Court of Human Rights has in multiple occasions emphasized on the necessity to carry out a balancing exercise when determining the limitation on the rights and freedoms, and a complete limitation on a certain right must be the last and the only resort left. Apart from that, Poland has limited the access to public information. That has been done through the introduction of “special laws”, allowing all Polish institutions to refrain from answering questions regarding the virus, leaving the citizens merely with the official information by the public authorities, which gives undetermined flexibility for manipulation.⁸ Those were not rare cases of human rights suppression, as Poland is widely known for the aforementioned practice years before the Covid-19 crisis. The press freedom in Poland has fallen down by record forty places, leaving her on the 58th spot out of 180 countries in the world, since the governing of the “Law and Justice” Party in 2015. The aforementioned party is conservative-nationalist and has taken control of the courts, public companies and the national broadcasting.⁹ In 2016, a highly controversial law was passed, which gives power to the government to appoint the heads of public TV and radio stations, as well as the civil service directors. As a result, more than 200 people were fired and replaced by ones who are associated with the government. Furthermore, there have been so far several situations in which independent media outlets faced legal challenges in reporting. For example, one independent media outlet published revelations of corruption of the Financial Supervision Authority, after which the “Law and Justice” party alongside with other state bodies filed fifty legal challenges against the reporter and the media outlet. There were also fines issued against private TV stations that covered anti-government protests, for an alleged propagation of illegal activities and incitement of behavior that imposes threat on the national security.¹⁰ With these past trends, it does not come by surprise the use of the Covid-19 virus as a pretext to deepen the suppression on the freedom of media and freedom of expression.

Moldova has been high on the list of countries with severe violations of the freedom of expression and media freedom in Europe. At the beginning of the pandemic, the government ordered all audiovisual media providers to present solely the official position of the competent national public authorities and the World Health Organization. The audiovisual providers were not allowed to express their opinions on the national Covid-19 measures, under the pretention to ensure maximum accuracy of the news provided.¹¹ The same decision was removed a day later, but it has been indirectly left in force since every journalist experienced long periods of

⁸ Warsaw Business Journal ‘Poland’s government blocks access to public information: daily’ (Warsaw Business Journal, 16 April 2020) <<https://wbj.pl/polands-government-blocks-access-to-public-information-daily/post/126760>> accessed 20 September 2021

⁹ Madeline Roache ‘As populists hold on to power in Poland, press freedom fear rise’ (Aljazeera, 18 October 2019) <[As populists hold on to power in Poland, press freedom fears rise | Media | Al Jazeera](#)> accessed 20 September 2021

¹⁰ Sarah Repucci ‘Media Freedom: A Downward Spiral’ (Freedom House, 2019) <[Media Freedom: A Downward Spiral | Freedom House](#)> accessed 20 September 2021

¹¹ Covid-19 Civic Freedom Tracker (n3)

unanswered requests for access to information. The official waiting period was extended from 15 to 45 days without an explanation for the rationale, which is an alarming notice of lack of necessity and proportionality, as the government fails to deliver an explanation. Undoubtedly, the problems reflected throughout the crisis are related to the pre-existing dominance of the political figures in the media outlets. With only minor exceptions, almost all audiovisual providers are affiliated to the political actors. Free and independent journalists are prevented from distributing news, and often harassed from the public authorities. An example is the recording of the telephone conversations of more than fifty individuals from the political opposition, the audiovisual media and the independent journalists during the elections, year before the Covid-19 crisis.¹²

Belarus as well is high on the list of European countries which used Covid-19 as a pretext to further oppose and control the work of the media. As an authoritarian regime, the media is used to manipulate the public opinion by spreading misinformation and through defamation of the political opponents.¹³ The national institutions own the national television channel, the radios and the major media outlets, whereas the online world was the only place that was free from regulations for a relatively long period. The independent media was capable of establishing dominance in the online space, until last year and the escalation of protests against the government, when more resources were invested in social media manipulation by the state. An example is the use of fake accounts by the police, in order to detect and harass political activists and anarchist organizations. The latter ones reported more than fifty social media pages and accounts that published personal data and pictures of the anarchists and activists, previously collected in the police raids, and were used to spread disinformation about them. During Covid-19 were reported around 200 social media accounts that re-shared fake news about the implications of the use of the 5G technology on the spread of the virus. It is worth to be remembered that Belarus is the only country in Europe that is not bound to the European Convention of Human Rights and is not a member of the Council of Europe, leaving its' citizens to rely on national mechanisms when reporting human right violations. In addition to that, it is widely known as the only left authoritarian regime in Europe, with un-free elections and weak judicial independence.

