



Relocation of **journalists in distress** in the European Union

Emergency visa mechanisms in the Czech Republic,
France, Germany, Lithuania, the Netherlands and Poland.

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Executive summary

Uncovering the truth is dangerous and can put journalists and media workers at serious risk. In 2022 alone, at least 57 journalists were killed. An unprecedented number of 533 journalists were detained. All too often, independent journalists fall victim to serious threats, violence and murder. Such experiences of unsafety lead to self-censorship and pose an imminent threat to press freedom.

When a journalist finds him- or herself in life-threatening danger because someone wants to keep the truth hidden, a situation can occur where the only way to safety is to seek refuge in another country. However, restrictive asylum and visa policies hamper pathways to international protection, within the European Union and elsewhere. In reality, journalists in danger often find themselves stuck in the country where they face persecution or worse. Due to crises, invasions and armed conflicts in Afghanistan, Belarus, Myanmar and Ukraine, we have seen a heightened awareness among certain governments that providing safe refuge to a group of at-risk individuals is necessary to protect those forces for change.

What is an emergency visa?

What is needed is a legal pathway for journalists to find refuge, so they can continue their crucial function of reporting in the public interest and holding those in power to account. They need temporary protection to stay out of harm's way. States can provide so-called 'emergency visas' to a specific group of journalists at risk of death or other serious harm. An emergency visa is provided on an individual basis after a thorough assessment of a journalist's conditions.

When outlining a global system where all countries offer emergency visas, a couple of conditions must be met. First, the emergency visa must be available to journalists who fear for their safety, regardless of their nationality and country of residence. The visa is a last resort for journalists under such serious threats who have no alternative to leaving their country. Therefore, the visa application must be processed in a timely manner, ideally within 48 hours but no more than within a week from application. Journalists facing serious threats have no time to lose and often must leave the country as quickly as possible. An emergency visa must be open to application from journalists' home states, through diplomatic

and consular missions, and in case the journalist's being seen in those missions carries risks, through secure online platforms. Moreover, it is crucial that their family members receive a visa too, because journalists often cannot leave a country without them. Moreover, family members who remain are known to be targeted in cases where a journalist was able to find safety abroad.

The duration of a visa should be assessed on a case-by-case basis; when it is safe to return to a country cannot be predicted by uniform models, precisely because the journalists all face individual persecution. Research shows that journalists are likely to return to their countries of previous residence once the safety conditions allow for it. The longer they live in exile, the more they lose connection with their readership or audience, their sources and the issues they report on. Journalists first and foremost seek temporary protection, not a permanent new career and country of residence.

Furthermore, once the journalist receives an emergency visa, receiving countries must have a system to accommodate them. It is not enough for them to safely cross a border, but some conditions must be met to enable them to continue their journalistic work from exile. This can include providing psychosocial support to cope with possible traumatic experiences, facilitating work permits for the journalists and assisting them to find (temporary) housing.

The current state of affairs

Global awareness of the importance of emergency visas for journalists is increasing. Following the example of a pioneering country like Canada (co-chair of the Media Freedom Coalition until June 2023), several European countries have made progress in the past years and started offering international protection to journalists in severe distress. For the European continent, the necessity of such protection became more evident due to recent crises and armed conflict in Belarus and Afghanistan, and the Russian aggression against Ukraine.

On the other hand, it should be noted that threats to the safety of journalists are not merely an 'eventuality' of situations in extremis, such as armed conflicts. Recent years witnessed that journalists killed in non-conflict zones were higher in number than journalists killed in conflict zones. Thus, threats to journalists' safety are pervasive and represent a global problem. Being aware of this, the MFRR conducted this mission, to explore the current laudable responses concentrating mostly on situations in extremis, and

draw lessons about the creation of emergency visas with a global scope, especially for other EU Member States that are yet to follow in offering emergency visas to journalists.

During the mission, the MFRR zoomed into six EU Member States: the Czech Republic, France, Germany, Lithuania, the Netherlands, and Poland, each offering differing pathways to refuge in close collaboration with civil society partners. In all member states that were studied, the authorities worked closely with civil society organizations to find ways to offer journalists refuge. By looking at the different forms of protection that many of these countries offer to journalists, it becomes clear that offering international protection to journalists comes in different forms. The flexibility and creativity in providing legal ways into these countries and ensuring that exiled journalists can continue their vital work abroad show that as long as there is political will, there is a way. At the same time, the ad hoc character of these mechanisms and limitations to capacity among the various stakeholders create numerous challenges.

Ways forward

Therefore with this report, the MFRR delegation hopes to inspire other EU Member States to follow the example of these championing countries. The report offers concrete tools and solutions to deal with questions ranging from eligibility criteria for beneficiaries and practical questions about the application process to broader advocacy lessons learnt and ways to ensure that journalists can continue their work.

At the same time, the studied countries cannot accommodate all journalists that are globally in distress. They need solidarity from the other Member States. Therefore with this report, we hope to provide useful insights to these leading countries in their national processes towards becoming safe havens for journalists. Despite impressive efforts of the studied Member States and their civil society partners, the mechanisms' limitations show the need for a more systematic approach with guarantees for a longer-term solution. At this stage, many countries offer rather improvised solutions in response to wars and violence such as Belarus and Ukraine. This leaves a gap for journalists from or residing in other countries such as the Philippines or Pakistan, countries where journalist safety is equally under high pressure, whose applications for emergency visas are not prioritized in the European countries the MFRR delegation assessed. At the same time, it is understandable that selection criteria are applied; as only a few EU Member States offer international protection to journalists facing persecution, places are limited.

Therefore, part of the solution lies in creating more spaces of protection within the EU. This report shows that there is a clear need for a broader coalition of States to offer emergency visas to journalists. For that reason, other EU Member States must join the existing champions in these efforts and start offering international protection to journalists in distress on a broader scale. By sharing the burden across the Union, the system can be open to journalists from all over the world that require protection. This should be a priority for all EU Ministries of Foreign Affairs that advocate for human rights and call themselves a press freedom ally. ■

Introduction

More than 2 years ago, Professor Can Yeğinsu, currently the Deputy Chair of the High Level Panel of Legal Experts on Media Freedom (“the High Level Panel”) and a leading barrister in London, authored the High Level Panel’s “Report on Providing Safe Refuge to Journalists at Risk”. This publication meant the beginning of several lobby efforts in Media Freedom Coalition member states, including many EU countries. The successes are dispersed; while in response to crises in Ukraine, Belarus and Afghanistan, some countries have offered emergency visas to journalists, the majority of the EU Member States do not offer such forms of protection yet. Moreover, countries have applied limitations to the visa schemes based on the country of origin of journalists.

This report reflects the learnings of a thematic fact-finding mission organised in May and June 2023 by Free Press Unlimited (FPU) and the European Centre for Press and Media Freedom (ECPMF) as part of the Media Freedom Rapid Response (MFRR). Other MFRR partners are ARTICLE 19 Europe, the European Federation of Journalists (EFJ), the International Press Institute (IPI) and Osservatorio Balcani Caucaso Transeuropa (OBCT). The external partner ProtectDefenders.eu also took part in the mission. Finally, the Committee to Protect Journalists attended some of the meetings.

The fact-finding mission aims to contribute to a better understanding of six pioneering relocation mechanisms for journalists in distress, in the Czech Republic, France, Germany, Lithuania, the Netherlands and Poland. While they are not the only EU Member States to have done so, our delegation chose these six countries because all have made much-welcomed steps towards offering international protection for journalists in distress and show salient differences and similarities in their political and cultural contexts, and in the scope and features of the responses that were established. Thus, the selection allows for drawing lessons from the diverse practices that can be applied to all EU Member States.

