



21 December 2009

## STATEMENT

### **Western Europe: Freedom of Expression in Retreat in 2009**

**At the end of 2009, ARTICLE 19 notes with concern a number of instances this year indicating that media freedom is “retreating” in the countries of Western Europe.**

This statement highlights where states are falling short of expected international standards and makes constructive recommendations to remedy such shortcomings. All countries within the region have committed themselves through key international and European treaties to safeguard freedom of expression as a fundamental human right. However, there have been a number of cases that undermine this right, including the emergence of overly restrictive laws, violations of journalists’ right to protect the confidentiality of their sources, strengthened and applied criminal defamation legislation and the application of counter-terrorism laws as a pretext to stifle free speech.

The following are examples of incidences that have severely undermined media freedom as well as examples of legal provisions that do not adequately protect media freedom.

#### **Violence against journalists**

There have been a number of alarming incidents where journalists have received threats of violence or murder and even been attacked by organised crime groups, terrorist organisations or individuals acting in response to perceived insults to their religion; while the states have taken limited action to investigate these attacks and to provide redress to victims.

- In **Italy**, in November 2009, it was reported that as many as 10 journalists are under police protection because of threats they had received after reporting mafia activities. These include Roberto Saviano, author of “Gomorra” as well as Lirio Abbate and Peter Gomez, co-authors of “The Octopus.” Instead of defending free speech, Prime Minister Silvio Berlusconi stated at a public meeting in Sardinia in November 2009 that he would like to “strangle” anyone who writes about the mafia in Italy, as such reports give the country a bad image abroad. The Prime Minister’s statement is an affront to Italy’s positive obligation under international law to safeguard freedom of expression.
- In **Spain**, there have been several incidents over the year of journalists and media installations being attacked. ETA detonated explosions at the headquarters of EITB public broadcasting service on 31 December 2008 and at a TV transmission facility on 16 January 2009, both causing serious damage but no injuries. Since the end of the ceasefire in June 2007, mainstream conservative newspapers such as ABS and

*La Razón* can only be circulated clandestinely in the Basque region. During the elections which ended in May 2009, several journalists, photographers and cameramen were attacked by pro-independence Basque militants who destroyed their equipment. On 18 March 2009 in Andalucía, a journalist was attacked by people who disagreed with his reporting on a corruption case. The journalists allege that they were not protected by the police that witnessed the attack.

- In **France** in July 2009, the defense minister Hervé Morin's decided not to declassify three documents relating to the disappearance of the Tahiti-based independent journalist Jean-Pascal Couraud. Couraud disappeared in 1997 at a time when he was working on several sensitive stories relating to bank transfers to French Polynesia from accounts he alleged to be owned by French President Jacques Chirac. More than twelve years after the disappearance, the investigation is still open and has not reached a conclusion. It is widely believed that the undisclosed documents, seized from the French intelligence agency, would be instrumental in establishing the truth about what happened to Couraud. Also, in August 2009, the car of another investigative journalist Enrico Porsia was bombed in Corsica. Porsia is an Italian national who has claimed political asylum in France. He believed that the car bombing was related to the land development and zoning stories he had been covering for more than a year in Corsica. The investigation of the attack is ongoing.

### **Limitations on journalists reporting demonstrations**

There have been a number of instances where journalists have been prevented from reporting demonstrations and detained for doing so.

- In **Finland**, in September 2009, the Supreme Court rejected the claim of the photojournalist Markus Pentikäinen against a conviction for ignoring a police order to stop reporting on a demonstration at the Asia-Europe meeting in Helsinki in 2006. Pentikäinen argues that his violent removal from the protest and subsequent detention for eighteen hours was an indiscriminate restriction on his right to freedom of expression. He has announced that he will be challenging the decision at the European Court of Human Rights.
- In **France**, a journalist at *Le Monde* newspaper was arrested on 13 July 2009 at a demonstration against police violence in Paris which he was reporting on. He was detained for 9 hours before a lawyer secured his release. Frances National Syndicate of Journalists has lodged a complaint about the matter with the police.
- In **Spain**, on 18 March 2009, journalists were beaten by Catalan Police during a students' demonstration in Barcelona. Measures are now being taken by Spain to ensure that journalists are more clearly identifiable when reporting demonstrations and situations of public disorder.

