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# What is journalism? The paradox of media privilege

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Journal Article

European Human Rights Law Review

E.H.R.L.R. 2021, 5, 523-539

## Abstract

*Privileges that aim to enhance journalist and media freedom can also undermine it if their administration necessitates gatekeeping of the status of journalist. This article examines this paradox of privilege on the basis of a selective survey of three areas of law: protection of journalistic sources, defamation, and protection of journalists. It argues that there exists a “privilege paradox” whereby journalism and the media need special protection in order to fulfil their democratic function, but that awarding of this privilege can create vectors of control through gatekeeper control of access to the profession. The article shows that journalism privilege can be based on the status of the person of the journalist, or on the genre or activity of journalism through various forms of judicial discretion and also accreditation. There are numerous examples with respect to the award of privileges that incorporate protections for media freedom. As journalism privilege is redefined, a functional notion of journalism will be required, but this is not sufficient for all journalistic and media privileges.*

## 1. Introduction: The paradox of “media privilege”

The terms “journalist privilege” and “media privilege” have contested meanings. They often refer to specific privileges and protections relating to the identity of sources, or defences in relation to personality rights claims. In this article I will adopt a wider definition of journalism and media privileges to denote all special treatment in law that is based on the status or function of journalism or the activities carried out by media. According to the European Media Observatory of the Council of Europe, “media privilege” is understood to mean all provisions that: (1) guarantee through special information rights that media are able to fulfil their opinion-shaping function; (2) ensure through special protective instruments of a procedural nature that freedom of the media is safe from state interference; and/or (3) prevent people affected by media reporting from being able to suppress it by reference to general provisions of civil or criminal law without any consideration of the media’s freedom to communicate.<sup>1</sup>

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The US Supreme Court has tended to resist special institutional protection for journalism or the media,<sup>2</sup> but in Europe the role of the press in a democracy justifies such support, including through positive interventions by the state. Behind the US position lies the assumption that any attempt to endow journalism or the media with “institutional rights” in recognition of these important functions potentially opens a door to censorship by offering whoever defines the status of journalist control of access to the privileges necessary for journalism.<sup>3</sup> This is the paradox of journalism privilege: creating institutions and rules to *\*E.H.R.L.R. 524* provide protection and special status may lead to sovereign control. Thus, whilst in democracies, journalism privileges such as source protection, defences in defamation claims and shelter from arrest or violence can protect the independent fourth estate, the same journalism privileges may enable those that control access to privileges to award them only to a cadre of regime propagandists, who set the agenda and frame public debate.

As delivery technologies change, the nature of journalist privilege, and who enjoys it is changing. Whereas in the past few people could access technologies of dissemination associated with the special status of journalist, now access to publication is as universal as smartphones. Thus not only citizen journalists and bloggers but “influencers”, campaigners and human rights defenders increasingly claim journalism privilege, raising new questions about media privilege. Should privileges be extended to all those claiming to fulfil a journalistic function, or restricted to those that serve the public interest, and if the latter, who decides whether the public interest is indeed served?

The academic and legal literature on journalism privilege<sup>4</sup> has focused on source protection.<sup>5</sup> In fact, multiple areas of law including data protection,<sup>6</sup> intellectual property and market abuse<sup>7</sup> contain exemptions for media and journalists.<sup>8</sup> This article examines how the award of journalism privilege works in practice by examining source protection, defamation and protection of journalists. It shows that journalism privilege can undermine media freedom but does not necessarily do so.

The virtues of various approaches to defining journalism have long been a subject of theoretical dispute. The settled view of the US Supreme Court is that special institutional rights for the press should be avoided because they are inherently dangerous to free expression, create inequality between journalists and other speakers and facilitate media control.<sup>9</sup> For the European Court of Human Rights and other international human rights bodies, in contrast, journalistic freedom is an instrumental freedom, enjoyed insofar as journalists serve the public interest, which requires a determination as to whether journalism is in fact being pursued. Thus, privilege is linked to professional standards, and the identity of whomever should determine questions of professional eligibility is contentious.<sup>10</sup>

If journalism is seen as socially beneficial and therefore to be privileged, this naturally begs the question of who decides what journalism is and who is a journalist. In many countries, enhanced legal privileges and protections have been granted to those engaging in a defined set of journalistic activities, rather than professional membership.<sup>11</sup> In other countries, where professional membership determines privilege, access to professional associations is as a result more politicised. In Hong Kong in September 2020, for example, a proposal to redefine who would qualify for status as “media representatives” was dismissed by the Hong Kong Foreign Correspondents Club as “another step in the erosion of Hong Kong’s once cherished press freedom”.<sup>12</sup> Mandatory accreditation of journalists has been held to be contrary to freedom of expression in multiple jurisdictions.<sup>13</sup>

In practice, as we shall see, legal protections and privileges for journalism are awarded in a variety of ways. They may be awarded on the basis of belonging to a professional association or union, possession of an educational credential, on the basis of behaviours, purpose or function or on the basis of genre of output. Tests for what constitutes journalism are specific to areas of law: defamation law may contain public interest defences and “responsible journalism” tests that incentivise good journalism by granting protection only to publishers that meet professional standards. Laws that protect journalists from obligations to reveal sources or from protection from harassment or arrest may be based on the definition of activities and functions that relate to information dissemination to serve public rather than private interests.

This article will survey approaches to definition of a journalist in relation to source protection, defamation and protection of journalists. The aim is not an exhaustive comparative analysis, but rather a selective overview with some illustrative examples.<sup>14</sup> I will examine whether there is evidence that journalism privilege leads to journalism control, and what forms of protection are in place to mitigate the potential for control.

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## 2. Protection of sources

Many countries have passed “shield laws” permitting journalists to protect the identity of sources in criminal trials. The *Goodwin* case<sup>15</sup> underlined the importance of source protection for sustaining the watchdog role of the press and UNESCO has identified this as one of the key challenges for media freedom.<sup>16</sup> Bloggers have claimed similar protection, prompting a debate about whether definitions based on profession, function or medium should be adopted in awarding source protection privileges. In this section I review some approaches to source protection revealing the wide range of approaches to protection of sources, and to the “Catch 22”<sup>17</sup> whereby protection leads to control.

Source protection laws vary in intensity between US states, precisely because many argue that they should not be reserved to journalists or even journalism. At times the question of whether source protection can be granted hinges on whether a judge can be convinced that journalism was being pursued. For example, in the case of *Tracy v Missoula*, a judge granted shield protection to a student who argued that she should be considered a journalist since she intended to sell her video footage.<sup>18</sup> The Reporters Committee for a Free Press summed up the situation in the US:

”Shield laws usually have specific limits that exclude some journalists or certain material from coverage. For instance, some of the statutes define ‘journalist’ in a way that only protects those who work full-time for a newspaper or broadcast station. Freelance writers, book authors, Internet journalists, and many others can be left in the cold and have to rely on the First Amendment for protection.”<sup>19</sup>

Thus even in the US some states do word their source protection laws in ways that single out professional journalists for special protection, but arguably the internet is leading to a drift towards a functional definition.

Source protection of journalists is guaranteed under the art.197(1)(iii) of the Constitution of Japan not in terms of a journalism-specific law but as an aspect of professional confidentiality: a witness may refuse to testify in cases concerning technical or professional secrets. Section 15(2) of the Press Council of India Act 1978 provides protection from journalists being forced to reveal their sources but this is only applicable to proceedings before the Press Council. No protection is available to journalists in judicial proceedings where they may face a contempt of court charge if they do not reveal their sources.<sup>20</sup> In each of these cases judges define ultimately who is a journalist, but in practice they often defer to professional membership.