The fact-finding mission met with representatives of Amnesty International the Netherlands, Belarusian Association of Journalists, Ceeli Institute, Freedom House, Justice & Peace, People in Need, Rapporteurs Sans Frontières (RsF), Viasna Human Rights Centre,

the member organisations of the Hannah Arendt Initiative (DW Akademie, European Centre for Press and Media Freedom, JX Fund and Media in Cooperation and Transition), and two Polish organisations (anonymised). The mission also met with Carsten Illius and Maryia Sadouskaya-Komlach. The multi-country, thematic approach combined with capacity constraints meant that it was unfortunately not possible to meet with more stakeholders in each country for a deeper dive. For that same reason, we opted during the research phase to meet predominantly with civil society partners. In addition, our delegation extensively consulted the recent [European Parliament resolution](#) of 16 March 2023 on the EU Guidelines on Human Rights Defenders (2021/2204(INI) and the report on [‘Protecting human rights defenders at risk: EU entry, stay and support’](#), published on 11 July 2023 by the EU’s Fundamental Rights Agency. Going forward, we aim to engage with governments in our advocacy on emergency visas, based on the mission’s findings and recommendations.

Finally, Professor Yeğinsu has provided a written contribution (chapter 5) to add his expertise and perspective to the discussion. Can Yeğinsu is a leading barrister and the Deputy Chair of the High Level Panel of Legal Experts on Media Freedom, the independent body comprised of 15 international lawyers convened to advise the 50 State Members of The Media Freedom Coalition, currently co-chaired by Estonia and the Netherlands. Professor Yeğinsu published the [Report](#) on Providing Safe Refuge to Journalists at Risk in 2020 (added as an Annex) and has been working to engage Media Freedom Coalition state members to take on the recommendations of the report. The principal recommendation calls for the creation of an emergency visa for journalists at risk.

Chapter 1 of this report outlines the status quo and the need for introducing systematic solutions that will enable journalists at risk to find a safe haven from where they can continue their work until it is safe to return. Chapter 2 looks at the similarities and differences in practice in six pioneering EU Member States, and Chapter 3 considers lessons learned from the various roles of civil society partners in these mechanisms. Chapter 4 looks ahead at a structural solution. In Chapter 5, Professor Can Yeğinsu outlines the concept of emergency visas for journalists he developed as part of the Media Freedom Coalition’s High Level Panel of Legal Experts.”

Based on its findings, the delegation recommends to the Governments of all EU Member States to collectively devise a pan-European regime of “emergency visas” for journalists and media workers who need refuge that creates adequate capacity to meet the needs and shares the burden fairly among Member States. Such a pan-European regime should meet the following characteristics:

- It must be a structural solution that is enshrined in law and thus less vulnerable to shifting political moods;
- While being sufficiently flexible to be able to respond to situations of war or crisis, it must be accessible to all nationalities;
- It must be designed with the needs of the journalist in distress at the core.



Chapter 1

The status quo

Outlining the problem

The recent crises and wars in Belarus, Afghanistan and Ukraine have once again shown that uncovering the truth is a dangerous profession that can put journalists at risk. Globally, media workers are threatened by detention, physical violence or, in the worst cases, murder. Unfortunately, journalists can find themselves in a situation where they must flee a country as quickly as possible. When there is a well-founded fear of persecution, there is no time to lose.

However, restrictive asylum and visa policies hamper pathways to international protection. In reality, journalists in danger often find themselves stuck in a country where they reasonably fear persecution or serious harm. They often lack the legal option to obtain visas. As a consequence, they are not allowed into safe countries or regions such as the European Union, but instead, they are stuck in insecurity. The lack of a common visa policy contrasts the [EU's](#) values: *"The European Union is an area of protection for people fleeing persecution or serious harm in their country of origin."*

Nonetheless, several individual European countries have made progress. Countries such as the Czech Republic, France, Germany, Lithuania, the Netherlands and Poland all offer some form of protection for human rights defenders at risk - often in response to crises in Ukraine, Belarus and Afghanistan. However, the majority of EU Member States have yet to offer any form of emergency visas for journalists in distress.

Current legal situation

Within the EU, the issue of emergency visas, humanitarian visas or other forms of international protection for journalists is a Member State competence. On 7 March 2017, the Court of Justice of the EU decided that under the EU Visa Code, Member States are not obliged to admit people on humanitarian grounds. This means that the Court left responsibility for granting humanitarian visas with Member States, consequently in practice this relies on political will in each individual state. This is visible in the scattered visa responses to different crises by European Member States.

Emergency visas on the political agenda

The lack of international protection mechanisms for journalists in distress has also caught attention in policy circles, as part of a broader debate on refugee policy that features high on the Brussels political agenda. On 11 July 2023, the EU Agency for Fundamental Rights (FRA) published its report on [‘Protecting human rights defenders at risk: EU entry, stay and support’](#). The report was commissioned by the European Parliament. During the exchange of views on the report in the European Parliament in the presence of FRA Director Michael O’Flaherty on 28 June 2023, the European Commission expressed willingness to revise the Visa Handbook before the end of the year to include specific language on HRDs. It is expected that a debate on the issue of safe refuge for human rights defenders in the European Union will follow.

[Moreover](#), before the end of the parliamentary term in 2024, the European Pact on Migration and Asylum must be finalised. The pact, presented in September 2020 as an attempt to reform the system, led to disagreement among Member States over fundamental directions of the Common European Asylum System (CEAS). Most recently, on 8 June 2023, the Council [reached agreement](#) on its negotiating position vis-à-vis the European Parliament.

Present-day options for safe refuge

As the rethinking process of international protection in Europe is taking place, it is important to take stock of existing pathways for journalists and other human rights defenders (HRDs) in distress to enter the European Union and find safety. Currently, at the EU level there are three options: applying for asylum in an EU Member State, resettlement through the fixed UNHCR quota system, or short-term protection within the Schengen regulation of 3 months, with the possibility of an extension up to 6 months. Below we will outline the different options.

Application for asylum

First of all, people at risk can consider applying for asylum in the European Union. The 1951 [Geneva Convention](#) and the 1967 Protocol outline the fundamental right to asylum in case of the risk of persecution, and the obligations for States to accommodate refugees. All EU Member States are a party to both documents. Moreover, the 1950 [European Convention on Human Rights](#) states that no one can be subjected to torture, inhumane treatment or punishment. These Conventions form the basis for the EU Asylum Policies in place. In 1999, the Common European Asylum System (CEAS) was established. The CEAS has to be in accordance with the Geneva Convention and the Protocol as a matter of EU law (Art 78 TFEU).

The [EU Qualification Directive](#) of 2011 sets out criteria for eligibility for refugee status or subsidiary protection in the EU. The Directive also outlines the rights of those who receive a formal status, such as *“the right to a residence permit, travel document, access to employment, access to education, social welfare, healthcare, access to accommodation, access to integration facilities, as well as specific provisions for children and vulnerable persons.”*

The Dublin Regulation III prescribes that the first country of arrival in the EU is responsible for processing the application of an asylum seeker. According to the [EU Asylum Procedures Directive](#), member states must process an asylum application within 6 months. However, the lack of legal consequences when authorities fail to meet this deadline means that in practice, the asylum procedure often surpasses the 6 months by months if not years. For example, in 2016, when the number of asylum applications was roughly as high as it was in 2022, the [European Council on Refugees and Exiles](#) wrote that: *“European countries do not seem to strictly abide by the 6-month deadline envisioned by the recast Asylum Procedures Directive. By way of example, many asylum seekers in Austria have waited for over a year for their personal interview in Austria, or six months in Sweden.”*

UNHCR resettlement

Next to regular asylum application processes, many EU member states have committed to a third-country resettlement quota. These are so-called [‘complementary pathways for admission’](#) that are established in close coordination with the UNHCR. *“Beneficiaries of complementary pathways are given legal access to a third country through the given pathway, where they can gradually attain a more sustainable permanent status.”* A potential complementary pathway

is a humanitarian pathway. *“Either under the form of humanitarian visas or humanitarian admission programmes, humanitarian pathways can serve as a valuable tool in cases of mass displacement, where there is a great need to provide effective protection to a significant number of people within a short period of time.”*

Many EU Member States have committed to inviting a quatum of refugees every year, allocated by UNHCR. This agency, also referred to as the UN Refugee Agency, takes care of the selection process of refugees that apply for third-country resettlement. In addition to regular asylum processes, countries can commit to such humanitarian admission schemes. For example, the Netherlands has committed to an annual number of 500 persons suggested by the UNHCR.