Turkey has been widely criticized for imposing measures that have deepened the existing inequalities and the continuous suppression of the core human rights and freedoms. Regarding the freedom of expression, till 2021 there have been reported more than 500 cases of Turkish citizens who have been detained for publications on their social media profiles that allegedly spread disinformation over the corona virus.¹⁴ An example is a truck driver who was detained and released on the same day, for posting a video on social media where he criticized the government over the imposed measures. He addressed the drastic orders of the government and their implications over peoples' financial status and life in general. Very soon afterwards, he was detained under the reasons of "inciting people to not follow the rules" and "inciting hatred". Although he was released on the day of the detention, he was questioned multiple times, he was

¹²Freedom House 'Freedom in the World 2021: Moldova' (Freedom House 2021) <<https://freedomhouse.org/country/moldova/freedom-world/2021>> accessed 21 September 2021

¹³ To know more, read Samantha Bradshaw, Hannah Bailey and Philip N. Howard. "Industrialized Disinformation: 2020 Global Inventory of Organized Social Media Manipulation." (2021) Oxford, UK: Programme on Democracy & Technology <demotech.oii.ox.ac.uk>

¹⁴ Didem Tali 'Turkey is using Pandemic to tighten chokehold free expression' (Freedom House, 20 July 2020) <<https://freedomhouse.org/article/turkey-using-pandemic-tighten-chokehold-free-expression>> accessed 22 September 2021

obligated to sign in to the police on a weekly basis and the most drastic measure was the foreign travel ban, which consequently led to loss of his job.

Under the pretext to combat fake news and spread of fear and panic,¹⁵ the Turkish authorities used the criminal law provisions to follow and target people who are discussing the measures online. The Cyber Crimes Unit of the Interior Ministry declared more than thousand social media users that allegedly made terrorist propaganda, by sharing provocative posts about the virus.

Doctors have also been controlled and summoned. They have used their voices to present the real situation in the hospitals and prisons, and to criticize the lack of adequate health policies by the government. Once again, they were detained and questioned under the provisions of the Criminal Code, for “threats that create fear and panic among people”. Especially on target were doctors who talked publicly about the risk of spreading the virus in the prisons and who criticized the Ministry of Health and its’ lack of cooperation with the medical personnel and medical associations.

The intensified suppression of the freedom of expression and media freedom in Turkey corresponds to the generally illiberal democratic conditions in the country. In the last two decades Turkey has been defined as increasingly authoritarian, where the system of check and balances is strongly undermined, freedom of expression is limited and the government controls the public information, leaving open the possibility of manipulating the magnitude of the Covid-19 crisis. The civil societies and the media have been unfortunately prevented from normal work and flow of accurate information in the public, even longer before 2020. Especially, after the failed coup attempt in 2016 against the national institutions, the President and the government by a faction within the Turkish Armed Forces, civil societies and the media have experienced difficulties in carrying out their basic tasks under the new political climate.¹⁶ Moreover, Amnesty International has reported a closure of 180 media outlets, more than 120 imprisoned journalists and around 3000 journalists who have lost their jobs. Consequently, all of these events have caused a chilling effect on the freedom of expression and the work of the media, as the fear of imprisonment is more present than ever. Current columns and debate programs do not contain diverse political opinions or criticism. As for Turkish journalists who work within foreign media outlets or as freelancers, they have been denied entry to Turkey or their press credentials have been revoked.¹⁷

Russia has been noticed for its’ severe restrictions on the alleged publishing of false information or misinformation over the Covid-19 crisis, with extremely high fines against the physical and legal entities. The Russian Criminal Code was amended for that purpose. It not solely imposed fines as a threat to tackle the spread of disinformation and misinformation, but as well it included a five years prison sentence for anyone who deliberately spread disinformation about serious matters of public safety. Furthermore, the amended law is not limited to the duration of the pandemic, which immediately goes beyond the necessity, as one of the conditions for an allowed restriction of the freedom of expression under Article 10 of the European Human Rights Convention. But this new amendment compliments an already existing law from 2019, which

¹⁵ Amnesty International ‘Turkey: Stifling free expression during the Covid-19 pandemic’ (Amnesty International, 16 June 2020) <https://www.amnesty.org/en/latest/campaigns/2020/06/turkey-stifling-free-expression-during-the-covid19-pandemic/>> accessed 22 September 2021