According to art.41 of the Russian Law on Mass Communication, editors are not entitled to divulge information provided by the citizen with the condition of keeping it secret. Whilst the rules appear to support protection of sources, the circumstances when journalists are obliged to reveal them are very wide: the editorial office is obliged to keep the source of information secret unless the corresponding request was received from the court in connection with a case in progress.

In the UK, journalists have the right to protect their sources under conditions of proportionality for legitimate aims in accordance with the European Convention on Human Rights.<sup>21</sup> There is no immunity under ECHR standards, but any request to disclose sources must meet the standard of a pressing social need and be necessary in a democratic society. The Contempt of Court Act 1981 creates a general protection regime that places limits on powers of courts to require the disclosure of information, requiring individual judges to balance freedom of expression and rights to protect sources with justified calls for disclosure based on prevention of crime or disorder. The Police and Criminal Evidence Act (PACE) refers to a journalistic right to protect sources but does not define journalism: it has been repeatedly deemed too difficult to define journalism in statute.<sup>22</sup> Therefore, whether source protection is ultimately afforded depends on judicial discretion regarding whether the source material is journalism. Judges tend in practice to take into account formal employment and membership of the profession along with a functional assessment of activities.

International human rights bodies are united in their support for source protection but divided between those that favour a wide view of journalism and the protection of non-professional journalists, and those that tend to argue for protection of professional journalism. UNESCO argued for a definition of “acts of journalism” rather than having the status of journalists determine access to source protection.<sup>23</sup> The international free expression NGO “Article 19” adopts a broad view of journalism,<sup>24</sup> adopting the view that source protection should be afforded to “journalists, and others who obtain information from confidential sources with a view to disseminating it in the public interest”. This framing is more function based, extending to any person (irrespective of profession) distributing information in the public interest.<sup>25</sup>

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The UN Special Rapporteur on the Right to Freedom of Opinion and Expression highlights the need to consider contemporary changes in the media landscape:

”Historically, States have enabled a professional class of journalists to invoke the right, but the revolution in the media and in information over the past 20 years demands reconsideration of such limitations ... The protection available to sources should be based on the function of collection and dissemination and not merely the specific profession of ‘journalist’. The practice of journalism is carried out by ‘professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self- publication in print, on the Internet or elsewhere.’”<sup>26</sup>

In Recommendation No.R(2000)7 of the Council of Europe Committee of Ministers to Member States on the Right of Journalists not to Disclose their Sources of Information, the Committee of Ministers focuses on the “requirements for an adequate protection of the right of journalists not to disclose their sources of information” as disclosure may cause a chilling effect on sources to provide journalists with information.<sup>27</sup> The problem of the chilling effect was outlined in the *Goodwin* judgment: “[w]ithout such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected”.<sup>28</sup>

The operation of shield laws is therefore one area where careful consideration should be given to a “Catch 22” whereby definitions of journalism reinforce official gatekeeping of the journalism profession or provide a means for discrimination or exclusion of alternative voices. We have seen that there is a very wide variety of legal structures and approaches to source protection, but also that there is a general tendency to shift over time towards a functional definition in which access to the privilege is determined by courts, without deference to professional accreditation. In most democracies considered here there is a general acceptance that judges should not reward formal membership of the profession with the privilege of source protection but should rather identify if a journalistic *function* was being performed. But as Oster<sup>29</sup> points out, granting such a privilege indiscriminately is likely to result in it being watered down. For the purposes of source protection, classification as a journalist must be reserved for diligent, responsible attempts to inform the public of verified information that they have a genuine interest in receiving. In the case of source privilege, therefore, the paradox of privilege is resolved by judges acting independently to apply a functional definition of journalism as an activity, rather than falling back on professional status.

### 3. Defamation

That journalistic freedom is not absolute is nowhere more evident than with respect to defamation laws which enable those who claim their reputation has been damaged to seek compensation. Put simply, journalism should not be malicious, it should pursue public interest objectives, and seek truth, and libel law is an important part of the framework that ensures it does so. It rarely requires professional membership, or a definition of journalistic activity per se in order to benefit from those defences, but such membership may help persuade a judge in individual cases that the activity pursued was public interest journalism.

*\*E.H.R.L.R. 528*

According to the United Nations Human Rights Committee:

”[defamation] laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification ... consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence.”<sup>30</sup>

Notwithstanding the influence of these international standards, a wide variety of national (and regional/federal)<sup>31</sup> practices has persisted. Legal reforms in the post-war period have been influenced by the development of the US approach during the twentieth century. In the US, under qualified privilege, a statement may be defamatory, but because of particular circumstances, would not be actionable under defamation law. However, if the statement is made with actual malice,<sup>32</sup> then the speaker will no longer be entitled to this privilege. Journalistic practice has evolved in part to conform to standards under which the defence would succeed.

In the UK the “responsible journalism” test was seen as a way of protecting journalists and editors from defamation claims when they have reasonably checked and sourced a story, even if it subsequently turns out not to be true, as long as they are

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published without malice.<sup>33</sup> It has since been superseded by a more subtle test under the [Defamation Act 2013](#), according to which editors can use the defence if they can prove that “[t]he statement complained of was, or formed part of, a statement on a matter of public interest”, and that “they reasonably believed that publishing the statement complained of was in the public interest”. Whilst strictly speaking this defence is not restricted to accredited journalists, in practice, editors will be in a better position to use the defence if they tried to verify the relevant facts and their reporting is neutral and balanced, i.e. if they apply the professional standards required by ethical journalism.<sup>34</sup> As another example, a 2004 case established that defamation in Canada should take into account whether a journalist conforms to “the professional standards of a reasonable journalist”.<sup>35</sup>

In effect, “responsible journalism” tests such as these outline a function-based approach to journalism. Judges are concerned with establishing not the status of the person but whether professional standards have been followed. There remain numerous examples of countries that persist with defamation laws that are skewed to protect the powerful or tend in practice to a definition of journalism restricted to professional membership, and judges may simply defer to professional bodies—or government accreditation—when individuals claim to be journalists. But the shift to a function-based definition of journalism, coupled with the widespread use of public interest tests, incentivises self-regulation of responsible communication without a state definition of what constitutes responsibility, and opens enjoyment of journalistic privilege to a wider variety of actors than the “official” media. Once again, the paradox has been unpicked by a shift to a more function-based award of the privilege, applied by independent judicial authority.

#### 4. Protection of journalists

All states have a duty to protect those on their territory from violence. In the light of the particular dangers faced by journalists,<sup>36</sup> some have adopted specific regulations to ensure the protection of news professionals. As well as physical protection, some countries have developed specific protection from detention or arrest for journalists, and specific rules and definitions apply in armed conflicts where military institutions operate accreditation schemes.<sup>37</sup> Such rules engage the journalism privilege paradox in a particularly stark way, because a decision to remove the privilege of protection could result in injury or death.