### **Criminal defamation**

Criminal defamation laws still remain in existence in many Western European countries. ARTICLE 19 considers these laws inherently harsh and having a disproportionate chilling effect on free expression. Individuals face the constant threat of being arrested, held in pre-trial detention, subjected to expensive criminal trials, and then saddled with a criminal record, fines and imprisonment, and the social stigma associated with this. Although criminal defamation is rarely prosecuted in Western Europe, this does not necessarily remove the 'chilling effect' it has on media reporting.

- In **France** on 24 June 2009 a Paris court found the *Tahiti-Pacifique* editor Alex du Prel guilty of criminal defamation of public prosecutor Jean Bianconi. The case was brought to protect the reputation of the public prosecutor, who was apparently defamed by an article Du Prel wrote critical of the judicial probe into the 1997 disappearance of Jean-Pascal Couraud. Du Prel was fined €1,000 and ordered to pay the public prosecutor €1,000. The French Press Law of 1881 criminalises insulting the President, courts, armed forces and other public bodies. In 2000 the law was amended to remove custodial penalties but fines are still imposed.
- In **Germany**, the criminal code provides penalties for denigration of the President of State, denigration of the state and its symbols, unconstitutional denigration of the Organs of the Constitution, insult, defamation of character, defamation with deliberate untruths, political defamation, denigration of a deceased person and “insult” with true statements. “Insult” is most commonly prosecuted, with 193,617 cases recorded in 2008.<sup>1</sup> In 2009, a German court found “Alex W” guilty of criminal insult and fined him €780 for racial insults to Marwa El-Sherbini, a woman of Egyptian nationality. During the appeal proceedings in 1 July 2009, “Alex W” stabbed and killed the victim of the insult in open court.
- **Italian** law contains provisions penalising insult to the Republic, constitutional institutions, the armed forces and the Italian nation, but there has been no successful prosecution since the 1950s. To ‘offend the honour’ of the President and the Pope is also a criminal offence and there was a successful conviction in 2004 although no custodial penalty was imposed.
- In **Belgium** there are laws against insult to members of the royal family but this law has not been applied recently. Similarly, laws in **Portugal** and **Greece** against insult to officials have not been enforced.
- The **United Kingdom** became the first country in Western Europe to decriminalise libel this year.<sup>2</sup> ARTICLE 19 has welcomed this advance. It sets an example to other Western European states and other established democracies to demonstrate to more repressive governments around the world that criminal defamation laws should not exist and that the imprisonment of journalists is unjustifiable.

### **Civil defamation**

ARTICLE 19 is concerned that civil defamation laws in Western Europe remain over broad in their application. Civil defamation laws can serve a legitimate purpose by protecting one’s reputation from unwarranted attacks and is recognised under international law as a valid restriction on freedom of expression. However, such legislation is often abused by the politically or financially wealthy to hinder investigative reporting on issues of significant public interest, including politics, corruption and even science. The chilling effect this has on free expression is compounded by a heavily claimant friendly civil defamation law and excessive awards for damages and costs. In some instances the law appears to protect feelings rather than reputations.

- In the **United Kingdom**, freedom of expression is severely inhibited by a heavily claimant-friendly civil defamation law. The number of civil defamation cases in the UK raised by 11% during the last year. A reverse burden of proof absolves the

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<sup>1</sup> German government statistics: [http://www.bka.de/pks/pks2008ev/pcs\\_2008.pdf](http://www.bka.de/pks/pks2008ev/pcs_2008.pdf)

