



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Miklós Haraszi

ENGLISH only

- CHECK AGAINST DELIVERY -

October 25, 2006

Regular Report to the Permanent Council

Mr Chairman, Excellencies, Ladies and Gentlemen,

This is my third report to the Permanent Council in 2006.

I am compelled to start my report with the shocking news of the murder on October 7 of Anna Politkovskaya, Russia's famous reporter, and pay tribute to her sacrifice for freedom of journalism.

In 2003, Anna Politkovskaya received the OSCE Prize for Journalism and Democracy for her courageous professional work in support of "human rights and freedom of the media". She was famous abroad, but remained excluded from the mainstream media at home. While reporting on the Chechnya conflict, she was often subject to intimidation and harassment.

Her murderers must have been encouraged by the prospects of impunity of the numerous killings of journalists in recent years. These cases have been followed by my Office with a request to the authorities to track down the killers, not only for the sake of justice, but also for the sake of protection of freedom of journalism.

In my statement on the Politkovskaya case, issued jointly with the Chairman-in-Office, Belgian Foreign Minister Karel De Gucht, I stressed: "It is extremely important to break the circle of inconclusive investigations into recent murders of journalists in Russia. The violent death of any member of the media stifles the free spirit of journalism. But in this case, the expediency of action is crucial because Anna Politkovskaya was an outspoken critic of government policies."

For this reason, it should be the special pride of Russian democracy to bring the killers of Politkovskaya to justice, and to demonstrate thereby that all members of the media, regardless of their politics, will be protected from intimidation and violence.

I was glad to hear that Chief Prosecutor Yury Chaika has taken the case under his own supervision and I hope to be informed about the results soon.

The following report provides details of the issues raised with participating States over the past months, as well as our cooperation on project activities.

It includes:

- **An account of the development of our work in a new direction on media ethics and self-regulation.**
- **A Special Report on challenges to journalists' accreditation in the OSCE area**
- **An update on the Access to Information questionnaire sent to the participating States earlier this year.**

Issues raised with participating States

Since my report in July, my Office has continued to monitor events and raise issues in the OSCE area. I have also entered into a dialogue with the participating States on a number of important structural issues.

Azerbaijan

My Office has registered numerous cases of libel suits filed by government officials against media professionals since March this year. Four journalists were imprisoned or have received suspended prison sentences for defamation. Several others are facing similar punishment in ongoing trials. This sudden deterioration of the situation runs contrary to the courageous appeal made by President Ilham Aliiev in March 2005, after the murder of journalist Elmar Huseynov, in which the President called on Azerbaijani public officials not to bring defamation charges against journalists and the media.

In immediate response to the new wave of prosecutions, I visited Azerbaijan on 9-10 October, where I was granted the possibility to express my concerns at the highest level. During my meetings with President Ilham Aliyev, Foreign Minister Elmar Mammadyarov, and with the Head of the Socio-political Department of the Presidential Administration, Ali Hasanov, I called on the authorities to stop the deterioration of the situation by removing the criminalization of offences against honour and dignity, so that only civil-law courts would deal with these cases. I also asked President Aliyev to pardon the journalists currently in prison or under suspended sentences for libel.

I also raised the issue of the satirical journalist Mirza Sakit Zahidov, who was convicted to three years imprisonment for alleged possession of drugs.

I inquired about warnings by the National Council on TV and Radio to ban the BBC, Voice of America and Radio Liberty programmes on local stations.

To promote and assist the decriminalization reform, I chaired a Roundtable on defamation, organized by the OSCE Office in Baku. At this event, which was attended by various stake holders representing the Government and civil society, a draft 'Law on Defamation' was presented along with a review of it by Article 19. The draft law,

proposed by civil society and two members of parliament, seeks to decriminalise defamation and to set out clear and progressive rules for civil defamation. Although certain provisions of the draft have still to be modified, I hope that a law in the same spirit will be adopted by Parliament in the near future.

In a positive development following my visit, I welcome the Presidential Decree of 23 October pardoning Shahin Agabayli, editor of *Milli Yol* and Samir Adigozalov, editor of *Boyuk Millat*. Both of them were serving one-year sentences for defamation and insult against public figures. I look forward to a similar positive outcome regarding the pending cases and suspended convictions of journalists.

Belarus

On 3 October, I sent a letter to Foreign Minister Sergei Martynov in which I proposed a number of initiatives for cooperation. As a follow-up to the recommendations in my 2005 report on Belarus, I suggested that events on the future of the Media Law and on the Internet could be organised in Minsk with the support of, and in cooperation with my Office. I also offered my Office's assistance to expand to Belarus the successful training project on the topic of 'Interaction between the media and the state press services in a democratic society', further details of which are documented later in this report.

I look forward to receiving a positive reply to my proposals in order to continue the cooperation with the Belarusian authorities.

Canada

On 2 October, I raised the case of Juliet O'Neill, a journalist for the *Ottawa Citizen*, with the Minister of Justice. Ms. O'Neill's home and office were searched by police on 21 January 2004, following her November 2003 article on an Ottawa man who had been under surveillance by Canadian security forces for alleged terrorist links. The searches against Ms. O'Neill were based on the 2001 Security of Information Act.

Ms. O'Neill appealed to the Superior Court of Justice for Ontario to overturn the search warrants. Should the court rule that the order was properly issued, all Canadian journalists would be denied the right to obtain classified information from confidential sources. Using leaked documents would be made illegal, even in cases of legitimate public interest.

I asked the authorities to address this matter and to re-examine Section 4 of the Security of Information Act in light of this case.