Numerous international bodies have reported on the importance of the protection of journalists, and asserted that states have a positive obligation to protect journalists in particular from violence, intimidation and wrongful arrest derived from a positive obligation to protect freedom of expression.<sup>38</sup> A long line of consensus-based non-binding Human Rights Council and General Assembly resolutions have been passed on the safety of journalists, and two Security Council resolutions (1738 and 2222) which are binding though applicable only in situations of armed conflict. According to the Human Rights Committee:

“states parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression ... Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with Article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities.”<sup>39</sup>

Regional bodies such as the OAS/IACHR have advocated for special protections for journalists. The Special Rapporteur for Freedom of Expression of the IACHR and the Committee of Experts and Special Rapporteurship of the IACHR expressed in 2018 their concern over the threats against journalist Noelia Díaz Esquivel in Paraguay a female journalist who reported on femicide.<sup>40</sup> The Council of Europe recommends “detailed guidelines to member States on how to fulfil their relevant obligations on the effective protection of journalism and safety of journalists and other media actors”.<sup>41</sup> Together with the jurisprudence of the European Court of Human Rights, these international standards have tended to favour a function-based definition of journalism in principle, but in practice when administering specific protection measures, authorities often fall back on existing professional accreditation schemes. There are calls for additional and more effective support for protection of journalists: the International Bar Association Media Freedom Panel has called for special visa protection for journalists and sanctions against those that breach it.<sup>42</sup>

The “Catch 22” of journalism privilege is most dramatically evident in countries—such as Colombia and Mexico—where publicly funded journalist protection schemes are a lifeline for brave journalists threatened by extra-judicial killings and organised crime, and where a government redefinition of who benefits from such a scheme could have fatal consequences by

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removing protection.<sup>43</sup> Journalism protection requires a definition of who should benefit, but the wrong approach to defining the category of actors who qualify as a journalist can have far-reaching, direct and indirect chilling effects. *\*E.H.R.L.R. 530*

Mexican Federal Law defines journalists expansively as:

”People, as well as media outlets—whether public, community, private, independent, university, experimental or any other sort—whose work consists in gathering, generating, processing, editing, commenting, opining, disseminating, publishing or providing information by any medium, such as print, radiofrequency, digital, or by image.”

This legal definition is used to assess who should be protected.<sup>44</sup> The definition is not restricted to professional journalists and includes media outlets and human rights defenders. The mechanism for journalist protection includes: the establishment of a council comprised of various entities/representatives, which administers the protection, such as evacuation, temporary relocation, protection of property of journalists under threat. Such bodies, if they are truly independent, separate definitions of journalism from state and judicial authorities and derive legitimacy from civil society.

In India, although there is no nationwide law that provides journalists with protection, there are examples of federal and local innovation. Maharashtra State passed the Maharashtra Media Persons and Media Institutions (Prevention of Violence and Damage or Loss to Property) Act in 2017. The Act “recommends punishment of up to three years or a fine of up to Rs 50,000 or both in case of attack on media persons on duty”.<sup>45</sup> In Lebanon, art.6 of the Publications Law (No.330/1994) prohibits pre-trial detention for all speech crimes occurring in media covered by law no matter the length of imprisonment.<sup>46</sup> This provides some protection from detention for media workers as defined by the relevant judge.

Reporters Without Borders encourages adherence to UN Security Council Resolution 2222 (2015) in the development of national legislation that seeks to protect journalists and associated media personnel in armed conflict reiterates the rights that should be afforded to “journalists, media professionals and associated personnel as civilians”.<sup>47</sup> The resolution focuses mainly on a reporting obligation, and affirmation of a range of commitments to the importance of journalist protection. In practice, the resolution recalls that journalists should be protected like other civilians. It also acknowledges that they face particularly heightened threats in some circumstances. The grey area that arises concerns whether and to what extent the heightened threats justify specific resources of protection.<sup>48</sup>

In some circumstances journalism protection can trigger a closure of journalistic profession and empower only a cadre of privileged protected journalists selected by the government. For example, when Iraq introduced a Journalist Protection Bill in 2011, there was international criticism from human rights and free expression NGOs. Article 19, for example, explicitly stated that this approach, by defining journalism in relation to a professional association, violated international freedom of expression standards.<sup>49</sup>

UNESCO has also published a report supporting protection for journalists but expressing concern that the mode of defining journalists should not be controlled by the state. UNESCO favours a broad, inclusive definition of journalist and those to whom protection should be extended.<sup>50</sup> In some countries, safety mechanisms go beyond this and cover different populations at risk (Colombia), those attacked for exercising their profession (Italy) and those targeted by certain groups (such as illegal or clandestine security groups, as in Guatemala).

In summary, protection of journalists, like source protection and public interest defences, raises yet again what might be referred to as the journalism privilege paradox. Protection requires a definition, and yet definition establishes a potential vector of control. There is widespread awareness of this problem, and there are examples of mitigation. With respect to the protection of journalists, it is not practical to rely on judicial discretion in order to decide if any special protection is necessary, so the independence of the process for awarding protection should be a priority.

## 5. Accreditation of journalists

Why, it might be asked, do judges not simply reserve media and journalism privileges to members of a professional body or carriers of a press card? The answer—which should be clear by now—is that to do so raises concerns about censorship and media freedom. If judges want to protect media freedom they should use a functional definition of journalism as an activity, rather than a press card. Accreditation is necessary for practical reasons, but it should not become a necessary condition for

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access to privileges.

Accreditation schemes can fall into two traps: they could be controlled by the state or other interests, or they could favour professional journalists and may discriminate against new media, community media and citizen journalists and in favour of the economic interests of media owners.<sup>51</sup> This section examines some definitions of journalism and the press in selected systems and their relationship with professional accreditation.

As one might expect, centralised accreditation is a feature of more authoritarian countries. In the Russian Federation, for example, some journalistic privileges are restricted to those approved not only by media owners, but also by government agencies. According to art.2 of the Law on Mass Communication, a “journalist” means a person who is “involved in editing, creating, collecting or preparing messages and materials for a registered media outlet”, thus excluding non-professionals from the protections granted to journalists. The law provides an exhaustive list of rights to access and report on public bodies.<sup>52</sup> According to the law such privileges are not available to non-journalists and journalism requires employment on “registered” media. In China,<sup>53</sup> Governments at all levels, their functional departments, and staff should \*E.H.R.L.R. 532 provide the necessary convenience and guarantees for legitimate news gathering activities, and no organisation or individual may interfere with or obstruct the lawful interview activities of news organisations and their journalists in accordance with art.5 of the Measures for the Administration of Journalist Cards. Effectively, China operates a top-down system of control of access to the journalist profession, and therefore of the protections that accompany being a member of the profession. Journalists must reapply for accreditation every five years and can be struck off by government discretion.<sup>54</sup> Under Singapore’s Newspaper and Printing Presses Act,<sup>55</sup> a journalist is “an editor, a sub-editor, an editorial writer, a reporter and any other person whose business it is to edit or write for a newspaper”. Under this Act, the Government has discretion to revoke newspaper licences. It can also detain journalists without trial under the Internal Security Act, although the last time the Singaporean Government invoked these powers was in 1971. The Newspaper and Printing Presses Act was amended in 1986 to restrict the circulation of foreign print media deemed to have published inaccurate reports of Singapore. Since 1971, the Singapore Government has repeatedly used defamation and libel laws to challenge foreign publications it deemed to be inaccurate. These publications include the *International Herald Tribune*, the *Wall Street Journal*, *Bloomberg* and the *Economist*. Local publications have been charged with criminal defamation.<sup>56</sup> Singapore thus represents another example of licensing-based control of access to journalism status.

