

## ARTICLE

# The Platform for the Protection of Journalists: A Mechanism for Cooperation between Non-Governmental Organisations and the Council of Europe

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The decrease in journalist safety and media freedom has a negative impact on the rule of law because journalists cannot act as public watchdogs. Its deterioration in Europe during the last decade is a worrying trend for society as a whole. The Council of Europe has tried to fight against it through the creation of a public Internet-based Platform for the protection of journalism and the safety of journalists. The Platform receives alerts from non-governmental organisations such as journalist associations and this serves as an early warning mechanism for the Council of Europe. Non-governmental organisations act as partners of this International Organisation and in that way they protect the rule of law from below. A simple search of the Platform permits to see the many threats journalists face in Europe every day. This paper assesses how the Platform works. It is a positive initiative to co-operate with civil society that still has to improve its results mainly through a more effective engagement of the Member States of the Council of Europe.

**Keywords:** Council of Europe; media freedom; safety of journalists; civil society

## 1. Introduction

Freedom of the media has been deteriorating around the world over the past decade and this trend is more acute in Europe.<sup>1</sup> The 2021 World Press Freedom Index compiled by Reporters Without Borders shows that journalism is completely or partly blocked in 73% of the 180 countries ranked by the organisation.<sup>2</sup>

The threats to the media and journalists can vary from the direct ones that affect their physical integrity or even their lives to subtler ones that may come as changes in media laws, heavier defamation fines or the unwarranted rejection of the extension of a broadcast license of an independent radio station. The surge of anti-media rhetoric in populist political speech across regions has contributed to decreased public trust in journalists and media workers. This has created a more hostile environment for journalists in many countries paving the way for laws curtailing freedom of expression and reduced protections for journalists and their sources.<sup>3</sup> All over the world, journalists are struggling because of pressures and attacks from both external actors and decision-making systems or individuals of their own outlets.<sup>4</sup>

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<sup>1</sup> Sarah Repucci, 'Freedom and the Media: A Downward Spiral' in *Freedom and the Media 2019* (Freedom House 2019) <[https://freedomhouse.org/sites/default/files/2020-02/FINAL07162019\\_Freedom\\_And\\_The\\_Media\\_2019\\_Report.pdf](https://freedomhouse.org/sites/default/files/2020-02/FINAL07162019_Freedom_And_The_Media_2019_Report.pdf)> accessed 14 October 2020.

<sup>2</sup> Reporters Without Borders, *2021 World Press Freedom Index* (2021) <<https://rsf.org/en/2021-world-press-freedom-index-journalism-vaccine-against-disinformation-blocked-more-130-countries>> accessed 3 July 2021.

<sup>3</sup> UNESCO, *Intensified attacks, new defences: developments in the fight to protect journalists and end impunity* (2019) <<https://unesdoc.unesco.org/ark:/48223/pf0000371487?posInSet=86&queryId=0c83ab21-2dda-4d0c-b622-e529c7fd768f>> accessed 14 October 2020.

<sup>4</sup> Marius Dragomir, *Reporting facts: free from fear or favour: preview of In Focus report on World Trends in Freedom of Expression and Media Development* (UNESCO 2020) <<https://unesdoc.unesco.org/ark:/48223/pf0000373572>> accessed 14 October 2020.

This has a negative impact not only for journalists but also for society as a whole because how it affects freedom of information and the capacity to keep authorities accountable. When media pluralism and the safety of journalists decrease, the rule of law suffers. Hannah Arendt underlined that ‘the moment we no longer have a free press, anything can happen,’ this is because ‘what makes it possible for a totalitarian or any other dictatorship to rule is that people are not informed.’<sup>5</sup>

The assassinations of journalists such as Jamal Khashoggi or Daphne Caruana Galizia attracted a significant amount of public attention over recent years. They showed how journalists are still murdered to silence their voice and because they want to keep powerful people under check. This also exemplified why it is important to prosecute not just the persons who materially commit the crimes but their instigators to end impunity.

To protect journalists is a way to safeguard the rule of law in a country, but it is a complex task where different actors should be involved. The Council of Europe is the main intergovernmental organisation in Europe responsible for the protection of human rights, the rule of law and democracy. The organisation is concerned by the current risks encountered by journalists and has developed several tools to help its Member States face this challenge. Nevertheless, its success has been limited. That is why its Member States decided to involve non-governmental organisations (NGOs) whose objective is to promote freedom of expression as its partners, thus aiming at being better informed of the threats journalists encounter and to be able to react swiftly. All this resulted in the creation of the Platform to promote the protection of journalism and safety of journalists. This innovative mechanism gives NGOs the opportunity to protect the rule of law from below with the help of an intergovernmental organisation.

As this paper is part of a special issue devoted to the rule of law from below, it starts by exploring the sometimes-ignored relation between media freedom and safety of journalists and the rule of law (Section 2). Then, it focuses on the role that the Council of Europe and NGOs play together to protect them, particularly, through the Platform to promote the protection of journalism and safety of journalists (Section 3). The objective of this paper is to understand the context of its creation (Subsection 3.1), its origins (Subsection 3.2), how it works (Subsection 3.3) and assess some of the data of its first six years of operation (Subsection 3.4). This paper underlines its main advantages and weaknesses and its potential as a useful tool of a broader toolbox to protect journalists and media freedom.

## 2. Media freedom, safety of journalists and the rule of law

Lord Bingham in his seminal book on *The Rule of Law* explained how the concept of the rule of law is elusive and people mention it repeatedly without knowing very well what it means.<sup>6</sup> He offered his own definition that ‘all persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts.’ He went on to outline eight principles which he saw as the key ingredients necessary to support this concept: accessibility, law not discretion, equality, limited exercise of power, human rights, dispute resolution, fair trial and compliance with international law. The protection of journalists is not explicitly mentioned. Nevertheless, when he speaks about human rights he explains that, in a modern democracy where the ultimate decisions rest with the people, they should be fully informed and empowered to choose between conflicting opinions and alternative courses of action and he underlines that the media have a crucial role to play in that sense. According to Campos Mello, professional journalism is one of the last barriers against the collapse of democracy in many countries struggling with an avalanche of lies.<sup>7</sup> The protection of journalists and media freedom is situated at the intersection of human rights, democracy and the rule of law.

Even if there is no universally accepted definition of the rule of law, it is usually understood, following the Checklist of the Venice Commission, to cover elements such as: legality, including a transparent, accountable and democratic process for enacting laws; legal certainty; prohibition of arbitrariness; access to justice before independent and impartial courts; and non-discrimination and equality before the law.<sup>8</sup> Again, none

<sup>5</sup> Hannah Arendt, ‘Hannah Arendt: From an Interview,’ *The New York Review* (26 October 1978) <[www.nybooks.com/articles/1978/10/26/hannah-arendt-from-an-interview/?utm\\_source=sumome&utm\\_medium=facebook&utm\\_campaign=sumome\\_share](http://www.nybooks.com/articles/1978/10/26/hannah-arendt-from-an-interview/?utm_source=sumome&utm_medium=facebook&utm_campaign=sumome_share)> accessed 14 October 2020.

<sup>6</sup> Tom Bingham, *The Rule of Law* (Penguin UK 2011).

<sup>7</sup> Patrícia Campos Mello, *2021 Reuters Memorial Lecture* (8 June 2021) <<https://reutersinstitute.politics.ox.ac.uk/risj-review/2021-reuters-memorial-lecture-how-rescue-journalism-age-lies>> accessed 21 June 2020.

<sup>8</sup> Venice Commission, *The Rule of Law Checklist* (Council of Europe 2016) <[www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule\\_of\\_Law\\_Check\\_List.pdf](http://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf)> accessed 14 October 2020.

of those specifically refers to media pluralism or safety of journalists. Nevertheless, if we search for the reason behind this principle we find that its aim is preventing the arbitrary use of government powers to undermine the rights of individuals.<sup>9</sup> This is one of the main reasons for the need of an independent media capable of keeping public authorities and other powerful actors accountable for their actions.