<sup>2</sup> Coroners and Justice Act 2009

claimant of proving falsity or actual malice and charges the defendant with proving truth or that a narrow exception of qualified privilege or fair comment applies. Crucially, there is no robust ‘public interest’ defence to protect the media. These problems are compounded by the prohibitive expense of defending a libel claim in the UK, which is 140 times greater than in any other European jurisdictions but Ireland.<sup>3</sup> The defendant may face financial ruin whether they settle out of court or defend the claim with the prospect of probable defeat. In November 2009, the actress Kate Winslet was awarded £25,000 in damages for statements published by the Daily Mail falsely alleging the actress had lied about her exercise regime. In July 2009, the actress Kate Beckinsdale was awarded £20,000 for libellous statements that falsely alleged that she was heartbroken from failing to secure her ‘dream role’ in a particular film. These examples demonstrate instances where the level of damages awarded seem disproportionate to the damage caused to the individual reputation. In May 2009 the journalist and author Simon Singh was successfully sued for libel by the British Chiropractic Association for writing in an “opinion” column in the Guardian that he believed Chiropractic treatments that they promoted for certain ailments were bogus. The case is currently being appealed to the Court of Appeal. This is an example of how public interest debates on issues of medical importance are suppressed by the UK defamation law.

- Media freedom is seriously threatened by the **transnational** phenomenon of ‘libel tourism’. A jurisdictional loophole means that anyone may sue a publication in the **United Kingdom** courts provided that the contested material has been accessed in the country. ARTICLE 19 has previously noted that these factors have a powerful inhibiting effect on investigative journalists and others and may result in widespread self-censorship internationally. This includes publishers avoiding releasing contentious literary works in the country out of fear of reprisals in the courts. In an ongoing case, the United States based ‘NMT medical’ is suing the cardiologist Dr Peter Wilmschurst for allegedly libellous statements the latter made in respect of the effectiveness of a new heart implant available on the NHS manufactured by NMT medical. The comments were made to a journalist in Canada and were published on a United States based medical journal website which was accessed in the United Kingdom by several cardiologists. This is only the most recent example of foreign based litigants travelling to the United Kingdom to circumvent the freedom of expression protections that exist within their own jurisdictions. On 23 November 2009, the Home Secretary Jack Straw pledged to reform libel law, although the substance of such reforms is not yet clear.
- In **Ireland**, in July 2009, the Government reformed its defamation law, which has been criticised for discouraging voluntary corrections and apologies as they allow complainants to prove substantial damage. The new Defamation Bill was generally approved by the media but not so the accompanying Privacy Bill which was seen as a potentially drastic curb on reporting practices.
- In **Italy**, Prime Minister and media owner Silvio Berlusconi has initiated libel lawsuits against the Spanish newspaper *El Pais* (for photographs they published of one of his parties) and the French weekly *Le Nouvel Observateur*. He is suing the Italian newspaper *La Repubblica* for €1million for repeatedly asking questions concerning his private life and public duties. The Italian daily *L’Unità* is being sued for €3million over its coverage of alleged corruption in connection with receptions

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<sup>3</sup> A Comparative Study in Defamation Proceedings Across Europe, Programme in Comparative Media Law and Policy, Centre for Socio-Legal Studies, University of Oxford, December 2008.

organised for the prime minister. It is reported that Mr Berlusconi's lawyers are looking into the possibility of suing British papers. The Organization for Security and Cooperation's Representative in Europe on Freedom of the Media, Miklos Haraszti, has called on Mr Berlusconi to drop the civil libel actions as they abuse media freedom.

### **Defamation of religions**

It has been widely re-affirmed within Western Europe that only individuals are entitled to a 'reputation' that can be protected by defamation laws.<sup>4</sup> Religious faiths per se do not attract this same right. Many states have engaged in new forms of dialogue among religious and other civic groups which have sometimes contributed to better mutual understanding between people of different faiths and convictions. These positive initiatives encourage greater tolerance and promote the right to freedom of expression rather than inhibit it. However, ARTICLE 19 notes that blasphemy remains a criminal offence in many Western European states.