In the US, in contrast,<sup>57</sup> there is no government involvement in general press accreditation though different parts of the administration do operate local schemes. The US has repeatedly refused to adopt a statutory definition of journalism or news, and when questions arise regarding journalists’ privilege, a functional definition is generally adopted. Arguably, however, this not only makes it more difficult to control the press it also makes it more difficult to support it, for example through source protection. In the US, press accreditation is of limited relevance to carrying out journalistic activities and is carried out by several competing associations.

In India, the existing legal definition of a journalist under the Working Journalists Act 1955<sup>58</sup> mainly exists to set standards of pay, pensions and conditions for working journalists, rather than professional accreditation. This defines a working journalist as “a person whose principal vocation is that of a journalist”, essentially someone who is employed by a newspaper or a news agency.<sup>59</sup> Because the government pay board sets wages for journalists, this was seen as a potential form of control and independence safeguards have been instituted such as increasing employment security by granting longer notice periods for editors and journalists.<sup>60</sup> In addition, the central government operates an accreditation scheme to manage access to press conferences and briefings, based on criteria such as length of professional service, size of outlet audience.<sup>61</sup> Definitions are primarily media-based, rather than functional and afford protections and privileges on the basis of employment by existing media. Since they are operated by a committee appointed by government there is a high potential for control. \*E.H.R.L.R. 533

In Japan,<sup>62</sup> press freedom is protected under art.21 of the Constitution.<sup>63</sup> Whilst there is no official accreditation of journalists there are a number of informal mechanisms for professional closure.<sup>64</sup> In effect the Kisha Clubs bind the profession of journalism to state hierarchies by acting as gatekeepers to news. Whilst the Japanese press club does not have any legally coercive power over the media companies or journalists that form its membership, exclusive interview opportunities with affiliated regulatory agencies are offered to members. Press clubs are voluntary organisations, and incumbent members have the right to refuse new candidates such as freelance journalists, based on the decision of membership meetings. Because membership is necessary for access to stories, the Kisha Club system permits a form of spoon-feeding control, as

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cookie-cutter headlines are generated from the same news source offered by the government. It has resulted in discouraging diverse perspectives due to peer pressure amongst journalists, and a tendency to consensus views reinforced by the potential for exclusion.<sup>65</sup>

In Lebanon, journalism is defined as “professional” in art.9 of the Publications Law 1962: journalism entails writing, editing, reporting news, and translating journalistic material including pictures and drawings. The law defines a journalist as being at least 21 years of age, having a baccalaureate degree and having been apprenticed for at least four years. Article 4 of the Audio-visual Media Law 1994 defines audio-visual media as all television and radio broadcasting operations that communicates to an audience signs, images, sounds, or writings of any kind provided that such communications are not private and are done via channels, frequencies, transmitters, networks and other visual and radio broadcasting technologies.<sup>66</sup>

There is no statutory definition of journalism in UK law. There have been fierce battles over whether a press law should define responsibilities of the press and journalism, but the Royal Charter on the Press defines the role and recognition of self-regulatory bodies for the press, and it is self-regulatory bodies that define their own membership. When in 2021 the government attempted to introduce Online Safety Law obliging online gatekeepers to protect users, it struggled to define an exemption for providers of journalism, “news” and democratically important content.<sup>67</sup> Accreditation is also provided by the UK Press Card Authority,<sup>68</sup> which is an industry-controlled organisation, and the Union of Journalists also provides a membership card backed by a code of ethical conduct. The Press Card Authority is funded and operated by the major professional journalism organisations and other gatekeeper organisations such as the journalism unions. The rules of the organisation define an “Eligible Newsgatherer” as a person who meets the following criteria: they are working professionally as a media worker in the UK; their employment (or self-employment) is wholly or significantly concerned with the gathering, transport or processing of information or images for publication in broadcast electronic or written media, including TV, radio, internet-based services, newspaper and periodicals; and they need in the course of those duties to identify themselves in public or otherwise to official services. In the UK, as elsewhere, other bodies such as courts and Parliament offer accreditation and the UK Parliament offers a preferred status in the form of membership of “The Lobby” which can confer access privileges effectively self-regulated by members.

Accreditation of journalists has thus been a focus both of attempts to control journalists and to defend them. Accreditation can be a way of ensuring that professional journalists acting in the public interest have access to the spaces and information that they need to serve democracy, but it can become a means of control. In the countries considered above, therefore, there are multiple instances of journalism being defined in law and a wide range of approaches to such definition. Some countries such as China, Russia and Lebanon operate with a legal definition of journalism which can determine whether an individual can access the information, people and legal defences necessary to conducting the activity of journalism. From the point of view of journalism freedom these are inherently problematic, and do not meet the international standards outlined in the previous section.

The NGO the Centre for Law and Democracy issued in 2015 a Statement on Regulation of Journalists in the Arab World<sup>69</sup> in which international human rights and media experts reiterated that it is not for governments to decide who is and is not a journalist. They argued for decentralised accreditation if accreditation is necessary at all, and that journalist syndicates and unions should not act as gatekeepers for the profession. Systems for issuing press cards should not be used to control access to the profession and should be overseen by an independent body.

According to the Council of Europe:

”Systems for the accreditation of journalists should be introduced only to the extent necessary in particular situations. When accreditation systems are in place, accreditation should normally be granted. Member states shall ensure that: a. accreditation operates to facilitate the exercise of journalism in situations of conflict and tension; b. the exercise of journalism and journalistic freedoms is not made dependent on accreditation; c. accreditation is not used for the purpose of restricting the journalist’s liberty of movement or access to information.”<sup>70</sup>

The UNHRC<sup>71</sup> adopts a broad view of journalism for the purposes of accreditation and cautions against state-operated accreditation schemes to the extent that they frustrate the ends of a free and transparent/accountable media:

”Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as

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bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3 [transparency and accountability]. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.”

There are a number of international schemes for accreditation of journalists. The International Federation of Journalists (IFJ) issues an “International Press Card” for journalists from member countries, which it claims to connect journalists and offer assistance for journalists from IFJ affiliated organisations. Press cards are “only issued to members of national journalists’ unions or associations which are members of the IFJ (and are) only issued to genuine journalists who are committed to ethical standards and solidarity between media professionals”. Since accreditation by the IFJ is tied to membership to a journalism union/association, the IFJ doesn’t itself define who will constitute a journalist for the purposes of obtaining the International Press Card. Rather, those to whom accreditation will be granted depends on the criteria of the membership organisation in such individual’s home country, and whether this independent accreditation is recognised varies from country to country.

In most cases, accreditation of journalists is conducted independently and has the main purpose of identifying journalists for the purpose of accessing events and spaces such as press conferences where space is limited. The press card per se is not in most cases the condition for enjoying legal privileges and protections but, if it is, this is a means of control. In many cases, and particularly if accreditation is vested in professional and civil society organisations independent of government and owners, press cards promote press freedom, as they can prevent manipulation by government bodies who otherwise tend to trade access to stories for favourable coverage. Where accreditation is centrally controlled and is a condition for enjoyment of a wider range of privileges than simply access to newsgathering, it is likely to form part of a wider system of control of journalism.

#### 6. Defining journalism in international law

These legal developments are increasingly reflected in international law standards that recognise the censorship potential of professional gatekeeping and try to mitigate it. There is no settled definition of who is a “journalist” or what constitutes “journalism” in an international treaty or instrument. Nevertheless, international bodies and mechanisms have tried to establish standards in how to define journalism for the purposes of allocating privileges.