France

In a letter to the President of the French Senate, Christian Poncelet, I asked the Senators to reconsider the amendment to the "*Loi ... tendant à réprimer la contestation de l'existence du génocide arménien*", approved by the French National Assembly. The amendment would make 'denial of the genocide' a criminal offence. I pointed out that such a legal provision would run contrary to the internationally accepted principle that history should be dealt with by historians and not by legislators. I am glad that the French

Government has voiced its dissent with the decision of the National Assembly. I call upon French legislators to withdraw this provision, as it criminalizes the expression of opinion.

Hungary

In my statement of 19 September, I condemned the violent attacks on the building of the Hungarian public television in Budapest on 18 September. I stressed that the independence of public service broadcasters should be secured not only from pressure by political parties and governments, but also from all anti-democratic forces and especially from intimidation and violence.

Kazakhstan

On 1 August, following a request from the Kazakh authorities to provide further information on the issue of Internet regulation, I replied to the acting Minister of Culture and Information of Kazakhstan, reiterating my Office's position in this regard.

I noted the inherent dangers of over-regulation and the unacceptability of mandatory filtering and blocking of Internet content. On the question of how to deal with illegal content, I referred to the rules of legal procedure and the role played by independent courts, rather than government agencies or private organisations, to make decisions on the legality of website content. I also referred to the inadmissibility of licensing Internet content and the purely technical nature of website registration. Finally, I noted that there should be no requirement for a country specific domain, such as “.kz”, to have its server physically located in the country.

I would like to reiterate my willingness to further cooperate with the Kazakh authorities on the issues raised in the letter.

Lithuania

On 19 September 2006 I wrote to Lithuania's Foreign Minister regarding the temporary detention of the editor of *Laisvas Laikrastis* newspaper, Mr Aurimas Drizius. My intervention followed a search of the newspaper's premises, the confiscation of 15,000 copies of the newspaper, and its computer hard drives. These actions were meant to identify confidential sources who had leaked information to the paper.

In my letter I stressed that journalists and the media should not be held liable for the possession or publication of leaked information. Rather, only the officials who gave an oath to protect classified information, and who failed to do so, should be liable for breach of confidentiality. I also signalled the dangers of using journalists as the investigative tool of law enforcers.

Discussing this case with the Head of the Lithuanian Delegation, my Office was informed of the Government's willingness to resolve this issue according to OSCE principles with respect to freedom of the media. I was also pleased to hear the clear words of President Valdas Adamkus on the matter. I look forward to a positive outcome of the case.

Russian Federation

On 27 September I wrote to the Russian authorities regarding the case of Vladimir Korolev, a correspondent with the weekly business newspaper *Permski Obozrevatel*'. Mr Korolev is held on charges of violation of Article 283 of the Criminal Code on 'Dissemination of State Secrets', and Article 137, 'Violation of the Integrity of a Private Life'. The maximum penalty for the charges is four years imprisonment. In my letter I asked for clarification of the reasons why these charges have been laid against Mr Korolev.

On 17 October, I contacted the Russian authorities regarding another murder of a media professional, Anatoliy Voronin, a business manager of Itar-Tass news agency, who was found dead in his apartment on 15 October. As with other similar cases this year, I asked for a regular communication of the findings of the investigations to the public.

Serbia

On 30 August, I appealed to Mr. Slobodan Jankovic, the Republican Prosecutor of the Republic of Serbia, to question the legality of a sentence handed down on journalist Slavko Savic. Mr. Savic, Senior Editor of *RTV Kursumlija* in Prokuplje, following an appeal against a previous verdict, received a sentence of four months imprisonment, with one year probation, for libel. In my letter I criticized the severity of the verdict and referred to the fact that as of 1 January 2006 the new Criminal Code eliminated imprisonment as a sanction for defamation, before the appeal verdict of Mr Jankovic's case was announced.

I was glad to hear that following my intervention, the Republican Prosecutor initiated the procedure of questioning the legality of Mr. Savic's second-degree sentence. He asked the Supreme Court of Serbia to order re-examination of the case. I hope that Mr. Savic's verdict will be lifted.

In close co-operation with the OSCE Mission to Serbia, I channelled my concern about new amendments to the Serbian Broadcasting Law. I support the Mission's call on the Serbian authorities to withdraw these recently adopted amendments, which give a legal basis to violate media freedom rights. The amendments relate, *inter alia*, to the scope of activity of the Republican Broadcasting Agency and the manner in which its decisions are implemented. I urge the Serbian authorities to seek additional input from stakeholders before submitting a new draft to Parliament.

Tajikistan

For the third time this year I have to refer to the suspension of the Persian language service of BBC radio on FM frequencies, which took place in January. The BBC received notification of its re-registration with the Ministry of Justice on June 26, but was still denied its broadcast licence by the Tajik Media TV and Radio Broadcast Committee on July 26. I have contacted the authorities on this issue on several occasions. The most

recent correspondence from the authorities refers to the lack of an inter-governmental memorandum of understanding between the UK and Tajikistan.

I ask the Tajik authorities to allow the BBC to resume broadcasting while negotiations regarding the intergovernmental agreement are underway.

Turkmenistan

Continuing the dialogue with the Turkmen authorities on the case of RFE/RL journalist Ogulsapar Muradova, I wrote to the authorities on 9 August requesting that the authorities re-examine the legislation that had allowed for the detention of Ms. Muradova, and others, on the grounds of their involvement in collection and dissemination of information. In my press release of 14 September, following the tragic death of Ms Muradova in custody, I stated that I regret that Ms Muradova will not have the opportunity to see through the appeal, launched at the end of August. I asked the authorities for transparency in the handling of her death.