Piccone argues that the political factors that measure various limitations on government powers (checks and balances, absence of corruption, open government and fundamental rights) are in decline. Therefore, societies need a stronger civil society and independent media to tackle these challenges, but governments are increasingly blocking them through manipulation, intimidation and outright repression.<sup>10</sup>

Journalists are usually among the first to denounce the erosion of the rule of law. This is why they are also some of the first victims of its decline, very often foretold by verbal or even physical attacks on journalists and their subsequent impunity.<sup>11</sup> If you silence journalists and spread fear among them, they are less likely to voice concerns.

For example, Frye, when speaking about corruption in Russia, explains that great damage was done to the supporting institutions essential for the rule of law, as it is the case of the press.<sup>12</sup> Kmezić argues that the 'Western Balkan countries have built a democratic façade by holding elections, by promulgating legal acts guaranteeing freedom of expression, or by constitutionally declaring a strict system of checks and balances,' but, in reality, 'political elites rely on (...) control of the media to undermine democracy. Given that formal democratic freedoms are effective only to the extent that political elites are bound by the effective rule of law.'<sup>13</sup> When the powerful control the media, it becomes another tool to attack the rule of law and cover its decline.

UNESCO denounces that journalists are killed for reporting human rights violations, environmental crimes and political wrongdoing.<sup>14</sup> They also suffer undue pressure when reporting about corruption and financial crime, uncovering stories and crimes that could stay in the dark if it was not for their work.<sup>15</sup> UNESCO considers that the news media is 'the sector of society most able to promote vigilance towards the rule of law, especially through fostering investigative journalism, promoting the openness of court, legislative and administrative proceedings, access to officials and to public documents.'<sup>16</sup> The current problems of the rule of law appear hand in hand with a decrease in freedom of expression. Protecting journalists and media workers means protecting society as a whole and the rule of law.

The European Court of Human Rights (ECtHR) has underlined 'the pre-eminent role of the press in a State governed by the rule of law' and has stated repeatedly that freedom of expression constitutes one of the essential foundations of a democratic society.<sup>17</sup> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders.<sup>18</sup> It is incumbent on the press to impart information and ideas on matters of public interest and, not only does

<sup>9</sup> Kaarlo Tuori, 'The common core of the rule of law and the *Rechtsstaat*' in *The rule of Law as a Practical Concept* (Council of Europe 2012) 13.

<sup>10</sup> Ted Piccone, 'The rule of law is under duress everywhere' (*Brookings*, 17 March 2020) <[www.brookings.edu/blog/order-from-chaos/2020/03/17/the-rule-of-law-is-under-duress-everywhere/](http://www.brookings.edu/blog/order-from-chaos/2020/03/17/the-rule-of-law-is-under-duress-everywhere/)> accessed 14 November 2020.

<sup>11</sup> Anita R. Gohdes and Sabine C. Carey, 'Canaries in a coal-mine? What the killings of journalists tell us about future repression' (2017) 54(2) *Journal of Peace Research* 157 <<https://doi.org/10.1177/0022343316680859>> accessed 14 October 2020.

<sup>12</sup> Timothy Frye, 'Corruption and the rule of law' in *Russia after the Global Economic Crisis* (Peterson Institute 2010) 83.

<sup>13</sup> Marko Kmezić, 'Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice' (2020) 20 *Journal of Southeast European and Black Sea Studies* 183 <<https://doi.org/10.1080/14683857.2019.1706257>> accessed 14 October 2020.

<sup>14</sup> UNESCO, 'Director-General Report on the Safety of Journalists and the Danger of Impunity 2020' (27 October 2020), CI-20/COUNCIL.32/4. <<https://unesdoc.unesco.org/ark:/48223/pf0000374700?posInSet=2&queryId=59f40786-004d-4e02-b22a-3c5f3fef2291>> accessed 14 October 2020.

<sup>15</sup> Susan Coughtrie and Poppy Ogier, *Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world* (The Foreign Policy Centre 2020) <<https://fpc.org.uk/wp-content/uploads/2020/11/Unsafe-for-Scrutiny-November-2020.pdf>> accessed 14 October 2020. This report based on a global survey of investigative journalists explained that the majority (71%) of respondents have experienced threats and/or harassment while working on investigations into financial crime and corruption.

<sup>16</sup> UNESCO, *Rule of Law to Ensure Safety of Journalists and Combating Impunity* (2014) <[www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/2014-themes/rule-of-law-to-ensure-safety-of-journalists-and-combating-impunity/#:~:text=The%20rule%20of%20law%20is%20especially%20important%20in%20regard%20to,of%20public%2Dinterest%20journalism%E2%80%9D](http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/2014-themes/rule-of-law-to-ensure-safety-of-journalists-and-combating-impunity/#:~:text=The%20rule%20of%20law%20is%20especially%20important%20in%20regard%20to,of%20public%2Dinterest%20journalism%E2%80%9D)> accessed 14 October 2020.

<sup>17</sup> *Castells v Spain*, App. no. 11798/85 (ECtHR, 23 April 1992), para. 43; *Prager and Oberschlick v Austria*, App. no. 15974/90 (ECtHR, 26 April 1995), para. 34.

<sup>18</sup> *Castells v Spain*, App. no. 11798/85 (ECtHR, 23 April 1992), para. 43.

the press have the task of imparting such information and ideas, but the public also has a right to receive them. Otherwise, the press would be unable to play its vital role of ‘public watchdog.’<sup>19</sup> The media develops this function by keeping under scrutiny the activities of public authorities,<sup>20</sup> thus reinforcing the rule of law.

The EU has identified media pluralism and media freedom as one of the four pillars to assess the rule of law in a country, because they are key enablers for the rule of law, democratic accountability and the fight against corruption.<sup>21</sup> The World Justice Project that elaborates a well-known annual global Rule of Law Index takes into account media freedom in several of its indicators.<sup>22</sup>

The General Assembly of the UN recognizes the relevance of free media in building inclusive societies and democracies and in fostering peace and good governance.<sup>23</sup> This is also interlinked with socio-economic rights. The Sustainable Development Goal 16 seeks to promote peace, justice and strong institutions, its target 10 is to ensure public access to information and protect fundamental freedoms, and, more concretely, indicator 16.10.1 is the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists and associated media personnel in the previous 12 months. The main difference of this indicator from the 16.1.1 that measures homicides in general is the motivation behind it and their chilling effects.<sup>24</sup> UNESCO supported the creation of national monitoring and reporting mechanisms on safety of journalists in countries such as Uganda, Iraq or Afghanistan, through the International Programme for the Development of Communication,<sup>25</sup> but it does not have the means to monitor this at global level.<sup>26</sup> There is a UN Plan of Action on the Safety of Journalists and the Issue of Impunity and a series of resolutions underlining the need to protect journalists from the Security Council,<sup>27</sup> the General Assembly,<sup>28</sup> and the Human Rights Council,<sup>29</sup> but journalists are still being killed for their work. In an open debate at the Security Council, Mustafa Hajji Abdinur, an award-winning Somalia correspondent, presented himself as a ‘dead man walking.’<sup>30</sup>

Threats to media freedom and the work of journalists are on the rise, as many journalists are facing prosecution, condemnation and detention for just reporting on issues of public interest or expressing critical views.<sup>31</sup> This results in high levels of self-censorship among journalists, as they feel pressured to present their reports in ways that are more amenable to their employers, withholding information when necessary or compelled to tone down controversial stories, or abandon them altogether.<sup>32</sup> This has as a consequence the decrease of the quality of democracy as a whole, as media cannot play its role of public watchdogs and

<sup>19</sup> *Observer and Guardian v the United Kingdom*, App no. 13585/88 (ECtHR, 26 November 1991), para. 59; *The Sunday Times v the United Kingdom (No. 2)*, App. no. 13166/87 (ECtHR, 26 November 1991), para. 50.