In theory, such subsidiary protection could be a solution for journalists who need urgent protection. However, in practice, we see that the process is constrained. Firstly, this form of protection is not suitable for journalists who are in danger in their country of residence; it is meant for those who have fled to a second country, and from there wish to obtain a visa for a third country. Moreover, the process of applying for third-country resettlement with UNHCR is often very lengthy. This means that for those seeking urgent protection, this is not a solution.

Three to six months short stay

Next to the above-mentioned options for asylum, there is another way to find temporary protection in the EU. Several Member States, like the Netherlands and Germany, offer temporary visas to human rights defenders including journalists in distress through NGOs. These short-term stay Schengen or national visas can help HRDs to strengthen their network, regain energy and improve their work in the long run.

This form of protection is suitable for a group of journalists who are suffering from pressure and need a break to re-energise and recuperate. It is not, however, suitable for those journalists who are in life-threatening situations. First of all, many European countries are reluctant to give short-stay visas to persons they consider may apply for asylum. For that reason, these short-term visas are usually not granted to journalists who have a well-founded fear of persecution in line with the criteria set out in the Geneva Convention. Secondly, the process of applying for these short-term visas is lengthy and can take months. If a person is in a life-threatening situation, it is crucial that their case is treated with urgency.

Proposal: emergency visas

In short, there is a clear protection gap. Journalists in distress frequently do not want to apply for asylum; they need a temporary solution to immediately find safety abroad until the situation is safe enough to return to their home country. However, a visa for three to six months is frequently not long enough; a change in the risk may take more time and is very case-specific. Moreover, it turns out that Member States do not select HRDs with a well-founded fear of persecution or serious harm for temporary Schengen visas because they fear that these persons will apply for asylum. Finally, in all three of the above-mentioned forms of protection, the application process is long. With the UNHCR, the application for third-country resettlement can easily take two years. Also, applicants for a short-term Schengen visa often wait months for approval.

This situation creates legal and administrative hurdles that prevent journalists at serious risk, including life-threatening situations and detention, from legal pathways to enter the EU. When a rapid evacuation of a fleeing journalist is needed, the administrative doors of the EU remain closed. This contrasts starkly with the values of the European Union's Charter of Fundamental Rights which defines the European Union as "*an area of freedom, security and justice*".

The EU strives to be a human rights beacon and is an active advocate for press freedom but only a handful of Member States offer some form of international protection to HRDs. These mechanisms can offer a responsive solution, but only when political momentum and operational capacity in the institutions and civil society partner organisations all align. Limitations apply, be it to the length of the stay or which nationalities are welcome. Meanwhile, the *ad hoc* nature of the mechanisms allows for flexibility but also introduces unpredictability and the risk of arbitrariness. There is a clear need for a more structural European solution.

Professor Can Yeğinsu of the High Level Panel of Legal Experts on Media Freedom authored the report "Providing safe refuge for journalists at risk". In the report, the High Level Panel advocated for the creation of so-called emergency visas for journalists at risk. Professor Yeğinsu found "*that the pathways to safety open to them are too few in number and those that do exist are too slow, burdensome, and difficult to navigate to be capable of providing practical and effective recourse.*"

■

Chapter 2

Six pioneering Member States, six different systems

In each of the six pioneering countries under study, the emergency visa mechanism relies on a close collaboration between the authorities and civil society partners in the receiving country. In all cases, this collaboration is underpinned by the partners' extensive expertise on the media landscape and persecution of journalists in the countries of origin of the applicants, the reliability of thorough internal vetting processes, and their general reputation as trustworthy and knowledgeable actors. The trusted partners' role varies: in some countries, they are gatekeepers who actively filter applications, and the authorities subsequently accept most cases they support. In others, they function more as intermediaries or facilitators who pass on all applications that meet the basic eligibility criteria and the authorities themselves do the filtering. In several of the studied countries, the filtering function of civil society partners for instance consists of an online questionnaire where the HRD is asked to describe their case and why they need protection, their future plans, and provide personal information needed for the visa, which is subsequently assessed by the civil society partner before the application is passed on to the authorities.

The weight of trusted civil society partners' engagement and their influence over the final decision not only varies from one country to the next depending on whether their role is more that of a gatekeeper or a facilitator, but can also vary within each country. For example, French civil society organisations provide support letters to threatened journalists to the embassies, who are in charge of processing the application. Subsequently some embassies strictly follow the rule that they cannot communicate about ongoing applications and do not even acknowledge to have received the file, while with other embassies, French civil society organisations have established closer working relationships. Differences between embassies are however not the only source of variation, which also occurs in systems where applications are centrally processed and, in such cases, can be linked to the country of origin of the applicant. For example, one of the MFRR's interlocutors in Germany, where the Ministry of Foreign Affairs leads the processing of applications, stressed that "we have to really differentiate on countries ... Russia works very

well, but you would get a very different answer from colleagues who work e.g. on Afghanistan. Even for Belarus, it is already more difficult than Russia."

This report does not reflect granular detail of civil society partners' role that was gathered during the fact-finding mission. A number of reasons necessitate this approach. From an operational point of view, there is the risk that providing many specifics may lead to the inundation of partners with illegitimate applications by people who are not eligible but attempt to exploit the system. Furthermore, discretion is a critical element of the collaboration between civil society partners and the authorities, albeit with some variation between the countries under study as to how important this is. Throughout the mission and across countries, personal connections were mentioned as key success factors for a sustainable and fruitful collaboration between civil society and the government. Such personal relationships seem crucial in both the advocacy phase and the visa application process. Lastly, providing too many details may play into the hands of those oppressive regimes from which HRDs are attempting to find safe refuge, and may provide them with ammunition for attempting to undermine emergency visa systems as a whole or applications of individual HRDs.

The Czech Republic

Prior to 2020, small numbers of HRDs would come to the Czech Republic under the short-stay Schengen type C visa, e.g. to participate in advocacy events or rest and respite programmes, based on the EU Visa Code linked to para. 20 of Act No. 326/1999 Coll. on the residence of foreigners in the territory of the Czech Republic. They mostly came from target countries of the transition promotion programme of the Ministry of Foreign Affairs. In the aftermath of Russia's invasion of Ukraine, an additional pathway was launched for citizens of Belarus or Russia at risk of persecution. Under this [civil society visa support programme](#), established pursuant to Resolution of the Government of the Czech Republic of 18 May 2022 No 418 (208), up to 500 Belarusian and Russian HRDs per year can apply for a national long-stay visa based on a direct link with the Czech Republic, such as business, employment or study, which is valid for one year with the possibility of applying for a long-term residence. Family members and partners may join the HRD under the scheme, on the basis

of long-term visas for family purposes or long-term residence permits for family reunification.¹

Under the civil society visa support programme, the applicant HRD works with Czech civil society partners to relocate. Some of those partners give priority to the relocation of entire teams to the Czech Republic, while others focus on individuals. In the case of relocating a team, it is possible to create an association as a legal entity registered in the Czech Republic. Once established, the new association can open vacancies that then serve as the basis for requesting a residence permit on the basis of employment. This process is effective not just in ensuring relocation to a safe haven but also creates opportunities to work and to continue engaging in critical journalism (or other human rights-oriented activities). This is not the only route: permits are also extended on the basis of pursuing a university education, or a fellowship or internship in a civil society organisation. The process spans about three months.