On several occasions in connection with this case, the authorities of Turkmenistan have stated that Ms Muradova cannot be considered a journalist owing to the fact that she is not properly accredited according to the laws of Turkmenistan. My Office does not share this view. One of the annexes to this report sets out the position of my Office regarding the function of accreditation.

United Kingdom

On 16 October I welcomed the decision of the House of Lords, the UK's highest court that granted investigative journalists the right to publish unproven allegations in cases of public interest, provided that they have done their best to establish the facts. On 11 October, in a unanimous judgement, the Law Lords, in the case of *Jameel v. Wall Street Journal Europe*, held that the newspaper had the right to publish allegations about a foreign company whose bank accounts were monitored, to trace whether they were misused to finance terrorist groups.

I view this judgement as a step forward in the ongoing reform of libel provisions in the OSCE area. It is vital for the United Kingdom, where courts have been notoriously hostile towards journalists in the past.

The United States of America

On 26 September, I raised the lack of a 'federal shield law' that would allow for protection of journalists' sources and materials, on the occasion that freelance journalist and blogger Joshua Wolf was ordered to return to prison by a San Francisco Court of Appeal for contempt of a Federal Grand Jury. He refuses to produce the video footage that he took during a street protest in July 2005, which the police sought to obtain to assist an investigation. He was first found in contempt of court in August 2006 and served one month in prison.

It is my conviction that the Court should not have applied the harshest possible sanction to Mr. Wolf at a time when federal legislation on this issue is being vigorously debated,

while practically all States of the U.S. have already passed ‘shield laws.’ Notably the journalist was found in contempt of a federal court in California, where both the State Constitution and a special ‘shield law’ protects journalists from having to disclose their confidential sources and unpublished materials. I asked the Department of State to use its powers to help the Free Flow of Information Act 2006 – a federal bill with shield provisions – to be passed by Congress quickly.

Uzbekistan

On 2 August, I wrote to the Uzbek authorities on two matters. The first concerns the journalist and human rights activist Mutabar Tadjibaeva, charged on 6 March 2006 on 17 counts and sentenced to eight years in prison. My Office received a number of reports about the conditions Ms Tadjibaeva endures in prison. I have asked for further information from the authorities.

The second matter concerns a shipment of 100 books, published by my Office and sent to the OSCE presence in Uzbekistan in July. The books contain the materials of the 2005 OSCE Central Asia Media Conference. A government communications agency concluded that “different articles of the book have numerous violations of legislation of the Republic of Uzbekistan”, and decided to block the distribution of the books. I have asked for clarification on which parts of the publication are considered to violate which provisions of Uzbek law, finding regrettable such restrictions on information-flow within the OSCE region.

Assessment visit to Armenia

On 19-21 June, I made an assessment visit to Yerevan. The visit was made following an invitation of the Government of Armenia, and was co-organised by the OSCE Office in Yerevan. I was received by President Robert Kocharyan and I also had meetings with parliamentarians, government officials, journalists and with the NGO community. The aim of the visit was to assess the state of media freedom, giving special attention to the forthcoming changes in the legal framework, required as a result of constitutional amendments adopted in November 2005.

In my report, circulated to the participating States on 26 July 2006, I noted that Armenia has made significant progress in improving media legislation, but media pluralism remains limited to the independent, financially weak and less influential print media.

Despite the presence of opposition voices in some of the programmes, broadcast outlets do not consistently offer pluralistic information, even as state TV has been transformed into a public-service broadcaster and numerous private channels exist. In conformity with current legislation, all members of the regulatory bodies are directly appointed by the President of Armenia.

The print media is pluralistic, and news coverage is diverse, at times openly critical of politicians. However, as none of the outlets exceeds a circulation of 3-4,000 copies per day, the Armenian print media is exceptionally weak, playing a limited role in informing the public.

There remains a lack of transparency regarding media ownership. This is caused by insufficient ownership disclosure legislation.

Since 2005 there have been very few cases of violence against journalists. It is also commendable that no libel cases have been initiated for several years, although the complete decriminalization of libel is still pending.

The key recommendations made in the report relate to legal changes in broadcasting, distribution and licensing issues for print media, and improvements for access to information and the decriminalization of libel and defamation.

The final report can be downloaded from:

http://www.osce.org/documents/rfm/2006/07/20007_en.pdf

Access to Information Project

In May 2006 I asked the participating States to assist my Office in the collection of data, in order to develop a database of legislation and practices related to access to information issues.

My Office is also gathering information on the subject from other sources, including the OSCE field operations and media NGOs.

By the October 1st deadline, my Office had received more than 30 responses from Governments and other sources.

When sufficient data has been collected to enable analysis, my Office will prepare recommendations to all OSCE participating States. I expect to publish the final report in early 2007.

I would like to thank the Governments which have already shared their data with my Office. I would kindly invite those participating States which have not yet returned completed questionnaires, to do so as soon as they can.

A summary of the preliminary findings can be found at the end of this report.

Supplementary Human Dimension Meeting

On 13/14 July my Office, in cooperation with the Belgian Chairmanship and the ODIHR organized the Supplementary Human Dimension Meeting (SHDM) on the topic of Freedom of the Media: Protection of Journalists and Access to Information. This meeting provided a platform for NGOs, media workers and governmental officials to exchange and share recommendations and experiences on media freedom in the OSCE region.

Three working sessions addressed current challenges to freedom of the media:

- Access to Information;

- Freedom of Opinion and Expression: The role of voluntary professional standards in facilitating mutual respect and understanding;
- The Protection of Journalists: Administrative Measures.

