



Council of Europe Conference of Ministers
responsible for Media and Information Society

**FREEDOM OF EXPRESSION
AND DEMOCRACY IN THE DIGITAL AGE**

OPPORTUNITIES, RIGHTS, RESPONSIBILITIES

Belgrade, 7-8 November 2013



Republic of Serbia
Ministry of Culture and Information



8 November 2013

**POLITICAL DECLARATION
and
RESOLUTIONS**

Draft Political Declaration

Freedom of Expression and Democracy in the Digital Age *Opportunities, rights, responsibilities*

The Ministers of States participating in the Council of Europe Conference of Ministers responsible for media and information society, held in Belgrade, Serbia, on 7 and 8 November 2013, adopt the following political declaration:

1. We affirm that the right to freedom of expression, to hold opinions and to receive and impart information and ideas as enshrined in Article 10 of the European Convention on Human Rights and its corollary media freedom are fundamental prerequisites for pluralist democracy. Freedom of expression is not absolute; its exercise must respect the rights of others in particular the right to private life, in accordance with the European Convention on Human Rights and in light of the case law of the European Court of Human Rights.
2. Freedom of expression and media freedom are threatened in various parts of Europe, online as well as offline. This calls for political commitment and additional efforts by member States. In this respect, we acknowledge the longstanding work carried out by the Council of Europe and its potential to further promote freedom of expression and media freedom in Europe.
3. In 2011, the Council of Europe embraced a new notion of media, acknowledging that media-related policy must take full account of traditional and new forms of media. The new notion provides criteria for identifying various forms of media and offers guidance for differentiated responses, in particular in respect of media freedom and its protection, media independence, pluralism and diversity, as well as a reference for the duties and responsibilities of the various actors, in line with Council of Europe standards. This however does not apply automatically and may require implementation through appropriate national law.
4. We agree that the independence of the media and media freedom – whether print, broadcast or online – require effective self-regulation. Undue State regulation, control and supervision of the media have negative effects in this respect, including individuals' perception of media freedom.
5. Access to the Internet is inextricably linked to human rights, in particular to the exercise of the right to freedom of expression. We acknowledge the fundamental importance for people to be able to express themselves and access information on the Internet without undue restrictions, thus enabling them to effectively exercise their rights under Article 10 of the European Convention on Human Rights.

6. The right to private life is protected under Article 8 of the European Convention on Human Rights and the protection of personal data, one of its corollaries, has been expounded among others in Convention 108, European Union legislation and other relevant international and national laws or principles. The protection of personal data is both itself a right and an enabler for the exercise of other rights.
7. Data can be collected and processed for a legitimate aim including the objectives set out in the Council of Europe's Statute. Any data collection or surveillance for the purpose of protection of national security must be done in compliance with existing human rights and rule of law requirements, including Article 8 of the European Convention on Human Rights. Given the growing technological capabilities for electronic mass surveillance and the resulting concerns, we emphasise that there must be adequate and effective guarantees against abuse which may undermine or even destroy democracy.
8. The widespread and growing phenomenon of hate speech and intolerant discourse online calls for concerted action at national and transnational levels. The promotion of respect for human rights, dignity and ethics online are important and we welcome the Council of Europe campaign against hate speech. We believe that media professionals have an important role to foster ethical journalism offline and online.
9. We are appalled that journalists and other media actors who carry out journalistic activity or perform public watchdog functions are increasingly subject to physical attacks and other forms of harassment and are even being killed because of their media related activities.
10. **In view of the above, we:**
 - α) invite the Council of Europe to pursue as a matter of priority its efforts to uphold and promote the respect of Articles 8 and 10 of the European Convention on Human Rights and as regards the latter article we invite the Council of Europe to promote media freedom – whether print, broadcast or online – and the implementation of existing European standards at national level as well as additional standard setting as appropriate;
 - β) encourage member States to reinforce their work on freedom of expression and media freedom on the basis of the new notion of media with a view to preserving the core values of the Council of Europe and to guarantee the same human rights protection in all forms of media, whether offline or online;
 - χ) declare our firm commitment to Internet freedom which must be fully compatible with the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and to this end, fully support the implementation of the Council of Europe's Internet Governance Strategy 2012-2015;
 - δ) declare our support for the complementary efforts made by the United Nations, the Council of Europe, the European Union, the Organisation for Security and Co-operation in Europe and other organisations to address the urgent need to establish a safe and enabling environment for journalists and the media;

- ε) consequently, we adopt the resolutions “Internet freedom”, “Preserving the essential role of the media in the digital age” and “Safety of journalists” which are appended to this political declaration and invite the Committee of Ministers of the Council of Europe to take appropriate steps to implement the actions proposed in those documents.