<sup>20</sup> *Castells v Spain*, App. no. 11798/85 (ECtHR, 23 April 1992), para. 46; *Stoll v Switzerland*, App no. 69698/01 (ECtHR, 10 December 2007), para. 110.

<sup>21</sup> European Commission, ‘Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2020 Rule of Law Report. The rule of law situation in the European Union’, Brussels, COM(2020) 580 final (30 September 2020).

<sup>22</sup> Regarding constraints on Government power and freedom of opinion an expression, the report measures whether an independent media is free to report and comment on policies without fear of retaliation. Regarding the right to life and security of the person, it measures if it is effectively guaranteed and, notably, if members of the media are subjected to unreasonable searches, arrest, detention, imprisonment, threats, abusive treatment or violence. World Justice Project, *Rule of Law Index 2020* (2020) <[https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf)> accessed 14 November 2020.

<sup>23</sup> UNGA, ‘Resolution adopted by the General Assembly on the safety of journalists and the issue of impunity’ (18 December 2013) A/RES/68/163.

<sup>24</sup> UN Statistics Division, *Metadata SDGs* (2018) <<https://unstats.un.org/sdgs/metadata/files/Metadata-16-10-01.pdf>> accessed 14 November 2020.

<sup>25</sup> UNESCO, *Monitoring and reporting on SDG Indicator 16.10.1* (2019) <[https://en.unesco.org/sites/default/files/sdg\\_indicator\\_16101\\_ipdc\\_technical\\_support\\_on\\_ground.pdf](https://en.unesco.org/sites/default/files/sdg_indicator_16101_ipdc_technical_support_on_ground.pdf)> accessed 14 November 2020.

<sup>26</sup> Guy Berger, ‘New Opportunities in Monitoring Safety of Journalists through the UN’s 2030 Sustainable Development Agenda,’ (2020) 8(1) *Media and Communication* 78.

<sup>27</sup> S/RES/1738, S/RES/2222.

<sup>28</sup> A/RES/68/163, A/RES/69/185, A/RES/70/162, A/RES/72/175 and A/RES/74/157.

<sup>29</sup> A/HRC/RES/21/12, A/HRC/RES/27/5, A/HRC/RES/33/2, A/HRC/RES/39/6 and A/HRC/RES/45/18.

<sup>30</sup> See ‘UN Security Council debates safety of journalists’ <<https://en.unesco.org/news/security-council-debates-journalists%E2%80%99-safety>> accessed 24 June 2021.

<sup>31</sup> OSCE, ‘Regular Report to the Permanent Council for the period from 21 November 2019 to 2 July 2020 of the Representative on Freedom of the Media’, Harlem Désir (2 July 2020).

<sup>32</sup> Marilyn Clark and Anna Grech, *Journalists under pressure. Unwarranted interference, fear and self-censorship in Europe* (Council of Europe 2017) <<https://rm.coe.int/168070ad5d>> accessed 14 October 2020.

everyone's fundamental freedom to receive information is undermined. That is why the Council of Europe together with the relevant NGOs had to try to find effective ways to protect journalists.

### 3. The Platform for the protection of journalism and the safety of journalists

#### 3.1 *The context of the Platform: the Council of Europe and the protection of media freedom and safety of journalists*

The protection of the rule of law and freedom of expression, including media freedom, are two interrelated priorities of the Council of Europe. Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) establishes that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Therefore, the ECtHR has a well-developed case-law regarding protection of journalistic sources,<sup>33-34</sup> news-gathering,<sup>35</sup> access to public documents,<sup>36</sup> and protection of journalist covering demonstrations.<sup>37</sup> Nevertheless, the case-law of the ECtHR regarding journalists does not only rely on Article 10 but also Article 2 (right to life), 3 (prohibition of torture, inhuman or degrading treatment or punishment), 8 (right to respect for private and family life) and 13 (right to an effective remedy).

States have to refrain from violating the human rights of journalists, but we still find many cases of the use of public powers to silence journalists. A very graphic example is the fabrication of bogus charges in order to limit the freedom of journalists, as was the case of Khadija Ismayilova and Azerbaijan.<sup>38</sup>

States should not only abstain from committing such violation themselves but also create an environment where the breach of those rights by others is prevented and punished. The ECtHR has underlined in multiple occasions the need to protect journalists and the positive obligations that derive from the ECHR. In the case of Anna Politkovskaya,<sup>39</sup> it condemned Russia for not investigating the intellectual author of her assassination even if the material perpetrators had been brought to justice and stressed the importance of taking into account the link between her journalist activities and her murder. Something similar happened with Guéorgui Gongadze and Ukraine.<sup>40</sup> The Court has also explained that these positive obligations also mean effective investigation of murder threats and protective measures when a violent campaign against a newspaper is orchestrated that prevents its operation.<sup>41-42</sup> The killing and the harassing are despicable on their own but they also have a chilling-effect in all the media in a country if there is a widespread sensation that the authorities condone the violence and the attacks to journalists.

When a journalist suffers a rights violation, he or she has to exhaust the domestic remedies before reaching the ECtHR. This entails a long procedure that takes several years to be resolved, when in most cases immediate measures are the only effective ones to prevent irreparable damage to media freedom. Unfortunately, when a decision of the ECtHR arrives, it may be too late.<sup>43</sup> That is why other measures at an earlier stage are necessary.

The Council of Europe fulfils its mandate to protect human rights, the rule of law and democracy through a strategic triangle formed by standard-setting, monitoring and cooperation activities. Standard-setting and

<sup>33</sup> Dirk Voorhoof, Ad van Loon, Charlotte Vier and Ronan Ó Fathaigh, *Freedom of expression, the Media and Journalists. Case-law of the European Court of Human Rights* (European Audiovisual Observatory 2021).

<sup>34</sup> *Goodwin v The United Kingdom*, App. no. 17488/90 (ECtHR, 27 March 1996); *Roemen and Schmit v Luxembourg*, App. no. 51772/99 (ECtHR, 25 February 2003).

<sup>35</sup> *Dupuis and others v France*, App. no. 1914/02 (ECtHR, 7 June 2007); *Dammann v Switzerland*, App. no. 77551/01 (ECtHR, 25 April 2006).

<sup>36</sup> *TASZ v Hungary*, no. 37374/05 (ECtHR, 14 April 2009); *Magyar Helsinki Bizottság v Hungary*, App. no. 18030/11 (ECtHR, 8 November 2016).

<sup>37</sup> *Butkevich v Russia*, App. no. 5865/07 (ECtHR, 13 February 2018).

<sup>38</sup> *Khadija Ismayilova v Azerbaijan* (No. 2), App. no. 30778/15, (ECtHR, 27 February 2020). This is part of a wider trend to silence not only journalists but also human rights defenders in the country.

<sup>39</sup> *Mazepa and others v Russia*, App. no. 15086/07 (ECtHR, 17 July 2018).

<sup>40</sup> *Gongadze v Ukraine*, App. no. 34056/02 (ECtHR, 8 November 2005).

<sup>41</sup> *Dink v Turkey*, App. nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 (ECtHR, 14 September 2010).

<sup>42</sup> *Özgür Gündem v Turkey*, App no. 23144/93 (ECtHR, 16 March 2000).

<sup>43</sup> For recommendations on a more strategic and preventive approach for the ECtHR to facilitate the narrowing of the gap between principles of media freedom and their implementation on the ground, see Başak Çalı, 'Does the remedy jurisprudence of the European Court of Human Rights do enough for media freedom?' in *Journalism at risk. Threats, challenges and perspectives* (Council of Europe 2015).

cooperation are strongly developed in the field of the protection of journalists,<sup>44</sup> but monitoring was clearly missing. The members of the Council of Europe are not willing to create a separate monitoring body for freedom of expression. Such a body has proven to be very useful in other sectors to raise national standards. For example, the conditions of detention centres in Europe improved due to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Unfortunately, Member States had never been willing to give this kind of competences to the Council of Europe in the field of the protection of journalists.