The UN Human Rights Committee<sup>72</sup> describes journalism as a “function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”. There is a recognition that scarce resources, and in particular limited access to newsgathering opportunities, may necessitate accreditation, but that this should be limited in scope and independent. Under the General Comment 34, general state systems of registration and licensing of journalists are incompatible with freedom of expression:

”(L)imited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with Article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.”

Changes in media technology have undermined media-based definitions of journalism and widened access to privileges. In the Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (2012),<sup>73</sup> the UN Special Rapporteur on Freedom of Opinion and Expression stated that:

”journalists are individuals who observe and describe events, document and analyze events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole.”

Such a definition of journalists includes all media workers and support staff, as well as community media workers and so-called “citizen journalists” when they momentarily play that role.<sup>74</sup> The UN Special Rapporteur emphasised that journalists “may form professional associations to guarantee professionalism and common ethical standards” and “register for the

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purposes of obtaining an identification card to allow them to have access to certain events”, although these conditions may not be imposed by state authorities as preconditions to the practice of journalism.<sup>75</sup> By explicitly not limiting journalism to professionals, and \*E.H.R.L.R. 536 curtailling state involvement such a definition asserts that neither private media interests nor state agencies should control access to the profession.

International law thus has cohered around the view that there should be specific institutional privileges for journalists, but that these privileges should not be in the gift of the state. It has also embraced an expansive definition to include campaigners, researchers and bloggers. The UN Special Rapporteur<sup>76</sup> highlighted the evolving nature of journalism and highlighted the use of the terms “social communicators”, “media professionals”, “media workers”, “media practitioners”, and “new participants in journalism” to refer to those who perform journalistic functions.<sup>77</sup> The Rapporteur continued:

”Two categories, for example, expand beyond officially recognized journalists. First, there are those who most closely reflect the professional engagement in collection and dissemination: members of civil society organizations who conduct research and issue findings, and researchers—academics, independent authors, freelance writers and others—who regularly participate in gathering and sharing information publicly ... Second, ‘citizen journalists’ and bloggers and other media ‘non-professionals’ engage in independent reporting.”<sup>78</sup>

The Council of Europe has also published a number of instruments which stress that the privileged gatekeeper roles of journalism, the media and the “public watchdog role” should be based on the function and activity of journalism rather than professional status. In 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, the Committee of Ministers of the Council of Europe said that:

”the definition of media actors has expanded as a result of new forms of media in the digital age. It therefore includes others who contribute to public debate and who perform journalistic activities or fulfil public watchdog functions.”<sup>79</sup>

In Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a New Notion of Media,<sup>80</sup> the Committee of Ministers suggested the following criteria for identifying media and journalists in this new landscape: (1) intent to act as media; (2) purpose and underlying objectives of media; (3) editorial control; (4) professional standards; (5) outreach and dissemination. In another recommendation,<sup>81</sup> the Committee of Ministers defined “journalist” to be “any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication”. In the Explanatory Memorandum to Recommendation No.R(00)7, the Committee of Ministers elaborated a number of factual requirements as to who a journalist is for purposes of the recommendation.<sup>82</sup> In a Parliamentary Assembly Recommendation on “Strengthening the protection and role of human rights defenders in Council of Europe Member States”,<sup>83</sup> the Steering Committee on Media and Information Society noted that while the European Court of Human Rights does not define journalism:

”it refers to a diverse range of contributions to public debate, emphasising the freedoms that are instrumental to the realisation of the public watchdog role traditionally played by journalists and the media in any democratic society. Whereas public watchdog functions were predominantly fulfilled \*E.H.R.L.R. 537 by journalists and the media in the past, they are now increasingly being fulfilled also by other media and non-media actors.”

Most recently, in a book published by the Council of Europe entitled *A Mission to Inform—Journalists Speak Out*, a “journalist” is defined as “[a] person who is regularly engaged in collecting or disseminating information to the public with a journalistic (public interest) purpose”.<sup>84</sup> The Council of Europe and other international human rights bodies agree that journalism should be defined by function and not status. In 2021 the Council of Europe is likely to approve a new Recommendation that will encourage states to confer upon providers of “quality journalism” new privileges such as platform prominence and sustainability guarantees.<sup>85</sup>

To sum up, international human rights standards, to the extent that they have considered the question, side with a functional definition of journalism, stating that privileges and protections should not be granted on the basis of credential or professional membership, but rather on the basis of the activity that is carried out.<sup>86</sup> At the national level, however, there remain a range of approaches to defining journalism and these vary across legal areas such as source protection, defamation and protection of journalists.

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## 7. Conclusion: Democratising journalism privilege

The academic and legal literature on journalism privilege<sup>87</sup> has focused on source protection.<sup>88</sup> I have extended the analysis to cover also public interest defences and protection of journalists. In fact, multiple areas of law including data protection,<sup>89</sup> intellectual property and market abuse<sup>90</sup> contain privileges for media and journalists. The international practice reviewed above indicates that US concerns about special rights for the press are justified but overstated. Law should recognise and encourage ethical journalism, but not do so on the basis of centralised professional accreditation. Indeed, this brief survey of source protection, defamation and protection of journalists has shown that many jurisdictions, including those with a longstanding reputation for media freedom, confer significant privileges on journalists and the media. It also shows that media privilege does not *necessarily* lead to media control, because there exist multiple protections to prevent award of privilege being a vector of control. Notably, functional definitions of journalism and judicial independence protect journalistic independence, as do decentralised and independent award of privilege. Accreditation can be a means to protect the independence of some privileges—such as access and protection—where judicial discretion is impractical and independence of the accreditation process can be guaranteed.

Journalism is made possible by a variety of privileges and protections for both the activities of public interest newsgathering and the status of journalism. This article has shown that definitions in some cases require professional employment by a defined media outlet. It is, however, neither necessary nor desirable *\*E.H.R.L.R. 538* to apply a centralised, top-down definition of journalism to determine who will access the privileges and protections that attach to the role. Indeed, such a framework would be a threat to media freedom.

Underlying the tension over journalism privilege is a deeper set of questions: on the one hand, there is a need for privilege as a means to protect and incentivise ethical, truth-seeking media, and on the other hand there is a problem when state or private interests control access to the privilege and use it as a means of media control. Oster is correct to identify a general global tendency to define journalism functionally,<sup>91</sup> but we should be alert to defining journalism only functionally. Accreditation will continue to govern access to newsgathering and also to protection including special visa and sanitary status. In the future, notions of “quality journalism” might also come into play in awarding of distribution privileges—for example prominence or “discoverability”.<sup>92</sup> There thus remains a role for accreditation and professional gatekeeping, but this should be controlled neither by private media interests individually or collectively, nor by the state. Independence of journalism can be supported by investment in genuinely independent accreditation, and international bodies such as the International Federation of Journalists.

There are various ways to guard against the Catch 22, or the “privilege paradox” whereby the awarding of privileges enables control. These are means to democratise and decentralise the award of journalism privilege, and loosen the control of established media and government over access to the privilege. For example:

1. In the award of source protection and defamation privileges, courts can adopt function-based definitions and extend protection beyond “approved” journalists to bloggers and campaigners. Where the judiciary is sufficiently independent this can act as a bulwark government gatekeeping of journalist privilege.
2. Access and other privileges awarded through administrative decision-making and accreditation can be awarded by independent bodies, or in a plural, decentralised way. Such accreditation can be used to protect journalists from harassment or arrest and to widen access to information and newsgathering.
3. Independent, civil society organisations, and representatives can be involved in the award of journalist privileges of various kinds, for example through oversight boards, citizen panels and user groups.