France

France issues national long-stay visas (for a stay longer than three months) for exceptional reasons, which have been nicknamed “humanitarian visa”.

Potential recipients, whose nationality does not matter, apply directly to the embassy. They must provide documentation to demonstrate that they are threatened in their home country and, in case this is different, the country from which they are applying. The embassy processes the visa request. It is sent to the Ministry of Interior for security vetting, and if cleared, the dossier is sent back to the embassy, which extends the humanitarian visa.

Only the nuclear family (spouse and children under 18) can join the applicant. Children over 18 and any other family members need their own visa application, with low chances of it being accepted.

The rules are not applied consistently across all embassies, and appear to follow political priorities. For example, the criterion that a journalist must be threatened not only in their home country, but also in the country from which they apply for a visa, is applied differently - presumably following specific instructions from the capital. Processing times are generally slow (up to 12 months in some cases), but also differ markedly from one embassy to the next. In some situations, this can be explained by the high number of applicants and low number of consular staff, but this is not always the case. The level of transparency about this also depends on the local staff.

Recipients of a humanitarian visa can apply for asylum once they arrive in France. Other options include for instance long-term visas for work purposes. In the case of some Russian journalists, the lack of clear central guidelines to embassies and immigration services at the local level in France has led to confusion. They were given a humanitarian visa, in which some embassies have put the mention that it needs to be transformed into a temporary residence permit once in France, as opposed to the more usual asylum. Most local immigration authorities had not seen this before and did not want to deal with this complication, saying the holder can only ask for asylum, which most Russians do not want, as it does not give the applicant the right to work in France.

In December 2021, the French President launched the Marianne Initiative, managed by the Ministry for Europe and Foreign Affairs and the Ministry of the Interior and built using a partnership approach with the participation of human rights NGOs and other stakeholders including local authorities in France. It aims to support HRDs both in their home countries and through temporary relocation. The initiative creates a pathway for a yearly cohort of defenders to be welcomed in France for a six-month period of personalised exchange, networking and training courses. Fifteen defenders participated in 2022, and a further 14 were welcomed in 2023. Applicants register their interest through a detailed form, which can be submitted through a French embassy or consulate or a dedicated digital platform. An independent selection committee assesses the applications. Besides demonstrating their work in favour of human rights, applicants must justify how participation in the programme will reinforce their capacity to do human rights work, hold a valid passport or be prepared to obtain one, and be free from any judicial order not to leave the country. If accepted, the HRD receives a temporary long stay-visa to allow travel to France and abroad. There are no provisions for family members to accompany the HRD during their participation in the programme.²

Germany

In Germany, journalists under threat may be granted a temporary residence permit (Section 22 Residency Law (Aufenthaltsgesetz)) on the basis of urgent humanitarian grounds by the Ministry of Foreign Affairs. The pertinent legal provision is framed “as an exception to an exception to an exception”, as one interlocutor framed it, making clear that these visa should be granted only under very special circumstances. The applicant does not need to prove that they will be financially independent in Germany. The visas are also flexible in terms of allowing family members, including non-married partners, to join.

¹ EU Fundamental Rights Agency, ‘Protecting human rights defenders at risk: EU entry, stay and support’, 11 July 2023, p. 34-35.

² Ibid, p. 36.

It is possible to apply on an individual basis, which has higher chances of success in case a trusted German NGO acts as a sponsor; or, for Russian HRDs, on the basis of lists prepared by those civil society partners.

It is also possible to obtain a residence permit on the basis of an employment offer (for qualified jobs, Section 18a Residency Law) or as a freelancer (Section 21.5 Residency Law). Furthermore, it is possible to enter Germany on the basis of participating in a fellowship in a residency programme (Section 7 Residency Law). These are set up by German civil society organisations as a temporary shelter for journalists who face harassment and intimidation as a direct result of their work.

In 2022, the German federal government established the Hannah Arendt Initiative, which provides a specific protection programme for journalists and free speech defenders, similar to previous initiatives that covered artists or scientists under threat (Martin Roth Initiative and Phillip Schwartz Initiative). The commitment in the coalition contract to set up this global Initiative followed from learnings of the close collaboration in response to the Afghan crisis. In its pilot phase, the programme was limited to Afghanistan, Belarus and Russia. It has recently been expanded to include Myanmar as well in the start-up.

The Hannah Arendt Initiative is the first time that civil society partners were involved from the outset in designing the programme in Germany. This allowed them to put the spotlight on critical issues from the start, for instance the importance of family members being able to join a relocating journalist. These civil society efforts resulted in “opening up the scope of the programme a little more than the government initially had in mind”.

Lithuania

In Lithuania, Belarusian and Russian HRDs can enter the country with a type C (Schengen, short stay) or type D (national, long stay) visa under art. 130 of the Law on Legal Status of Foreigners, depending on the specifics of the application. Schengen visas are processed only outside the Schengen area, meanwhile national visas or residence permits could be facilitated without leaving Lithuania. If the visa was issued on humanitarian grounds, the recipient can later apply for a residence permit on humanitarian grounds, which is valid for one year and can be prolonged each year. In the case of Russian citizens, if the Schengen visa was issued by another country, a border patrol permit for arrival may be required. Victims of repression, independent journalists and civic activists are eligible for the humanitarian visas. Former representatives of the regime, especially those who participated in acts of violence, election

fraud, bypassing sanctions and those fleeing (potential) mobilisation are not eligible.

Visas and residence permits are processed by the Migration Department in case there is a facilitation or approval by the Ministry of Foreign Affairs. Verified cases can be submitted to them by credible Lithuanian human rights organisations with a track record of work with this region, who in turn work with trusted and respected local human rights organisations or civic initiatives in Belarus and Russia and associations of exiled HRDs from those countries to facilitate relocation of the applicant HRDs.

It is generally a speedy process, and it is possible to apply from a third country. The MFRR’s interlocutors described Lithuania as particularly welcoming when it comes to extending the long-term stay on humanitarian grounds or facilitating visas to members of Belarusian civil society. They also commented positively on the Lithuanian embassies’ willingness to help relocate applicants’ children.

Due to geographical proximity and close cooperation with numerous Belarusian NGOs Lithuania had a certain visa framework before the rapid developments in 2020. It needed certain corrections because of the pandemic restrictions back then, but that was implemented relatively fast due to a strong political will of Lithuania and consultations with civil society representatives.

The Netherlands

In June 2020, the Dutch Parliament adopted a motion that requested the government to provide fifty emergency visas per year to journalists in distress. This was the result of a press freedom masterclass for Members of Parliament that Free Press Unlimited organised. In response, however, the Minister of Foreign Affairs published a policy letter which stated that the Netherlands already offers other options for the relocation of journalists in distress, referring to the Shelter Cities programme, which hosts HRDs for three to six months, and to the UNHCR quota, which may be a lengthy process. Neither of these meet the requirements of an emergency visa. At the time of writing, the Dutch government has not implemented the parliamentary motion and does not systematically offer fifty emergency visas per year.

The Ministry of Foreign Affairs in very rare instances issues humanitarian visas to journalists under threat. The humanitarian visas are “very much treated on a case-by-case basis”, depending on the person and the situation, without a structural solution. “It is hard to establish a pattern” when it comes to eligibility and conditions. For example, at the beginning of the full-scale invasion of Ukraine, the embassy in Russia arranged some visas for HRDs. For some, this was

also arranged for their family members; for others, it was not. According to the Ministry of Foreign Affairs, support from the Moscow embassy has decreased since then in part because embassy staff was deported. In June 2022, civil society partners were told that a quota applies to the provision of visas for HRDs, which at the time was used up. It was said that the embassy had requested the MFA to top this up. One interlocutor explained this as follows: “We were told that due to the quota and limited capacity, the selection process had become more strict, hence the demand that HRDs should have a connection to the Netherlands to be eligible. We were also told that HRDs from organisations receiving funding from the Dutch embassy were prioritised.”

