

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

DECLARATION

Declaration on freedom of political debate in the media

*(Adopted by the Committee of Ministers on 12 February 2004
at the 872nd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

More than 50 years after having opened the Convention for the Protection of Human Rights and Fundamental Freedoms, hereinafter referred to as "the Convention", for signature by the member states, the Convention being the supreme instrument throughout Europe for the protection of the rights and freedoms enshrined therein;

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles that are their common heritage;

Recalling the commitment of all member states to the fundamental principles of pluralist democracy, respect for human rights and the rule of law, as reaffirmed by the Heads of State and Government at their Second Summit in Strasbourg on 11 October 1997;

Reaffirming that the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual, as expressed in its Declaration on the Freedom of Expression and Information of 1982;

Referring to the Declaration on a media policy for tomorrow adopted at the 6th European Ministerial Conference on Mass Media Policy in Cracow on 15 and 16 June 2000;

Recalling its Resolution (74) 26 on the right of reply - position of the individual in relation to the press and its Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns;

Recalling also its Recommendation No. R (97) 20 on "hate speech" and emphasising that freedom of political debate does not include freedom to express racist opinions or opinions which are an incitement to hatred, xenophobia, antisemitism and all forms of intolerance;

Aware of Resolution 1165 (1998) of the Parliamentary Assembly on the right to privacy;

Reaffirming the pre-eminent importance of freedom of expression and information, in particular through free and independent media, for guaranteeing the right of the public to be informed on matters of public concern and to exercise public scrutiny over public and political affairs, as well as for ensuring accountability and transparency of political bodies and public authorities, which are necessary in a democratic society, without prejudice to the domestic rules of member states concerning the status and liability of public officials;

Recalling that the exercise of freedom of expression carries with it duties and responsibilities, which media professionals must bear in mind, and that it may legitimately be restricted in order to maintain a balance between the exercise of this right and respect for other fundamental rights, freedoms and interests protected by the Convention;

Conscious that natural persons who are candidates for, or have been elected to, or have retired from political bodies, hold a political function at local, regional, national or international level or exercise political influence, hereinafter referred to as "political figures", as well as natural persons who hold a public office or exercise public authority at those levels, hereinafter referred to as "public officials", enjoy fundamental rights which might be infringed by the dissemination of information and opinions about them in the media;

Conscious that some domestic legal systems still grant legal privileges to political figures or public officials against the dissemination of information and opinions about them in the media, which is not compatible with the right to freedom of expression and information as guaranteed by Article 10 of the Convention;

Conscious that the right to exercise public scrutiny over public affairs may include the dissemination of information and opinions about individuals other than political figures and public officials,

Calls on member states to disseminate widely this Declaration, where appropriate accompanied by a translation, and to bring it, in particular, to the attention of political bodies, public authorities and the judiciary as well as to make it available to journalists, the media and their professional organisations;

Draws particular attention to the following principles concerning the dissemination of information and opinions in the media about political figures and public officials:

I. Freedom of expression and information through the media

Pluralist democracy and freedom of political debate require that the public is informed about matters of public concern, which includes the right of the media to disseminate negative information and critical opinions concerning political figures and public officials, as well as the right of the public to receive them.

II. Freedom to criticise the state or public institutions

The state, the government or any other institution of the executive, legislative or judicial branch may be subject to criticism in the media. Because of their dominant position, these institutions as such should not be protected by criminal law against defamatory or insulting statements. Where, however, these institutions enjoy such a protection, this protection should be applied in a restrictive manner, avoiding in any circumstances its use to restrict freedom to criticise. Individuals representing these institutions remain furthermore protected as individuals.

III. Public debate and scrutiny over political figures

Political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and are therefore subject to close public scrutiny and potentially robust and strong public criticism through the media over the way in which they have carried out or carry out their functions.

IV. Public scrutiny over public officials

Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions.

V. Freedom of satire

The humorous and satirical genre, as protected by Article 10 of the Convention, allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about facts.

VI. Reputation of political figures and public officials

Political figures should not enjoy greater protection of their reputation and other rights than other individuals, and thus more severe sanctions should not be pronounced under domestic law against the media where the latter criticise political figures. This principle also applies to public officials; derogations should only be permissible where they are strictly necessary to enable public officials to exercise their functions in a proper manner.

VII. Privacy of political figures and public officials

The private life and family life of political figures and public officials should be protected against media reporting under Article 8 of the Convention. Nevertheless, information about their private life may be disseminated where it is of direct public concern to the way in which they have carried out or carry out their functions, while taking into account the need to avoid unnecessary harm to third parties. Where political figures and public officials draw public attention to parts of their private life, the media have the right to subject those parts to scrutiny.

VIII. Remedies against violations by the media

Political figures and public officials should only have access to those legal remedies against the media which private individuals have in case of violations of their rights by the media. Damages and fines for defamation or insult must bear a reasonable relationship of proportionality to the violation of the rights or reputation of others, taking into consideration any possible effective and adequate voluntary remedies that have been granted by the media and accepted by the persons concerned. Defamation or insult by the media should not lead to imprisonment, unless the seriousness of the violation of the rights or reputation of others makes it a strictly necessary and proportionate penalty, especially where other fundamental rights have been seriously violated through defamatory or insulting statements in the media, such as hate speech.
