



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

-CHECK AGAINST DELIVERY-

11 December 2003

Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

This is my last report to the OSCE Permanent Council since having been elected in 1997 by the then 54 Foreign Ministers as the Representative on Freedom of the Media. I served for two three-year terms. Six years ago there was great hope in the world for those countries that came from a very dramatic past where freedom for writers and journalists was non-existent. As a publisher I had brought to the public some of the authors who were forbidden in their own countries. Back in the nineties we all felt confident that we would be able to overcome the burden of the past in the structure of many media outlets in the newly emerging democracies.

At that point it seemed that media freedom had taken hold in almost all OSCE participating States and what was then needed was to cement this successful start with vigorous monitoring and support, mostly of a legal nature. Thus, my two-fold work started.

We had not foreseen that in the following six years the situation would change not for the better: many of the new governments used new and old methods of countering criticism of their policies. As a result, the climate changed. The new media openness in some states was replaced by one of nervousness, self-censorship and a constant fear of oppression. This difficult situation for the media was exacerbated by the murder of thousands of citizens on 11 September 2001.

As a result of a shift in priorities among the OSCE participating States, civil liberties, including freedom of expression, were pushed to the sidelines by what many countries believed were more pressing needs. Many of the new priorities were justified but we also saw the misuse of the 11 September tragedy by certain governments for their own selfish reasons.

An organisation that prided itself on being a community of declared democracies, in 2003 changed its policy outlook more towards global threats to security than to its deteriorating human rights record.

I have to declare here and now that after six years I leave the OSCE with a record in some of our member states where the new reality concerning freedom of the media is more problematic today than when I took this job in 1997. Who at that time would have thought that in developing democratic Russia the Kremlin would again have direct or indirect control of many of the print media and of most of the electronic media? Who could have predicted that the just-concluded Russian State Duma elections would be so widely criticised for failing

to meet international standards precisely because of the lack of media independence, balanced coverage and the absence of a broad range of information for voters, thus casting a dark shadow, perhaps for years to come, over Russia's true democratic intentions? Who at that time would have foreseen, that an elected Prime Minister of a founding member of the European Union would organise media legislation so as to help his political agenda and his and his family's economic interest?

It is with great concern I view last week's passage in Italy of a new media law. As far as I understand, the law would allow Prime Minister Silvio Berlusconi's family holding company to buy into radio and newspapers starting in 2009. Prime Minister Berlusconi, through his political office and his business interests, already has direct and indirect influence over an estimated 95 percent of Italian TV. In this respect, Italy is setting a very dangerous precedent that could seriously influence the media structure in other OSCE states, not to mention it also undermines the position of this Office regarding media monopolisation.

Let me now focus on some of the methods that are being used in the OSCE region by both governments and big business to stifle public debate and curtail independent journalism.

As you know since my first reports to this forum from 1998, we encountered what I called "**structural censorship**." Many of the governments in order to avoid open censorship introduced a series of indirect methods of harassment of media, which have a chilling effect and often force journalists and editors to revert to self-censorship. Structural censorship encompasses using the tax police, the fire department, office space owners, distribution and printing companies, to exert pressure on the media from either uncalled for and numerous harassing inspections to the denial of services under different economic pretexts.

In the end, journalists and editors are forced to compromise their editorial policy so as to be able to continue to publish and broadcast. I have mentioned dozens of such cases in this forum, I will not repeat them, but all of you know what I am talking about. One newspaper, for example, in an OSCE participating State survived over forty tax inspections in one year and finally was forced to completely change its attitude towards the authorities. It has not seen a tax inspector ever since.

"**Censorship by killing**" still remains a threat in the OSCE region, albeit ours is one of the areas in the world with the lowest number of killed journalists: this year two were murdered in Russia. Nevertheless, even one case of such an ultimate form of censorship is extremely disturbing. Of note is also the fact that rarely is anyone charged with murdering a journalist. Often these cases linger for years with no arrests ever made.