Overall, it was said that there is more open support for Belarusian HRDs than for Russians. For the latter, it is frequently still considered an option to remain in the home country, whereas it is recognised to be impossible in the case of Belarus.

HRDs can apply directly to the embassy in their home country, or they can be linked up to the consular services by Dutch civil society partners. Civil society partners do not have a formalised vetting or filtering role, however. These civil society organisations work with the Ministry and embassies throughout the process and build on established personal connections. Civil society partners recommend the applicant get in touch with the political section within the competent embassy to help the speedy and adequate processing of applications, as the consular department is not always aware of the issues and sensitivities around security at hand. As consular services are also more and more often delegated to external visa centres, the problem that a visa may be denied because the consular service is not aware of the HRD status of the applicant remains.

In principle, applicants should apply in their home country. Subsequent to lobbying by civil society, however, the government is now aware that this needs to be broadened. Reportedly, some embassies outside Russia are now open to helping Russian applicants, although “it is not easy” to convince them. When the political department of the Dutch embassy in the so-called ‘hub-countries’ or the country- or human rights desk of the Dutch MFA is involved, the odds of success improve. It was noted that the Ministry of Justice and Security was generally less favourable of providing safe refuge to journalists in distress.

The Ministry of Foreign Affairs only provides a visa, but it is up to the HRD and the inviting organisation to make the necessary arrangements so they can live and work in the Netherlands. Local politics and individual influential advocates play a big role here. Where those circumstances align, it can be fairly easy to arrange for office space and other supporting measures.

Poland

Poland provides safe refuge for journalists under threat through issuing humanitarian visas (based on Articles 60(1)(23) and Article 348 of the Act on Foreigners) to applicants from Eastern Europe, Russia, Central Asia and the Caucasus. A direct link with Poland is not required.

Applicants can apply from within their home country as well as from third countries. Core family members are eligible to join them. The humanitarian visa (a national long-stay visa, type 21 under Polish law) is valid for a period of one year and provides for their entry and stay in the country and travel within the Schengen area. A special regime exists for Belarusians who stay in Poland on the basis of a humanitarian visa: they can apply for a permit that allows the holder to stay in Poland for up to three years and gives entitlement to a travel document.

As soon as HRDs arrive in Poland, they can start working and the majority of journalists continue to do so. Opening a single-person business (independent contractor) is only possible after obtaining a residence permit.

Different systems, but similar advantages and obstacles?

Positively, the overall outcome is that in the six European Union Member States under study, journalists in distress can find a system that can be responsive at times of crisis. These countries have taken a responsibility, albeit some more than others, to offer flexible approaches to be able to accommodate journalists in distress. This also means that the systems differ in each Member State.

Each of the countries' mechanisms has its own idiosyncrasies, shaped to an important degree by political priorities and support base. Political will and operational capacity in the institutions must align, which is not always the case and can create arbitrariness. Moreover, the much-welcomed flexibility concerning the application of certain procedural requirements also furthers the creation of a system that can be difficult to navigate.

In all six studied countries, embassies and consulates evidently play a central role in the process and this invariably means that their capacity affects how the application procedure plays out in practice. In all countries under study, we heard that at times there is simply not enough consular staff to process the applications, influencing the length of procedure and introducing an element of unpredictability. The MFRR's interlocutors generally appreciated that adequate staffing of consular services can be challenging, especially when the relationship between the country of origin and receiving country deteriorates or during emergencies. Nevertheless, some remarked that the lack of capacity seemed a more sophisticated argument at least in some cases, where there is no evident justification for a lack of consular capacity.

Generally more problematic is the variation in the extent to which these staffing challenges are clearly communicated to applicants and partner civil society organisations: from no communication at all to open and even a pro-active "heads up", with differences across countries and within countries, from one embassy to the next. In France, as a rule there is strictly no communication about ongoing applications, which in some but not all cases means even receipt of the file is not acknowledged. In the other countries under study, there seems to be a higher degree of openness. In Poland for example, a civil society partner noted that "it can be hard to tell" why an application takes long or not, but if the embassy is silent, "we can just ask why that is the case and what they can do to expedite the process". Most interlocutors described similar interactions, with individual good contacts at embassies "based on personal connections".

In all six countries under study, embassy and consular personnel regularly make efforts so that applicant journalists can bypass some of the regular visa procedures. Examples that were provided include the allocation of specific time slots to submit or collect documents, and direct appointments with posted personnel only - instead of having to queue outside. In practice, the result of this approach is the creation of a needed "more secure fast track", which was invariably an informal procedure. On the upside, this flexibility means it can be responsive to the needs of the specific situation. The *ad hoc* nature however creates some challenges that are parallel among the studied countries. An important difficulty stems from diplomatic personnel's rotation. This entails that the benefits of active outreach and investments in personal relationships with relevant staff in embassies by civil society partners, including by explaining how their vetting processes work to establish trust, can be short-lived depending on the efficiency of the post's handover. A second challenge is that individual consular staff's assessment of the situation and attitudes play a role too, which one interlocutor remarked can be problematic when new staff lacks in-depth knowledge of the local context or appreciation of the sensitivity of the issues. Efforts by civil society partners play an important role in sensitising embassy and consular staff. For instance, one Dutch interlocutor described the positive impact of efforts to familiarise embassy staff in Georgia, who are "very willing to help", with the different needs of Russian HRDs.

Furthermore, in all six countries under study, national security related checks, have, justifiably, a low level of transparency. In practice, they do not pose an obstacle. Overall, there is a high awareness that criminal and anti-extremism laws are frequently abused as a political instrument against journalists and HRDs and this is clearly taken into account in the vetting process.

A final element on which there is largely congruence between the countries under study, is the fact that the various emergency visa mechanisms are generally not widely promoted. The MFRR's interlocutors provided a variety of reasons. Prominently, these include the need to ensure applicants' safety and the need to avoid opening "the floodgates". The latter argument is based on practical considerations: promoting "easy visa procedures" would result in "thousands of applications" including many that do not meet the eligibility criteria, which would be impossible to process by trusted civil society partners. Nevertheless, there is also limited promotion of some aspects of emergency visa mechanisms in a few of the countries under study. Germany promotes the Hannah Arendt Initiative specifically as a tool to support and protect journalists in distress: ideally, in their home countries or as close to them as possible but if need be, through temporary protection in Germany. Similarly, the Netherlands actively promotes the Shelter Cities programme. ■

Chapter 3

The role of civil society: lessons learnt

In all six countries under study, NGOs played a pivotal role in the issuing of emergency visas. Their role was fundamental in both the advocacy efforts leading up to the establishing of emergency visa schemes, as well as in carrying out the practical and administrative steps needed for the visas. The number of active NGOs differed per country. In Lithuania however, a number of Belarusian human rights organisations, civic initiatives and independent media can request the visa support through an established one window procedure to ensure that state institutions are not overwhelmed by multiple and repetitive requests.

Some civil society partners assist a wide range of applicants in obtaining emergency visas. Others focus on partner organizations and members.

Advocacy efforts

First of all, in many countries, establishing a scheme of international protection was linked to the advocacy of civil society organisations. For example in the Czech Republic, CSOs took the initiative to speak with their authorities and proactively advocate for a solution to provide safety for HRDs from abroad. The political context, as explained before, played a large role here. Various interlocutors expressed the opinion that after a crisis broke out, for example the full-scale Russian war of aggression against Ukraine, this was a reason for them to approach the authorities. This was not successful in all countries. In the Netherlands for example, Justice & Peace told our delegation that they repeatedly tried to engage with the authorities to establish a systemic solution to the need for international protection, but without result.