Draft Resolution No 1

Internet Freedom

The Ministers of States participating in the Council of Europe Conference of Ministers responsible for media and information society, held in Belgrade, Serbia, on 7 and 8 November 2013, adopt the following resolution:

1. The Internet, which was designed to exchange information and knowledge, plays a unique role in assisting individuals to work, to be politically and culturally engaged, to assemble, associate and, above all, to communicate and express diverse views and varied opinions, including those of discontent and protest.
2. We recognise the social and economic benefits that Internet access creates in addition to enhancing democratic processes.
3. Internet freedom is a shared responsibility; the full and meaningful involvement of governments, the private sector, civil society and other communities in their respective roles is critical to encourage respect for and uphold freedom of expression and other fundamental rights, such as the right to assemble and associate, and to enjoy private and family life, which includes the protection of personal data.
4. We reaffirm our commitment to multi-stakeholder dialogue on Internet governance to build confidence and trust. This should include attention to the shared commitment of State and non-State actors to fundamental rights on the Internet.
5. Freedom of the Internet includes preserving the Internet's open architecture, supported and enhanced by open standards, development processes, and promoting innovation in the bottom up, decentralised multi-stakeholder manner which has proved so successful for the rapid evolution and spread of access to the Internet and its associated technologies and applications.
6. Access to the Internet is a key tool enabling people to effectively seek, receive and impart ideas and opinions. Interfering with access can undermine participation in democratic processes and affect the dissemination of information and expression in the public interest. Any interference must meet the requirements of Article 10, paragraph 2, of the European Convention on Human Rights.
7. We renew our commitment to do no harm to the Internet and to preserve its universality, integrity and openness. Any measure, including blocking and filtering, that might interfere with people's freedom to access and communication via the Internet must be taken in compliance with international human rights law.

8. We resolve to protect people from the risks encountered on the Internet, in particular by fighting cybercrime, sexual abuse and exploitation of children, cyber bullying, gender based discrimination, incitement to violence, hatred and any form of hate speech. This may require concerted efforts with other non-state stakeholders. At the same time, we reaffirm that any restrictive measure taken must be in compliance with international human rights law, in particular as regards the protection of personal data.
9. Measures taken in the interest of national security which interfere with the right to freedom of expression or to the protection of private life, should meet the requirements set out in the European Convention of Human Rights. These requirements constitute effective guarantees against abuse.
10. Unjustified interference threatens the universality and integrity of the Internet and will adversely affect people's trust in the Internet and undermine its public service value. Council of Europe member states should respect their commitment to do no harm to the Internet.
11. We acknowledge the paramount importance of improving media and digital literacy and skills of individuals, in particular those belonging to vulnerable groups, to use the Internet safely and in an informed way, in particular by knowing how to distinguish between public and private spaces on the Internet. Users should be properly informed of existing human rights and should be empowered to exercise their rights and fundamental freedoms online.
12. We encourage the Council of Europe to continue developing, within the framework of its Internet Governance Strategy, adequate safeguards to protect fundamental rights on the Internet, especially when action is taken that might interfere with access and free flow of information and expression online.
13. **In view of the above, we invite the Council of Europe to:**
 - (i) further develop, in a multistakeholder approach, the notion of “Internet freedom” on the basis of standards adopted by the Committee of Ministers on Internet governance principles, network neutrality and the universality, integrity and openness of the Internet;
 - (ii) promote media diversity and pluralism online, in particular by ensuring that users can access content of their choice;
 - (iii) complete as soon as possible the elaboration of a Compendium of existing human rights for Internet users;
 - (iv) step up efforts to protect the right to privacy and personal data, in particular in respect of young people;

- (v) examine closely, in the light of the requirements of the European Convention on Human Rights, the question of gathering vast amounts of electronic communications data on individuals by security agencies, the deliberate building of flaws and ‘backdoors’ in the security system of the Internet or otherwise deliberately weakening encryption systems;
- (vi) examine the role and human rights implications of the Internet and new technologies as tools for political debate, protest and other expressions of discontent;
- (vii) continue to combat hate speech and incitement to violence and terrorism, whether involving individuals, public or political persons or groups, including offering guidance on ways to mitigate its escalation, due to the speed and scope of its online dissemination;
- (viii) promote media and digital literacy programmes having due regard to the gender perspective and diversity implications;
- (ix) explore ways of enhancing online participation of vulnerable and disadvantaged people or groups taking into account their specific needs;
- (x) engage with the private sector and the business sector in order to encourage them to respect their obligations and responsibilities in protecting and respecting human rights on the Internet;
- (xi) offer guidance on enabling access to culture and encouraging innovation and creation on the Internet while ensuring that creators, innovators and producers of cultural products are appropriately rewarded and their rights protected.