What the Council of Europe has done is to create soft-law on the issue. Especially relevant is the very detailed Recommendation of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors.<sup>45</sup> This recommendation contains a series of guidelines for States to fulfil their positive obligations under the ECHR to create a favourable environment for freedom of expression. The guidelines are organised into four pillars: prevention, protection, prosecution (including a specific focus on impunity) and promotion of information, education and awareness-raising. They combine legal, administrative and practical measures. One of those guidelines is that Member States should encourage the establishment of, and support the operation of, early-warning and rapid-response mechanisms, such as hotlines, online platforms or 24-hour emergency contact points, by media organisations or civil society, to ensure that journalists and other media actors have immediate access to protective measures when they are threatened. Member States are also urged to support and co-operate with the Council of Europe's platform and help to strengthen the capacity of Council of Europe bodies to warn of and respond effectively to threats and violence against journalists and other media actors.

Some States have adopted measures in this sense. For example, the United Kingdom published a National Action Plan for the Safety of Journalists and created a National Committee for the Safety of Journalists that brings together representatives from government, journalism, policing, prosecution services and civil society to work in collaboration to make sure journalists in the country are able to operate free from threats and violence.<sup>46-47</sup>

The Council of Europe is heavily invested in supporting States in order to put the Recommendation into practice through an Implementation Strategy,<sup>48</sup> an Implementation Guide and its cooperation activities.<sup>49</sup> Unfortunately, its implementation by Member States has been unequal and in some States is insufficient.

Here is where the work of NGOs can be invaluable, as they can be key partners in the monitoring of the fulfilment of international obligations by States.<sup>50</sup> The resources of the Council of Europe are limited, therefore, it is difficult for it to assess whether States are actually protecting effectively journalists.<sup>51</sup> The Council of Europe decided to better use and promote a partnership with NGOs specialised in the protection of human rights in numerous sectors through different avenues.<sup>52</sup> One of them is to take advantage of their work on the field and access to information. Tallberg *et al.* argue that NGOs engage in multiple strategies

<sup>44</sup> Council of Europe, *Recommendations and declarations of the Committee of Ministers of the Council of Europe in the field of media and information society* (2015) and 'Cooperation activities on freedom of expression' <[www.coe.int/en/web/freedom-expression/co-operation-activities](http://www.coe.int/en/web/freedom-expression/co-operation-activities)> accessed 14 October 2020.

<sup>45</sup> Council of Europe, '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' (13 April 2016).

<sup>46</sup> Available at <[www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists](http://www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists)> accessed 3 July 2021.

<sup>47</sup> See <[www.gov.uk/government/groups/national-committee-for-the-safety-of-journalists](http://www.gov.uk/government/groups/national-committee-for-the-safety-of-journalists)> accessed 3 July 2021.

<sup>48</sup> Council of Europe, 'Implementation Strategy for Recommendation CM/Rec(2016)4 on the Protection of Journalism and Safety of Journalists and Other Media Actors' (28 March 2018).

<sup>49</sup> Council of Europe, 'Implementation Guide to Recommendation CM/Rec(2016)4 on the Protection of journalism and safety of journalists and other media actors', DGI(2020)11. In this Guide, concrete examples of measures taken by the Member States are highlighted as good practices.

<sup>50</sup> See, for example, Oliver Meier and Clare Tenner, 'Non-governmental monitoring of international agreements', *Verification Yearbook* (2001) and Michael Crowley and Andreas Persbo, 'The role of non-governmental organizations in the monitoring and verification of international arms control and disarmament agreements.' in *Thinking outside the box in multilateral disarmament and arms control negotiations*. (UNIDIR 2006).

<sup>51</sup> Steffek, theorising about the relations between NGOs and International Organisations, explains that their cooperation is often motivated by resource-dependency, so they can trade resources for mutual benefit, notably information. Jens Steffek, 'Explaining cooperation between IGOs and NGOs – push factors, pull factors, and the policy cycle' (2013) 39 *Review of International Studies* 993 <<https://doi.org/10.1017/S0260210512000393>> accessed 14 October 2020.

<sup>52</sup> Council of Europe, 'Resolution CM/Res(2016)3 Participatory status for international non-governmental organisations with the Council of Europe' (adopted by the Committee of Ministers on 6 July 2016). For an overview of the synergies of the Council of Europe with NGOs particularly in the field of freedom of expression, see Ana Gascón Marcén, 'El papel de las organizaciones no

aimed at influencing international organisations, but they are most likely to succeed when contributing information in exchange for access.<sup>53</sup>

As it has been explained, the ECtHR developed a solid case-law recognizing the public watchdog role of the press and the safeguards this function should entail. More recently, the Court has extended this recognition to NGOs who can act as democratic ‘watchdogs’ and it has specially underlined its usefulness as providers of information to the public.<sup>54–55</sup> The mutually beneficial relation between the ECHR system and NGOs has been the object of several studies,<sup>56</sup> but this paper highlights how it extends to another sector of activity of the Council of Europe.<sup>57</sup>

For all these reasons, the Council of Europe, in partnership with various NGOs, created the Platform to promote the protection of journalism and safety of journalists. The Platform gives the opportunity to denounce swiftly the attacks to journalists or journalism in Member States, thus protecting the rule of law. This paper will analyse in the following sections the creation of the Platform, how it works, its results and challenges.

### 3.2 Origin of the Platform

In its Recommendation 1897 (2010),<sup>58</sup> the Parliamentary Assembly of the Council of Europe (PACE) painted a grim portrait of the situation of journalists in Europe and the attacks they suffered in several Member States. Therefore, it asked the Secretary General to allocate the resources necessary to collate information on a continuing basis from media freedom organisations identifying violations of media freedom; analyse this information on a systematic basis, country by country, using indicators for media freedom; and make such information publicly available in electronic form on the website of the Council of Europe. It acknowledged the need to work with these NGOs in order to get a full picture of the situation and make it known. Nevertheless, this proposal did not crystallise immediately and took several years to gain the support of the Member States.

The Committee of Ministers took a decision, on 10 July 2013, agreeing on the usefulness of addressing an open invitation to interested media freedom organisations to report serious violations of media freedom to the relevant Council of Europe bodies via the Secretariat; and to reflect on the modalities for the creation of an Internet-based platform aimed at facilitating the compilation, processing and dissemination of this information.

Later that year, the Ministers responsible for media and information society of the Member States of the Council of Europe met in Belgrade. They were appalled that journalists in parts of Europe were 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. They resolved to take all appropriate steps for ensuring the

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gubernamentales en el marco del Consejo de Europa, en particular en el área de la protección de la libertad de expresión.’ in *Os sujeitos não estaduais no direito internacional* (Petrony 2019).

<sup>53</sup> Jonas Tallberg, Lisa M. Dellmuth, Hans Agné and Andreas Duit, ‘NGO Influence in International Organizations: Information, Access, and Exchange’ (2018) 48 *British Journal of Political Science* 213 <<https://doi.org/10.1017/S000712341500037X>> accessed 14 October 2020.

<sup>54</sup> *Vides Aizsardzi Ēbas Klubs v Latvia*, App.no. 57829/00 (ECtHR, 27 May 2004), para. 42; *Animal Defenders International v the United Kingdom*, App. no. 48876/08 (ECtHR 22 April 2013), para 103 and *Magyar Helsinki Bizottság v Hungary*, App. no. 18030/11 (ECtHR, 8 November 2016), para. 166.

<sup>55</sup> ECtHR, *Rapport de recherche. Les organisations non gouvernementales dans la jurisprudence de la Cour européenne des droits de l’homme* (2016).