¹⁶Tank, Pinar (2020) Turkey and COVID-19: Balancing Health and Economic Priorities, *MidEast Policy Brief*, 4. Oslo: PRIO

¹⁷Amnesty International ‘Turkey: Journalism is not a crime’ (Amnesty International 2020) <<https://www.amnesty.org/en/latest/campaigns/2017/02/free-turkey-media>> accessed 23 September 2021

imposes fines against anyone who spreads misinformation or insults the state in traditional and social media, which is different from the previous provisions that predicted punishments for fake news and website blocking. The aforementioned provisions formed part of the Russian Administrative Code, whereas the new, stronger ones are amendments of the Criminal Code and give more power and control to the government over the flow of information in the media.¹⁸ An example for the latter is the fact that only after few days from passing the amendments, the authorities began to put them in use. In the first three months were reported almost 200 cases of arrests and impositions of fines.¹⁹ Among the first cases was the pre-investigation opened against a Russian journalist, over an interview with an anonymous doctor in which it was talked about the possibility of shortage of ventilations machines. She was later investigated and pressured to reveal the identity of the anonymous doctor. Although the case dates back from 2020, it has been finally clarified in May 2021, after a local city court denied the request of the Russia's Investigative Committee to register a criminal case against the journalist.²⁰ The court instead opted for an administrative procedure and a fine, due to an appeal and an extensive help from media rights lawyers and a non-profit media organization.²¹ In a statement released by Amnesty International, the right of access to accurate and timely information has been extensively violated with the government's reliance on fines, censorship and criminal proceedings to control the distribution of information to the public. In the statement released in October 2021, Russia was taken as an example of country that has put in force an oppressive law, among many others.²² Nonetheless, even before the law was amended, suppressive methods had been used to block and prevent the distribution of vital information regarding the virus in public. The Russian Media Monitoring Agency demanded more than 20 media outlets to remove inaccurate information about the virus. Among them were included an interview with a disease expert that criticized the government's form of handling the crisis. On the other side, the freedom of speech of the medical press was completely limited, with the obligation of the heads of the medical institutions to coordinate with the central authorities before any interviews and statements to the press, whereas individual doctors were prohibited to speak to the media.²³ Consequently, that has triggered an initiative from the part of "Syndicate-100", a Russian journalist association, who offered doctors to non-publicly address the existing or upcoming problems which the health system confronts, by filling a questionnaire and with guaranteed anonymity. Further, the

¹⁸ International Press Institute 'New fake news law stifles independent reporting in Russia on Covid-19' (IPI, 8 May 2020) <[New 'fake news' law stifles independent reporting in Russia on COVID-19 - International Press Institute \(ipi.media\)](#)>

¹⁹ Peter Noorlander, "COVID and Free Speech. The impact of COVID-19 and ensuing measures on freedom of expression in Council of Europe member states," Council of Europe Publications (November, 2020) 7 <[COVID and Free Speech EN.pdf](#)> accessed 23 September 2021

²⁰ Coalition of Women in Journalism 'CFWIJ welcomes the dismissal of the case against Tatyana Voltskaya by the Russian court' (CFWIJ, 07 May 2021) <[Russia: CFWIJ welcomes the dismissal of the case against Tatyana Voltskaya by the Russian court — The Coalition For Women In Journalism](#)> accessed 23 September 2021

²¹ Olga Korelina 'A great victory: Russian court drops case against journalist accused of spreading fake news about the coronavirus pandemic' <['A great victory' Russian court drops case against journalist accused of spreading 'fake news' about the coronavirus pandemic — Meduza](#)> (Meduza, 05 May 2021) accessed 24 September 2021

²² Amnesty International 'Covid-19: Global attack on freedom of expression is having dangerous impact on public health crisis' (Amnesty International, 19 October 2021) <[Covid-19: Global attack on freedom of expression is having a dangerous impact on public health crisis - Amnesty International](#)> accessed 25 September 2021

²³ International Press Institute (n18)

journalists will send requests to the heads of the hospitals and regulatory authorities, and if the situation is not improved, it will be possible to reveal the issues publicly.²⁴