The final report from the meeting can be downloaded from:
http://osce.org/conferences/shdm2_2006.html

Self-Regulation Project

Over the last months, my Office has undertaken a comprehensive analysis of the current situation regarding self-regulation mechanisms in the OSCE area.

The term 'self-regulation' refers to civil-society mechanisms, drafted by and for media professionals, that are independent from governmental control and that aim to uphold the quality and responsibility of the media. Self-regulation is essential because it fosters ethical standards and media quality while preserving editorial independence. It has also proved to be an efficient tool to promote cultural respect and mutual understanding.

Allow me to recall the main benefits of self-regulatory mechanism. Such mechanisms protect the right of the general public by providing a venue for complaints about unethical or bad journalism; they also protect the media by providing a way of demonstrate their responsibility vis-à-vis the public and the authorities. Self-regulatory mechanisms can thereby promote the decriminalization of defamation by being an antidote to judicial action against the media.

The preliminary results of our survey suggest that about half of OSCE participating States have some form of a self-regulatory body in place, while another eight participating States are discussing the introduction of such mechanisms.

On 28 September, together with the Head of the OSCE Presence in **Albania**, I welcomed the establishment of the Albanian Council on Media Ethics. Since 2000 alone, self-regulatory bodies have been created in **Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Georgia, Kosovo, Montenegro, Slovakia** and **Ukraine**.

Projects for establishing new self-regulatory bodies are underway in **Armenia, Croatia, Hungary, Ireland, FYR Macedonia, Moldova, Romania** and **Slovenia**. This suggests a new trend of development in this area, which is welcomed by my Office.

In order to obtain further data on the topic and to establish additional contacts with representatives of self-regulatory bodies, my Office participated on 14-15 September in the Annual International Meeting of Press Councils held in Sofia.

On 2 October, my Office held a side event at the Human Dimension Implementation Meeting on the topic of self-regulation. A representative from the *Netherlands Press Council*, Ms. Daphne Koene, and a representative from the *Bulgarian Media Council*, Mr. Ognian Zlatev gave presentations on the merits of self-regulation and the challenges faced by new and established self-regulatory mechanisms. An important element of the presentation was the fact that the 'satisfaction factor' for those persons, who filed a

complaint, is much higher in countries where a press council exists, because as much as 70 - 80% of the papers publish the ethics verdicts of the councils.

My Office is currently developing projects to assist participating States in establishing or enhancing self-regulatory mechanisms. In order to support new initiatives, a practical handbook reviewing best practices will be published next year. Additionally, a set of training courses will be organized to complement the previously mentioned activities.

I ask the participating States to contact my Office directly to register their interest in cooperation in this direction in 2007.

Accreditation Report

Following up the results of this summer's SHDM, my Office has completed a special report: "*Accreditation of Journalists in the OSCE participating States: Observations and Recommendations*". It offers recommendations to the OSCE participating States to improve accreditation practices in the OSCE area.

My Office has witnessed a growing number of instances where the misapplication of administrative procedures has imposed restrictions on the functioning of the media. In particular, the misuse of the accreditation function has prevented coverage of events deemed to be of public interest.

The report contains examples of the misperception of the function of accreditation. . It expands on the recommendations made in a June 2005 report¹, in which my Office recommended that "*accreditation should be used to facilitate access of journalists to officials and lack of it should not be used to deprive them from the possibility to work.*"

The report is included at the end of this report, and it can be downloaded from http://www.osce.org/documents/rfm/2006/10/21826_en.pdf.

Central Asia Media Conference and Training Event

On 19-20 October, my Office hosted the Central Asia Media Conference and Training Event, organized together with the OSCE Centre in Bishkek. As the participating States are aware, my Office has a successful history of regional Conferences in Central Asia and the South Caucasus. This year, in response to feedback from participating States and the media, my Office re-considered the concept and made adjustments to respond to changing needs.

The one-day conference took place 19 October and discussed "The Business of Media." The following day, my Office, in cooperation with the Eurasia Foundation, also conducted practical training for local media on management and business skills.

¹ "*Coverage of the Events and Governmental Handling of the Press During the Andijan Crisis in Uzbekistan*", http://osce.org/documents/rfm/2005/03/15195_en.pdf

A similar event for the South Caucasus region will take place in Tbilisi in early November.

I would like to thank the following delegations for the generosity in making these two events possible: **Austria, Germany, Ireland, The Netherlands, Sweden, Turkey and the United States.**

Press Officer Training

At the request of a number of participating States, my Office continues a project successfully launched last year as a pilot: "**Interaction between the media and state press services**". Its goal is to improve public access to government information by strengthening the relations between authorities and the media.

In the training seminars, international media experts assist press and public information officers to expand their knowledge on the effective management of a press service. They inform participants about general principles and legal foundations for interaction with journalists in democracies and provide them with an overview of international experience in this field. These seminars also give journalists an excellent opportunity to improve their professional skills and working ethics.

- This summer, together with the Office of the OSCE Project Coordinator in **Ukraine**, we completed an extensive training program for press secretaries and journalists in several Ukrainian cities. About 150 participants attended the seminars, which were held in Sebastopol, Kharkov, Donetsk and Odessa.
- In July, my Office, in cooperation with the OSCE Center in Baku, organized a three-day training course for journalists from the main **Azerbaijani** media outlets, as well as for spokespersons and representatives of the press services from key government bodies. The seminar was a follow-up of an earlier session held in Baku last year, which took place at the initiative of the Azerbaijani Foreign Minister.
- In September, the same workshop was held in **Kazakhstan**, jointly organized by my Office and the OSCE Centre in Almaty. The representatives of the official press services in Astana, including from the Presidential Administration, the Government, and the Parliament, as well as journalists from various Kazakh media outlets seized the opportunity to discuss major challenges in the domain of information exchange between media and authorities.