<sup>56</sup> Antoine Buyse, ‘Why Attacks on Civic Space Matter in Strasbourg: The European Convention on Human Rights, Civil Society and Civic Space’, (2019) 4 *Deusto Journal of Human Rights* 13 <<https://doi.org/10.18543/djhr-4-2019pp13-37>> accessed 14 October 2020. The author underlines the role of many NGOs as ‘watchdogs of those in power in the state and the market, as conveyors of information to the public, as advocates for public goods and contributors to debates of general interest.’ For an assessment of the contribution of NGOs to the ECHR system: Laura Van Den Eynde, ‘An empirical look at the *amicus curiae* practice of human rights NGOs before the European Court of Human Rights’ (2013), 31 (3) *Netherlands Quarterly of Human Rights* 271 <<https://doi.org/10.1177/016934411303100304>> accessed 14 October 2020; Heidi Nichols Haddad, *The Hidden Hands of Justice: NGOs, Human Rights, and International Courts* (Cambridge University Press 2018) <<https://doi.org/10.1017/9781108557313>> accessed 14 October 2020; and Elif Erken, ‘The Participation of Non-Governmental Organisations and National Human Rights Institutions in the Execution of Judgments of the Strasbourg Court. Exploring Rule 9 Communications at the Committee of Ministers’ (2020) 1 (2) *European Convention on Human Rights Law Review* 248 <<https://doi.org/10.1163/26663236-bja10007>> accessed 1 December 2020.

<sup>57</sup> Outside of the scope of this paper, some examples are the contribution of NGOs to the work of the monitoring bodies of the Council of Europe and the Commissioners for Human Rights in their country visits and the collective complaints mechanism of the European Committee of Social Rights for violations of the European Social Charter.

<sup>58</sup> PACE, ‘Recommendation 1897 (2010) on respect for media freedom’ (27 January 2010).

protection of journalists, in terms of both preventive measures and effective investigations, and invited the Committee of Ministers to intensify its actions to implement the Council of Europe standards on protection of journalists. Notably, they asked the Committee to follow the developments in Member 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.<sup>59</sup>

At the beginning of 2014, a Task Force was created within the Secretariat of the Council of Europe, including representatives from all relevant sectors of the Organisation, to prepare a proposal for this platform. When the Secretary General presented to the Committee of Ministers the project, he underlined that the future platform would not be a monitoring mechanism. He did so to appease Member States. He explained its benefits clarifying that it would not duplicate or interfere with the work of the ECtHR, national jurisdictions or the Commissioner for Human Rights and the OSCE. It would be a tool for enhanced co-operation and co-ordination between Council of Europe bodies and institutions, as well as international partners such as the OSCE Representative on Freedom of the Media, the EU and the UN.<sup>60</sup>

Finally, on 4 December 2014, in Paris, a Memorandum of Understanding (MoU) was signed between the Council of Europe and four partner organisations: Reporters Without Borders (RWB), the International Federation of Journalists (IFJ), the Association of European Journalists (AEJ) and Article 19.<sup>61</sup> These organisations had a worldwide reputation as reliable and deeply committed to the protection of the rights of journalists and free media and had previously worked with the Council of Europe. The MoU left open the possibility that other organisations joined the Platform, following consultation with the partner organisations and upon invitation by the Council of Europe. Currently, 14 international NGOs have adhered to the MoU.<sup>62</sup> There are organisations whose general aim is to protect freedom of expression (such as Article 19), others are focused on the safety of journalists (such as INSI), in some cases, in countries where there is limited media freedom (such as CPJ or Free Press Unlimited). The most representative journalists' associations (such as IFJ, EFJ or AEJ) are also present. Together they channel the effort of civil society in Europe to protect media freedom through different means, such as political advocacy, financial resources, training, legal support, etc. They also represent the initiative of journalists to organise themselves and act together to defend media freedom whenever it is attacked.

These organisations are usually the first to receive an alert when there are attacks to journalists or media freedom in a given country. For example, RWB has a 24/7 Press SOS hotline; the CPJ provides a secured online platform on which journalists and other media actors can report press freedom violations, including threats/attacks; and IPI and the EFJ work with the European Centre for Press and Media Freedom in the Media Freedom Rapid Response and Mapping Media Freedom.

The Platform was set up as part of the Directorate of Policy Planning, working under the direct authority of the Secretary General, with a view to ensuring communication and coherence within the Council of Europe, coordination with other stakeholders and a high profile. After a reform of the structure of the Organisation, it became part of the Directorate of Democratic Participation. As McGonagle explains 'the action-oriented nature of the Platform means that its place within the broader Council of Europe system is a crucial complement to the normative standards and the intra-institutional players.'<sup>63</sup>

### 3.3 How the Platform works

The Council of Europe was in charge of setting up the public Internet-based platform, which started to work in April 2015.<sup>64</sup> From that moment on, it has been hosting and servicing the Platform.

<sup>59</sup> Council of Europe Conference of Ministers responsible for Media and Information Society, 'Resolution No 3 on Safety of journalists' (8 November 2013).

<sup>60</sup> Secretary General of the Council of Europe, 'Information Documents Internet-based Platform to promote the protection of journalism and safety of journalists' (10 October 2014), SG/Inf(2014)37.

<sup>61</sup> Available at: <<https://rm.coe.int/1680479b43>> accessed 14 October 2020.

<sup>62</sup> The organisations that joined the Platform later are: the European Federation of Journalists (EFJ), the Committee to Protect Journalists (CPJ), Index on Censorship, the International Press Institute (IPI), the International News Safety Institute, the Rory Peck Trust, the European Broadcasting Union (EBU), PEN International, the European Centre for Press and Media Freedom and Free Press Unlimited.

<sup>63</sup> Tarlach McGonagle, *Freedom of expression: still a precondition for democracy? Conference report* (2015) <[www.ivir.nl/publicaties/download/1707.pdf](http://www.ivir.nl/publicaties/download/1707.pdf)> accessed 14 October 2020.

<sup>64</sup> The Platform is available at: <[www.coe.int/en/web/media-freedom/home](http://www.coe.int/en/web/media-freedom/home)> accessed 3 July 2021.



As it is not a monitoring body, the Council of Europe was very clear when it created the Platform that the ones responsible for the alerts published are the partner organisations. That is why the name and logo of the publishing partner organisation is posted on the site together with the content of the alert, with a clearly worded disclaimer by the Council of Europe.<sup>65</sup> The Platform allows the partner organisations to publicise information subject to their own verification processes and standards. The Council of Europe does not edit this information; however, it can remove posts that do not meet the requirements set out in the MoU.

The partner organisations commit to post only information on serious concerns about media freedom and journalists' rights, notably safety of journalists, that is reliable and based on verified facts and refrain from posting opinions or legal assessments. The Platform is a self-reporting mechanism. This means that something that may be considered as an attack to journalism by these organizations may be a legal and proportionate measure in line with what is permitted by the ECHR. Nevertheless, in general an assessment of the threats posted shows that the NGOs only report serious threats following strictly what was accorded in the MoU.

The alerts fall under one of these categories: attacks on physical safety and integrity of journalists,<sup>66</sup> detention and imprisonment of journalists,<sup>67</sup> harassment and intimidation of journalists,<sup>68</sup> impunity,<sup>69</sup> and other acts having chilling effects on media freedom.<sup>70</sup> In addition, the partner organisations can label the alerts depending on their gravity as level one or two.<sup>71-72</sup> The alerts can be searched following different criteria such as: status (active or resolved), if there is a State reply, country of origin, year, publishing partner, category, source (State, non-state or unknown) or level of gravity.