NGOs as intermediaries: a patchwork of roles and responsibilities

In all Member States that have been studied, NGOs have a role in the procedures of applying for emergency visas. In most countries, NGOs are the first points of contact for candidates. The journalists or human rights defenders then provide their personal details and a description of the danger they are

facing to the NGOs. Also as part of this so-called vetting process, the question of whether an applicant qualifies as a journalist is considered as well. In various cases, this selection process was designed by the NGO itself. Many NGOs seem to be trusted by the authorities in deciding which information is needed from an applicant. This again shows the importance of (mutual) trust between civil society and the authorities.

After collecting all information, the NGO takes the required steps by referring these cases to the authorities (either the Ministry of Foreign Affairs (MFA) or other responsible authorities in capital or the diplomatic missions). The procedural steps that must be followed differ per country. Often the journalist applies him or herself, and NGOs provide a guarantor letter. In other countries, the NGOs directly send the application of endorsed journalists to the authorities. In Poland for instance, civil society partners can provide a letter of support signed by the President and then sent to the consular offices. In the Czech Republic, Ceeli Institute shares the questionnaire results directly with the MFA. The Ministry accordingly verifies the form in roughly two to three weeks. If they approve, the documents can be submitted to the visa department.

Throughout the mission, we noticed a large variety in approaches towards this selection process and deciding who is eligible for a support letter. Some NGOs work with an external or internal board to consider and approve or reject the application of a human rights defender. An example is the Dutch NGO Justice & Peace, which has a selection board of jury members that are external to the organisation and carefully selected based on merit and expertise. Also in other Member States, some partner civil society organisations are selective in how many requests are passed on to the Ministry of Foreign Affairs, explained with reference to the importance of maintaining trust with the authorities. In most cases, however, the NGOs with whom the mission met wanted to refrain from taking any decisive role in the selection procedure. They therefore shared a list as broad as possible of potential beneficiaries with the authorities. They stated clearly that they want to keep their distance from deciding who is eligible and who is not, and instead leave the decision to the Ministry. They only rejected cases of which they were sure the Ministry would not accept them.

In many of the countries studied, the (large) majority of the cases referred or vetted by NGOs were accepted by the authorities. This shows that the process is based on a mutual trust relationship between the authorities and civil society. Authorities highly rely on CSOs. The checking process by the authorities is in most cases conducted by the Ministry of Foreign Affairs and the Ministry of Interior Affairs.

In the Netherlands, however, the acceptance rate by the authorities was much lower. NGOs with whom our delegation spoke expressed frustration about the lack of positive response from the authorities. In the case of Justice & Peace, their request to extend a Schengen visa for an endangered HRD after the six months visa ran out succeeded in one case. Amnesty International Netherlands expressed the opinion that the success of an HRD's application for an emergency visa depends on a case-by-case basis. It must be noted that in the Netherlands, there is no (informal) collaboration structure in place as there is in the Czech Republic, Poland, Lithuania and Germany.

Personal connections and a strong reputation make a difference

In all countries that our delegation studied, the relationship between the NGO and the authorities was of crucial importance. All CSOs allowed to provide guarantor letters or a list of applicants to the authorities had a long track record in human rights work and a good reputation in the country. Various interlocutors were convinced that a trustworthy public image is key to the collaboration.

Sharing the burden between NGOs and the authorities

The relationship between the NGOs and the authorities is delicate. It is based on trust, and it requires a high level of credibility. The reputation of such organizations in the country (based on their history, track record of work and further recommendations from international institutions and bodies) allows them to provide credible information and vetting as part of the application process. According to our interlocutors, the success of the programme is precisely because NGOs are able to share the burden with the authorities. Partially, this may be a financial burden. For example in Poland, the HRHF covers the financial costs for accommodation, insurance, medical bills and all other costs that are made by displaced HRDs until their visa application has been processed.

Next to financial costs, the NGOs that act as guarantor organizations also process a part of the administrative workload and burden. For example, the Czech organization Ceeli Institute acts as an intermediary and manages all contacts between the MFA and the beneficiaries. This is time-consuming. Throughout our mission, it became clear that many of the CSOs that currently have a vetting role in the emergency visas process are challenged by the workload it brings along. In some cases, the maximum number of granted emergency visas is capped by the capacity of NGOs - not by a rule of the government. Some organizations therefore have to make choices and for example, only focus on the applications of their own partners. Some CSOs shared that they cannot open their application procedures to any kind of participants, because the organisation would simply not be able to deal with the numbers.

Accessibility of the programmes

Often, national authorities rely on NGOs to do outreach to potential beneficiaries and spread information about the programme. In some cases, like in Lithuania and the Czech Republic, the authorities primarily rely on cases submitted by NGOs, while also doing their own vetting. This means that civil society has a big responsibility to ensure that their programme and information about it are accessible to all human rights defenders. At the same time, there are significant security risks and workload associated with the program, so some organizations choose not to make their participation public or to share any details through public channels, relying on trusted networks instead. The MFRR partners are concerned that inevitably, not all journalists that are in danger have the same chance of receiving international protection. For example, for security reasons and to avoid a deluge of requests, NGOs often do not publish about the programme on their website, but instead use less-public channels to spread the information. This can be challenging for journalists that are not well connected with (international) NGOs, do not speak the language or do not work for a (well-known) media house, who may have fewer chances to benefit from such systems.

At the same time, there are rewarding efforts by NGOs to accommodate journalists in distress that are less well-connected. For example, BAJ works cross-nationally with CSOs in different countries (the Czech Republic, Lithuania, Poland). For journalists that are not famous or do not have an extensive track record yet, it can be more difficult to obtain an emergency visa. For Belarusian journalists facing such obstructions, an organisation like BAJ is available. BAJ can provide support letters and lobby with the relevant embassies for individual cases. ■

Chapter 4

Looking ahead at a structural solution

As explained in the previous chapters, Lithuania, Poland, Czech Republic, France, Germany and the Netherlands all offer some form of international protection to HRDs and journalists in distress - albeit some more than others. The role of civil society is of high importance. In this chapter an appreciation of the systems in place will be given.

Expanding the programmes to other nationalities

Throughout the mission it became clear that the recent developments in the region have shaped the willingness to offer emergency visas. In Member States closer to Ukraine, Belarus and Russia, there seems to be more willingness to offer safe refuge to journalists. This political will is reflected in the programmes that Poland, the Czech Republic and Lithuania offer: they created options for HRDs from predominantly Ukraine, Belarus and Russia. When asked about the public support for this scheme, our respondents indeed linked the increased willingness to offer emergency visas to the developments in the region. For Poland, two of our respondents even indicated that the country applies positive discrimination to Ukrainians and Belarusians.

In Germany, the option of emergency visas is also restricted by nationality. Here, the option exists for HRDs from Russia, Ukraine, Afghanistan and Belarus, and the extent to which this works well differs for each. Only in France, the option to obtain emergency visas is not restricted to nationality. In the Netherlands, emergency visas are also not limited by nationality, but that is because the programme officially does not exist.

A mix of considerations related to geopolitics and to the domestic support base and political positioning of the ruling party or parties underlies these restrictions or instances of positive discrimination. Given that the global need for safe refuge for HRDs outstrips current capacity and only a handful of championing countries have acted on the crisis, it is also logical that they impose restrictions not to overwhelm the system. This is understandable and defensible from a pragmatic point of view. At the same time, our delegation however finds that the outcome of the

choice to offer visas only to people with certain nationalities may lead to arbitrary and unfair differences in the treatment of people fleeing persecution.

First and foremost, this situation again underscores the need for a pan-European solution. The majority of EU Member States, who are currently not fulfilling their plight to offer safe refuge to HRDs in distress, should follow the course set by those Member States who did take action. It is understandable that the few countries that do offer international protection to journalists have to apply limitations and cannot take the whole burden that should be shared among all EU Member States. Additionally, the creation of more capacity would in turn make it less acceptable to impose arbitrary restrictions on eligibility. *In se*, the threat to the journalist at risk should be the dominant criterion.