Draft Resolution No 2

Preserving the essential role of media in the digital age

The Ministers of States participating in the Council of Europe Conference of Ministers responsible for media and information society, held in Belgrade, Serbia, on 7 and 8 November 2013, adopt the following resolution:

1. Media are constantly evolving; society witnesses new forms of media and self-expression, bringing new possibilities for creation, innovation and dissemination. Whilst media in the digital age provide opportunities never known before, the development of new forms of media is inevitably disruptive to traditional media.
2. We are committed to creating the necessary conditions to maintain the essential role that media play in a democratic society also in the digital environment; the provision of information, the nurturing of public debate, the enhancement of the transparency and accountability in respect of public affairs and other matters of public interest or concern – the “public watchdog” function – justify media’s special status and protection in societies based on pluralism and democracy.
3. The Recommendation of the Committee of Ministers on a new notion of media provides criteria for identifying media and offers guidance for a graduated and differentiated regulatory response, in line with Council of Europe standards. This instrument offers assistance in understanding the functioning of the media, both online and offline, with a view to preserving and developing their traditional role in the digital age.
4. We are concerned that media pluralism and diversity can be threatened by excessive media concentration at national and international level and by State interference. The risks associated with media concentration have grown more acute in the digital age both in Europe and beyond. Access to diverse information and content is also threatened by the emergence of new online players and “gatekeepers” benefiting from dominant positions at national and global level.
5. We consider it important to further consolidate effective media self-regulation as a prerequisite for media freedom and independence of the media. Regulation, including its milder form of co-regulation, or “regulated” self-regulation, should comply with the requirements set out in Article 10 of the European Convention on Human Rights and the standards that stem from the relevant case law of the European Court of Human Rights.

6. We have entered into a new phase in digital convergence. Connected television and other connected devices lead to new forms of distribution and control over content. This may bear on the diversity of content and users' choice or lead to fragmentation as a result of different platforms that are not interoperable. It also raises concerns about the protection of children. The constant development and convergence of technologies also poses new challenges as regards the collection and processing of personal data and the profiling of users irrespective of their gender.
7. We consider that, alongside editorial independence, professional journalism is crucial for accomplishing media objectives. The situation of journalists increasingly working in precarious situations and in freelance positions, together with the emergence of new forms of online journalism and what is sometimes referred to as "citizen journalism", require innovative ways of promoting ethical standards while protecting freedom of expression and information, and reconciling it with the right to privacy.
8. We recognise that the protection of journalistic sources as a condition for investigative journalism remains of critical importance in the digital age, considering the necessity for media to ascertain the authenticity of content received from multiple sources without exposing them to tracking and reprisal.
9. The preservation of the essential role of media in the digital age justifies, alongside commercial media, further support for, on the one hand, a well-funded, sustainable, independent, high quality and ethical *public service media* providing distinctive content on all services and platforms and, on the other hand, non-profit *community media* capable of addressing the specific needs of various communities and committed to inclusive and intercultural practices.
10. **In view of the above, we invite the Council of Europe to:**
 - (i) closely examine the state of media concentration, transparency of media ownership and regulation and their impact on media pluralism and diversity, and consider the need for updating European standards in this respect in the digital age;
 - (ii) promote truly independent media in Europe based on effective self-regulation;
 - (iii) propose measures to preserve and strengthen media's watchdog function by creating a favourable legal environment for vigorous investigative journalism and critical scrutiny of all matters of public interest;
 - (iv) explore means of promoting professional and ethical journalism effectively, taking due account of the expanded range and number of actors in the digital age;
 - (v) carefully consider, in the light of Council of Europe standards on media pluralism and diversity of content, questions relating to digital convergence, connected television and other new arrangements for the delivery of essential media content or information and, in this context, examine the role of public service media and community media services.

