

■ Yearbook 9

2007

THE REPRESENTATIVE ON FREEDOM OF THE MEDIA



Organization for Security and
Co-operation in Europe

The Representative on
Freedom of the Media

The views expressed by the contributing authors in this publication are their own and do not necessarily reflect the views of the OSCE Representative on Freedom of the Media.

Edited by Christian Möller

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The OSCE Representative on Freedom of the Media

Vienna 2008

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Preface

Miguel Angel Moratinos

It is a great pleasure to introduce readers to the 2007 Yearbook of the Representative on Freedom of the Media. The Yearbook is most appropriately entitled “Freedom and Responsibility” thus expressing the balance that the Spanish Chairmanship sought to strike between defending freedom of expression as a fundamental right and pledging for its responsible exercise in the public sphere. I am glad to say that this approach was instrumental in contributing to finding a common response to some of the most divisive issues that in this realm have affected the OSCE region in recent years. Particularly, I have in mind the so called cartoon crisis in 2006 which Spain together with other countries sought to defuse precisely by advancing the principle that “freedom has to be exercised with responsibility” – without of course incurring into imposed censorship.

The activities carried out by the Representative on Freedom of the Media and his Office in 2007 were also in line with the overarching theme chosen by the Spanish Chairmanship for the OSCE Human Dimension: “Diversity and Participation in Pluralistic Societies”. Starting from the acknowledgment that our countries are becoming increasingly diverse, Spain wanted to move beyond this factual recognition towards devising a strategy to accommodate diversity through participation in political systems based on democratic values and principles. Obviously, the media, as most relevant channel for participation, have an essential role to play here, both reflecting diversity and ensuring that all members of our societies, without distinction, have equal access to information.

A good example of the complementarities between the OSCE and the Initiative of the Alliance of Civilizations, co-sponsored by Spain and Turkey under the auspices of the United Nations, is the fact that media figured as a prominent topic in the deliberations and action-oriented decisions of the First Alliance of Civilizations Forum, held in Madrid on 15 and 16 January 2008. In fact, together with mutual respect and understanding, youth, migration and education, the media are one of the pillars sustaining our Alliance. In Madrid several projects were approved in this regard, the most prominent ones being a multi-million dollar Media Fund, a Media Literacy Education Programme and a Rapid Response Media Mechanism. Their aim is to use the media as a bridge between cultures and religions, thus countering misconceptions and misrepresentations of the other.

Taking into account the high priority accorded by the OSCE Spanish Chairmanship to tolerance and non-discrimination issues, the Representative's Office active involvement in the two main events that took place in this field in 2007 must be highlighted. I am referring to the *OSCE Conference on Combating Discrimination and Promoting Mutual Respect and Understanding* held in Bucharest and to the *OSCE Chairmanship Cordoba Conference on Intolerance and Discrimination against Muslims*. As the *Human Dimension Implementation Meeting* in Warsaw also devoted a working session to "Freedom of Expression, Free Media and Information", the Representative on Freedom of the Media and his Office played a significant and prominent role during the Spanish Chairmanship.

But besides advancing the Spanish Chairmanship's priorities, which are in line with basic OSCE commitments, our aim in working with the Representative on Freedom of the Media was to support him and his Office in the implementation of their mandate. Thus during 2007 we stood by their side in advancing our shared goals when it came to fighting violence, misuse of registration, licensing or taxation for discriminatory or restrictive practices against freedom of the media, and also in decriminalizing defamation. In

all these areas Mr. Haraszti and his dedicated team made an outstanding contribution as demonstrated by the three regular reports presented to the Permanent Council during last year. All in all, the Representative intervened in numerous cases where freedom of the media was at stake in the OSCE area; and he was also vigilant and active in monitoring and providing early warning on media freedom violations based on misuse of hate speech laws.

Another important contribution by the Representative and his Office were the four special reports published in 2007 on *Registration of Print Media in the OSCE area*, *Access to Information by the Media in the OSCE region: Trends and Recommendations*, *Handling of the Media during Political Demonstrations*, and on *Access to Information: Country Reports*. These publications constitute a valuable body of literature on their respective topics and will remain a reference for years to come, even beyond the OSCE area.

