



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Dunja Mijatović**

Civic responsible media cultivation and society right to know

Constitution Hall of the Lithuanian Parliament,
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Address by Dunja Mijatović, OSCE Representative on Freedom of the Media

I am pleased to be in Vilnius today, in person, to discuss current issues facing the media in Lithuania.

I say “in person” because in October of last year I had the opportunity to address parliamentarians and members of the media by video at a roundtable discussion on decriminalization of defamation organized by the Human Rights Committee of the Parliament.

My comments today on this issue will mirror what I said last year: There is no place for criminal sanctions when it comes to the exercise of free expression. People should not risk jail for speaking their minds. This is not a view I hold alone.

And I trust you will agree.

Perhaps it is time to consider what is obvious.

Defamation is a serious issue. No one in this room, which is filled with people who are well known in this nation, wants to have words written that will damage their reputations. No one wants to be called a criminal or someone involved in misconduct that benefits them or harms the public. That is a natural, human feeling.

But it happens.

Media, old and new, write stories EVERY DAY that damage the reputations of people – public figures as you are and ordinary citizens who get thrown into the public spotlight because of some story that appears in the local newspaper or on television or, as is increasingly more likely, on the Internet where something appears in one minute, long enough to leave an impression and is then deleted with the damage done.

And that, as you know, is the definition of defamation – damage to someone’s reputation.

The question, “What happens next?” is the issue we are here to discuss today.

In virtually every country, laws exist, statutory and then fleshed out by judicial decisions, that govern who can sue for defamation, who must defend the allegations and how damages are awarded. That is a big issue for our office. It all falls under the rubric of civil law.

My Office has always campaigned for civil defamation laws that are fair, based in well-reasoned principles of law and are NOT designed to punish unpopular or dissenting views.

But today we are talking about something far more serious, both to the individuals involved and society as a whole.

Should someone be put in prison for what they say? That is where we need to begin, because the issue of criminal defamation touches at the heart of a society’s ability to criticize itself.

Free expression and free media lie at the heart of democratic societies. Without a robust and free media, democracies cannot survive. This, to me, is a fact. And governments must support a free and critical media in order to sustain the environment necessary for democracy.

I can think of nothing more helpful to limiting free expression and free media than having a “Sword of Damocles” hanging over every journalist’s neck – and that sword is the potential of prison.

The threat of prosecution is intimidating – leading clearly to a reduction in the robust debate necessary in a free society; stifling the ability of everyone to receive and impart information.

Indeed, if free media and free expression are benchmarks of a democratic society, maintaining and actually enforcing criminal defamation laws damages, reduces and enfeebles a nation’s freedom.

I turn to the words of Terry Davis, former Secretary General of the Council of Europe, when he referred to criminal defamation as “a particularly insidious form of intimidation.”

The connection between prison and what we call the “chilling effect” is indisputable. Other than capital punishment, how can how can voices critical of the ruling elite be effectively silenced?

We have seen the consequences of criminal libel right here in Lithuania. None other than Dainius Radzevičius was actually found guilty and faced fines for criminal libel before his conviction was overturned on appeal. And that for simply reporting on Wikileaks cables.

The European Court of Human Rights has held that prison as a punishment for defamation would be appropriate only in the most exceptional cases.

As the Court held in *Cumpăna and Mazare v. Romania* in 2004, “Although sentencing is in principle a matter for the national courts, the Court considers that the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the [European Convention on Human Rights] only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.”

The legislatures of 15 of the participating States of the OSCE have, to one extent or another, repealed criminal defamation laws. High courts in Western European nations have found criminal defamation laws unconstitutional.

The reason for this trend is obvious.

The freer the media, the freer the nation. And ridding every country of criminal defamation laws will make the nations of the OSCE models of free media and the openness that we all desire.

So I once again encourage Parliament to repeal criminal defamation laws. That is not just the wave of the future; it's today's reality.

In my remaining time I'd like to touch upon an issue that is integral to free media and investigative reporting – the protection of confidential sources.

The role of media in a free society is to act as a watchdog of sorts over government and other high officials. As events of the past year have shown, that involves pursuing stories that have great social significance but are not obvious to the public. It takes working with sources that are willing to risk everything to disclose what they know.

Those sources will come forward only if they are promised anonymity. That is why my Office supports “shield laws” which, except in the most unusual cases, provides reporters (and their sources) with protection from governmental and outside pressure.

It is in the public interest to disclose wrongdoing. A free media must be free to report with the most resources at its command, including sources that require confidentiality.

To force a reporter to choose between disclosing a confidential source or going to prison for refusing to testify about sources is a “Hobson's Choice,”¹ – take it or leave it or, in this case, disclose your source or go to prison.

Disclosure and reporting on issues of public interest should never be a Hobson's choice. Law enforcement authorities are free to do their jobs. They cannot be allowed to use journalists as their sources when the journalists have their jobs to do.

Thank you for your time and I remain eager to discuss these issues with you.

¹ A **Hobson's choice** is a free choice in which only one option is offered. As a person may refuse to take that option, the choice is therefore between taking the option or not; "take it or leave it". The phrase is said to originate with Thomas Hobson (1544–1631), a livery stable owner in Cambridge, England. To rotate the use of his horses, he offered customers the choice of either taking the horse in the stall nearest the door or taking none at all.