

Securing a favourable environment for journalists in the Netherlands

Executive summary

In its 2016 [Recommendation on protection of journalism and safety of journalists and other media actors](#),¹ the Committee of Ministers of the Council of Europe (CoE) called on the organisation's 47 member states to 'create and secure a favourable environment' for the right to freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights. This very timely and in-depth study examines the extent to which such a 'favourable environment' exists in the Netherlands.

The study's **overall conclusion** is that while Dutch law, policy and practice secure an environment that is **by and large favourable** for freedom of expression, journalistic activities and the safety of journalists,² there is **still room for improvement in several areas**.

The study first gives an overview of the Council of Europe's legal framework. It then examines Dutch law (including draft laws and case-law), policy and practice to assess the extent to which they adhere to the Council of Europe's standards. Taking its cue from the Committee of Ministers' Recommendation, the study contains particular focuses on **prevention** of threats and risks for freedom of expression, journalistic activities and safety of journalists and other media actors; **protection** and support measures, and **prosecution** of those behind threats and violence targeting journalists.³

The study identifies a number of **strengths and weaknesses** of the Dutch framework, a selection of which is listed below. It also draws attention to a number of existing or emerging trends which require continued monitoring and vigilance.

Strengths

- Adequate regulation and procedures are in place for anyone who threatens or harms journalists to be prosecuted in accordance with the rule of law;
- The protection of whistle-blowers has a legislative basis and is supplemented by relevant practical initiatives;
- Blasphemy has been decriminalized and offences such as *lèse-majesté* and insulting a foreign head of state are in the process of being removed from the Dutch Criminal Code.

According to the CoE framework, prosecution should be effective, adequate and thorough, impartial and independent, prompt and conducted under public scrutiny. The study shows that a variety of legal rules, doctrines and institutions ensures the proper application of these principles in the Netherlands. Special attention is paid to the principle of truth-finding

¹ 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.

² The Netherlands were ranked fifth in the [Reporters Without Borders Press Freedom Index in 2017](#).

³ The fourth pillar, 'promotion', falls outside the scope of this study since it concerns the promotion of the contents of the Recommendation, whereas the study focuses on journalists' legal position.

(*waarheidsvinding*), the rights of crime victims and the rules governing the use of force by police officers.

In the context of whistle-blowing, progress has been made with the adoption of the House for Whistle-blowers Act and the development of the Publeaks platform. Future research and implementation of the House for Whistle-blowers Act could further improve the functioning of both.

As the offences of *lèse-majesté* and insulting a foreign head of state do not provide for a public interest defence, they are not in line with the case-law of the European Court of Human Rights. Their imminent removal from the Dutch Criminal Code is therefore to be welcomed from the perspective of freedom of expression.

Weaknesses

- Source protection is not sufficiently guaranteed when secret surveillance measures are used against journalists;
- There is a lack of publicly available formal guidance concerning protection of journalists during public assemblies;
- Freedom of access to information legislation is not totally in accordance with European standards.

Following several rulings by the European Court of Human Rights against the Netherlands, the right to source protection for journalists in criminal proceedings is finally being codified. Nevertheless, the revised Intelligence and Security Services Act fails to offer journalists and other media actors an adequate level of source protection.

Both the police and mayors are responsible for safeguarding public order during public assemblies such as demonstrations. However, there is a lack of (public) documentation that specifically mentions the important role and sometimes vulnerable position of journalists during such assemblies.

The right of access to information is governed by the Openness of Government Act, which is not yet fully in accordance with relevant European standards. For example, the absolute grounds for refusal to give access, laid down in the Openness of Government Act, are in conflict with the principles of proportionality and subsidiarity.

Significant trends

- An increasing incidence of threats against journalists;
- Instances of denial of access for journalists to particular events or (public) spaces, such as press meetings of political parties;
- Concentration of media ownership, which could raise issues or concerns for media independence and pluralism.

Journalists are facing an increasing amount of both physical and online threats,⁴ which have a severe chilling effect on freedom of expression. Journalists are being threatened with, for example, violence or legal action. Sometimes these threats are specifically directed at female journalists or journalists with an ethnic background.

Some political parties barred journalists from their meetings during the most recent election period, thereby obstructing journalists from reporting on matters of public interest.

Although mergers and acquisitions can have positive effects and help traditional media survive in the digital age, the high concentration of ownership in the Dutch newspaper market and a high cross-ownership between different media sectors could put media independence and pluralism at risk.

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Additional information

The study has been researched and written by [Geert Lokhorst](#) and [Leon Trapman](#), both of whom are research masters students at the [Institute for Information Law \(IViR\)](#), Faculty of Law, University of Amsterdam. The methodology used is explained briefly at the start of the study and very extensively in the second appendix.

The Project Leader, [Dr. Tarlach McGonagle](#), senior researcher/lecturer at IViR, supervised the research and edited the study. [Mr. Otto Volgenant](#), Boekx Advocaten, acted as special adviser. Valuable comments on an earlier draft version of the study have also been received from the project's expert advisory board and in response to presentations at two conferences.

The present version of the study is a pre-final draft. We welcome feedback on this draft study **until 15 June 2018**. Please send your comments and suggestions to: fejj@ivir.nl. This e-mail address should also be used for academic or media enquiries about the study; the contact person is Leon Trapman.

The study has been carried out in accordance with [The Netherlands Code of Conduct for Academic Practice](#), as agreed by the Association of Universities in the Netherlands. It is part of a larger project, entitled *Audit of freedom of expression in the Netherlands*, which has received funding from the [Democracy & Media Foundation](#). The study and its key findings will form the basis of a policy paper on the same topic that is currently being prepared by the project team.

More information about the project is available at:
<https://www.ivir.nl/projects/auditoffreedomofexpression>.

⁴ See: M.W.A. Odekerken & A.F.M. Brenninkmeijer, [Een dreigend klimaat](#), 2017.