Mr. Miklós Haraszti had his mandate as Representative on Freedom of the Media renewed on 10 March 2007 for another three years. I extend to him and to his able team my sincere congratulations for a work well done and wish them all the best in their continuous and tireless efforts to protect and expand the exercise of freedom of the media –with responsibility- in our diverse and pluralistic societies.

Introduction

Miklós Haraszi

In March 2007 the OSCE participating States decided to appoint me as the Representative on Freedom of the Media for the second term.

It is a great honour for me to be able to continue working at the realm of the World's only intergovernmental body able to intervene directly with Governments in cases of non-compliance with their freedom of expression commitments.

As a matter of fact, the number of occasions for interventions has not decreased: on the contrary, new challenges faced by free speech across the OSCE region compelled me to call on the participating States to observe their core free-speech commitments with the reinvigorated persistence.

In 2007, I intervened with the Governments of the OSCE participating States on more than 100 occasions and issued over 50 public statements. My Office organized two regional conferences, held four training seminars and published about a dozen books and special reports.

This book presents to the readers the essence of this work. It also focuses on the major areas of our thematic activities: access to information, promoting media freedom on the Internet, media self-regulation, tolerance and non-discrimination, digitization of media, training programme and other fields.

Among all the dangers to free expression in the OSCE family of nations, one danger became particularly visible in 2007 and shaped into the most alarming tendency affecting the ability of journalists to report freely about

important public events in quite a number of our states. It is the impunity of assaults against journalists.

When violence against journalism can count on a practical impunity, it is no exaggeration to claim that this indifference by the authorities encourages and perpetuates the crime. Even the best detectives may fail to find the perpetrators. But with apathy, law enforcement seems to share the motives of the perpetrators.

Vladislav Listiev, Paul Klebnikov and Anna Politkovskaya in the Russian Federation, Elmar Huseynov in Azerbaijan or Georgiy Gongadze in Ukraine all lost their lives for their reporting, and the murderers are not known as I write this.

Unless these horrible crimes have been investigated, and the very masterminds are taken to court and convicted, investigative journalism in those countries cannot thrive.

Impunity does not stem from investigators' failures. It is my firm belief that its roots are in the criminalization of journalism as such, with all "offending, shocking, and disturbing" comments, sharp criticism of the mighty and simple human sloppiness and mistakes.

Before becoming plaintiffs in violence cases, journalists are defendants in criminal cases – for speech offences!

State hostility and violence against journalists: street arrests, detention, criminal prosecution, and all for their reporting – are gateways to unofficial violence: threats, assault and murder.

Elmar Huseynov, Anna Politkovskaya and Hrant Dink, at some point in their careers were prosecuted under the criminal law.

Another clear danger to investigative journalism in our states is legal persecution of journalists for unearthing governmental data based on security concerns.

In many new democracies, journalists are punished for ‘breach of secrecy’, while in many Western democracies journalists are forced to reveal their sources to law enforcement agencies. This was a subject of a comprehensive survey that my Office published in 2007.

While the Internet is becoming the most important source for diverse information (indeed the only remaining source in several countries), it is under attack both legislatively and operationally, endangering not only the present but also the future of media freedom.

What is the way forward? It is charted in the commitments that the participating States have agreed upon. We cannot expect the change to happen overnight that may take the efforts of several generations. But we should remain vigilant and protest when the OSCE freedom of expression commitments are violated.

I hope that this book will find many interested readers who will use it for work, studies and self-education.

Contributions

OSCE media freedom representative surveys media laws to boost investigative journalism

Ilia Dohel

Access to official information and the ability to protect the identity of sources are key factors that shape conditions for investigative journalism, which is vital for any democracy. The Office of the Representative on Freedom of the Media surveyed the Organization's 56-country region to evaluate these factors.

The survey, completed in May 2007 and supported by the 2006 Belgian OSCE Chairmanship, found that societies of the OSCE participating States permit more access to information than in the past. But weak laws and prosecution against the media still harm investigative journalism.

Based on some 60 reports by governments of the participating States, OSCE field missions, national NGOs and experts collected over a year, the survey highlights a number of best and not-so-good practices in key areas: access to information, sanctions for handling classified information and the protection of sources.

The OSCE Representative uses the findings to promote legislative change aimed at improving conditions for investigative journalism. Readers can find the survey's summary or the country reports on the Representative's website.