As the sanitary crisis began in 2020 Macedonia faced politically challenging events, with the dissolution of the Parliament and the inability to hold parliamentary elections due to the state of emergency.²⁵ Reports without borders in 2021 positioned Macedonia in the middle on the list of 180 countries, based on the press freedom. It highlighted the fact that the media environment worsened, as government officials harassed and threatened media outlets. There was as well a sharp rise in verbal attacks against journalists on social media.²⁶ The quality of information declined, with a lack of resources and staff to conduct fact-checking. In general, the traditional and broadcast media are more likely to secure the necessary resources and provide accurate information, whereas the online media is concentrated on distributing short hit stories, instead of investing in full and enterprise reporting. The latter ones are the main source of misinformation and fake news, usually because of lack of creativity and proper internal standards for regulation. Most of the articles published on a daily basis are short and repetitive, The Metamorphosis Foundation conducted a research and published a report about the content of the articles published in 2020 in Macedonia. What was noticeable is that two-thirds of the total articles were related to the Covid-19 crisis, where the most read ones contained conspiracy theories over the source and spread of the virus, as well as the safety of the vaccines. Numerous articles transmitted disinformation over the involvement of Bill Gates in the creation and spread of the virus, and the impact of the 5G technology.

Overall, the lack of financial resources is the main impediment to the proper work and flourishing of accurate and reliable information, based on previously verified facts. The two biggest political parties have been severely criticized for using people who intentionally initiate online conflicts or offences against social media users and media outlets, whenever they find unfavorable information. They opt for the latter, instead of initiating or supporting a campaign dedicated to tackle disinformation and hear the voices of the press media, their remarks and proposals regarding the future work and financial support.

The only positive trend is the decline of physical and verbal assaults against journalists, compared to last years. There is also a drop in the number of defamation proceedings. The media received financial help through the economic emergency assistance programmes and the broadcast media was not obligated to pay the annual fee for using the frequencies and permits.²⁷

b. Use of violence against journalists in times of Covid-19

Apart from using oppressive laws and punishments as methods to silence journalists and to hinder their working conditions, it has also been evidenced the use of violence in certain European countries. Moreover, security forces and police officials physically attacked journalists

²⁴ Ibid

²⁵ To know more, read Reporters without borders 'News on North Macedonia' <<https://rsf.org/en/north-macedonia>> accessed 26 September 2021

²⁶ Ibid

²⁷ To learn more read the study of Vibrant Information Barometer, a product of IREX with funding from USAID, an annual study that tracks how information is produced, spread, consumed, and use in North Macedonia. Dejan Georgievski 'Vibrant Information Barometer: North Macedonia' <<https://www.irex.org/sites/default/files/pdf/vibe-north-macedonia-2021.pdf>> accessed 26 September 2021

and bloggers who reported on Covid-19 matters, as well as protesters and human right activists.²⁸ For example in Ukraine in January 2021, protesters were detained and charged for violating the Covid-19 quarantine measures. Around 30 activists gathered in the Ukrainian capital to protest, as they do every year in order to commemorate the anniversary of the killing of a Ukrainian journalist and a human rights lawyer, by a radical nationalist. Prior 2021, the police had attempts to disperse the protests, with threats and detentions of several activists. However, in 2021 they used the Covid-19 crisis and the imposed quarantine measures as an excuse for the temporary non-functioning of the Ukrainian Constitution. The police used verbal attacks and physical violence to detain a larger part of the participants, while it also prevented a second protest that had been planned for that same day.²⁹ Serbia is also one of the European countries where the police used violence to stop protests against the lockdown measures. More specifically, the police used tear gas, grenades and physically assaulted protesters. Another big concern is the use of facial recognition cameras in the capital with the purpose of scanning and identifying the protesters, which is arguable from perspective of data protection and can have chilling effect on the right to protest.³⁰ In Italy there have been as well cases of death threats and physical attacks against journalists who covered news about protests and issues related to the lockdown measures. In most of the occasions, the attacks were committed by the protesters who used provocative songs and anti-media slogans with death threats. There have been cases of violence that ended in head trauma, intimidation, insults and robbing of equipments used by the media workers and journalists. Fortunately, the police was actively involved in protecting the media, who undertook investigations and initiated proceedings against the identified protesters who committed the violent attacks. The conclusion is that Italy is a country where the unfavorable working conditions for the media have been created by the citizens, and not the state authorities, in contrast to Ukraine and Serbia.³¹

Regarding the use of violence against journalists and human rights activists, it has been evidenced an amplification of this pre-existing trend more than ever during the pandemic. In the first six months of 2020 the Council of Europe reported a rise of 60% of incidents and violent attacks. But this specific percentage does not include solely the acts committed by public authorities, such as the police, it takes into calculation the physical attacks by non-state actors, which disrupted the work of the media. In some European countries it has been created an extensively negative rhetoric towards the media, by public officials and politicians. For example, an independent freelance journalist from Slovenia was subject of a hate campaign initiated by the Slovenian government, after he sent an official “Freedom of Information request” to the Minister of Interior. In the request he expressed his concern over the security of the journalists and did not receive a reply, after which he decided to reveal it publicly. The request was also signed and supported by six other international organizations, with the hope that journalists will receive