- In the **United Kingdom**, the Coroners and Justice Act 2009 retains blasphemy as a criminal offence in Northern Ireland. Last year, ARTICLE 19 welcomed the abolition of blasphemy in England and Wales but criticised the decision not to extend full protection of freedom of expression to those in Northern Ireland as completely incompatible with democratic ideals.
- In **the Republic of Ireland**, the Defamation Act 2009 makes it an offence to be "grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion" with the intention of causing such outrage. Conviction can lead to a fine of up to €100,000. There is a defence for works of "genuine literary, artistic, political, scientific, or academic value". ARTICLE 19 has raised serious concerns that later this year, Pakistan adopted the *exact wording* of the Irish legislation in its submissions on behalf of the Organisation of Islamic Conference to the UN Ad Hoc Committee on Complementary Standards, legitimising its calls to establish defamation of religions as a standard of international law.
- In **Finland**, a city councilman and critic of multiculturalism, Jussi Halla-aho was charged with disturbing religious worship<sup>5</sup> and incitement of an ethnic-group for publishing on his blog that Prophet Mohammad was a paedophile. Halla-aho was found guilty and fined €330 on 8 September 2009. Although the charges were not for blasphemy, the criminal penalty was essentially for the insult of a figure of religious veneration.

### **Impact of anti-terrorism legislation on free speech**

Evidence from across Western Europe suggests that over intrusive and far-reaching anti-terrorism legislation has brought new restrictions on media freedom. This is because anti-

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<sup>4</sup> At the 23<sup>rd</sup> session of the UN Human Rights Council the EU spokesperson at the UN spoke out against the resolution on defamation of religions proposed by Pakistan on behalf of the Organisation of Islamic Conference. He stated that "the European Union does not see the concept of defamation of religion as a valid one in a human rights discourse... The European Union believes that a broader, more balanced and thoroughly rights-based text would be best suited to address the issues underlying this draft resolution."

<sup>5</sup> Section 10 of Chapter 17 of the Finnish Penal Code.

terrorism legislation often fails to define clear limits to authorities' interference or lacks sufficient procedural guarantees to prevent abuse.

- In the **United Kingdom**, Section 76 of the Counter-Terrorism Act 2009 makes it an offence punishable by up to ten years' imprisonment for a person to photograph the police, the armed forces, or the intelligence services which are "likely to be useful to a person committing or preparing an act of terrorism."
- In **Spain** in September 2009, the Madrid Prosecutor's office demanded that the deputy editor-in-chief of *El Mundo*, Antonio Rubio, be sentenced to three years in jail and be barred from practising journalism for three years on charges of "discovering and revealing state secrets." Rubio had written an article in the wake of the 2004 Madrid bombings, in which he suggested that an informant had tipped off the Spanish authorities about the upcoming attacks more than one year before they took place.
- In **Denmark** on 21 September 2009, a Copenhagen court ruled not to ban the publication of a book by the former Danish soldier Thomas Rathsack. The book gave his personal account of sensitive operations carried out by a Danish special forces unit in Afghanistan. The Danish Defence Ministry had asked the Court to ban the book despite its wide circulation on the internet and its inclusion as a free supplement in the daily newspaper *Politiken*. Because the hearing was conducted as a closed procedure, it has not been disclosed why the Defence Ministry felt a publication ban was warranted.

### New Media and Internet Surveillance

Media freedom has largely been increased by the arrival of the internet and the opportunity for all those with access to it to promulgate their views to wide audiences. However, states are reported to use these new technologies to gather data on journalists and other users for the purposes of surveillance, and thousands of websites have been closed by order of governments.

- In December 2009 in the **Netherlands**, the Dutch intelligence service AIVD has been cleared of accusations of illegally tapping the telephones of two journalists, Jolande van der Graaf and Joost de Haas, at the mass-circulation daily *de Telegraaf*. The journalists had written two articles containing details from documents declared to be state secrets. AIVD had been ordered to stop tapping the journalists' phones in July 2009. The independent Review Committee on the Intelligence and Security Services judged that the tapping was justified after the publication of the second article, but not after the publication of the first. The paper's editor, Sjuul Paradijs, is demanding an apology from the minister because of the violation of press freedom after the first publication when the tapping was held to be unnecessary.
- In **France** in October 2009 the Constitutional Court validated the three strikes "Hadopi 2" law which allows the authorities to disconnect from the internet any users engaged in illegal downloading subject to a court order in an accelerated proceeding. The law does not specify how the authority is able to reliably distinguish between legal and illegal downloads, or whether an IP address has been hijacked. Nor does the act impose an obligation on the authority to inform disconnected users which downloads resulted in their disconnection. A bill is also being considered this year that would allow the French police to use spyware to obtain information from privately owned computers and internet cafes without the knowledge or consent of the owners of that information.