Freedom of information: better implementation needed

“In the past ten years, most OSCE nations have passed good laws to balance the public’s right to be informed with government classification needs,” says Miklos Haraszti, the Representative. “Yet in most countries this balance is upset when it comes to journalists’ daily struggle with secrecy.

“A sounder mechanism of protection is also required for anonymous sources who provide information to journalists. This is a precondition for healthy journalism, which is able to reveal and successfully combat corruption and maladministration, thereby exercising effective public control over governments.”

Forty-five OSCE participating States have freedom of information laws that enable citizens, including journalists, to demand data from all levels of their governments.

In a number of states, however, the survey showed that freedom of information policies remain no more than paper. Even some established democracies tend to backtrack on openness due to increased security concerns, the survey found.

Sanctions for breach of secrecy

The survey revealed that in most “new democracies” – for example in Hungary, Latvia, Lithuania, Romania, Russia and some other states – the criminalization of “breach of secrecy” is still not limited to officials in charge of protecting secrets. Any citizen who plays a role in passing on or publishing classified data may be punished for disclosure of secrets.

The OSCE Representative has registered dozens of such cases involving journalists.

“It is unacceptable that in fighting leaks the prosecutors punish journalists for receiving them. OSCE participating States must limit prosecutions to officials, introduce a mandatory public-interest test and oblige the courts to consider the public interest value when it comes to the publication of secrets,” says Haraszti.

Protection of sources

Almost all OSCE States recognize in law the importance of protecting journalists’ confidential sources. But in practice less than half offer adequate protection from court orders to disclose sources.

Over the last few years attempts by prosecutors in some “old democracies” to make journalists identify their anonymous informants have provoked a huge outcry in the media community and international organizations. This is part of the reason why national courts have largely allowed journalists to keep their sources secret despite recurring attempts by prosecutors to uncover them.

In Belgium, a separate “shield” law was adopted in 2005 to establish proper protection of sources. In Germany, this important media right was confirmed in the recent “Cicero” ruling of the Constitutional Court.

In the United States, although most of the individual states have some form of protection, there is no “shield” law at the federal level. Journalists have been prosecuted as a result of this legislative gap.

The survey, Haraszti says, encourages changes across the OSCE region that can help give rise to more effective investigative journalism in the service of democracy.

For more information on the survey, please see the links on the right.

Written by Ilia Dohel

18 October 2007

Baku conference paves the way for media self-regulation in new democracies

Adeline Hulin

How can effective media self-regulation be achieved in transition countries? This was the guiding question of a conference hosted by the Azerbaijan Press Council in Baku last December, supported by the OSCE.

The event brought together more than 40 journalists and editors-in-chief of major media outlets in Azerbaijan and press council representatives from countries across the OSCE area, including Georgia, Kyrgyzstan, Switzerland, Turkey, Ukraine and United Kingdom. It offered a unique opportunity to exchange views, best practices and recommendations on the challenges of media self-regulation.

Members of the Office of the OSCE Representative on Freedom of the Media also attended the event, since media self-regulation has become a major subject in the work of the office.

Regaining the public's trust

In new democracies, establishing press councils is a promising step forward for the media in regaining the public's trust. Often controlled by governments in the past, media in these countries have had limited access to uncensored and unbiased information. Placing partisanship before objectivity, however, is a weakness that can be replicated under a multi-partisan environment.

"Self-regulation can help the media community rid itself of old habits," says the OSCE Representative, Miklos Haraszti. "A core number of media outlets

opting for objectivity can make a real difference in overall media quality. Self-regulation, with its codes of ethics, is the choice of editors who strive to adhere to standards of objectivity and cultural understanding.

“Increased media accountability, however, must be accompanied by the disengagement of government in regulating media,” he says, arguing that journalistic respect for ethics and tolerance does not need new legislation.

Without the support of governments in allowing the media independence, Haraszi further explains, all efforts to promote media self-regulation in new democracies might be in vain. This is why the conference in Baku focused on helping new democracies develop self-regulation models that meet different challenges from those usually found in western European countries.

The Azerbaijan Press Council

Since its opening in 2003, the Azerbaijan Press Council has handled 746 public complaints. It has reached agreements in 301 cases, out of which 66 gave plaintiffs the right of reply.