The feedback from participants was overwhelmingly positive and we look forward to developing the training further in 2007 to include self-regulation issues.

Projects & Activities since the last report

Human Dimension Implementation Meeting

On 2 October, I addressed participants of the 2006 Human Dimension Implementation Meeting in Warsaw during the Opening Plenary and Working Session on the topic “Fundamental Freedoms: Freedom of Expression, Free Media and Information”.

During the opening plenary, I stressed the importance of media democratization in the OSCE region as the process of transformation, where the custody and ownership of the media passes out of the hands of the State into those of society.

Several challenges to freedom of the media in the OSCE region were discussed during the first working session. These included the three main topics addressed in the SHDM in July, namely access to information, self-regulation to promote mutual respect and understanding, and administrative obstacles faced by the media. The session provided an important opportunity to present the violations and to give both, civil society groups and governments of participating States, the opportunity to debate the issues.

Media Twinning Visit to Belgium

On 23 October, I participated at an event organized by the Belgian Chair in Brussels. The Media Twinning Visit to Belgium, attended by 15 journalists and other media professionals, debated, *inter alia*, the role of the media in a democratic society, followed by practical information sessions and visits to various international institutions in Brussels.

I would like to express my gratitude to the Belgian Chairman-in-Office for the high profile given to freedom of the media issues in 2006.

Legal reviews

My Office continued to actively review media legislation in the participating States in the past months since my last report to the Permanent Council.

- Regarding **Kazakhstan**, my Office commissioned a legal review of the newly adopted amendments in the media law. I presented the review to a high-level delegation from Kazakhstan during their visit to Vienna. On receiving the review, the delegation agreed to examine the recommendations therein with a view to updating the amendments.
- Regarding **Ireland**, my Office reviewed the draft defamation law, as well as provisions relating to freedom of expression and media, in the new draft law on privacy.
- Regarding **Azerbaijan**, my Office reviewed a proposal for a new defamation law. I chaired a follow-up Roundtable, organized by the OSCE Office in Baku on 11 October to discuss this draft.
- This month my Office also reviewed the **Armenian** draft plan on Digital Radio and Television Broadcasting Implementation. A Roundtable to discuss the recommendations will take place in Yerevan in November.

All RFOM legal reviews can be downloaded from <http://www.osce.org/fom/documents.html?lsi=true&limit=10&grp=294>

Internet

RFOM has conducted Internet training for young journalists in **Tajikistan** and **Kyrgyzstan** this summer. The trainings took place in Osh and Khujand and were implemented by IREX, the International Research & Exchanges Board.

A positive indication for the sustainability of these projects is that some training sessions were conducted by previous project participants.

The results of the training sessions, including some investigative pieces on corruption in the field of education, can be downloaded from <http://www.nashaversia.net>.

Cooperation with other organisations

ICTY

Following the constructive exchange on 7 September before this forum with the Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Ms. Carla Del Ponte, I have submitted a position paper to the Chief Prosecutor which contains proposals to amend some of ICTY's procedures. The changes could empower both prosecution and judges to spare from contempt-of-court charges journalists who have reported about issues of legitimate public interest at the time of the publication, while fully preserving the integrity of the witness protection.

In her reply 18 October, the Chief Prosecutor elaborated on the practice of taking into account the public interest dimension in the work of the Court. I was pleased to be informed that Ms Del Ponte forwarded the relevant proposals to the Judges and the Registrar of the ICTY, which are the competent bodies for considering changes to the Rules.

European Union

Following up on my visit to the European Commission and Members of the European Parliament in May, I wrote a letter to the Rapporteur of the European Parliament's Committee on Culture and Education, MEP Ms. Ruth Hieronymi, regarding the draft Directive on audiovisual media services². The draft Directive, presented by the European Commission, is intended to replace the current 'Television without Frontiers' Directive. The draft is under discussion in a number of committees in the European Parliament.

In the letter, I commented on some technical issues in the draft, particularly those which relate to the free flow of information in the digital era. I addressed the newly established concept of 'non-linear audiovisual media services' and the impact of the proposals on

² "Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities {SEC(2005) 1625} {SEC(2005) 1626}"

media freedom on the internet. My Office also published a position paper on this issue, which examines these concepts in further detail.

The position paper is available for downloading at http://www.osce.org/documents/rfm/2006/10/21248_en.pdf

Göteborg Bookfair

In September I was invited to the Göteborg Bookfair in Sweden, where I participated in a panel to discuss recent issues in the field of freedom of expression. It was a great honour to share a panel with Turkish writer Orhan Pamuk who, only two weeks ago, was awarded the 2006 Nobel Prize in Literature. I hereby congratulate Mr. Pamuk for this outstanding achievement.

Planned activities for the next period

In November, I will give a presentation to the Association of European Journalists in London on the topic of Access to Information.

My Office is also supporting a conference, organized by the OSCE Spillover Monitor Mission in Skopje, on 9-10 November, focusing on the practical aspects of the implementation of the recently adopted Access to Information Law in **fYR Macedonia**.

In December, at the request of the Republic of **Kyrgyzstan**, my Office in cooperation with the Press and Public Information Service plans a study visit for Kyrgyz journalists to visit the OSCE structures in Vienna.

Together with the OSCE Mission to **Moldova**, my Office is planning a training session for judges on defamation issues. The training is planned for the final quarter of 2006.