- In **Sweden**, on 14 October 2009, the Parliament passed the “new signals intelligence law”. The law gives Sweden’s National Defence Radio Establishment (FRA) extensive surveillance powers to tap all international telephone and internet communications made to or from Sweden.

### **Confidentiality of journalists’ sources**

Countries within Western Europe provide differing degrees of legal protection to the protection of journalistic sources. Some states do not have any shield provisions protecting the right in law, including the Netherlands, Greece, Spain and Andorra whereas in France the protection is absolute in all criminal cases.<sup>6</sup> In Sweden, it is a criminal offence for a journalist to break their duty of confidence to their source. In Belgium, the protections can only be overridden by a judge where there is a serious threat to the physical integrity of a person, the information is of crucial importance and it cannot be obtained by any other means.<sup>7</sup> In Luxembourg, the exceptions are broader as journalists can be forced to disclose their sources where it involves crimes against individuals, drug trafficking, money laundering, terrorism or state security. In Finland, the law provides that disclosure can only be forced in relation to criminal acts that attract a custodial sentence of six years or more.

Despite strong legal protections in some states, many journalists continue to find themselves facing arrest, their offices searched and equipment seized for refusing to identify their sources to law enforcement authorities or the courts.

- In **Ireland**, on 18 June 2009 Susanne Breen, the Sunday Tribune’s journalist, won the right to not disclose her source and interview notes for the story she published on the murder of two British soldiers by the Real IRA. She would have faced up to five years’ imprisonment if she had lost the case and continued to refuse disclosure. The judge acquitted the journalist citing Article 10 ECHR and the serious threats to her life there would be if she were forced to comply with a disclosure order. The police were ordered to pay only 75% of her defence costs. However, in another case in August 2009, the Irish Supreme Court upheld the right of the editor of the Irish Times, Geraldine Kennedy, and reporter Colm Keena, to keep the identity of their sources secret. They had refused to reveal the source of an article about payments to the former Irish Prime Minister Bertie Ahern. In December 2009, the Supreme Court incongruously ordered that the Irish Times pay the costs of the tribunal who had lost the action, which was over €600,000. Although the Supreme Court previously established no legal wrongdoing on the part of the Irish Times, they justified the order based upon the defendants’ “reprehensible conduct” in destroying evidence that would have been subject to an order. They were under no legal obligation to retain this evidence or disclose it. The order for costs can only be regarded as punishment for a legal act. The Sunday Times is considering appealing the ruling to the European Court of Human Rights as a disproportionate interference with their right to freedom of expression under Article 10 ECHR.

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<sup>6</sup> The French Criminal Procedure Code states that “any journalist is free not to disclose its origin” provided he or she “heard as a witness in respect of information collected in the course of her/his activities.”

<sup>7</sup> The 2005 Belgian law on the protection of information sources was upheld at the time as an example to the whole world. However that did not prevent the Belgian authorities from bringing criminal charges against a journalist on a Flemish-speaking magazine, *Humo*, for refusing to disclose the name of his informants.

- In **Finland**, in 2009, legislation was proposed that would compel journalists to reveal their sources in certain criminal cases "involving a suspicion of [a] serious breach of confidentiality." Under the law, journalists could be ordered by courts to reveal their sources of information even in preliminary investigations before the case goes to trial. The current legislation allows for revealing the sources of a journalist in preliminary investigation only in criminal cases which carry a mandatory minimum of six years' imprisonment upon conviction. Such cases include robbery, aggravated violence and serious narcotic drug-related crimes.
- In the summer of 2009, in the **Netherlands**, the homes of Telegraaf journalists Jolande van der Graaf was searched and documents and computers confiscated in relation to state secrets detailed in two articles he wrote. The search did not result in the authorities finding any state secrets.