Most complaints dealt with attacks on honour and dignity, or damages to business reputation, and claimants could have initiated legal proceedings, as libel and defamation can be severely punished in the courts. “But by being quicker than lengthy court procedures, and by giving satisfactory moral redress,” says the OSCE Representative, “the Azerbaijan Press Council managed to prove its efficiency, and has become a real alternative to state regulation.”

In discussing some cases submitted to the Press Council, international experts assessed the body’s current level of professionalism, while also pointing out the diversity of ethical standards.

Despite visible good will, the Council also faces considerable challenges, one of which is the endorsement of ethical standards by many Azerbaijani journalists. Nonetheless, the main issue to be solved remains the body's lack of independence from government influence.

Exchanging best practices

During the conference in Baku, participants from several countries shared their experiences and offered solutions.

Taras Kuzmov, a representative of the Journalist Ethics Commission from Ukraine, said the development of media self-regulation promotes media freedom, but underlined the necessity of excluding the Government from the Council's work as much as possible.

The representative of the UK Press Complaint Commission, Robert Pinker, explained the need to define public interest in journalism, and emphasized the benefits of decriminalizing defamation. Discussions that followed on managing a press council grabbed the attention of most Azerbaijani media professionals.

Peter Studer, the representative of the Swiss Press Council, emphasized the fact that, contrary to popular belief, abundant financial means are not a precondition to a well functioning body.

Towards the end of the conference, Azerbaijani media representatives seemed relieved that, although other countries encounter similar problems, co-operating with them can help to find solutions.

“Even well established press councils need constant updating and upgrading to cope with cultural, ethical and moral challenges,” says Haraszti.

Eventually, the Azerbaijan Press Council proposed to draw up concrete recommendations, and share the Azerbaijani experience and the conference's lessons to promote and assist in the establishment of other press councils in new democracies.

The Representative on Freedom of the Media and his office will continue to work at helping countries in transition create freer and more responsible media. Events such as the one held in Baku are planned in other OSCE participating States for 2007.

Written by Adeline Hulin

31 January 2007

Mandate of the OSCE Representative on Freedom of the Media

Decision No. 193: Mandate of the OSCE Representation on Freedom of the Media

PC.DEC No. 193

5 November 1997

137th Plenary Meeting

PC Journal No. 137, Agenda item 1

1. The participating States reaffirm the principles and commitments they have adhered to in the field of free media. They recall in particular that freedom of expression is a fundamental and internationally recognized human right and a basic component of a democratic society and that free, independent and pluralistic media are essential to a free and open society and accountable systems of government. Bearing in mind the principles and commitments they have subscribed to within the OSCE, and fully committed to the implementation of paragraph 11 of the Lisbon Summit Declaration, the participating States decide to establish, under the aegis of the permanent Council, an OSCE Representative on Freedom of the Media. The objective is to strengthen the implementation of relevant OSCE principles and commitments as well as to improve the effectiveness of concerted action by the participating States based on their common values. The participating States confirm that they will co-operate fully with the OSCE Representative on Freedom of the Media. He or she will assist the participating States, in a spirit of co-operation, in their continuing commitment to the furthering of free, independent and pluralistic media.

2. Based on OSCE principles and commitments, the OSCE Representative on Freedom of the Media will observe relevant media developments in all

participating States and will, on this basis, and in close co-ordination with the Chairman-in-Office, advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media. In this respect he or she will assume an early-warning function. He or she will address serious problems caused by, inter alia, obstruction of media activities and unfavourable working conditions for journalists. He or she will closely co-operate with the participating States, the Permanent Council, the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities and, where appropriate, other OSCE bodies, as well as with national and international media associations.

3. The OSCE Representative on Freedom of the Media will concentrate, as outlined in this paragraph, on rapid response to serious non-compliance with OSCE principles and commitments by participating States in respect of freedom of expression and free media. In the case of an allegation of serious non-compliance therewith, the OSCE Representative on Freedom of the Media will seek direct contacts, in an appropriate manner, with the participating State and with other parties concerned, assess the facts, assist the participating State, and contribute to the resolution of the issue. He or she will keep the Chairman-in-Office informed about his or her activities and report to the Permanent Council on their results, and on his or her observations and recommendations.

4. The OSCE Representative on Freedom of the Media does not exercise a juridical function, nor can his or her involvement in any way prejudice national or international legal proceedings concerning alleged human rights violations. Equally, national or international proceedings concerning alleged human rights violations will not necessarily preclude the performance of his or her tasks as outlined in this mandate.