When these threats especially "structural censorship" do not produce the required effect, direct legal harassment through the use of both criminal and civil codes is put into gear. The weapon of choice here is usually libel legislation. That is why I have taken a very strong stand concerning criminal defamation and insult laws that provide undue protection for public officials.

In late November I held a round-table in Paris on this matter and together with *Reporters sans frontières* issued a set of recommendations that are distributed to you today. They call, among other things, for the decriminalisation of defamation in OSCE participating States. That is why I continue to stress that the two main pillars of a democracy are free media and the independence of a country's legal institutions.

Libel is not the only legal means to target an offending journalist. When all else fails, a criminal case might be fabricated that could involve any allegedly unlawful activity: from bribery to having sex with a minor. Again, I have brought to the attention of this forum several such cases. The depth of cynicism of some of the governments that belong to this organisation never ceases to amaze me. Journalists who had the courage to criticise these governments are locked up for years under trumped up charges that on the face of it have nothing to do with exercising one's right to freedom of expression. Just two names: Sergey Duvanov serving time in Kazakhstan and Ruslan Sharipov who is incarcerated in Uzbekistan. Even after I leave this job, I will continue fighting for their freedom.

There is one country in the OSCE region where I have basically put all the activities of my Office on hold. This is Turkmenistan, a dictatorial regime in our organisation, where the only function of the media is to glorify the President-for-life and destroy his opponents. Until civil liberties are reinstated I do not see any reason to work with the government. Of course, I will continue defending those reporters who run afoul of this racist dictatorship.

Now, I will provide you with a review of some of the themes we have worked on for the past years.

Freedom of the media and the Internet. This is becoming an important topic, with governments and civil society debating the future development of information technologies and the pros and cons of this global network. I held a meeting of experts this June in Amsterdam where we all agreed that illegal content must be prosecuted in the country of its origin but all legislative and law enforcement activity must clearly target only illegal content and not the infrastructure of the Internet itself.

Another theme I have been pursuing concerns **media in multilingual societies**. Our latest effort is a publication issued in several languages on what is happening in this field in five OSCE countries: former Yugoslav Republic of Macedonia, Luxembourg, Moldova, Serbia and Montenegro and Switzerland. The five country reports were presented at a conference in March in Bern, Switzerland. I also presented them in Belgrade in October. In the global future of this new electronic century there will be no completely monolingual country in the OSCE world or elsewhere.

Journalists working in conflict zones has been an ongoing theme that I focused on over the past years. There are two dimensions here: the security of those reporters who follow events from the frontlines, often filing from conflicts where dividing lines are blurry and combatants represent diverse groups and communities. Another dimension concerns the relationship that is established between journalists and the military, such as was the case during the war in Iraq.

How to balance fair and unbiased reporting with security when covering a conflict area is a theme that all of us, inside and outside the OSCE, should continue to discuss. Any military action by a democracy is preceded by a public debate and is followed scrupulously only if the public has access to all kinds of information coming from different sources. This established practice should not be jeopardised.

We all understand that at the very moment a democracy sends its soldiers to war, the pros and cons debate becomes limited since we all side with our fellow soldiers. But any military action a democracy feels it has to take needs to be debated critically.

After 11 September, national security matters started again creeping in as reasons to censor the media. Overly intrusive legislation is being passed in several OSCE states. Some media outlets feel the full burden of being targeted for allegedly undermining national security. When I point an accusing finger at a country to the East of Vienna that country points its own finger to the West: if they can get away with it why can't we? I believe that in the developed democracies the glitches in the system that we come across in the end will be fixed through the efforts of civil society assisted by an independent judiciary and a vigilant media. However, these glitches still set a bad precedent for the developing democracies, where civil society is weak, independent judiciary mostly non-existent and media hounded into submission. That is why, no matter how often I am criticised for raising what might appear to be minor issues, I will urge my successor to do the same. A minor issue in the US that will be ironed out in a week or two may set a precedent in another country that will become law for years to come. We know that this must be avoided.