Given varying levels of protection in countries, ARTICLE 19 notes with concern the March 2009 decision of the **European Court of Human Rights** in *Sanoma vs. Netherlands*.<sup>8</sup> The case was brought by a Dutch magazine that was forced to disclose unpublished photographs or face being shut down. It was held that although the searches showed a "regrettable lack of moderation" they did not violate the freedom of expression guarantees contained in Article 10 of the European Convention on Human Rights. ARTICLE 19 finds the panel chamber decision in serious conflict with previous decisions of the Court, including the groundbreaking 1995 case of *Goodwin v. UK*, which firmly established the rule of protection of sources in Strasbourg jurisprudence. As the case has been referred to the Grand Chamber of the Court, ARTICLE 19 has submitted an *Amicus Curiae* brief calling for the reaffirmation of the right of journalists not to disclose their sources.<sup>9</sup>

### **Media ownership and plurality**

It is important to the quality of a democracy that there is a variety of media available to the public so that they have access to a spectrum of political, social and cultural perspectives. Diversity of content is important for providing the means for the individual to formulate their own opinions and identity. ARTICLE 19 is concerned that within Western Europe corporate 'media monopolies' are too large, guarantees for editorial independence are too weak and profit is prioritised over quality and in-depth journalism. Additionally we note that disproportionate weight is given to the viewpoint of an exceptionally wealthy minority who may be prone to abusing their excessive market share to control editorial content and promote their own interests. Individuals in this powerful position are courted by world leaders and opposition politicians in an effort to establish good 'media relations' and receive more favourable content. It is of additional concern that in several cases senior politicians have direct financial control over media enterprises.

- In **Italy**, Prime Minister Silvio Berlusconi's business empire includes several of the most popular TV channels and a number of news publications. He has been sharply criticised in Italy and abroad for using his influence over these media to bolster his political image and for influencing media regulation. He blocked the passage of strict

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<sup>8</sup> *Sanoma Uitgevers BV v Netherlands*, Application no. 38224/03, judgement of 31 March 2009, <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=21472288&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=72422>

<sup>9</sup> For a copy of the *amicus* brief, see <http://www.article19.org/pdfs/press/european-court-of-human-rights-article-19-calls-for-high-level-protection-of.pdf>.



conflict of interest provisions that would affect his position in the media. He also failed to enact a bill to guarantee the public broadcaster RAI's independence from political influence. He is also alleged to have threatened journalists with exclusion from his press appearances for asking questions about his private life. As a result of this climate it is claimed that Italians receive a distorted account of the government's difficulties and his personal scandals, which are numerous. The OSCE's Media Freedom Representative has criticised the unresolved conflict of interest Mr Berlusconi holds as both Prime Minister and media owner.

- In **France**, there are concerns that ownership of several of the leading national newspapers have recently moved into the hands of business conglomerates with ties to the government. *Libération* has become the property of a member of the Rothschild family and was obliged to accept a financial plan involving severe cuts in journalists' posts and expenditure. *Le Monde* has come under new management and was obliged to sell many of its regional subsidiaries. *Le Figaro* was acquired by Serge Dassault, an important French industrialist and Member of Parliament for the party founded by former President Jacques Chirac. Journalists at *Le Figaro* have expressed concerns that its new owner may seek to interfere in the paper's editorial line in favour of the French government. Mr Dassault recently said that he could not understand why only journalists, and not shareholders, were allowed to write the articles that appear in newspapers. It is also reported that the media owners Mr Arnaud Lagardère, Mr Vincent Bolloré and Martin Bouygues have several business interests dependent on government contracts and are close friends of President Sarkozy.<sup>10</sup> These links raise doubts over the survival of a free and independent media in France. These worries were reinforced in 2009 as Mr Sarkozy approved proposals to give the president powers to appoint the head as well as top broadcasters of the French public TV broadcasting networks. The changes provoked a lengthy strike of Radio France International staff in March 2009, against 200 expected job losses.
- In **Germany** and **Austria**, editorial appointments and the senior management of public broadcasting services reflect the strength of rival political parties. This can be criticised for undermining journalistic independence by taking account openly of political affiliations. In Austria some broadcasting journalists have questioned the guidelines on news coverage which take account of political factors in deciding on coverage and running orders on news bulletins.