Draft Resolution No 3

Safety of journalists

The Ministers of States participating in the Council of Europe Conference of Ministers responsible for media and information society, held in Belgrade, Serbia, on 7 and 8 November 2013, adopt the following resolution:

1. We are appalled that journalists in parts of Europe are increasingly being intimidated, physically or through other forms of harassment, deprived of their liberty and even killed because of their investigative work, opinion or reporting, often with insufficient efforts by relevant State authorities to bring the perpetrators to justice.
2. Similarly, on 20 September 2013, the Human Rights Council declared itself “Deeply concerned at the frequent violations and abuses of the human rights of journalists, including through killing, torture, enforced disappearance, arbitrary detention, expulsion, intimidation, harassment, threats and acts of other forms of violence, as well as through measures, such as surveillance, search and seizure, when aimed at hampering the work of journalists”.
3. This situation is unacceptable and clearly violates Article 10 of the European Convention on Human Rights, which guarantees the right to freedom of expression and information
4. States are obliged to protect every person’s fundamental human rights; the right to life and the absolute prohibition of torture, which cannot be justified in any situation, as well as the right of liberty and security, the right to respect for private and family life, home and correspondence, freedom of thought, conscience and religion, and the freedom of assembly and association, as provided for by the European Convention on Human Rights.
5. The European Court of Human Rights has repeatedly ruled that States are required to create a favourable environment for participation in public debate by all persons, enabling them to express their opinions and ideas without fear. Furthermore, the Court has established that States must not only refrain from interference with the individual’s freedom of expression, but are also under a *positive obligation* to protect their right to freedom of expression against the threat of attack, including from private individuals through an effective system of protection.
6. Failures by law enforcement agencies and judicial authorities to investigate effectively and prosecute those responsible in cases of attacks on journalists, whether committed by public officials or by non-State actors, fuel a climate of impunity, which is liable to lead to further attacks and undermines the rule of law.

7. Freedom of expression cannot be upheld without free, pluralistic and independent media and the free exercise of journalistic freedoms as an instrument for the formation of opinions, ideas and decision making. Journalists serve society as a whole and democracy at large; they have a role to impart information and ideas of public interest and therefore require special protection. Freedom of expression is also essential for the protection of other human rights.
8. A definition of journalist can change from country to country depending on national legislation or case law on the subject. While Article 10 of the European Convention on Human Rights applies to everyone, the Court has afforded even stronger protection under it to journalists and others who communicate in the public interest. Related good practice in some member states includes special legal protection for journalists, for example in respect of the confidentiality of sources and their material or investigations. In some cases, violence against journalists is treated as an aggravated offence and carries higher penalties.
9. Moreover, in 2011 the Committee of Ministers recommended a new, broad notion of media to encompass all actors involved in the production and dissemination to potentially large numbers of people of content, including information, analysis, comment and opinion. The Committee of Ministers also acknowledged that, for certain purposes, some privileges which are normally recognised for journalists may extend to other actors who may not fully qualify as media (for example individual bloggers) taking account of the extent to which such actors can be considered part of the media ecosystem and contribute to the functions and role of media in a democratic society. The Committee of Ministers recommended a graduated response that should be taken into account as regards the safety and protection of various media actors.
10. In spite of member States' commitments to the European Convention on Human Rights and undertakings to intensify efforts in this regard, authoritative reports by UN agencies, the Council of Europe, the OSCE, civil society and professional groups provide compelling evidence that journalists in some parts of Europe are still the targets of persistent physical attacks, intimidation, and other forms of harassment because of their media related activities.

11. In view of this alarming situation:

- (a) we affirm that threats to freedom of expression and the safety of journalists must be dealt with as a matter of priority by all Council of Europe member States;
- (b) we strongly condemn physical attacks and violence, intimidation, misuses of the power of the State, including unlawful monitoring of communications, and other forms of harassment of journalists as well as others who contribute to shaping public debate and public opinion by exercising their right to freedom of expression and information;
- (c) we resolve to take all appropriate steps for ensuring the protection of journalists, in terms of both preventive measures and effective investigations;
- (d) we commit to contribute to the concerted international efforts to enhance the protection of journalists, in particular within the framework of the *UN Plan of Action on the Safety of Journalists and the Issue of Impunity*, having regard to Resolution 21/12 of the Human Rights Council on the safety of journalists, and the endeavours of regional organisations, such as the OSCE and the Council of Europe, and of professional and non-governmental organisations to increase the safety of journalists;
- (e) we invite the Committee of Ministers to pursue its work, in co-operation with other institutions of the Council of Europe, including the Commissioner for Human Rights and the Parliamentary Assembly, with a view to:
 - (i) elaborating guidelines for the protection of journalism and the safety of journalists and others who carry out journalistic activity or perform public watchdog functions with a view to harmonising legislative frameworks, practice and law-enforcement processes at national level (including positive obligations as established by the European Court of Human Rights);
 - (ii) intensifying actions to implement such standards and best practices through appropriate efforts by States and through the Council of Europe's co-operation, technical assistance programmes and activities;
 - (iii) following the developments in members States, sharing and disseminating information about urgent cases and issues concerning journalists' safety and other serious threats to freedom of expression, and proposing remedial action when necessary;
 - (iv) addressing the specific challenges and threats that women journalists are confronted with in the course of their work.