Committee of Ministers: Right of Reply in New Media Environment

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On 15 December 2004, the Council of Europe's Committee of Ministers (CM) adopted Recommendation Rec (2004) 16 on the right of reply in the new media environment. The Recommendation revises the CM's Resolution (74) 26 on the right of reply - position of the individual in relation to the press, by revamping its key principles and provisions for the digital age.

In its preambular section, the Recommendation acknowledges that the right of reply can be assured "not only through legislation, but also through co-regulatory or self-regulatory measures". It emphasises as well that the right is "without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been violated in the media".

The Recommendation sets out a number of minimum principles, the exercise of which is regarded by the CM as adjustable to "the particularities of each type of media". First, the scope of the right of reply extends to all natural or legal persons. Second, a request for a reply should be made within a "reasonably short time from the publication of the contested information". The medium in question should then "make the reply public without undue delay". Third, the reply should be given (as far as possible) "the same prominence as was given to the contested information". Fourth, the reply should be made public "free of charge for the person concerned".

Exceptions, i.e., possibilities for a medium to turn down a request for a reply, could be provided for in national law or practice in the following cases: if the length of the reply is excessive for correcting the contested information; "if the reply is not limited to a correction of the facts challenged"; "if its publication would involve a punishable act, would render the content provider liable to civil law proceedings or would transgress standards of public decency"; if it is contrary to the legally protected interests of a third party; in the absence of a demonstration of a legitimate interest; if the reply is in another language than that of the contested information, or if the contested information "is a part of a truthful report on public sessions of the public authorities or the courts".

The CM envisages procedural and other safeguards for the effective exercise of the right of reply. The media should ensure that their contact points for receipt of

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requests for replies are made public. The CM posits that “national law or practice should determine to what extent the media are obliged to conserve, for a reasonable length of time, a copy of information or programmes made publicly available”. A novel feature of the Recommendation (certainly vis-à-vis its forerunner) is its provision on electronic archives. The CM states that if “the contested information is kept publicly available in electronic archives and a right of reply has been granted, a link should be established between the two if possible, in order to draw the attention of the user to the fact that the original information has been subject to a response”.

The Recommendation concludes with a dispute settlement provision which recommends that recourse be available to “a tribunal or another body with the power to order the publication of the reply”.

Recommendation CM/Rec (2004) 16 of the Committee of Ministers to member states on the right of reply in the new media environment, 15 December 2004

https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282004%2916&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679

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