Structural solution or momentum-based scheme?

Moreover the largely *ad hoc* and somewhat improvised nature of the visa mechanisms we studied gives rise to the question how structural the mechanisms are, and what will happen once the political will to support them decreases.

The lack of stability of the solutions in place raises concerns. For example, in the Czech Republic, the sitting government is formed by a unique coalition of a wide range of political parties. Since the start of the full-scale Russian war of aggression against Ukraine, there is a lot of political willingness to create a scheme for HRDs that are (directly or indirectly) affected by the conflict. The Minister of Foreign Affairs expressed a strong personal dedication and willingness to introduce an emergency visa scheme, and the system that was put in place creates commendable opportunities for Russian journalists and other HRDs to continue their work abroad. However, emergency visas are not enshrined in law, raising the concern that the continuity of the program may be susceptible to political changes. In the Czech Republic, the government is currently revising its national Asylum Act. We call on the authorities to use this opportunity to anchor a structural solution for HRDs in domestic law.



In the Netherlands as well, the issuing of emergency visas has never been made structural. Here, offering a visa for more than six months is always based on a case-by-case assessment. The Justice & Peace interlocutor shared with the delegation that the Shelter City programme is limited because it only offers temporary protection for three to six months. Ongoing advocacy efforts by national civil society to expand this system remained unsuccessful on a structural level. In some instances, the circumstances of HRDs in the Shelter City programme changed, creating security constraints that impeded their safe return. In some cases, J&P managed to advocate for prolonging the visa for a year. But this was always an exception and never a structural part of the programme. J&P shared with our delegation that in its lobby efforts to offer more flexible and longer protection options, it is very difficult to find support. This is “mind-boggling” according to Sebastiaan van de Zwaan because the Netherlands would be the “perfect country” to offer emergency visas. ■

Chapter 5

The Emergency Visa for Journalists at Risk: A concept developed by the High Level Panel

Chapter by Professor Can Yeğinsu, the current Deputy Chair of the High Level Panel of Legal Experts on Media Freedom and author of the Panel's report entitled 'Providing Safe Refuge to Journalists at Risk'

The Media Freedom Coalition (MFC) is a partnership of countries working together to advocate for media freedom at home and abroad, through a combination of advocacy, diplomatic interventions, encouraging and supporting legal reforms, international events, and making funding available for media freedom initiatives. The MFC was established in July 2019 and currently comprises 51 member states from six continents. It is co-chaired by Estonia and the Netherlands.

The following EU Member States are part of the MFC: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia, Spain and Sweden.

A High Level Panel of Legal Experts on Media Freedom serves as an independent advisory body of the MFC. It was established in July 2019, and provides legal advice and recommendations to the Coalition and its partners. The Panel's work is supported by the Global Media Defence Fund. It is chaired by Lord Neuberger of Abbotsbury and

its Deputy Chairs are Can Yeğinsu and Catherine Amirfar.

MFC member states work closely with civil society through the Consultative Network. This group of national, regional and international organisations, created in January 2020, provides advice to the MFC on the Coalition's work and facilitates selection of cases that it believes require State intervention. MFRR partner ARTICLE 19 is currently one of the Consultative Network's co-chairs, and the International Press Institute (IPI) and Free Press Unlimited (FPU) are among the members.



Professor Can Yeğinsu

Background: safe refuge for journalists at risk

At its first meeting in July 2019, the High Level Panel of Legal Experts on Media Freedom designated the issue of safe refuge for journalists at risk as a key priority.

Following wide-ranging consultations between the High Level Panel and States, NGOs, media companies, international organisations, and individual journalists, the High Level Panel published its advisory report on the issue of safe refuge to the Media Freedom Coalition of States.

The [Report on Safe Refuge for Journalists at Risk](#) was published in November 2020 and is annexed to this report.

The High Level Panel's Report found that every year, scores of journalists are forced to leave their countries to escape threats to their safety, threats that have arisen because they have performed their duties, as journalists, to report the truth and to inform the public.

The Report also found that leaving their home countries, at least while a threat to their safety exists, is all too often the only way for these journalists to avoid politically motivated harassment, kidnapping, incarceration, violence, or even assassination. It is not a decision taken lightly, nor is it one motivated by a desire to relocate permanently: the wish to move is driven by necessity.

However, in too many cases the journalists at risk are simply unable to secure safe refuge in time. That can, and has, come at an appalling cost to them and their families. There are numerous case studies – many of them set out in the Report.

Journalists are often unable to move to safety in time because the pathways open to them are too few in number and those that do exist are too slow, burdensome, and difficult to navigate to be capable of providing practical and effective recourse.

The High Level Panel made numerous findings which all served to show that today journalists face a number of formidable practical and legal obstacles and are often left with no choice but to seek safe refuge abroad in the face of a threat at home. And, traditionally, it has almost exclusively been non-governmental organisations that have had to bear the tremendous burden of providing essential financial, administrative, and logistical assistance to journalists in their quest for safety. There is, however, only so much those organizations can do, especially within the present framework for protection.

Accordingly, the High Level Panel made nine recommendations to the Media Freedom Coalition States. The first of those recommendations was the introduction of a new emergency visa for journalists at risk. The other recommendations related the implementation of several essential adjustments to the existing framework for safe relocation.

The High Level Panel's recommendations on safe refuge were formally endorsed by the UN Special Rapporteur of Freedom of Expression, the Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights, and many major NGOs working to protect journalists and promote media freedom.

The emergency visa: a new legal tool to protect journalists at risk

The High Level Panel recommended that MFC States introduce a journalist-specific emergency visa: this would be the most effective (and principled) way to address the obstacles that journalists at risk encounter with the existing immigration pathways.

This visa once introduced would not be dissimilar to a type of humanitarian pathway already offered by a scattering of States, such as Germany, Norway, Switzerland and the United States. The proposed emergency visa would be granted to those journalists who present an 'arguable claim' of exposure to a real risk of serious harm or a well-founded fear of persecution.

Description of visa: The journalist-specific emergency visa would offer a humanitarian pathway for journalists and those engaging in journalistic activity. The visa should be open to those journalists in need of immediate or urgent protection due to an ongoing threat to them and/or their families and continue to be available until the risk subsides.

Visa information and applicable criteria: States should make available to NGOs, and to the public at large, information regarding the availability of this visa category and any criteria or guidelines that the authorities will consider to determine applications for this visa type.

Submission of visa application: States should permit journalists to make an application for this category of visa – on behalf of themselves and their immediate family – in the State's embassy or consulate located within the journalist's home country. For some journalists, travelling to, or being seen to enter, a foreign consulate or embassy may in itself be unsafe. To account for these circumstances, States should also permit journalists to make secure online visa applications in exceptional circumstances.

Visa processing: In processing applications for this visa, States should:

- present the journalist with an opportunity to provide information regarding their claims and, in particular, any criminal investigation or outstanding charges that may raise character and/or security concerns. Since journalists at risk will often be under severe time pressure in making a visa application, and may not be able to put forward a complete application in the first instance, ongoing opportunities to provide information are critical;
- train, and provide sufficient resources to, diplomatic and consular personnel to ensure that decisions are made by reference to: (i) available information on general issues of freedom of expression and the press in the applicant journalist's home State; and (ii) the specific circumstances of the journalist's case in particular;
- train their decision-making teams so as to ensure the proper and fair assessment of character and security grounds that may arise, so as not to preclude or delay the grant of a visa to a journalist investigated, indicted or convicted on pretextual charges by the home country;
- confer, where necessary, direct authority on ambassadors and/or consular teams to make decisions with respect to: (i) the grant of this visa; and (ii) any necessary steps to be undertaken by the State to ensure the safe relocation of the journalist;
- commit to decisions being made on applications for this visa in a maximum of 15 days, or, on determination of acute urgency, 48 hours;
- confer on ambassadors and/or consular teams the power to authorise immediate transfer, i.e. either to grant the visa on a prima facie basis, or to apply a visa waiver pending determination of the visa application, in cases where the journalist's life or liberty is at imminent risk; and
- if a visa application is refused, provide the journalist with an opportunity of internal review. Internal review should be undertaken de novo, conducted by an independent team that includes diplomatic and/or consular staff on the ground in the journalist's home State, and should have particular regard to: (i) the general state of media freedom in the home country; (ii) the nature of the particular risk to the journalist's safety; and (iii) whether the journalist has been subject to harassment, investigation, or criminal sanction, of a politically motivated nature. In finely balanced internal review cases, the processing authorities should seek an independent (and confidential) view on the journalist's case from appropriately qualified local or international counsel.