²⁸ Human Rights Watch ‘Covid-19 triggers wave of free speech abuse’ <[Covid-19 Triggers Wave of Free Speech Abuse | Human Rights Watch \(hrw.org\)](#)> accessed 29 September 2021

²⁹ Yulia Gorbunova ‘Ukraine Police Break up Peaceful Protest Against Far-Right Violence’ (Human Rights Watch, 22 January 2021) <[Ukraine Police Break up Peaceful Protest Against Far-Right Violence | Human Rights Watch \(hrw.org\)](#)> accessed 29 September 2021

³⁰ Amnesty International ‘Serbia: Violent police crackdown against COVID-19 lockdown protesters must stop’ (Amnesty International, 09 July 2020) <[Serbia: Violent police crackdown against COVID-19 lockdown protesters must stop - Amnesty International](#)> accessed 29 September 2021

³¹ Article 19 Organization ‘Italy: MFRP partners condemn increasing violence against journalists covering anti-lockdown protests’ (Article19.org, 11 November 2020) <[Italy: MFRP partners condemn increasing violence against journalists covering anti-lockdown protests - ARTICLE 19](#)> accessed 01 October 2021

from the Slovenian government a right to report on the health crisis freely and independently, and to be guaranteed with open access to information. The joint request was re-sent after not getting a response, but solely an indirect referral through social media, more precisely on Twitter. Namely, the Crisis Headquarters of the Ministry of Interiors offended him via social media, by stating that he is part of a “group of four patients who escaped from quarantine and have Covid/Marx/Lenin virus”. The repercussions of this tweet were such, that later the ruling party’s media channels and journals initiated mudslinging against the journalist, with the use of offensive verbs to describe him. However, that provoked even larger reactions, this time from part of the public, with life threats from anonymous social media users.³²

i. Amplification of murders of journalists during Covid-19

Unfortunately, apart from violent attacks, there have been as well numerous murders of journalists while defending their freedom of expression.³³ As portrayed in the 2021 report by the Secretary General of the Council of Europe, in the period between 2018 and 2020 there has been an increased violence and murders of journalists, with most of the cases left unresolved to date. One of the most controversial cases that implicate the national government is the self-immolation of the Russian journalist and news editor Irina Slavina. In 2020 she set herself on fire in front of the Ministry of Interior, after anticipating her death on Facebook and blaming the Russian Federation for her death. A day before her death, Slavina reported that twelve police officers had searched her whole apartment and seized her lap top, as well as her daughter’s lap top, the phones belonging to her and her husband, with the aim to find materials related to the pro-democracy and opposition group Open Russia. Slavina was an editor of an online newspaper that investigated and reported over the illegal removal of historic buildings in the region where she lived, the work of the local authorities and the ongoing political persecution.³⁴ The Russian investigators have decided to not open a criminal case for incitement of suicide, under the excuse that highly probably Slavina had a mental condition and that there was not elements of crime in this specific case.³⁵ However, the pressure that she felt can be evidenced through the numerous administrative convictions for her political position and activity as a journalist in 2019 and 2020 and the latest case of the intrusive search of her house in 2021, which are simply examples of the persecution against her.

During the ongoing sanitary crisis in 2021, there have been many dark days for the media freedom in Europe. Such was the murder of a well-known Greek crime reporter, who was shot ten times with a weapon outside his home. After his death, there have been several theories for the reasons of the cold-blooded murder, with the principle one being his long time involvement

³² Reporters Without Borders ‘Slovenia: Free press groups call on governments to stop harassing journalist Blaz Zgaga’ (International Freedom of Expression, 27 March 2020) <[Slovenia: Free press groups call on government to stop harassing journalist Blaž Zgaga - IFEX](#)> accessed 01 October 2021

³³ ‘State of Democracy, Human Rights and the Rule of Law: A Democratic Renewal for Europe’, Report by the Secretary General of the Council of Europe, May 2021, Council of Europe Publications F-67075 Strasbourg Cedex, 43 <[Reports \(coe.int\)](#)> accessed 02 October 2021