There do exist established international standards for defining journalism, and for the process of accreditation. The current technological and market reorientation of the media will continue to undermine existing definitions and this will entail dangers for media freedom as journalists seek new privileges. Future attempts to formalise new forms of journalism privilege should reaffirm existing international standards and:

be based as much as possible on a function or activity rather than a profession or medium;

favour decentralised definitions based on independent judges applying tests of those functions and activities

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wherever possible;

where centralised accreditation is necessary, for example in relation to access and protection privileges, favour an inclusive but not overly expansive definition awarded by an independent body; and

build upon existing accreditation schemes such as the IFJ,<sup>93</sup> but be aware that the underlying definitions operated by member organisations would need to be reviewed to ensure independence.

The functional approach to journalism is the better approach because it best serves the democracy-enhancing rationales for media freedom. Where decisions regarding the award of protections or privileges turn on whether a journalist or journalistic activity was involved, courts should adopt the functional test proposed by Jan Oster, which grants privileges to a

”person or institution generating information and ideas on a journalistic basis and disseminating them via facilities of mass communication to an undefined number of recipients. Thus ... the media is a content provider (not an intermediary), provides mass communication (not individual communication) and is based on journalistic work—the adherence of certain standards of conduct.”<sup>94</sup>

These codes and standards, along with access to the profession of journalism, should be set and legitimised by civil society and the profession of journalism, not government or media owners.

Damian Tambini

## Footnotes

- 1 *European Audiovisual Observatory (Council of Europe), Journalism and Media Privilege (Strasbourg, 2017)*, <https://rm.coe.int/journalism-and-media-privilege-pdf/1680787381> [accessed 8 September 2021].
  - 2 P. Stewart, “Or of the press” (1975) 26(3) *Hastings Law Journal* 631–637.
  - 3 A. Lewis, “A preferred position for journalism” (1979) 7 *Hofstra Law Review* 595.
  - 4 See J. Johnston and A. Wallace, “Who is a Journalist?” (2017) 5(7) *Digital Journalism* 850–867; C. Calvert, “And You Call Yourself a Journalist? Wrestling with a definition of ‘Journalist’” (1999) 103 *Dickinson Law Review* 411; B. Zelizer, “Definitions of Journalism” in G. Overholser and K.H. Jamieson (eds), *Institutions of American Democracy: The Press* (Oxford University Press, 2005) pp.66–80.
  - 5 Such as D. Anderson, “Freedom of the Press” (2002) 80 *Texas Law Review* 435–529.
  - 6 **Article 85 of the GDPR**: “Member states shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression ... or processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member states shall provide for exemptions or derogations”.
  - 7 In the UK, financial journalists are exempt from the provisions of the **Market Abuse Regulation** if they are subject to a self-regulatory code. See *Independent Press Standards Organisation: Financial Journalism Best Practice Note (2016)*.
  - 8 For a discussion, see D. Tambini, *Media Freedom (Polity, 2021)*.
  - 9 For some useful sources on this debate, see: P. Stewart, “Or of the press” (1975) 26(3) *Hastings Law Journal* 631–637; A. Lewis, “A preferred position for journalism” (1979) 7 *Hofstra Law Review* 595. See also J. Oster, *Media Freedom as a Fundamental Right* (Cambridge University Press, 2015).
  - 10 See Leveson: “The fundamental point is that unlike freedom of expression for individuals, which has intrinsic merit as a form of self-expression, press freedom has value to some extent as an aspect of commercial freedom, and to some extent because of the functions it serves. In other words, freedom of the press is largely understood as an instrumental good, to be valued, promoted and protected to the extent that it is with the result that it is thereby enabled to flourish commercially as a sector and to serve its important democratic functions.” *Leveson Inquiry—Report into the culture, practices and ethics of the press* (London, HMSO, 2012), vol.1, p.63. Similarly, see Judith Lichtenberg: “If press institutions or their agents have special rights, it is because the people as a whole have granted them; if the people have granted them, it is because doing so is to the benefit of
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us all”. *J. Lichtenberg, “Foundations and limits of freedom of the press” in J. Lichtenberg (ed.), Democracy and the Mass Media: A Collection of Essays (Cambridge University Press, 1990) pp.102–135.*

11 This article draws upon a collaboration with students in the LSE Masters Programme on Media Governance 2019–2020. I am grateful to David Neuberger, Amal Clooney, Judge Robert Sack, Gail Gove and Dario Milo for comments on the idea and a previous draft. I am grateful to Patricia Pena for research on international law. I am grateful to the students named in subsequent footnotes and to Nicola Austin, Alexandra Illes and Eleonora Mazzoli for research support.

12 *Y. Chow and C. Mang, “Hong Kong press body says new police media rules could limit scrutiny” (24 September 2020), Reuters, <https://www.reuters.com/article/us-hongkong-security/hong-kong-press-body-says-new-police-media-rules-could-limit-scrutiny-idUSKCN26F0DW> [accessed 8 September 2021].*

13 See *Media Council of Tanzania v Attorney General (2017), East African Court of Justice*, available at <https://globalfreedomofexpression.columbia.edu/cases/media-council-of-tanzania-v-attorney-general/> [accessed 8 September 2021].

14 These have been selected on a convenience basis as this project was limited to the linguistic expertise of researchers.

15 *Goodwin v UK (App. No.17488/90), judgment of 27 March 1996.*

16 *J. Posetti, Protecting Journalism Sources in the Digital Age (UNESCO, 2017)*, available at <https://unesdoc.unesco.org/ark:/48223/pf0000248054> [accessed 8 September 2021].

17 From the 1961 novel by Joseph Heller, a “Catch 22” is a paradox or rule from which one cannot escape because of conflicting or contradictory rules, or because resisting a rule involves accepting it.

18 See *J. Peters, “Shield Laws and Journalist’s Privilege: The Basics Every Reporter Should Know” (22 August 2016), Columbia Journalism Review, [https://www.cjr.org/united\\_states\\_project/journalists\\_privilege\\_shield\\_law\\_primer.php](https://www.cjr.org/united_states_project/journalists_privilege_shield_law_primer.php); see also <https://www.rcfp.org/trial-judge-dismisses-subpoena-student-journalist/> [accessed 8 September 2021].*

19 See <https://www.rcfp.org> [accessed 8 September 2021].

20 See <http://asu.thehoot.org/resources/press-laws-guide/protection-of-sources-6295> [accessed 8 September 2021].

21 See *G. Robertson and A. Nicol, Media Law (Penguin 2008), p.48.*

22 **Section 13 of the Police and Criminal Evidence Act 1984** defines the meaning of “journalistic material” as follows:  
(1) “Subject to subsection (2) below, in this Act ‘journalistic material’ means material acquired or created for the purposes of journalism.  
(2) Material is only journalistic material for the purposes of this Act if it is in the possession of a person who acquired or created it for the purposes of journalism.  
(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes. Material that meets the definition of journalistic material cannot be the subject of a warrant under the **PACE** but must instead meet the higher standards of a special procedure and convince that it is necessary for the prevention or prosecution of serious crime for example.”