5. The OSCE Representative on Freedom of the Media may collect and receive information on the situation of the media from all bona fide sources.

He or she will in particular draw on information and assessments provided by the ODIHR. The OSCE Representative on Freedom of the Media will support the ODIHR in assessing conditions for the functioning of free, independent and pluralistic media before, during and after elections.

6. The OSCE Representative on Freedom of the Media may at all times collect and receive from participating States and other interested parties (e.g. from organizations or institutions, from media and their representatives, and from relevant NGOs) requests, suggestions and comments related to strengthening and further developing compliance with relevant OSCE principles and commitments, including alleged serious instances of intolerance by participating States which utilize media in violation of the principles referred to in the Budapest Document, Chapter VIII, paragraph 25, and in the Decisions of the Rome Council Meeting, Chapter X. He or she may forward requests, suggestions and comments to the Permanent Council, recommending further action where appropriate.

7. The OSCE Representative on Freedom of the Media will also routinely consult with the Chairman-in-Office and report on a regular basis to the Permanent Council. He or she may be invited to the Permanent Council to present reports, within this mandate, on specific matters related to freedom of expression and free, independent and pluralistic media. He or she will report annually to the Implementation Meeting on Human Dimension Issues or to the OSCE Review Meeting on the status of the implementation of OSCE principles and commitments in respect of freedom of expression and free media in OSCE participating States.

8. The OSCE Representative on Freedom of the Media will not communicate with and will not acknowledge communications from any person or organization which practises or publicly condones terrorism or violence.

9. The OSCE Representative on Freedom of the Media will be an eminent international personality with long-standing relevant experience from whom an impartial performance of the function would be expected. In the performance of his or her duty the OSCE Representative on Freedom of the Media will be guided by his or her independent and objective assessment regarding the specific paragraphs composing this mandate.

10. The OSCE Representative on Freedom of the Media will consider serious cases arising in the context of this mandate and occurring in the participating State of which he or she is a national or resident if all the parties directly involved agree, including the participating State concerned. In the absence of such agreement, the matter will be referred to the Chairman-in-Office, who may appoint a Special Representative to address this particular case.

11. The OSCE Representative on Freedom of the Media will co-operate, on the basis of regular contacts, with relevant international organizations, including the United Nations and its specialized agencies and the Council of Europe, with a view to enhancing co-ordination and avoiding duplication.

12. The OSCE Representative on Freedom of the Media will be appointed in accordance with OSCE procedures by the Ministerial Council upon the recommendation of the Chairman-in-Office after consultation with the participating States. He or she will serve for a period of three years which may be extended under the same procedure for one further term of three years.

13. The OSCE Representative on Freedom of the Media will be established and staffed in accordance with this mandate and with OSCE Staff Regulations. The OSCE Representative on Freedom of the Media, and his or her Office, will be funded by the participating States through the OSCE budget according to OSCE financial regulations. Details will be worked

out by the informal Financial Committee and approved by the Permanent Council.

14. The Office of the OSCE Representative on Freedom of the Media will be located in Vienna.

Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations

PC.DEC/193

5 November 1997

Annex

By the delegation of France:

“The following Member States of the Council of Europe reaffirm their commitment to the provisions relating to freedom of expression, including the freedom of the media, in the European Convention on Human Rights, to which they are all contracting parties.

In their view, the OSCE Representative on Freedom of the Media should also be guided by these provisions in the fulfilment of his/her mandate. Our countries invite all other parties to the European Convention on Human Rights to subscribe to this statement.

Albania
Germany
Austria
Belgium
Bulgaria
Cyprus
Denmark

Spain
Estonia
Finland
France
United Kingdom
Greece
Hungary
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Moldova
Norway
Netherlands
Poland
Portugal
Romania
Slovak Republic
Slovenia
Sweden
Czech Republic
Turkey

[http://www.osce.org/documents/pc/1997/11/4124_en.pdf]

Decision No. 1/07: Extension of the Mandate of the OSCE Representative on Freedom of the Media

The Ministerial Council, Recalling Permanent Council Decision No. 193 of 5 November 1997 on establishing an OSCE Representative on Freedom of the Media, Considering that the first term of office of the current Representative on Freedom of the Media comes to an end on 9 March 2007, Underlining the important contribution of Mr. Miklós Haraszti to the promotion of the freedom of expression and free media in the OSCE area, Taking into account the recommendation of the Permanent Council, Decides to extend the mandate of Mr. Miklós Haraszti as OSCE Representative on Freedom of the Media until 10 March 2010.