The European Parliament has stressed the need to have in place independent monitoring mechanisms to assess the situation of media freedom and media pluralism and called on the European Commission and the Member States (of the EU) to fully support and strengthen the tools already developed in this regard, such as the Platform. However, it has also condemned attempts by governments to silence critical media and demolish media freedom and pluralism, including through more sophisticated ways that may not create an alert in the Platform. An example of this would be a situation in which Government members and their cronies buy up commercial media outlets and hijack the public service media to serve partisan interests.<sup>73</sup> By

<sup>65</sup> Still as the Council of Europe hosts the Platform some confusion persist, see, for example, Jon Stone 'Council of Europe issues media freedom alert over UK government blacklisting of investigative journalists' *Independent* (6 September 2020) <[www.independent.co.uk/news/uk/politics/press-freedom-uk-government-council-europe-alert-boris-johnson-priti-patel-a9706741.html](http://www.independent.co.uk/news/uk/politics/press-freedom-uk-government-council-europe-alert-boris-johnson-priti-patel-a9706741.html)> accessed 14 October 2020.

<sup>66</sup> Killings; abductions; threats and acts of violence against the physical integrity of journalists, their family members and other media actors; attacks against journalists' sources because of their co-operation with journalists or media.

<sup>67</sup> Arbitrary, unwarranted or politically motivated arrests, detention and imprisonment of journalists and other media actors.

<sup>68</sup> Harassment of journalists and other media institutions or actors; violence or interference causing damage or destruction of journalists' equipment or other property; punitive or vindictive exercise of investigatory tax or administrative powers; arbitrary denial of access for journalistic coverage; threats to journalists' privacy, threats to employment status, psychological abuse, bullying, online harassment and cyber-bullying; judicial intimidation: opportunistic, arbitrary or vexatious use of legislation, including defamation, anti-terrorism, national security, hooliganism or anti-extremism laws; issuing bogus or fabricated charges; political intimidation, including hate speech and use by public figures of abusive or demeaning language against journalists or media outlets; or other forms of intimidation and harassment.

<sup>69</sup> Failures to promptly, independently and effectively investigate and seek to prosecute crimes and offences against journalists and other media institutions or actors.

<sup>70</sup> Acts having chilling effects on media freedom including restrictive legislation encroaching on media freedom; censorship, interference with editorial freedom; threats to the confidentiality of journalists' sources; unjustified or indiscriminate blocking of websites or social media platforms, hacking and surveillance or interception of communications data of journalists without due process of authorisation.

<sup>71</sup> Level one covers the most severe and damaging violations of media freedom, including but not limited to murder, assassination or direct threat to the life of journalists or other media actors, or their family members, because of their journalistic work; physical assaults or any acts causing grievous injury to journalists or other media actors, or the use of violence to threaten their physical safety; impunity for any such violations; prolonged arbitrary detention or imprisonment of journalists because of their professional activities or their status as journalist; arbitrary closure of a media enterprise; and any other acts posing a grave threat or having a severe impact on media freedom.

<sup>72</sup> Level two covers all other serious threats to media freedom, including but not limited to physical assaults causing actual bodily harm, acts of intimidation and harassment; use by public figures of threatening or severely abusive language towards media members; unwarranted seizure or damage to property or equipment; laws and regulations that unduly restrict media freedom or access to information; actions that jeopardise the confidentiality of sources or the independence of the public sector broadcasters; abusive or disproportionate use of legislation; misuse of governmental or other powers to direct media content or to penalise media or journalists; and interference with media freedom through ownership, control and regulation.

<sup>73</sup> European Parliament, 'Resolution of 3 May 2018 on media pluralism and media freedom in the European Union.'

its very nature, the Platform cannot reflect this kind of risks to media freedom. It can record only more direct threats, such as attacks to journalists followed by impunity or laws that reduce media freedom.

The aim of the Platform is to be a framework for co-operation between the Council of Europe and the partner organisations, drawing on information supplied by the organisations to record and highlight serious concerns about media freedom and journalists' rights.

The information published on the Platform serves as a basis for timely action by the Council of Europe, as well as for a dialogue with the Member States concerned regarding proposals for possible protective or remedial action. The objective of the Platform is twofold: first, it works as a public record that permits to see a panoramic of the challenges to media freedom in Europe (or in any given State); second, it is also an early-warning system for the Council of Europe.

The platform serves as a channel of information that feeds into the work of the different bodies and organs of the Council of Europe:

- the reactions and country reports of the Commissioner for Human Rights;
- the reports, resolutions and recommendations of the PACE, especially its periodic resolutions on safety of journalists and the work of its Monitoring Committee and its requests for opinions to the Venice Commission on the compatibility of new laws with Human Rights standards;
- the addresses of the Secretary General bringing relevant cases to the attention of the Committee of Ministers and his or her bilateral exchanges with State authorities;

Some of this work is public, but there is also a good deal of silent diplomacy, through discreet channels.

When the circumstances allow it, the Council of Europe and a Member State, which is directly referred to in information posted on the Platform, may post reports on action taken in response to that information. This is one of the benefits of the Platform, where ideally every alert should be a first step towards a dialogue with the State that can respond and publish a reply. The Council of Europe considers that the Platform has given NGOs 'unprecedented access to an intergovernmental body, allowing dialogue between Member States and civil society.'<sup>74</sup> The NGOs have also directly presented their opinions on some meetings of the Committee of Ministers of the Council of Europe to the representatives of the States.

The Platform helps to protect the rule of law because it fights impunity against the attacks to journalists or the adoption of laws or measures at national level that are not in line with the basic principles of media freedom and safety of journalists, that States have to guarantee as a result of being parties to the ECHR. When States diverge from these standards, the rule of law is seriously undermined.

NGOs are very well positioned to sound the alarm in these situations and thus protect the rule of law from the ground or in other words 'from below' when this happens. Nevertheless, sometimes it is difficult for them to make these violations stop, that is why a partnership with the Council of Europe can be mutually beneficial and very useful. Such partnership gives both of them more leverage. When the partner organisations use the Platform and engage the Council of Europe in this endeavour, this international organisation can push the States to respect the rule of law 'from above,' creating a kind of 'compliance sandwich' in the middle of which are the States. The State is then pushed to act both from below (NGOs from the ground) and from above (Council of Europe at international level), thus doubling the pressure to take effective measures.<sup>75</sup>

The Platform also gives a sense of common identity to the NGOs that have signed the MoU. They can refer to themselves as the partner organisations of the Council of Europe Platform to make statements,<sup>76</sup> send

<sup>74</sup> Secretary General of the Council of Europe, *Annual report. Multilateralism 2020* (Council of Europe 2020).

<sup>75</sup> This process may find different graphic representations, such as the 'boomerang model' where domestic groups bypass their States to search out international allies to put pressure in their States from outside. Another example is the 'spiral model' that depicts the path governments may follow to improve human rights when pressured first by internal actors that then get the attention of international ones to put pressure on States who first reject any wrongdoing to later internalise human rights. See Thomas Risse and Kathryn Sikkink, 'The socialization of international human rights norms into domestic practices: introduction' in *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999).

<sup>76</sup> See Partner Organisations of the Council of Europe Platform, 'Statement of urgent concern regarding the risks to physical safety and undue restrictions faced by journalists covering the conflict in Nagorno Karabakh' (28 October 2020) <[www.coe.int/en/web/media-freedom/-/statement-of-urgent-concern-by-partner-organisations-of-the-council-of-europe-platform-concerning-the-risks-to-physical-safety-and-undue-restrictions-?fbclid=IwAR1Yh4LX3RXJV68rgsaeyVmjj77O2xuihMsryq5GpONE4ixHMIYpM6nCs](http://www.coe.int/en/web/media-freedom/-/statement-of-urgent-concern-by-partner-organisations-of-the-council-of-europe-platform-concerning-the-risks-to-physical-safety-and-undue-restrictions-?fbclid=IwAR1Yh4LX3RXJV68rgsaeyVmjj77O2xuihMsryq5GpONE4ixHMIYpM6nCs>)> accessed 14 October 2020.

letters,<sup>77</sup> etc. This self-identification can give them in some cases an extra layer of legitimacy by association with the Council of Europe. The Platform has offered them a channel for coordination not just with the Council of Europe but also among themselves.