23 *J. Posetti, Protecting Journalism Sources in the Digital Age (UNESCO, 2017)*, available at <https://unesdoc.unesco.org/ark:/48223/pf0000248054> [accessed 8 September 2021].

24 See *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation (Article 19, July 2000)*, <https://www.article19.org/data/files/pdfs/standards/definingdefamation.pdf> [accessed 8 September 2021].

25 See Principle 6—Protection of Sources: “Journalists, and others who obtain information from confidential sources with a view to disseminating it in the public interest, have a right not to disclose the identity of their confidential sources. Under no circumstances should this right be abrogated or limited in the context of a defamation case.” *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation (Article 19, July 2000)*, <https://www.article19.org/data/files/pdfs/standards/definingdefamation.pdf> [accessed 8 September 2021].

26 8 September 2015, A/70/361, at para.17.

27 See also Explanatory Memorandum to Recommendation No.R(00)7.

28 For a summary of the proportionality test to be applied in source protection cases, see *J. Oster, Media Freedom as a Fundamental Right (Cambridge University Press, 2015), p.87.*

29 *J. Oster, Media Freedom as a Fundamental Right (Cambridge University Press, 2015), pp.63–64.*

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30 *United Nations Human Rights Committee, General Comment 34 (2011) at para.47.*

31 An attempt to standardise and simplify defamation law in the US during the 1990s failed. See *R. Moore and M. Murray, Media Law and Ethics (Routledge, 2008), p.447.*

32 Malice has a specific legal meaning in the context of defamation which varies between jurisdictions but does not necessarily involve spite or anger and has common ground with the notion of “reckless disregard for the truth”. *G. Robertson and A. Nicoll, Robertson & Nicol on Media Law (Sweet & Maxwell, 2007), pp.140–141.*

33 V.R. Johnson, “Comparative Defamation Law: England and the United States” (2017) 24(1) *University of Miami International and Comparative Law Review* 98.

34 [Defamation Act 2013 s.4](#). This is not to suggest that non-media defendants cannot use the public interest defence. Recent English law cases under the [Defamation Act](#) have permitted non-media defendants to invoke the public interest defence, suggesting that the test might be more flexibly applied to non-media defendants: e.g. *Economou v De Freitas [2018] EWCA Civ 2591*; *[2019] E.M.L.R. 7 (CA)*. The author is grateful to Dario Milo for pointing this out.

35 *Gilles E. Néron Communication Marketing Inc v Chambre des notaires du Québec [2004] 3 S.C.R. 95 (Supreme Court of Canada)*.

36 The Committee to Protect Journalists has identified 1405 cases in which journalists were killed between 1992 and 2021. See <https://cpj.org/> [accessed 8 September 2021].

37 I. Düsterhöft, “The Protection of Journalists in Armed Conflicts: How Can They Be Better Safeguarded?” (2013) 29(76) *Mercurius* 4–22.

38 See, e.g. the *United Nations Human Rights Council, Resolution 39/6, The Safety of Journalists (27 September 2018)*.

39 *United Nations Human Rights Committee, General Comment 34 (2011) at para.23.*

40 IACHR Press Release (R228/18). See also: *Special Rapporteur for Freedom of Expression of the IACHR, Violence Against Journalists and Media Workers: Inter-American Standards and national practices on prevention, protection, and prosecution of perpetrators (2013)*.

41 Recommendation CM/Rec (2016)4 of the Council of Europe Committee of Ministers to Member States on the Protection of Journalism and Safety of Journalists and other media actors.

42 *A Pressing Concern: Protecting and Promoting Press Freedom by Strengthening Consular Support to Journalists at Risk (International Bar Association 2020)*, <https://www.ibanet.org/Consular-Support-report-launch-2020> [accessed 8 September 2021].

43 *Manual de autoproteccion para periodistas en el conflicto colombiano (Fundacion para la Libertad de Prensa (FLIP) and UNESCO, 2003)*.

44 Under the Mecanismo para la Protección a Personas Defensoras de Derechos Humanos y Periodistas. See <https://www.gob.mx/defensorasyperiodistas> [accessed 8 September 2021].

45 See *Rahul Tripathi, “Maharashtra only state with law to protect scribes” (The Economic Times, 25 November 2019)*, <https://economictimes.indiatimes.com/news/politics-and-nation/maharashtra-only-state-with-law-to-protect-scribes/articleshow/72214265.cms> [accessed 17 August 2021]. As of 2019, it is unclear “whether the law has seen any successful implementation” per Kunal Majumder, “Chhattisgarh’s plan for journalist safety law could be template for all India” (Committee to Protect Journalists, 15 February 2019), <https://cpj.org/blog/2019/02/chhattisgarh-journalist-safety-law-india.php> [accessed 8 September 2021]. According to s.2(b) of the Act: “protection is afforded to a ‘Media Person’ (which) means a person whose principal avocation is that of a journalist and who is employed as a journalist, either on regular or contract basis, in, or in relation to, one or more media institutions and includes an Editor, Sub-Editor, News Editor, Reporter, Correspondent, Cartoonist, News-Photographer, Television Cameraman, Leader-Writer, Feature-Writer, Copy-tester and Proof-Reader, but does not include any such person who (i) is employed mainly in a managerial or administrative capacity; or (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.”

46 Press Order of Lebanon (1962).

47 UN Security Council Resolution 2222 (2015), cl.9.

48 See I. Düsterhöft, “The Protection of Journalists in Armed Conflicts: How Can They Be Better Safeguarded?” (2013) 29(76) *Mercurius* 4–22.

