

OSCE Human Dimension Seminar, May 13-15, 2013

Media Freedom Legal Framework

Session 1 – International Framework for Media Freedom

- Underlying our OSCE commitments on media freedom are Article 19 of the UN Universal Declaration on Human Rights and our obligations under Article 19 of the International Covenant on Civil and Political Rights as enshrined in the Helsinki Final Act to respect the fundamental freedom of expression. This fundamental freedom is the birthright of every human being; it is inherent in the individual and not for governments to dole out or deny as they see fit.
- Our OSCE commitments require participating States to ensure that their laws will conform to their international legal obligations.

Application of the UDHR and the ICCPR

- The UDHR and ICCPR create the international framework for freedom of expression for all individuals, including for members of the media.
- The rights provided in these instruments – right to hold opinions, right to seek, receive and impart information and ideas through any media and regardless of frontiers – are key to what journalists do every day.
- As the Human Rights Committee stated in its General Comment about ICCPR Article 19 a “free, uncensored and unhindered press or other media is essential in any society for the ensuring of freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right to receive information on the part of the media as a basis on which they can carry out their function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. Pursuant to article 19, the public also has the right to receive information as a corollary to the specific function of any journalist to impart information.”
- The UDHR and ICCPR both recognize this right can be exercised via any media – it is clear that the exercise of this right, and the state’s obligations and commitments to ensure this right, apply online as they would offline. Fundamental freedoms, including freedom of expression, do not change with new technologies. This tenet is reflected in the draft OSCE Ministerial Declaration on Fundamental Freedoms in the Digital Age, which 51 participating States support, and we urge the six states that have not yet done so to join us in its adoption.
- At the OSCE Summit in Astana, the participating States reaffirmed the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law. The

commitments of the participating States to facilitate the freer and wider dissemination of information of all kinds and improve the working conditions for journalists give practical expression to the value we must place on the contributions of a free and independent press to our countries and to the international community.

Permissible Restrictions

- Per Article 19(3) of the ICCPR, any restrictions on freedom of expression must meet a strict test of justification.
- In fact, in ratifying the Covenant, the United States issued a declaration stating that it is the view of the United States that “States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant. For the United States, article 5, paragraph 2, which provides that fundamental human rights existing in any State Party, may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to article 19, paragraph 3, which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations.” As I will discuss in our session on National Frameworks, in U.S. constitutional practice, restrictions on expression are subjected to a strict scrutiny test and content restriction must be shown to be narrowly tailored to meet a compelling governmental interest.
- Any restrictions on expression in national law must comply with the requirements of Article 19(3), namely, that such restrictions are only such as are provided “by law” and “necessary.” Such restrictions on expression must be prescribed by laws that are accessible, clear, and subject to the scrutiny of an independent judiciary; are necessary (e.g., the measures must be the least restrictive means for protecting the governmental interest and are compatible with democratic principles); and should be narrowly tailored to fulfill a legitimate government purpose, such as the protection of national security (e.g., countering dissemination of weapons-making instructions for terrorist purposes), public order, public health and morals (e.g., countering child pornography), and the rights and reputations of others (e.g., countering copyright infringement and libel).
- In the session on Implementation of OSCE commitments, we will discuss our concerns regarding national laws and regulations in some participating States that are contrary to the ICCPR and UDHR, in that they place undue restrictions on the right to exercise freedom of expression, are overly broad or vague, or are selectively applied for political purposes against members of the independent media and others with whom those in power disagree.
- In sum, the international law framework governing the fundamental freedom of expression was not intended to be a blueprint for government restriction or regulation of the media, as some participating States seem to think. On the contrary, it was built to protect the exercise of freedom of expression by all individuals, including members of the media, from undue interference by the State.