[http://www.osce.org/documents/mcs/2007/03/23595_en.pdf]

Regular Reports

to the Permanent Council

March 29, 2007 Regular Report to the Permanent Council

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Mr Chairman, Excellencies, Ladies and Gentlemen,
First of all, I would like to voice my appreciation for the trust shown by the participating States when extending my mandate for another term. I look forward to working with you in a similarly constructive manner as during my first term in office. My special thanks to the Spanish Chairmanship for guiding the procedure.

At the end of my first term I see several major challenges emerging that threaten freedom of the media in the OSCE area.

- Of course, the most intimidating for free speech is when States tolerate harassment, physical attacks, and even murders of media workers;
- Secondly, in several participating States pluralism is considerably restricted by undue governmental influence over broadcasting; by favouritism towards the still-existing state-owned press and by administrative discrimination against the non-governmental media sector;
- Thirdly, heightened security concerns – also but not only in the wake of the global terrorist threat – have prompted authorities to deny investigative rights for journalism regarding governmental data, or to force journalists to reveal their sources to law enforcement agencies;
- Fourthly, in a world of dissolving boundaries, the otherwise legitimate expectation that the media should be culturally sensitive, has increased attempts to label offending or critical views as punishable “extremism” or “hate speech”;

- Finally, a proliferation of arbitrary speech bans on certain statements regarding historical events weakens international standards on free debate, and creates new tensions between nationalities and countries.

My office has tried to respond to these challenges not only with interventions, but also with relevant project activities. To mention but a few: joint training programs for civil servants and media professionals; ongoing efforts to replace criminal defamation laws with civil provisions; fostering professionalism in the media by supporting self-regulation; and developing guidelines for good practices regarding access to governmental information by the media. These activities will continue during my second term, just as will, I hope, the practice of assessment visits, in countries which I did not yet have the chance to visit.

Let me mention a forthcoming development that is bound to engage my Office's capacity in the near future, and also your Governments' energies. It is the so-called 'switchover' from traditional to digital terrestrial transmission in broadcasting, as well as the convergence among different telecommunication platforms towards digital ones. This change will revolutionize the way we watch TV or listen to radio: it will increase the number of available channels and will reduce broadcasting costs by eliminating the current scarcity of the frequency spectrum which, hitherto, has been the main justification for governmental licensing of broadcasters.

However, the enormous growth in commercial broadcasting opportunities will only increase the challenge to secure the finances for public-service broadcasting, without jeopardizing quality programming, such as news, education and minority language programs.

All this will add an additional layer of necessary reform in many participating States. As always, I would like to offer the services of my Office to assist the participating States to embrace these changes.

Obituary: Hrant Dink

I am saddened to have to report on the murder of another outstanding journalist in our region. Hrant Dink, one of Turkey's best known journalists of Armenian origin, was shot dead in Istanbul on January 19 2007. I would like to pay tribute to his sacrifice for freedom of speech.

Mr Dink was the editor of the Armenian-Turkish language weekly *Agos* Magazine, and a prominent commentator on Armenian-community related affairs in Turkey. The content of his work frequently attracted the attention of the authorities: in October 2005, Mr Dink received a six-month suspended jail sentence for "insulting the Turkish identity" under Article 301 of the Turkish Penal Code.

Shortly after the murder I wrote to the authorities, expressing my appreciation for public statements made by high-level Turkish officials that condemned the heinous attack, and also for the efficient investigation that has already produced tangible results in bringing the perpetrators to justice. To my knowledge, more than 20 people have been detained in several cities of Turkey in relation to the murder, and eight of them have remained in custody, including a 17-year-old man who has confessed to the crime.

Obviously, being depicted as an enemy of "Turkishness" may well have contributed to turning Mr Dink into an object of hatred and a target for fanatics and extremists. The failure by the authorities to repeal Article 301, which is used by certain groups to prosecute views they consider unacceptable in Turkey, must have played a role in this instance. The tragic event revealed that Turkey needs to implement a more supportive environment for free and open discussion. I am encouraged by the expressed readiness of Prime Minister Recep Tayyip Erdogan to support the necessary amendments: they must now to be tabled with Parliament.