³⁴ Radio Free Europe/Radio Liberty ‘Daughter Shuts Down Online Russian Newspaper after Journalist’s Self-Immolation’ (RFE/RL.org, 11 February 2021) <[Daughter Shuts Down Online Russian Newspaper After Journalist's Self-Immolation \(rferl.org\)](#)> accessed 02 October 2021

³⁵ Radio Free Europe/Radio Liberty ‘Russia Refuses To Open Criminal Case into Journalist’s Self-immolation’ (RFE/RL.org, 16 November 2020) <[Russia Refuses To Open Criminal Case Into Journalist's Self-Immolation \(rferl.org\)](#)> accessed 02 October 2021

in reporting into organized crime and mafia groups. In July 2021, a Dutch crime journalist was shot multiple times, and his death was met with a huge shock by the entire journalistic community. The most surprising part was the fact that the murder occurred in the daylight, in one of the European countries that has continuously been reported as one of the safest countries with an exceptionally high level of press freedom in the world.³⁶

As a consequence of all the abuses and repression over the freedom of expression and press freedom, people's trust in the media has started to decline gradually. The Reuters Institute for the Study of Journalism reported that in 2020, during the first year of the crisis, around 40% of people trusted the news media in most of the cases. As for 2021, the Reuters Institute noticed an increase in the trust of media, solely in Western Europe. Generally, those who perceived media as a source of distrust endorse the conservative political ideology, such as for example East Germans and the socio-economic classes in Great Britain.³⁷

ii. *Obligations of the Member States of the Council of Europe and the UN*

The most important remark regarding the restrictions and limitations of the freedom of expression, seen in the aforementioned examples and many more throughout the European countries, is what is considered as “false” information and under which criteria it is constructed.³⁸ In the cases *Altan v. Turkey* and *Alpay v. Turkey*, the European Court of Human Rights has stated that in emergency situations procedural and substantive requirements must be fulfilled. More specifically, the measures taken must be proportionate to the exigencies of the situation and they must not conflict with other international law obligations. That means that the states have a wide margin of appreciation, but under the Court's supervision. In the aforementioned cases the Court has decided regarding the emergency situation in Turkey after the failed coup in the summer of 2016 and whether the measures taken against the individuals involved were necessary and proportionate. The comments given by the Court are essential in the pre-determination of the restrictions and limitations of the rights and freedoms. In specific, the Court has stated that emergency situations cannot serve as a pretext for limiting the freedom of political debate, which is considered as a core democratic concept. Furthermore, the Court has stated that any other measure taken should protect the democratic orders from threats and should safeguard the values of the democratic society, such as pluralism, tolerance and broadmindedness. Most importantly, the Court has reflected upon the pre-trial detention of people who express critical views, and has determined that this has negative effect on the detainees, but as well as on the whole society. As the Court has concluded, the deprivation of liberty will have a chilling effect on the freedom of expression, by silencing dissenting voices and causing intimidation on the civil society.³⁹ As the cases are related with the aforementioned examples of treatment towards journalists during the Covid-19 emergency state in Europe, through the parallel made can be seen that most of the measures taken by the public authorities in the new cases are indeed contrary to the essential democratic values. The Court has

³⁶ International Press Institute ‘Death of Dutch Journalist Peter de Vries a sad day for Europe’ (International Press Institute, 15 July 2021) <[Death of Dutch journalist Peter de Vries a sad day for Europe - International Press Institute \(ipi.media\)](#)> 03 October 2021

³⁷ Guy Faulconbridge ‘People want trusted news’ (Reuters Institute, 23 June 2021) <[People want trusted news, Reuters Institute says | Reuters](#)> accessed 04 October 2021

³⁸ Noorlander, Covid and Free Speech, (n19) 8

³⁹ Stanford, B 2019, ‘Case comment - Mehmet Hasan Altan v Turkey (13237/17); Sahin Alpay v Turkey (16538/17)’ *Coventry Law Journal*, vol. 23, no. 2, 115-119

acknowledged that the circumstances provoking an emergency state can threaten the life of the nation, but the forms in which the state responds can undermine the core democratic values and suppress normal, “democratic” activities.⁴⁰