The main feature of the Platform is the database of alerts, but it also offers several other resources such as thematic fact sheets that highlight the ECtHR's relevant case-law and the Council of Europe's other instruments aiming to protect freedom of expression and journalists' safety. It circulates a newsletter that presents a weekly summary of the Platform's activities, including new alerts, updates and State replies, and has a special section dedicated to end impunity with the story and the photo of 24 cases of impunity for murders of journalists.<sup>78</sup>

### 3.4 The data from the Platform

Since its creation in 2015, the Platform has published 992 alerts, 338 of the highest level of gravity. For example, in 2021 (till 3 July), the Platform received 143 alerts from 30 States, four journalists were killed and there were still 24 cases of impunity for murder and 118 journalists in detention.<sup>79</sup>

Most alerts come from the action of States (593).<sup>80</sup> The State with most alerts by far is Turkey with 165; this may be because it is one of the countries with the highest number of jailed journalists in the world.<sup>81</sup> Russia is the second in the number of alerts with 115 and Ukraine is the third with 73. Regarding the different categories of alerts, the distributions is the following: 22.6% attacks on physical safety and integrity of journalists, 17% detention and imprisonment of journalists, 26.8% harassment and intimidation of journalists, 3.6% impunity and 30% other acts having chilling effects on media freedom.

According to the MoU, the Council of Europe has to draw up regular reports based on the information submitted by the partner organisations. In 2019 and 2020, the Council of Europe published an annual report by the partner organisations that is very useful because it gives a qualitative view based in the information of the alerts and underlines the worrying trends that put journalists at risk in Europe and the countries that required a special focus. In 2019,<sup>82</sup> the topics selected were impunity, freelancers, public service under attack and journalists' murders as a raising threat to the rule of law. The situation in Turkey, Russia, Italy and Hungary required particular attention. In 2020,<sup>83</sup> the trends underlined were censorship in the context of 'fake news,' counterterrorism and government accountability, media coverage of protests and demonstrations, SLAPPs as abusive legal actions designed to intimidate journalists,<sup>84</sup> impunity for killings of journalists and other serious attacks, online harassment and public service media. The countries and regions that deserved a particular focus were Albania, Azerbaijan, Bulgaria, France (violence against journalists covering protests), Hungary, Poland, Malta, Russia, Serbia, Turkey, Ukraine and the region of eastern Ukraine and Crimea.

To ascertain the success of the Platform, we can look at the number of alerts resolved, which are 169, only 17% of the total. Some have remained open from the very first day that the Platform started working. The numbers are not encouraging, but some specific cases are because some laws were amended and cases of attacks investigated. Without the Platform, it is doubtful that some of those actions would have taken place.

One of the main problems is the engagement of the countries because approximately half of the alerts do not have a reply from the State affected (507). For example, Russia with reservations about the Platform from the beginning has never replied to an alert. If States do not even consider replying to the alerts and prefer to ignore the Platform, it is impossible to reach a solution or start any kind of dialogue. The Platform partners consider the response rate to be disappointing and inadequate and have strongly urged Azerbaijan,

<sup>77</sup> See Partner Organisations, 'Open letter from the Partner organisations to the Secretary General to make press freedom a priority' (19 September 2019) <<http://internationaljournalists.org/open-letter-to-the-new-secretary-general-for-making-press-freedom-a-priority/>> accessed 14 October 2020.

<sup>78</sup> See <[www.coe.int/en/web/human-rights-channel/end-impunity-for-crimes-against-journalists](http://www.coe.int/en/web/human-rights-channel/end-impunity-for-crimes-against-journalists)> accessed 24 June 2021.

<sup>79</sup> All the data used in this section was extracted from the Platform on 3 July 2021 <[www.coe.int/en/web/media-freedom/home](http://www.coe.int/en/web/media-freedom/home)>.

<sup>80</sup> 231 came from non-state actors and 171 had an unknown origin.

<sup>81</sup> International Press Institute, *Turkey's journalists in the dock. Judicial Silencing of the Fourth Estate*, 2019 <<https://freeturkeyjournalists.ipi.media/wp-content/uploads/2019/11/Turkey-Mission-Report-IPI-FINAL4PRINT.pdf>> accessed 14 October 2020.

<sup>82</sup> Partner Organisations of the Platform for the Protection of Journalism, *Democracy at risk: threats and attacks against media freedom in Europe* (Council of Europe 2019). <<https://rm.coe.int/annual-report-2018-democracy-in-danger-threats-and-attacks-media-freed/1680926453>> accessed 14 October 2020.

<sup>83</sup> Partner organisations of the Platform to Promote the Protection of Journalism, *Hands off press freedom: attacks on media in Europe must not become a new normal* (Council of Europe 2020) <<https://rm.coe.int/annual-report-en-final-23-april-2020/16809e39dd>> accessed 14 October 2020.

<sup>84</sup> SLAPP stands for Strategic Lawsuit Against Public Participation. This is a worrying trend because it shows how powerful entities abuse the law in order to silence critical opinions and reporting.

Russia and Turkey to engage constructively with the Platform.<sup>85</sup> Even when States reply sometimes they just state that they are not breaching their obligations. Therefore, the quality of the replies is important and should be improved as a first step in a productive dialogue. In the opinion of the partner organisations, the low response rate points in many cases to a lack of serious consideration or a reluctance to acknowledge evidence of a failure of protection.<sup>86</sup>

The will of the State is the key in a mechanism such as this and some do not take seriously the alerts. States that have pledged to make the safety of journalists an element of their foreign policy such as the ones that form the Media Freedom Coalition should apply peer-pressure to States that ignore the alerts.<sup>87</sup>

In the other extreme, we can find States like France, which decided to create an inter-ministerial informal coordination group to deal with Platform alerts. The Permanent Representation of France to the Council of Europe transmits an alert to the Ministry for European and International affairs (MEAE), which identifies the Ministry competent to deal with it. Each Ministry designates a focal point to respond to such alerts. Within a short delay upon receipt, the focal point transmits the response to the alert back to the MEAE, which sends it to the Permanent Representation to the Council of Europe and then to the Platform.<sup>88</sup> Ukraine's Ministry of Information Policy also put in place a system to coordinate responses to alerts. From the 70 alerts recorded regarding France, 48 have a reply from the State and 21 had been resolved. From the 73 alerts recorded regarding Ukraine, 66 have a reply from the State but only 11 had been resolved. This shows that the existence of concrete mechanisms results in a higher rate of alerts with State replies but not necessarily solved because the general situation of the country should be taken into account. At least, a reply is a first step towards a possible dialogue. We can see that, from the total of 169 alerts solved, 105 had a reply of the State.

The Partner Organisations asked Member States to consider setting up internal mechanisms to manage alerts, with the authority to liaise with all relevant governmental, judicial and security institutions or bodies. Such mechanisms should have an adequate mandate to achieve effective and timely co-ordination of alerts and ensure informed consideration of the alerts by the appropriate governmental departments or other bodies. The Organisations also asked States to designate points of contact for facilitating dialogue between the authorities and the Platform partners.<sup>89</sup>

Different institutions use the data of the Platform. Some examples are the Secretary General of the UN in his report on safety of journalists,<sup>90</sup> and the Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom that considers the Platform 'a remarkable initiative for the protection of journalists and for countering impunity.'<sup>91</sup> The authors of the report on the *Safety of journalists and the fighting of corruption in the EU* for the European Parliament relied heavily on the Platform's data and considered it the 'best-established monitoring mechanism of its kind in Europe.'<sup>92</sup> The European Commission cited many of the Platform alerts in its assessments for recent initiatives to protect the media, and it used the Council of Europe's standards as benchmarks for the European Democracy Action Plan.<sup>93</sup> There is also potential for

<sup>85</sup> Partner organisations of the Platform to Promote the Protection of Journalism, *Hands off press freedom: attacks on media in Europe must not become a new normal* (Council of Europe 2020), 18 <<https://rm.coe.int/annual-report-en-final-23-april-2020/16809e39dd>> accessed 14 October 2020.

