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## Threats to the lives and freedom of expression of journalists

Opinion<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur for opinion: Mr Paschal Mooney, Ireland, Alliance of Liberals and Democrats for Europe

### I. Conclusions of the Committee

1. The Committee on Legal Affairs and Human Rights congratulates the Committee on Culture, Science and Education on its well-balanced report. It endorses by and large the draft resolution and recommendation proposed by the Rapporteur, Mr McIntosh. Due to recent events, the topic has given rise to renewed discussion about the need for increased measures to protect journalists who expose themselves to reprisals for simply doing their jobs. The report by the Committee pertinently illustrates the topic and covers key issues relating to the protection of journalists.

2. The Committee on Legal Affairs and Human Rights attaches great importance to the subject matter and suggests some amendments aimed at further strengthening and clarifying the texts submitted by the Committee on Culture, Science and Education.

### II. Amendments proposed by the Committee

#### Amendments to the draft resolution

##### **Amendment A:**

In paragraph 4, between "to investigate" and "any murders", insert the words "effectively, impartially and transparently".

##### **Amendment B:**

In paragraph 8, after the first sentence insert the following text: "It should be recalled that the Sub-Committee on the Media of the Committee on Culture, Science and Education created the position of a permanent Rapporteur on the Media in 2001, which is currently vacant and should be filled as a matter of urgency."

##### **Amendment C:**

After paragraph 8, insert the following new paragraph 9:

"9. The Assembly calls on:

9.1. the political leadership to swiftly and firmly condemn all attacks on the physical integrity of journalists;

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<sup>1</sup> See Doc. 11143 tabled by the Committee on Culture, Science and Education.

9.2. the law enforcement bodies to carry out effective, impartial and transparent investigations into attacks on journalists and to bring the perpetrators, organisers and instigators to justice;

9.3. national parliaments

9.3.1. to closely monitor the progress of such criminal investigations and hold the authorities accountable for any failures to investigate or to prosecute – for example, the Russian parliament as regards the murder of Anna Politkovskaya;

9.3.2. to abolish laws which place disproportionate limits on freedom of expression and are liable to be abused to incite extreme nationalism and intolerance – for example, the Turkish parliament as regards Article 301 of the Turkish Penal Code on the “denigration of Turkishness”.

**Amendment D:**

In paragraph 10, second sentence, insert the following part-sentence between “lack of progress in these investigations” and “and stresses the need to ensure ...”:

“, in particular as regards the instigators and organisers of the crime,”

**Amendment E:**

In paragraph 11, to delete the word “now” and insert between the words “Federation” and “to conduct” the words “as a matter of urgency”.

**Amendment F:**

In paragraph 11, after “Politkovskaya”, delete the words “in 2006” and insert “and the 24 other Russian journalists who have been assassinated since 1993”.

**Amendment G:**

In paragraph 11, replace the word “it” by “the Assembly”

**Amendment H:**

In paragraph 12, replace the words “The Assembly resolves to establish” by the words “The Assembly resolves to examine the feasibility to establish, within the Assembly or elsewhere in the Council of Europe”

**Amendment I:**

At the end of paragraph 12, insert the words “*via* the Rapporteur on the Media”

**Amendments to the draft recommendation**

**Amendment J:**

After paragraph 2.2. insert the following new paragraph 2.3:

“Call on national parliaments to abolish laws which place disproportionate limits on freedom of expression ”

**Amendment K:**

In paragraph 2.4., replace the words “establish also a mechanism for” by the following:

“to consider establishing within the Parliamentary Assembly or elsewhere in the Council of Europe a mechanism for “

### III. Explanatory memorandum

by Mr Paschal Mooney, Rapporteur for opinion

1. I share the analysis of the report submitted by the Rapporteur of the Committee on Culture, Science and Education and am satisfied that it adequately reflects the acute need for increased measures to protect the lives and, in particular, freedom of expression of journalists throughout Europe.

2. I should like, however, to put forward a few amendments to the draft resolution and draft recommendation. The majority of these amendments are not designed to modify the proposed draft elements, which I endorse, but to strengthen them by using stronger wording, or clarifying their formulation.

#### - Amendment A

Investigations must be effective, impartial and transparent, in line with the case law of the European Court of Human Rights on Article 2 ECHR.

#### - Amendment C

The new paragraph proposed regroups the operative provisions of the draft resolution, addressing separately the different actors concerned, in accordance with their respective roles: the political leadership is to take position swiftly and clearly, then the law enforcement bodies must investigate and prosecute, and the parliament must hold the latter to account for any failures in the fulfilment of their responsibilities.

The text of the draft resolution as it stands can be misunderstood as if the Assembly asks national parliaments themselves to play the role that is normally incumbent on the law enforcement bodies.

Parliaments should focus on their supervisory and policy-making functions. The latter include the need to abolish laws which unduly restrict freedom of speech and can be abused to stir up nationalist sentiment and intolerance.

The murder of Mr Hrant Dink, who was in recent years twice convicted and another time unsuccessfully prosecuted for “denigration of Turkishness” (Article 301 of the Turkish Penal Code), should incite the Turkish parliament to abolish once and for all this infamous provision, which in my view contradicts the freedom of expression protected in Article 10 ECHR. Hrant Dink became the victim of ultranationalist hate precisely of the kind that was fostered in the emotionally charged trials against him based on this provision. Such a symbolic measure would send a clear signal that intolerance and ultranationalism are not supported by a majority of the political forces in the country.

#### - Amendment D

In the Gongadze case (Ukraine), the trial against individuals suspected of having murdered this journalist is reportedly progressing, albeit belatedly. But the investigation of the “chain of command” is severely hampered by the alleged suicide of the former Minister of the Interior Kravchenko, a death that also needs to be investigated much more thoroughly.

- **Amendment G** (See above, under Amendment C)

#### - Amendment H

As a matter of prudence, I suggest that the feasibility of such a mechanism, within the Assembly, or possibly in another part of the Council of Europe, be first assessed more thoroughly before a decision is taken in due course, and in consultation with the Committee of Ministers.

- **Amendment K** (See above, under Amendment H)

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*Reporting committee:* Committee on Culture, Science and Education

*Committee for opinion:* Committee on Legal Affairs and Human Rights

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*Secretariat of the committee:* Mr Drzemczewski, Mr Schirmer, Ms Maffucci-Hugel, Ms Heurtin