This year I have started looking at the business side of media and how it may affect editorial policy and independent journalism. Again, this is not strictly a black and white issue, shades of grey prevail here, that is why it is essential to be very careful when making recommendations and offering advice. This July I have proposed a set of *Principles to guarantee the editorial independence of media* in Central and Eastern Europe and in Central Asia. These principles concern media that have been or are in the process of being acquired by Western conglomerates, as is happening in Bulgaria, the former Yugoslav Republic of Macedonia, Croatia, in several other OSCE participating States.

These *Principles* set out the criteria that the media owners take upon themselves to adhere to once they are in a position to financially control a media outlet/s in one of the developing democracies. For the time being, only two media giants have signed up: the German *Die WAZ-Gruppe* and the Norwegian *Orkla Media AS*, although I have invited many more to support these *Principles*. I hope that my successor will continue this lobbying effort so that we will be able to ensure that pluralistic media takes hold in all of our countries.

Before I leave this Office, I will present to you a report on the *Impact of media concentration on professional journalism*. This study looks at the situation in four EU countries: Germany, Finland, United Kingdom, and Italy; three new member-states: Hungary, Lithuania, Poland; and one applicant country: Romania.

As you know besides our Vienna work I have developed, thanks to donations by participating States and Open Society Institute, some very concrete projects dealing with the media future of the younger generation: five years ago I started several school newspapers in Central Asia.

Later I moved to my largest project for the young people: *Defence of Our Future*. This was a long-term project that has ended in 2003 after three years on the road in south-east Europe. As you know, it was called the *mobile.culture.container*. It concentrated more and more on media: establishing student newspapers, initiating radio and video groups. I hope that these initiatives will continue to foster understanding between the young in a region only a decade ago torn by war. That is why I call our project *In Defence of Our Future*, its focus was on the 14 to 18 generation who now are facing a dilemma: either to stay where they were born and

to help rebuilt their countries or to emigrate. *In Defence of Our Future* was geared at persuading them to stay.

This report, our 2002-2003 Yearbook *Freedom and Responsibility* and our regular **Central Asian conference** review are the latest publications of my Office. During my tenure we have published over three dozen books in several languages and in several countries. I gather this is a first for any OSCE institution.

I would also like to announce here the establishment of the **Veronica Guerin Legal Defense Fund** that would provide support to journalists who are being prosecuted in OSCE participating States. The Fund is named after Irish journalist Veronica Guerin who covered organized crime for Ireland's *Sunday Independent*. Guerin was killed on 26 June 1996. The purpose of the Fund is to assist, through voluntary donations by OSCE participating States, human rights organizations and individuals, in making available appropriate legal defense for those reporters who are in need of it. Relevant cases involving journalists would be referred to the Fund by OSCE field presences and *bona fide* non-governmental organizations. The Fund would be administered by the Office of the Representative on Freedom of the Media.

All of us at some point leave to new pastures but we do have a legacy. It is in our work, in our books, in the effect we had, or even in a lack of one. That is also a legacy.

I leave you with a fully developed and well-organized Office of the Representative on Freedom of the Media working in accordance with a functioning mandate in support of free media in the OSCE region. An Office that is well known and respected and staffed by a dedicated group of professional experts from half a dozen countries. I very much hope that our work was not in vain and will continue under a new Representative.

One last remark: one of my staff members just came back from a country where OSCE observed how in a very cynical fashion election results were pre-organized. My Office was looking into the terrible situation that the journalists where in. On several occasions my staff member was informed especially by journalists how much they need the attention of OSCE institutions, of Freedom of the Media and ODIHR, to their problems and the dangers they face, and how much they were disappointed by the reduced interest many journalists and public figures in the West have in their extremely dangerous situation.

Thank you as I bid farewell to all of you after six years as the first OSCE Representative on Freedom of the Media.