We are looking forward to implementing a training seminar for press secretaries and journalists in **Tajikistan** this year. In the framework of the same project, we also plan to run a follow-up training course on the interaction between media and governmental bodies in Almaty, **Kazakhstan**, before the end of the year.

Two further activities are planned to take place in **Georgia** before the end of this year: first, a training course on Basics of Management for Journalists in Ajaria and, second, a series of roundtable events to support the elaboration of the new Code of Conduct for Broadcasters, that will be held in several locations around the country.

In cooperation with the Central European University in **Budapest**, I am planning to hold an expert Roundtable on 1 December on the media freedom implications of the draft EU audiovisual media services directive.

With respect to freedom of the Internet, my Office will conduct a **study on Internet governance** in the OSCE region. The first expert meeting is planned for 15 December in Paris. This project has been made possible by generous donations of **France** and **Germany**.



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

25 October 2006

***“A Comprehensive Review of Laws and Practices on Access to Information
by the Media in the OSCE participating States”.***

Preliminary assessment of the state of legislation and practice

In May 2006 I asked the participating States to assist my Office in the collection of data, in order to develop a database of legislation and practices related to access to information issues.

My Office is also gathering information on the subject from other sources, including the OSCE field operations and media NGOs.

By the October 1st deadline, my Office had received more than 30 responses from Governments and other sources.

I would like to thank the Governments which have already shared their data with my Office. I would kindly invite those participating States which have not yet returned completed questionnaires, to do so as soon as possible.

Project Overview

The project has three areas of focus:

- 1) *Freedom of Information*: Access to information held by government bodies by journalists and media
- 2) *State Secrets and other Legislation*: Legislation for providing sanctions when information that is restricted is obtained or published
- 3) *Protection of Journalists' Sources*: Protection of journalists' sources from disclosure.

Summary of findings to date

Freedom of Information

Overall the trend on access to information is positive. The vast majority of OSCE countries (44 of 56) have adopted some form of a national law giving specific rights to citizens and journalists to obtain information from government bodies. The right has existed in some countries for a long period (in Sweden since 1766, in Finland since 1951, in the United States since 1966, in Norway since 1970) while a majority of countries in Central and Eastern Europe have adopted it within the past five years (Serbia and

Switzerland in 2004, Germany, Montenegro and Azerbaijan in 2005, the former Yugoslav Republic of Macedonia in 2006).

State Secrets and Other Legislation

All participating States have some legislation on the protection of confidential data and state secrets. Typically this is found in the criminal code but can also exist as free-standing legislation that sets out procedures on its use and protections. Some countries make useful distinctions between sanctions for leaking ordinary governmental data and national security related state secrets.

In a number of participating States, the criminal sanctions for breach of confidentiality do not differentiate between the liability of the officials who were obliged to keep secrets as part of their job description, and that of civilians, among them journalists, who obtained, passed, or published leaked confidential data. This amalgamation is probably a serious impediment on free discussion of public issues, among them corruption.

When sufficient data on these provisions are received from the participating States, my Office will assess their impact on the ability of the media to access official information of public interest.

Protection of Journalists' Sources

A large majority of OSCE participating States have adopted legal provisions to prevent courts from forcing journalists to disclose the confidential sources of information, exception in certain compelling circumstances. However, an initial assessment of the legislation and practice showed that several participating States do not protect journalists against court orders to reveal their confidential sources.

Next steps

My Office plans to finish the collection of data by the end of this year. The next steps would include translating submissions and texts of relevant provisions; compiling and formatting the database and preparing the analysis and recommendations to OSCE participating States. Recommendations will focus on establishing best practices and promoting legal reform.

The Office plans to issue the final project report in early 2007.



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

25 October 2006

Special Report:
Accreditation of Journalists in the OSCE area
Observations and Recommendations

Background

The Supplementary Human Dimension Meeting held in Vienna July 13/14 2006 on the topic *Freedom of Information and Protection of Journalists* raised a number of questions regarding legislative, regulatory and administrative frameworks for journalists in the OSCE area.

In the report of June 2005 *Coverage of the Events and Governmental Handling of the Press During the Andijan Crisis in Uzbekistan*³, the Office of the OSCE Representative on Freedom of the Media (RFoM) recommended that “*accreditation should be used to facilitate access of journalists to officials and lack of it should not be used to deprive them from the possibility to work.*” This recommendation was made in response to the governmental revocation of visas and accreditation of foreign journalists who travelled to Uzbekistan to cover the developments.

Since then, RFoM has observed a growing number of instances in the OSCE area where the misuse of accreditation has prevented coverage of events deemed to be of public interest. This report, therefore, expands on the recommendations made in the June 2005 report and offers recommendations to the OSCE participating States to improve the handling of accreditation in the OSCE area.

The function of accreditation for journalists

The accreditation system was designed to allow journalists access to specific venues with limited space as well as access to certain ‘closed zones’, including war zones and places deemed dangerous, or sealed off by the authorities for safety reasons. It also allows journalists to participate in official events and visits.

³ http://osce.org/documents/rfm/2005/03/15195_en.pdf

For example, journalists who wish to receive an annual accreditation to cover the work of the OSCE in Vienna are required to fill out an OSCE Press and Public Information Section *Accreditation Form* and to present a recent letter of confirmation from their employer or a copy of their Austrian press card. The issued press badge allows access to the second floor cafeteria area beside the Neuer Saal at the Hofburg during meetings of the Permanent Council, the Forum for Security Co-operation and other meetings, as well as to OSCE press conferences.