State engagement

The MFC responded to the High Level Panel's recommendations by placing the provision of safe refuge to journalists at risk at the top of the MFC's first ministerial communiqué.

Since then, several MFC member states have given effect to the Panel's recommendations, including by creating an emergency visa for journalists at risk. Many States have extended such protections to human rights defenders. In 2022, just over a handful of MFC States are reported to have provided over 1,600 journalists with emergency visas.

Emergency visas have now entered the lexicon of journalistic protection. But they are not an all size fits all solution. And the manner in which an emergency visa regime is administered by any given State is, of course, critical to its overall effectiveness.

While there is some cause for cautious optimism, there is much left to do. Too few States have come forward to lead in this area. Others that have moved to implement the High Level Panel's recommendations could do more.

The High Level Panel welcomes the efforts of this fact-finding mission to raise greater awareness to this critical issue and commends this report's authors for the incisive analysis that underpins their own recommendations.

The High Level Panel will continue to work with the MFC States, civil society partners (including the members of the MFC's Consultative Network), international organisations, and the media to strengthen the international framework for protection.

Affirming the importance of global media freedom in speeches is not enough. The root evil that underlies so many illegitimate abuses of media freedom is, as evinced in this report, the ultimate threat of violence to journalists and their families: 'If you write that, we will hurt you'.

Societies that believe protecting journalists and championing their work constitutes a vital pillar of a free and democratic society, need to act. Introducing a new emergency visa for journalists at risk and making the essential adjustments recommended by the High Level Panel to the existing framework of safe relocation will send a clear message back: 'If you are at risk for what you write, we will protect you'. ■

Chapter 6

Conclusions & recommendations

There is a clear protection gap to provide support to journalists and media workers in distress, who suffer serious threats or violence because of their work, through offering them safe refuge abroad until the danger subsides. Some EU Member States and their civil society partners, including the six countries under study in this report, are making valiant efforts to help close that gap. Often in response to acute crises and wars, these Member States have stepped up to the plate where other EU Member States are failing to act. The laudable actions of these pioneering Member States and their civil society partners show that providing safe refuge to journalists in distress is possible - as long as there is political will.

The role of civil society is critical in this regard. For one, advocacy efforts of civil society were instrumental in creating the various schemes in the countries under study. Once established, moreover, their success relies on continued close cooperation of civil society partners with the government. The precise role of the civil society organisations differs, and can include promoting the programme to beneficiaries, a formal or informal role in the application and vetting process, and advocacy in individual cases. In all of the countries under study, personal relationships between civil society representatives and politicians as well as civil servants and other staff in diplomatic and consular services is critical, and heavily weighs on the operation in practice and effectiveness of the programmes. In the delegation's view, this makes the systems overly fragile – a more structural solution is needed.

The mechanisms in the countries under study exhibit further similarities. Each displays a high degree of flexibility, which shapes the practicalities of the mechanisms in different ways. The mechanisms rely on different legal constructions in terms of which visa or residence permits are extended to applicants. These choices subsequently entail differences in legal rights, administrative obligations and practicalities for the recipients. In none of the cases, the emergency visa for journalists in distress is enshrined as a specific and separately defined mechanism in law but rather, it depends on a progressive interpretation and application of existing legislation. This puts into question its longevity and durability beyond election cycles and shifting political priorities.

The fact that the delegation welcomes the initiatives in the six countries under study is not to say there are no substantial weaknesses in the mechanisms, or

that all six of them are created equal. The delegation, and our interlocutors, are most positive about the mechanisms in place in the Czech Republic, Germany, Lithuania and Poland, which are perceived as most responsive and functioning best, albeit with important differences within each of the systems pertaining to the country of origin of the journalist in distress, which impedes an unequivocally positive assessment. As noted elsewhere in this report, eligibility restrictions are politically understandable and – given the needs heavily outweigh the response – operationally necessary to prevent the system from being overwhelmed. That said, it is fundamentally unfair and unjust that similar violence (or the threat thereof) is the basis for receiving refuge if a journalist is from one country, but not from another. As concerns France, the delegation found that an overall lack of transparency makes it difficult to assess how well the mechanism work in practice. Lastly, with regard to the Netherlands, the delegation found that unfortunately, the country appears to lag behind the other countries under study: a declared willingness to offer refuge is severely hamstrung and in practice, the support offered is limited.

Recognising these critical notes however does not take away from the delegation's appreciation for the pioneering role of the six countries under study. Their willingness to act in practice means that at least certain journalists in distress now have access to refuge which otherwise would not exist. The first central conclusion, then, is a call to action to the authorities in other EU Member States: follow the lead of these pioneering countries and act to provide refuge to journalists in distress, so that the needs can be met and the burden thereof, shared fairly.

In the view of the delegation, the creation of sufficient capacity to meet global protection needs through a pan-European solution ought to eliminate the need and pragmatic justification for discriminatory eligibility criteria. Furthermore, the delegation believes that the identified strengths and weaknesses of the existing systems can be helpful in shaping the way forward of such a pan-European solution. As regards strengths, we consider it will be critical to maintain the flexible nature of the existing systems, creating a system that can be responsive to heightened needs in times of acute crisis or war. Importantly, however, this should not negatively affect the capacity to offer refuge to journalists who face violence or threats in countries outside such circumstances. As regards weaknesses, we believe that our concerns regarding fragility and susceptibility to the political mood du jour can be best addressed

through devising a structural solution that is firmly anchored in law.

In light of these conclusions, the delegation recommends to the Governments of all EU Member States to collectively devise a pan-European regime of “emergency visa” for journalists and media workers who need refuge, that creates adequate capacity to meet the needs and shares the burden fairly among Member States. Such a pan-European regime should meet the following characteristics:

- It must be a structural solution that is enshrined in law and thus less vulnerable to shifting political moods;
- While being sufficiently flexible to be able to respond to situations of war or crisis, it must be accessible to all nationalities and available for application from journalists’ home states;
- It must be designed with the needs of the journalist in distress at the forefront. Accordingly:

- It must accommodate for the option of family members joining the journalist when they seek refuge;
- It must offer a fast route to safety, with fast processing times of applications - ideally within 48 hours;
- It must offer refuge until the danger has passed;
- It must generalise existing best practices in terms of psycho-social care, and social and professional integration of journalists who have sought refuge.

Meanwhile, in parallel to devising this pan-European solution, and reflecting the reality of the current scattered approach and the difficulties in finding a European consensus on issues around migration and asylum, Member States should develop new or strengthen existing domestic-level solutions along these same recommendations. ■



MEDIA FREEDOM RAPID RESPONSE



The Media Freedom Rapid Response (MFRR) tracks, monitors and reacts to violations of press and media freedom in EU Member States and Candidate Countries. This project provides legal and practical support, public advocacy and information to protect journalists and media workers. The MFRR is organised by an alliance led by the European Centre for Press and Media Freedom (ECPMF) including ARTICLE 19 Europe, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), International Press Institute (IPI) and CCI/Osservatorio Balcani Caucaso Transeuropa (OBC Transeuropa). The project commenced in 2020 and is co-funded by the European Commission.

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