<sup>86</sup> Partner organisations of the Platform for the Protection of Journalism, *Wanted! Real action for media freedom in Europe* (Council of Europe 2021) 62 <<https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>> accessed 3 July 2021.

<sup>87</sup> See <[www.gov.uk/government/publications/media-freedom-coalition-an-overview/media-freedom-coalition-an-overview](http://www.gov.uk/government/publications/media-freedom-coalition-an-overview/media-freedom-coalition-an-overview)> accessed 21 June 2021.

<sup>88</sup> Council of Europe, 'Implementation Strategy for Recommendation CM/Rec(2016)4 on the Protection of Journalism and Safety of Journalists and Other Media Actors' (28 March 2018), CDMSI(2018)005REV, 13 <<https://rm.coe.int/implementation-strategy-for-recommendation-cm-rec-2016-4/16808d7194>> accessed 14 October 2020.

<sup>89</sup> Partner organisations of the Platform for the Protection of Journalism, *Wanted! Real action for media freedom in Europe* (Council of Europe 2021) 62 <<https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>> accessed 3 July 2021.

<sup>90</sup> UNGA, 'Report of the Secretary General on the safety of journalists and the issue of impunity' (2019), UN Doc A/74/314, 10–11 <<https://digitallibrary.un.org/record/3826999#record-files-collapse-header>> accessed 14 October 2020.

<sup>91</sup> Elda Brogi, Roberta Carlini, Iva Nenadic, Pier Luigi Parcu and Mario Viola de Azevedo Cunha, *Monitoring Media Pluralism in the Digital Era* (European University Institute 2020), 152 <<https://cadmus.eui.eu/bitstream/handle/1814/67828/MPM2020-PolicyReport.pdf?sequence=5&isAllowed=y>> accessed 14 October 2020.

<sup>92</sup> Tarlach McGonagle, Ronan Ó Fathaigh, Gionata Bouché, Melinda Rucz, Sarah Stapel, Michelle Seel and Anne van der Sangen, *Safety of journalists and the fighting of corruption in the EU* (European Parliament 2020), 12 <[www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL\\_STU\(2020\)655187\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf)> accessed 14 October 2020.

<sup>93</sup> Partner organisations of the Platform for the Protection of Journalism, *Wanted! Real action for media freedom in Europe* (Council of Europe 2021) 57 <<https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>> accessed 3 July 2021.

the European Commission to use it in its reports about the assessment of the state of play in the candidate countries to join the EU. The possibility to use the information of the platform for the measurements of the SDG 16.10.1 indicator should also be studied.

The UN High Commissioner for Human Rights has acknowledged the wide range of prevention, protection, monitoring and complaint mechanisms that have been established and are regularly employed to draw attention to the attacks to journalists, to educate, prevent and protect, monitor violations and report, and pursue accountability. Nevertheless, despite the attention given at the international and regional levels, he was concerned because attacks on journalists were increasing, raising legitimate questions about the impact of these mechanisms at all levels.<sup>94</sup>

In that sense, the interoperability of these mechanisms should be studied and improved. For example, there is a clear overlapping in the territorial scope of the Platform and the Mapping Media Freedom (MMF) platform of the European Centre for Press and Media Freedom that covers all EU Member States and candidate countries.<sup>95</sup> The objectives of these platforms also partially overlap, as both are an early warning mechanism and a record of the threats to give them publicity. However, there are also important differences, for example, in the case of the MMF anyone can send an alert and there is a project to develop MMF 2.0,<sup>96</sup> which will automatically analyse and collate alerts from online published news and social media. The MMF counts with a network of experts, journalists, policy makers and other partners that verify all threats. In contrast, for the Council of Europe is very important to work only with trusted flaggers.

The MMF is the first step to trigger the Media Freedom Rapid Response (MMFR) mechanism and its legal, protection and advocacy work, while in the Council of Europe is the first step for a dialogue with the States and work of its different bodies. As the IPI and the EFJ are partners of both mechanisms, they very often introduce alerts in the two platforms in parallel and the MMF website links to the Council of Europe Platform, so we can see a certain degree of functional complementarity. Nevertheless, the overlap is also evident and begs the question if a fusion could be desired at least for the mapping of the alerts, taking into account all the resources both mechanisms require. Unfortunately, this does not seem possible as the definition of the threats/alerts is not completely the same and the feeding and response mechanisms differ. In addition, we cannot forget that intergovernmental organizations such as the Council of Europe are limited in their choices as they are accountable to their Member States, which probably already used all their flexibility setting the Platform as a creative way to tackle the issue.

#### 4. Conclusions

The increasing attacks on journalists and media freedom pose a serious threat to democracy and the rule of law, as they promote self-censorship and hinder the media role as a public watchdog. States should do more to ensure the application of Article 10 of the ECHR through the full implementation of the Council of Europe Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors.

This paper explores the concept of 'the rule of law from below' from a double perspective. First, journalists contribute to it keeping authorities accountable for their acts and exposing any wrongdoing to the public opinion because media freedom is a key enabler of the rule of law. Second, NGOs can also contribute to the rule of law from below by protecting those journalists, raising awareness of the attacks they suffer and the subsequent impunity and denouncing any divergence between the activities of States and the international standards that protect media freedom. The paper pays particular attention to an example of the second category: the Platform to protect journalists, where NGOs engage the help of the Council of Europe to push for actions compatible with the rule of law also 'from above.'

The creation of the Platform was the way for the Council of Europe to make more visible the attacks on journalists and media freedom in Europe, taking advantage of the NGOs in the field and their role protecting the rule of law. They are the ones that know what are the most pressing threats faced by journalists, so the system serves as an early warning for the organisation to respond swiftly through its different bodies. This information is also useful for other organizations such as the EU, the UN or the OSCE.

One of the advantages of the Platform has proven to be its main weakness: the engagement of the States. What singles out the Platform from other online mechanisms that gather this kind of information and present it to the public is that it is also a bridge to the States contacted in order to reply to the alerts. However, if

<sup>94</sup> United Nations High Commissioner for Human Rights, 'Report on Safety of journalists' (2018), UN Doc A/HRC/39/23, 16–17.

<sup>95</sup> See <[www.mfrr.eu/monitor/](http://www.mfrr.eu/monitor/)> accessed 24 June 2021.

<sup>96</sup> See <[www.mappingmediafreedom.org/report-it/](http://www.mappingmediafreedom.org/report-it/)> accessed 24 June 2021.

States decide to ignore the alerts, half of the purpose of the Platform is missing due to the lack of dialogue. It is necessary to promote the creation of formalised mechanisms to reply to the alerts at least in the Member States where the situation of journalists is worse.

The Council of Europe and its Member States need to find a way to work towards increasing pressure to achieve a higher percentage of replies to the alerts and effective measures. In any case, even if the NGOs and the Council of Europe partner in order to better protect journalists, there is a limit to their reach if States ignore the alerts.

The Council of Europe and its partners have to publicise better the Platform to make more people aware of its existence because it is known mostly among experts on this field but its findings may be of interest to a wider public.

This Platform is a creative way from an international organisation to use the resources of NGOs to fulfil better its own mandate to protect the rule of law, human rights and democracy, through a partnership with the representatives of civil society invested in those same goals, even if it has not reached its full potential. International organisations have to better channel the voices of civil society to support them and to consider them in their own work. This kind of mechanism could be extended to the protection of other human rights, tapping in the monitoring potential of NGOs. This is a working example of co-operation between an intergovernmental organisation and NGOs, similar initiatives if correctly supported could further improve the protection of the rule of law, democracy and human rights.

### Competing Interests

The author of this article is a civil servant of the Council of Europe currently on personal leave, nevertheless, the article was written in a strictly personal capacity, it expresses solely the views of the author and does not represent the official position of the Council of Europe. The author declares no conflicts of interest with this work.

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