Journalists who are not accredited at the OSCE may usually obtain temporary admission badges to the OSCE premises, unless space is restricted, when priority is given to accredited journalists. They must present a valid press card at the security desk (*see <http://www.osce.org/press/13222.html>*).

Accreditation therefore, offers journalists access to scarce resources, referring to limited space in a venue or access to the limited time of public officials. On the occasions where a venue cannot accommodate, on grounds of safety, all journalists wishing to attend a press conference, the accreditation system allows a broad range of journalists, representing a wide range of interests and opinions, to cover the same event. Pluralism can be maintained by issuing accreditation to journalists on a first-come, first-served basis, where selection for accreditation is made impartially, and where both pro-government and opposition views are granted equal access.

For some press events, legitimate security concerns require a more robust system of accreditation than a notification-type system would allow for, owing to the need for increased security checks on personnel wishing to enter, for example, the press gallery of a parliament building. In this case, additional background security checks would reasonably be undertaken on a journalist and its representative bureau before accreditation is granted.

Obtaining accreditation

The example above illustrates one method for journalists to obtain accreditation for OSCE events. Throughout the OSCE area, accreditation is handled in a number of different ways. Sometimes domestic journalists are required to apply to a national body, such as a national press council, which can issue a press card. In the cases where additional accreditation is required, either on grounds of security or because a quota system is in place, the press card allows journalists to apply for accreditation and allows the organizers to ensure pluralism in the composition of the press corp.

Procedures to accredit international journalists vary. In some OSCE participating States countries an application for accreditation is made directly to the Ministry of Foreign Affairs (for example, in **Russia** and **Belgium**) while in others, an independent body is responsible (for example, in the **UK** and **France**.)

The misuse of accreditation as a work permit

A common misconception about the accreditation system is the notion that it has a 'permissive' function – permissive in the sense that a government or other regulatory body has the right to grant, deny or revoke a journalist's accreditation. By applying the same rules to accreditation as for a work permit, the government exercises undue control over journalists.

An example of a misunderstanding of the function of accreditation was demonstrated in the regulations governing the activities of foreign journalists in **Uzbekistan** (Resolution No 33, adopted 24 February 2006). The provisions of the resolution affect both nationals and foreigners working in the media and states clearly what foreign journalists are or are not allowed to report. Additionally, the resolution allows the MFA to issue warnings, cancel accreditation, annul visas and expel foreign journalists from the country who do not comply with these provisions. Further, Uzbek nationals who work in a technical capacity with unaccredited foreign journalists are now liable to prosecution.

A further example of the misapplication of the work permit was observed in **Belarus** in June 2004, when the Belarus Committee for State Security (KGB) deported a Ukrainian journalist for allegedly violating regulations governing foreign citizens' stay in the country and for biased coverage of social and political events in the country. Mikhail Podolyak, chief editor of the opposition newspaper *Vremya*, was deported by KGB officials, having woken him at 7am and given him 15 minutes notice to pack his belongings. Mr Podolyak had his visa, temporary residence permit and accreditation revoked and was banned from entering Belarus for five years, even though he was married to a Belarusian and had lived and worked as a journalist in Belarus for 13 years.

As the applications for accreditation for foreign journalists is made directly to the Ministry of Foreign Affairs in Belarus, it is unlikely that Mr Podolyak would receive accreditation in the future.

Journalists travelling to the **United States** on business must obtain an I-visa (a journalist's visa) from the Homeland Citizenship and Immigration Services Bureau, part of the Department of Homeland Security. This measure was created in the 1950's, but rarely imposed until 2003. However, from May 2003, dozens of expulsions took place, mostly from Los Angeles, where border police started refusing entry to journalists without the I-visa. Examples of cases include Rachael Bletchley (*The People*, Britain) in October 2003, Sue Smethurst (*New Idea*, Australia) in November 2003 and Elen Lappin, a freelance journalist from Britain in May 2004. The requirement for a special visa for journalists in this instance serves the same function as a work permit, which carries with it an unnecessary permissive character.

Accreditation should not be used as a general work permit for journalism, only as facilitator of the work of journalists. Governments should facilitate the work of journalists by adopting procedures that enable journalists to work in the host country, including the timely issue of visas. Governments should abolish regulations that impose an additional layer of permission to media professionals.

The misuse of accreditation as a mechanism by which to control content

Because accreditation is the mechanism that enables a broad spectrum of journalists to report on events of public interest and to allow them to comply with security arrangements, it should not be used by official bodies as the means to select preferred journalists on the basis of political affiliation or as a reward for presenting a certain account of events.

In **Russia** in April 2006, the Moscow City Duma seized the accreditation card of Alla Tuchkova, a reporter from the Agency of National News following a critical report on 5 April concerning voting procedures in the Duma. The head of the Duma's press service threatened to revoke Ms Tuchkova's accreditation, should she refuse to deny the content of her report. Ms Tuchkova did not issue the requested denial and the accreditation was indeed revoked.

According to the rules of accreditation of journalists in the Moscow City Duma, official procedures must be followed before a journalist's accreditation can be revoked. Further, art 48 of the Russian Media Law states that accreditation of journalist can only be revoked by a court decision. Ms Tuchkova's accreditation has since been reinstated, following an intervention from local deputies, who cited the illegality of the revocation in accordance with the Russian media law.

In a similar case in **Uzbekistan**, the Uzbek MFA stripped Deutsche Welle correspondent Obid Shabanov of his foreign journalist accreditation for alleged inaccurate reporting in a story published on February 1st. The authorities stated that the journalist had been provided with an official account of events, but had chosen to ignore the information. As there is no means for foreign journalists to appeal the decision either to the MFA or through the courts system, the journalist cannot be re-accredited.