The Human Rights Council of the United Nations referred as well to the abuses of freedom of opinion and expression in a Report in 2020. First of all it began by criticizing the guidance issued by the World Health Organization, who although highlighted the importance of information and responsible governance in addressing the epidemics, it did not answer several crucial questions. WHO advised the States to provide reliable, accurate information, while taking into account the sensitivity of different people and by addressing without delays false rumors. It as well emphasized on the dependency between freedom of expression and access to information. However, WHO did not answer to what extent the public can have access to information held by the public authorities, regarding the pandemics, to what extent can a state impose restrictions to keep the public receiving solely official and legitimate information, and what are the exact obligations a state have in educating the public and securing reliable information to the health care workers.⁴¹ However, the international human rights law has the answers to these questions and the WHO’s insufficient addressing of these matters should not be an excuse for an ignorant behavior towards the international legally binding documents. The Human Rights Council of the United Nations has determined in a Resolution 21/12 that the freedom of expression is essential for the democratic society and a pre-condition for the further development. Then, the importance of the freedom of the media has been elaborated in the Resolution 68/163 of the General Assembly of the United Nations. The free media has been described as an essential factor in building inclusive knowledge societies and for fostering good governance. The International Covenant on Civil and Political Rights guarantees the freedom of opinion and expression, by first stating that the freedom of opinions may not be interfered, and then stating that the freedom of expression consists of several components, such as the rights to seek, receive and impart information.⁴² Furthermore, freedom of expression is unlimited regarding the information provided, meaning that it can be of any kind. It is not restricted to a particular type of media and it is regardless of frontiers, whereas with the next provisions are explained the grounds on which a state can rely in determining restrictions. Namely, any restriction or limitation must be based on a legitimate aim, necessary and proportionate. The latter is identical with the European Convention of Human Rights and the guaranteed freedom of expression, where through an extensive case law the European Court of Human Rights has restricted significantly the margin of appreciation of the states regarding Article 15.⁴³

The Human Rights Committee of the United Nations in its’ general comment regarding derogations in state of emergency, has stated that any measure taken should be of temporary and exceptional nature. When relying upon Article 4 of the International Covenant on Civil and Political Rights, it could not become necessary to derogate from the freedom of opinion during emergency state. If we connect the importance of the freedom of expression and the distribution

⁴⁰ Ibid

⁴¹ Kaye, D. UN. Human Rights Council. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Disease Pandemics and the Freedom of Opinion and Expression*, Report A/HRC/44/49, 4 <[A/HRC/44/49 - E - A/HRC/44/49 -Desktop \(undocs.org\)](#)> accessed 06 October 2021

⁴² International Covenant on Civil and Political Rights, Art. 19 <[OHCHR | International Covenant on Civil and Political Rights](#)>

⁴³ Kaye, D. (n41)

of information by the media in the shape of people's opinions, the measures taken in restricting them should not be exaggerated and go beyond the set criteria.⁴⁴

II. CONCLUSION - WHAT CAN BE DONE FURTHER?

Undoubtedly, the Council of Europe can contribute more in improving the limited freedom of expression and media freedom in Europe. It can begin by making more effective the use of the Platform to promote journalism and the safety of journalists, which was created in 2015. Unfortunately, so far the platform has triggered around 900 alerts, only half of them have received a reply and an insignificant percentage have been solved. In this context, it is more than ever necessary that it becomes mandatory for the member states to fully investigate the reported alerts and to make public the progress of the investigation, in order to secure transparency. Furthermore, the member states should consider forming internal mechanisms to manage the alerts which will co-operate with the relevant public authorities. With regard to the rejected alerts, the grounds for assessment should be provided with detailed explanations as for the decision made. The partners of the platform have already shared their determination to continue with the commitment of reviewing the replies and decisions made by the state authorities.⁴⁵ Apart from that, the value of the platform should be promoted on a larger scale, to make it more visible and accessible to everyone. It would be as well beneficial to connect the platform with the EU, in a way that it will be imposed as a topic of discussion and commitment for the accession. The platform should as well highlight the positive examples of actions and initiatives to enhance the protection of journalists, where the member states should be encouraged to follow them.⁴⁶ The Council of Europe presented two months ago a Recommendation to strengthen the safety of journalists and other media professionals, with special focus on online threats, the role of journalists during protests and demonstrations, and women journalists and the ones who report on equality.⁴⁷ However, as the legislation is non-binding it is urgent that the Council establishes a monitoring mechanism to have control over the implementation process in the member states. The Council should learn from the noticed delay in the implementation of the Recommendation on the protection of journalism and safety of journalists and other media actors, brought in 2016 by the Council's Committee of Ministers.⁴⁸

⁴⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, (31 August 2001), CCPR/C/21/Rev.1/Add.11,

<<https://www.refworld.org/docid/453883fd1f.html>> accessed 06 October 2021

⁴⁵ Partner organisations of the Platform for the Protection of Journalism, *Wanted! Real action for media freedom in Europe* (Council of Europe 2021) 62 - 63 <<https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>> accessed 06 October 2021.