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- 49 See the Commentary by art.19 at <https://www.article19.org/data/files/pdfs/reports/comment-on-draft-journalist-protection-law-of-iraq.pdf> [accessed 8 September 2021].
- 50 *Promoting Safety of Journalists and Building Effective Safety Mechanisms (UNESCO, 2017)*, <https://en.unesco.org/news/promoting-safety-journalists-and-building-effective-safety-mechanisms> [accessed 8 September 2021].
- 51 *Damian Tambini, "Who is a journalist and why it matters" (Inform's Blog, 30 November 2011)*, <https://inform.org/2011/11/30/who-is-a-journalist-and-why-it-matters-damian-tambini/> [accessed 8 September 2021].
- 52 According to the art.47 of the law on mass communication, journalists have the right to:  
"(1) Seek, request, receive and disseminate information; (2) Visit government bodies and organizations, enterprises and institutions, bodies of public associations or their press services; (3) Be received by officials in connection with a request for information; (4) Gain access to documents and materials, with the exception of fragments thereof, containing information constituting a state, commercial or other secret specially protected by law; (5) Copy, publish, publish or otherwise reproduce documents and materials, subject to the requirements of the first part of Article 42 of this Law; (6) To make recordings, including using audio and video equipment, film and photography, with the exception of cases provided by law; (7) To visit specially protected places of natural disasters, accidents and disasters, riots and crowds of citizens, as well as the area in which a state of emergency is declared; attend meetings and demonstrations; (8) Verify the accuracy of the information communicated to him; (9) State their personal judgments and estimates in messages and materials intended for distribution signed by him; (10) Refuse to prepare a message or material contrary to his convictions, signed by him; (11) Remove his signature on the message or material, the content of which, in his opinion, was distorted in the process of editorial preparation, or prohibit or otherwise stipulate the conditions and nature of the use of this message or material in accordance with the first part of Section 42 of this Law; (12) To distribute messages and materials prepared by him under his signature, under a pseudonym or without a signature."
- 53 According to art.3 of the Constitution of China, all citizens enjoy freedom to comment, publish, assemble, associate, march and demonstrate. In practice, all media are subject to significant control by the party-state. Under Administrative Licensing Law, all media activities "with a direct bearing on public interests ... need to be affirmed". Effectively this means that news providers require a licence. See *Y.K. Chin, Television Regulation and Media Policy in China (Routledge, 2016), p.51*. According to art.22 of the Constitution: "The state develops literary and artistic undertakings serving the people and socialism, news broadcasting and television, publishing and distribution, libraries, museums, cultural centres, and other cultural undertakings, and conducts mass cultural activities."
- 54 "*China Requires Journalists To Obtain New Press Cards To Practice Profession" (2 July 2009), Congressional-Executive Commission on China*, <https://www.cecc.gov/publications/commission-analysis/china-requires-journalists-to-obtain-new-press-cards-to-practice> [accessed 8 September 2021].
- 55 I am grateful to Santiago Correa for help with this section.
- 56 In 2018, the editor of socio-political website The Online Citizen, Xu Yuanchen, was charged alongside the author of an article that alleged corruption in the Singapore Government. Separately, Xu was also sued by the Singapore Prime Minister Lee Hsien Loong for defamation over the article published in 2019 that commented on a high-profile dispute among the Lee siblings over the property of their father and founding Prime Minister of Singapore, Lee Kuan Yew. These cases are still ongoing and the website is still allowed to operate.
- 57 Thanks to Martha Reilly and Jing Wang for research on this section.
- 58 See <https://labour.gov.in/wageboard/working-journalists-act> [accessed 8 September 2021].
- 59 See <https://labour.gov.in/wageboard/working-journalists-act> [accessed 8 September 2021].
- 60 See <https://www.newsclick.in/protection-journalists-under-threat-new-labour-code/> [Accessed 8 September 2021].
- 61 *Government of India Press Information Bureau, Central News Media Accreditation Guidelines (1999)*, available at [https://mib.gov.in/sites/default/files/in2\\_0.pdf](https://mib.gov.in/sites/default/files/in2_0.pdf) [accessed 8 September 2021].
- 62 Thanks to Amber Akiko Asami for assistance with this section.
- 63 See [http://www.japaneselawtranslation.go.jp/law/detail\\_main?id=174](http://www.japaneselawtranslation.go.jp/law/detail_main?id=174) [accessed 8 September 2021].
- 64 The Kisha Clubs are professional membership clubs, ostensibly independent, the membership of which is crucial for guaranteeing access to the information required for the exercise of journalism. See S. Fujita, "Japan's Blurred Vision of Media Freedom" (Centre for Freedom of the Media, 28 October 2018),
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65 <http://www.cfom.org.uk/2018/10/28/japans-blurred-vision-of-media-freedom/> [accessed 8 September 2021].

66 See [http://maesaka.sakura.ne.jp/bk/files/030611\\_kisyakurabu.pdf](http://maesaka.sakura.ne.jp/bk/files/030611_kisyakurabu.pdf) [accessed 8 September 2021].

67 Thanks to Christelle Menassa for research and advice on this section.

68 Draft Online Safety Bill (2021, CP 405), cll.13–14.

69 See *H. Tomlinson, “Should Journalists have privileges? Part Two, Accreditation and Privileged Access” (Inform’s Blog, 7 December 2011)*, <https://inform.org/2011/12/07/should-journalists-have-privileges-part-2-accreditation-and-privileged-access-hugh-tomlinson-qc/> [accessed 8 September 2021].

70 T. Mendel, “Statement on Regulation of Journalists in the Arab World” (Centre for Law and Democracy, 12 March 2015), <https://www.law-democracy.org/live/statement-on-regulation-of-journalists-in-the-arab-world/> [accessed 8 September 2021].

71 Principle 11 of the Council of Europe Committee of Ministers Recommendation No.R(96)4 on the Committee of Ministers to Member States on the Protection of Journalists in Situations of Conflict and Tension (Adopted by the Committee of Ministers on 3 May 1996 at its 98th Session).

72 United Nations Human Rights Committee, General Comment 34 on Article 19 of the ICCPR (2011), available at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> [accessed 8 September 2021].

73 United Nations Human Rights Committee, General Comment 34 on Article 19 of the ICCPR (2011), available at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> [accessed 8 September 2021].

74 Special Rapporteur Frank La Rue, A/HRC/20/17, 4 June 2012.

75 A/HRC/20/17, 4 June 2012, para.4.

76 A/HRC/20/17, 4 June 2012, para.6.

77 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2015), A/70/361, 8 September 2015.

78 A/70/361, 8 September 2015, para.18.

79 A/70/361, 8 September 2015, paras 19–20.

80 13 April 2016, para.4.

81 21 September 2011.

82 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, 8 March 2000.

83 See para.13.

84 CDMSI (2016)002 rev, 26 April 2016, para.6.

85 *M. Clark and W. Horsley, A Mission to Inform—Journalists at Risk Speak Out (Council of Europe, 2020)*.

86 According to the Council of Europe (2020) Draft Recommendation, Quality Journalism has an “unwavering commitment to the pursuit of truth, fairness, and accuracy”. See <https://rm.coe.int/msi-joq-2018-rev7-e-draft-recommendation-on-quality-journalism-finalis/168098ab76> [accessed 8 September 2021].

87 This is also the argument of *J. Oster in Media Freedom as a Fundamental Right (Cambridge University Press, 2015)*.

88 See J. Johnston and A. Wallace, “Who is a Journalist?” (2017) 5(7) *Digital Journalism* 850–867; C. Calvert, “And You Call Yourself a Journalist? Wrestling with a definition of ‘Journalist’ in the Law” (1999) 103 *Dickinson. Law Review* 411; *B. Zelizer, “Definitions of Journalism” in G. Overholser and K.H. Jamieson (eds), Institutions of American Democracy: The Press (Oxford University Press, 2005), pp.66–80.*

89 Such as D.A. Anderson, “Freedom of the Press” (2002) 80 *Texas Law Review* 435–529.

90 **Article 85 of the GDPR:**  
”Member states shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to

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freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression ... or processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member states shall provide for exemptions or derogations.”

90 In the UK, financial journalists are exempt from the provisions of the [Market Abuse Regulation](#) if they are subject to a self-regulatory code. See *IPSO Editors Code of Practice, Financial Journalism Best Practice Note (2016)*, [https://www.editorscode.org.uk/guidance\\_notes\\_9.php](https://www.editorscode.org.uk/guidance_notes_9.php) [accessed 8 September 2021].

91 *J. Oster, Media Freedom as a Fundamental Right (Cambridge University Press, 2015)*.

92 See *E.M. Mazzoli and D. Tambini, Prioritization Uncovered: The Discoverability of Public Interest Content Online (Council of Europe, Strasbourg, 2020)*, <https://rm.coe.int/publication-content-prioritisation-report/1680a07a57> [accessed 8 September 2021].

93 The International Federation of Journalists operates an international press card scheme. See <https://www.ifj.org/press-card.html> [accessed 8 September 2021].

94 *J. Oster, Media Freedom as a Fundamental Right (Cambridge University Press, 2015)*, p.268.

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