The remainder of this report provides details of the issues raised with participating States during the last four months, as well as our co-operation on recent and planned project activities.

It also includes:

- *A Special Report on Registration of Print Media in the OSCE area*
- *A report focusing on broadcasting in Bosnia & Herzegovina*
- *An update on our survey on Access to Information*

Issues raised with Participating States

Armenia

In my letter of 8 March 2007 addressed to the Chairman of the National Assembly, the Minister of Foreign Affairs, and the Minister of Justice of Armenia, I shared my observations about the recently adopted amendments to the Law on Television and Radio and the *Law on Regulations of the National Commission on Television and Radio* (NCTR).

In my letter I noted with satisfaction that the amendments were adopted prior to the Parliamentary Elections of 2007; this was one of the key recommendations in my July 2006 report on the state of media freedom in Armenia.

However, the amendments are not sufficiently robust to achieve the aim of an independent NCTR: thus further amendments will need to follow.

Azerbaijan

In my previous report to the Permanent Council I expressed my disappointment with the deterioration of the situation in Azerbaijan. Unfortunately, I cannot state that there has been improvement since.

In particular, I am alarmed by the dramatic increase in the number of criminal defamation charges brought against journalists by public officials. The most recent cases involve the weekly independent newspaper *Nota Bene*: its reporter Faramaz Novruzoqlu and chief editor Sardar Alibeyli were sentenced on 30 January 2007 to two years in prison and 18 months of corrective labour respectively for defamation and libel under Articles 147 and 148 of the Criminal Code.

These cases demonstrate the crucial importance for Azerbaijan to initiate decriminalisation reform.

Further, in my letter to President Aliyev on 27 November 2006, I raised:

- Impediments of ANS TV's license renewal, resulting in a brief suspension of its broadcasting in November 2006;
- The eviction of the opposition newspaper *Azadliq*, *Trend News Agency*, and some other media outlets from their state-owned premises;
- The satirical poet and journalist Mirza Sakit Zahidov is still imprisoned serving a three year sentence on drug-related charges, an allegation he strongly denies;
- Writer Rafiq Tagi and editor Samir Sedagetoglu of the Baku-based *Senet*, accused of stirring up religious hatred with an allegedly derogatory statement on Prophet Mohammed, are still in pre-trial detention: the hearing of their case was recently postponed.

I feel compelled to remind the authorities that two years after the brutal assassination of Elmar Huseynov, the perpetrators are still not brought to justice. This continues to impose a significant 'chilling effect' on Azerbaijani journalists. Full transparency of the progress and results of this investigation, together with full access for the media to court hearings should be guaranteed.

My Office continues to follow the developments in Azerbaijan. A constructive dialogue between my Office and the authorities is ongoing. In this regard, I am glad for an invitation from the Government of Azerbaijan to participate in the upcoming international conference of OIC, "The Role of the Media in Developing Tolerance and Mutual Understanding", which will take place in Baku on 25-26 April 2007.

Belarus

I have asked for information from the Belarusian authorities concerning a new draft law "On Information and Protection of Information", submitted by the Council of Ministers to the House of Representatives in March 2007. According to the press service of the House of Representatives, the adopted bill will deal with individual access to public information, information security of the state, and information exchange including international information. I look forward to a response, and reiterate the willingness of my Office to assist the Government to apply the best international practices of securing media access to information.

Details on planned cooperation projects with Belarus are included in the section *Projects and activities since the last report*.

Bulgaria

In a letter on 22 March, I expressed my concern to the Bulgarian authorities about the assault on journalists of *24 Hours* and *168 Hours* in their editorial office, committed by leaders and parliamentarians of Ataka party on 23 February 2007. For the sake of an unequivocal message about safety of the media, I urged the authorities to prosecute the attackers without delay, regardless of their public functions.

In the same letter I warned against the adoption of restrictive amendments tabled by individual parliamentarians to the country's already advanced *Freedom of Information Law*.

Canada

The Ontario Superior Court ruled on 19 October 2006 that it was contrary to the provisions of the Canadian Charter of Rights and Freedoms that the authorities had used the *Security of Information Act 2001* against Juliet O'Neill, a reporter with the *Ottawa Citizen*. The judge found the provisions vague, overly broad and open to abuse by government authorities.