⁴⁶ Parliamentary Assembly of the Council of Europe, *Threats to Media Freedom and Journalists' Security in Europe* (Council of Europe, 03 January 2020) 26, Doc. 15021,

<[Threats+to+media+freedom+and+journalists+security+in+Europe+\[Doc.+15021\].pdf \(ecoi.net\)](#)> accessed 06 October 2021

⁴⁷ Council of Europe 'New EC Recommendation to strengthen the safety of journalists and other media professionals' (Council of Europe, 16 September 2021) <[New EC recommendation to strengthen the safety of journalists and other media professionals - News \(coe.int\)](#)> accessed 07 October 2021

⁴⁸ European Federation of Journalists 'Safety of Journalists: EFJ welcomes European Commission's Recommendation and calls for monitoring of member states' (EFJ, 16 September 2021) <[Safety of journalists: EFJ welcomes European Commission's Recommendation and calls for monitoring of Member States – European Federation of Journalists \(europeanjournalists.org\)](#)> accessed 07 October 2021

On the other side, the European countries must create national plans of action based on an expert analysis of the national situation. The actions should reflect the aforementioned recommendations, which are fairly detailed regarding the protection of media and the safety of journalists and other media actors.⁴⁹ Apart from that, positive examples from several European countries can be taken as a guide in the process of creation and implementation of the national plans, as best practices that proved to be beneficial for the safety of the media industry.

Although there is a noticeably huge distrust in the news media, several examples in different countries serve as a source of support for the media and hope that the future of the media freedom in Europe will go in a positive direction. Several member states have implemented fiscal and financial support of the media, without differentiation of the size and capacity of the outlets, meaning that the independent ones are included as well. For example, the United Kingdom eliminated the tax obligation on news media, and there was similar support from the Netherlands and Germany as well. On the other side, the European Union has been active in providing help to the most media freedom “fragile” countries, with support for Moldova and Ukraine in creating alternative sources with quality information in Russian. The projects have been aimed to reduce the manipulation and use of inaccurate information through the media. For example, in Moldova it has been evidenced an increased support of the independent media, with the decline of the Russian influence over the provision of partial and subjective news in the country. Also, in Ukraine the real living conditions of the people who are affected by the ongoing war in the eastern part of the country have been showed.⁵⁰ These projects have consequently led to reducing the Russian influence in these countries, with sanctions on pro-Russian media and TV houses, where it has proved necessary.

Sweden enacted its’ Action Plan to defend free speech and protect journalists and artists in 2018. It is built on in-depth analysis for the period between 2012 and 2017 and it provides personal protection to journalists under threat or attacks. For example, the police have to investigate whether certain attack can cause chilling effect on the free speech, the specialized hate crime units are in charge to investigate offences that pose threat to the free formation of opinions. Sweden also is committed to invest in trainings for the special units and the police officers, and to provide refugee for journalists and media artists who are persecuted. Similar programme has been introduced in Netherlands as well. In 2018 a committee was set up to deliver the best actions on prevention and developing procedures to respond to future incidents. The committee is working on a joint understanding of the forms of intimidation and attacks and on developing a digital application for journalists where they can freely file complaints.⁵¹

The aforementioned initiatives and actions of the states are great examples of the necessary starting point in improving the media freedom. The member states in general should work on a larger scale in securing a normal environment for the journalists and media workers, where more stringent monitoring for compliance with the international human rights and obligations is necessary from part of the Council of Europe.

⁴⁹ Peter Noorlander, *Artificial Intelligence – Intelligent Politics, Challenges and Opportunities for media and democracy: Taking action to protect journalists and other media actors* (Council of Europe, Cyprus 2020) 8 <<https://rm.coe.int/cyprus-2020-safety-of-journalists/168097fa83>> accessed 07 October 2021

⁵⁰ Bosse, G. Hoppner, M. Vierra, A. *Freedom of Speech and Media Plurality in the Covid-19 context*, Policy Paper for the Eastern Partnership Civil Society Forum: Working Group ‘Democracy, Human Rights, Good Governance and Stability’ (2021) 30-31 < [Freedom-of-Speech-and-Media-Plurality-Paper-2021.pdf \(eap-csf.eu\)](#)> accessed 08 October 2021

⁵¹ Noorlander (n49) 12