



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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**Communique by the OSCE Representative on Freedom of the Media
on criminal defamation laws protecting foreign heads of state**

Criminal defamation laws, meant to protect honour and dignity from untrue or other kinds of libelous statements exist in many of the OSCE participating States. These archaic laws have been a common means of legal pressure on the media. Regardless of whether latent or actively applied, criminal defamation laws are generally used to protect the powerful from criticism. The threat can lead to self-censorship. Laws protecting the dignity of foreign heads of state are especially problematic. Journalists faced with the criminal liability for insulting foreign heads of state are typically not allowed to present truthful facts in their defence.

According to [2012 Council of Europe](#) and [2015 International Press Institute](#) studies, 14 out of 47 European countries have criminal provisions for defamation against foreign heads of state, monarchs, foreign ministers and the like, often with prison terms as a punishment. There is a need to expand the data to include all OSCE participating States.

Media freedom and pluralism also depend on the freedom of journalists to report on and criticize all, including the most senior public officials. Not only do the press and other media have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the media would be unable to play its vital role of “public watchdog.”

It has been a strong position and consistent policy of the OSCE Representative on Freedom of the Media to promote the abolition of all criminal defamation laws. This Office shares the position of the European Court of Human Rights, that the limits of acceptable criticism are wider with regard to a politician acting in a public capacity than in relation to a private individual.

Public figures must display a greater degree of tolerance, especially when he or she makes public statements that are subject to criticism. While heads of state, including heads of foreign states, are certainly entitled to have their reputation protected, the requirements of that protection have to be weighed against the interests of open discussion of political issues. Therefore exceptions to the right to freedom of expression must be interpreted narrowly.

To confer a special legal status on such figures, shielding them from criticism solely because of their function or status and irrespective of whether the criticism is warranted, provides them with a special privilege that cannot be reconciled with democratic practice. A civil law defence is a sufficient instrument to protect one’s reputation and compensate possible harm made.

Therefore the Representative on Freedom of the Media recommends that the OSCE participating States:

- (i) recognize that wherever they exist, criminal provisions that protect heads of foreign states impinge on the right of media to freely publish news as well as the public's right to receive information and ideas;
- (ii) accept that criminal provisions must be interpreted in the context of international obligations and best practices in the OSCE region on media freedom;
- (iii) encourage legislatures to repeal laws shielding of heads of foreign states from criticism solely because of their function or status.

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