In **Turkmenistan**, the OSCE Centre in Asghabad invited a group of local and foreign journalists to the opening of a conference on sustainable tourism development in May 2006. Following a request to the Centre to provide the names of the invited journalists to the authorities, the MFA objected to their participation, citing insufficient information regarding their accreditation as the reason for the objection.

The journalists in question were representatives from Turkmenistan, as well as from international media, including from Pakistan, France, Turkey and Iran. Many of those on the list have been working in Turkmenistan for some time and were on the list of those typically invited to the Centre's events.

Accreditation should not be the basis on which governmental bodies decide whether to allow a particular journalist to attend and cover a public event. Further, the threat of revocation of the accreditation for an event should not be used as the means to control the content of critical reporting.

Arbitrary application of accreditation procedures

Accreditation procedures differ widely across the OSCE region. For example, **the Russian Federation** has a set of clearly defined procedures that set out accreditation procedure for foreign journalists, managed by the Ministry of Foreign Affairs and available on the Ministry's website; by contrast, the **United Kingdom** does not have any defined procedures and the management of it is outsourced to an agency independent of the Foreign & Commonwealth Office.

The issue is not that procedures differ widely; rather that procedures once adopted should be applied consistently and fairly.

In a case in **Canada** in 1999, Robert W. Gauthier, publisher of the National Capital News, applied for membership in the Canadian Parliamentary Press Gallery, a private association that administers the accreditation for access to the precincts of the Parliament. He received a temporary pass that did not provide the same access as a permanent membership, since it denied, among others, access to press communiqués, or the right to take notes during debates in the Parliament. Despite numerous applications, Mr Gauthier was only ever granted temporary passes ranging from a few weeks to six months. No reason was given for denying him full access.

Following appeals to the Federal Court, the Bureau of Competition Policy, and the Provincial Court for a review of the decision of the Press Gallery, his complaints were turned down. Finally, Mr Gauthier filed an appeal to the Office of the United Nations High Commissioner for Human Rights (OHCHR). The Human Rights Committee of the OHCHR concluded that the restriction of the publisher's access to the press facilities in the Canadian Parliament amounts to a violation of his rights under article 19 of the Universal Declaration on Human Rights and urged the Canadian authorities to re-examine the decision of the Press Gallery.

Positive example of addressing arbitrariness in the accreditation system

In May 2006 the head of the Ivano-Frankivska local administration in **Ukraine** announced the intention to change an arbitrary system of accreditation that had been proposed by the newly elected city council in an earlier session. A decision had been taken by the newly elected local council that would allow the council to decide on a case-by-case basis whether or not to admit journalists to the council sessions. Following criticism from local media, the mayor proposed the changes in order to demonstrate the transparency of the work of the council.

The guidelines for issuing accreditation should be drawn up with the aim to promote pluralism, should be transparent and available to the public and should be applied impartially, without arbitrary exceptions. Refusal of accreditation should be accompanied by the right on the part of the applicant to dispute the reasons for the refusal.

Granting of accreditation under selective conditions

The OSCE Commitments underline the civic nature of journalism, which entitles civilians to fulfil the function of freelance or Internet journalists and this right allows civilians to interact both with the local and international media. Requirements for formal training or education in order to work as a freelance journalist are not envisaged. However, we have witnessed instances where the authorities have denied accreditation from journalists based on their lack of formal training.

In **Turkmenistan** in March 2006, the authorities questioned the validity of the claim of two stringers for Radio Free Europe/Radio Liberty, Meret Khommadov and Yumadurdy Ovezov, that they had the same rights as other journalists, following an incident that led to their detention for 15 days. In an official reply from the Turkmen authorities, it was claimed that because these persons did not have any formal journalistic education or training, that they could not be considered journalists.

This view of the Turkmen authorities has been confirmed in recent statements to the Permanent Council in connection with the status of the Turkmen RFE/RL reporter, Ogulsapar Muradova, who recently died in custody. The view of the authorities is that Ms Muradova cannot be considered a journalist as she was not properly accredited according to the laws of Turkmenistan.

Accreditation is the means to promote diverse reporting and should not be made dependent on unrelated factors, such as education or training. Legislation that has a permissive nature over the issuance of accreditation should be re-examined in order to maintain pluralism in the press corp.

Conclusions

The participating States have made commitments to facilitate the work of journalists, and have agreed to ensure that a number of procedural mechanisms are in place to assist them in their work⁴. Procedures related to issuing visas and accreditation, the right to transmit information abroad, travel within the country, access to officials and maintaining public and private contacts are all provided for in the OSCE commitments.

I urge all participating States to examine their accreditation procedures in the light of this report and to take the necessary measures to create an environment where legitimate security concerns are balanced against commitments to freedom of expression.

⁴ Helsinki Final Act 1975; Concluding Document of the Madrid Meeting 1983; CSCE Vienna Follow-Up Meeting 1986.

Recommendations

- *Accreditation should not be used as a general work permit for journalism, only as facilitator of the work of journalists. Governments should facilitate the work of journalists by adopting procedures that enable journalists to work in the host country, including the timely issue of visas. Governments should abolish regulations that pose a required further layer of permission to media professionals.*
- *Accreditation should not be the basis on which governmental bodies decide whether to allow a particular journalist to attend and cover a public event. Further, the threat of revocation of the accreditation for an event should not be used as the means to control the content of critical reporting.*
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http://www.osce.org/documents/rfm/2006/10/21826_en.pdf