## **Freedom of information**

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<sup>10</sup> Mr Lagardère owns interests in various media organisations, including a radio station (*Europe 1*), a TV channel (*M6*), the magazine *Paris Match*, the newspapers *L'Express* and *Le Journal du dimanche*. His group owns companies that supply electronics, aircraft and weapons to public sector enterprises. It was widely reported that he censored an article in *Le Journal du dimanche* reporting that Cecilia Sarkozy, then the president's wife, had failed to vote in the presidential election. It is also reported that he fired the chief editor of the *Paris Match* after publishing a photo of the then Mrs Sarkozy in New York with a man rumoured to be her lover. Vincent Bolloré, who owns two free daily magazines *Matin Plus* and *Direct Soir* and the TV channel *Direct 8* was reported to invite Mr Sarkozy to a holiday on his Yacht days after the election. He is also rumoured to have suppressed a story reporting the mistreatment of Hungarian musicians at the Charles de Gaulle airport. Martin Bouygues, the largest shareholder in TF1, France's most popular TV channel, has important business interests in constructing public buildings and roads. He is also acknowledged to be close to Mr Sarkozy.

Freedom of information laws are now in force in most Western European states, but some governments have cited pressing security concerns as a reason for placing new limits on applications, or on the range of information that can be obtained. It is of particular concern that some states' access to information laws contain exceptions to the right for information held by police forces. We note that such provisions go against the principle of maximum disclosure; that all documents must be made available to the public apart from in a very narrowly defined list of exceptions, subject to a public interest test. For example:

- **The Republic of Ireland** law contains an absolute exemption for information held by the police, placing them completely out of the scope of the law. It is the only state in Western Europe with such a broad exemption.
- In **Luxembourg, Spain, Monaco, San Marino** and **Andorra** there is no access to information law. Similarly, six provinces in **Germany** do not have an access to information law.
- In **Belgium, Denmark, France, Italy, Norway** and **Switzerland** the access to information laws contain blanket exceptions for information relating to criminal investigations by the police or judiciary. This is contrary to the principle of maximum disclosure because it excludes information on the basis of the information type rather than by reference to a narrow list of exceptions and the public interest test.

### **Recommendations**

- ARTICLE 19 reminds all states in Western Europe of their positive obligation to uphold the right to freedom of expression contained in international and European law. This includes the obligation to adequately investigate violations of convention rights. Attacks against journalists, particularly by public authorities, must be fully investigated and the perpetrators brought to justice.
- ARTICLE 19 urges all states in Western Europe to decriminalise defamation entirely. Recent practices show that in all but one exceptional case these provisions are redundant and their existence only creates legal uncertainty and may contribute to self-censorship. Democracies should not allow public bodies to sue for defamation under any circumstances because of the importance of open debate about such bodies and because they are not entitled to a reputation protected by law. The bringing of defamation actions by these bodies is regarded as an improper use of public money, particularly given the alternative channels available in a democracy to respond to criticism.
- ARTICLE 19 recommends that all countries within Western Europe ensure their civil defamation laws give due protection to freedom of expression. This requires that the burden of proof is placed on the Claimant. It also requires sufficient safeguards for discussions in the public interest and restraint on damages and cost awards so that bringing or defending a libel action is not prohibitively expensive.
- ARTICLE 19 recommends that all countries within Western Europe decriminalise blasphemy. Restrictions on freedom of expression should never be used to protect institutions, abstract notions, concepts or beliefs, including religious ones. Any such restrictions should be limited in scope to advocacy of hatred.
- ARTICLE 19 recommends that Western European States should adopt special laws or explicit provisions on protection of sources in line with CoE recommendation 2000 (7). This protection should include the right of media workers to refuse to reveal their confidential sources to law enforcement agencies or to testify about them before both criminal and civil courts. It should also include protection of journalists'

records from searches of their offices and homes, and from interception of journalists' communications, where these are in order to identify their sources. Imprisonment for refusal to reveal confidential sources and detention as a coercive measure should be provided only for the most serious cases.

- ARTICLE 19 recommends that Prime Minister Silvio Berlusconi resolves the conflict of interest he currently holds as both a politician and media owner. Other states must also treat it as a priority to guarantee media independence and diversity for the proper functioning of democracy.
- ARTICLE 19 recommends that all Western European states adopt freedom of information legislation that conforms to the principle of maximum disclosure and is subject to a public interest proviso. Information held by judicial and police authorities must be subject to these principles.