

ACADEMIC FRAMEWORK

INTERNATIONAL
LEGAL RESEARCH GROUP

FREEDOM OF EXPRESSION

THE PROTECTION OF
JOURNALISTIC SOURCES



Questions

1. Does the national legislation provide (explicit or otherwise) protection of the right of the journalists not to disclose their source of information? What type of legislation provides this protection? How exactly is this protection construed in national law?
2. Is there in domestic law a provision that prohibits a journalist from disclosing his/her sources? How exactly is this prohibition construed in national law? What is the sanction?
3. Who is a “journalist” according to the national legislation? Is it in your view a restricted definition for the purpose of the protection of journalistic sources? What is the scope of protection of other media actors? Is the protection of journalists’ sources extended to anyone else?
4. What are the legal safeguards for the protection of journalistic sources? How are the laws implemented? How are the legal safeguards combined with self-regulatory mechanisms?
5. In the respective national legislation are the limits of non-disclosure of the information in line with the principles of the *Recommendation No R (2000) 7*? What are the procedures applied? Is the disclosure limited to exceptional circumstances, taking into consideration vital public or individual interests at stake? Do the authorities first search for and apply alternative measures, which adequately protect their respective rights and interests and at the same time are less intrusive with regard to the right of journalists not to disclose information?
6. In the *Recommendation No R (2000) 7* the following principles should be respected when the necessity of disclosure is stated: absence of reasonable alternative measures, outweighing legitimate interest (protection of human life, prevention of major crime, defence of a person accused or convicted of having committed a major crime). Under which criteria can the interest in the disclosure outweigh the interest in the non-disclosure?
7. In the light of the case law of the European Court of Human Rights how do national courts apply the respective laws with regard to the right to protect sources? In particular, how do they balance the different interests at stake?
8. What are the criteria for using electronic surveillance and anti-terrorism laws, which may include measures such as interceptions of communications, surveillance actions and search or seizure actions in order to identify journalists’ sources of information? Are the national law provisions accessible, precise, foreseeable and include clear legislative norms in the context of surveillance and anti-terrorism provisions?
9. Can journalists rely on encryption and anonymity online to protect themselves and their sources against surveillance?
10. Are whistle blowers explicitly protected under law protecting journalistic sources? Is there another practice protecting whistle blowers? Is the legislation prohibiting authorities and companies from identifying whistle-blowers?

Selection of relevant Council of Europe instruments:

- [Recommendation No. R \(2000\) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information](#)
- [Report of the Committee on Culture, Science and Education of the Parliamentary Assembly \(2010\) on the protection of journalists' sources](#)
- [Recommendation 1950 \(2011\) of the Parliamentary Assembly on the protection of journalists' sources](#)
- [Recommendation CM/Rec\(2014\) 7 of the Committee of Ministers to member States on the protection of whistleblowers](#)
- [Freedom of expression in times of crisis: Guidelines of the Committee of Ministers of the Council of Europe \(2008\)](#)
- [Recommendation No. E \(96\) 4 of the Committee of Ministers to Member States on the protection of journalists in situations of conflict and tension](#)
- [Resolution 1535 \(2007\) of the Parliamentary Assembly on threats to the lives and freedom of expression of journalists](#)
- [Recommendation 1783 \(2007\) of the Parliamentary Assembly on threats to the lives and freedom of expression of journalists](#)