Ms. O'Neill's home and office were searched in 2004, following her November 2003 article about an Ottawa man under surveillance by the Canadian security forces for alleged terrorist links.

As I also intervened in the case on 3 October 2006, I welcome the Superior Court's decision, affirming the right of journalists to use leaked documents in cases of legitimate public interest.

Croatia

On 2 March 2007, I wrote to the Minister of Foreign Affairs of Croatia regarding the attack on Z1 television journalist Zeljko Malnar in a cafe in Zagreb on 27 February 2007. I raised my concern about instances of assaults and threats against journalists reported in recent months, and expressed my confidence that the Croatian Government would do everything possible to secure a free and safe working environment for media professionals.

Denmark

In my letter to the Director of Public Prosecutions of Denmark of 20 November 2006, I voiced concern about the trial of three Danish journalists charged with publishing classified information in the Danish daily *Berlingske Tidende*. Two journalists, Michael Bjerre and Jesper Larsen, as well as the editor Niels Lunde were charged with printing confidential government information under Article 152 of the Criminal Code. Based on leaked classified information, the newspaper published articles about the level of information known to the Danish government about weapons of mass destruction in Iraq in 2003.

I very much welcomed the decision of the court to acquit the journalists finding that by publishing the information they had acted in the public interest.

France

I welcome the decision of a Paris court's decision on 14 November 2006 to drop charges against journalist Claude Ardid and lawyer Albert Lévy for "violating the confidentiality of a judicial investigation" into alleged corruption in school meal contracts in Toulon in 1998.

In my previous report to the Permanent Council, I referred to my letter to the President of the French Senate, in which I asked the Senators to reject the amendment to the "Loi ... tendant à réprimer la contestation de l'existence du génocide arménien" ("Law tending to curb the denial of the existence of the Armenian genocide") earlier approved by the French National Assembly.

In his reply dated 23 November 2006, President Christian Poncelet informed me that no motion for debating the draft bill by the Senate, as Second Chamber, has been introduced.

I welcomed the decision by a Paris court 22 March 2007 to acquit the editor-in-chief of the satirical magazine *Charlie-Hebdo*, but recommended that Article 33 of the *Press Law of 1881*, foreseeing prison sentences for press offences, should be modified. Islamic institutions had filed charges against the paper for reprinting some of the so-called “Mohammed cartoons”, originally published by *Jyllands-Posten* in Denmark. The court held that reprinting these cartoons did not constitute an “insult of people based on their religion”.

Germany

In my letter to the German Minister of Interior in October 2005, I expressed my concerns regarding the treatment of the editorial staff of Cicero magazine following its publication of classified information in April 2005. Police raided the offices and homes of two journalists working for the magazine, with the aim of uncovering the sources of the leaked information.

However, on 27 February 2007, the Constitutional Court ruled that the raid was an unjustified intrusion into press freedom. The Court decided that the mere publication of classified information is not sufficient to justify a police search.

I welcome this decision, which reaffirms the independence of the media and the need for prosecutorial restraint in such cases.

Kazakhstan

I received unconfirmed reports regarding the arrest on 15 December 2006 of the journalist Azamat Zhetpysbayev, a freelance reporter for a number of media outlets, including Radio Free Europe. I wrote to the authorities on 22 December 2006, requesting further information on the case and of the

whereabouts of Mr Zhetpysbayev. I remain hopeful of receiving a reply from the authorities.

On 24 January 2007 I raised the case of Mr Kazis Toguzbaev, an independent Kazakh journalist, who was handed a two-year suspended sentence by an Almaty district court, for violating Article 318(2) of the Criminal Code Infringement on the honour and dignity of the President, for content published in two articles in April and May 2006 on a website.

The details of this case bear a close resemblance to the case of Mr Zhasaral Kuanyshalin, sentenced to two year's imprisonment, also suspended, on 31 July 2006 on similar charges.

In my letter, I stressed that the existence of special insult laws, which give elevated protection to public officials from verbal offence, is contrary to modern democratic practice and I have asked again for their removal from the criminal domain. The urgency of this request is underlined by the fact that new amendments to the Criminal Code have been proposed, which would increase the penalty for libel in Kazakhstan.

Details of cooperation on project activities with Kazakhstan are included in the section *Projects and activities since the last report*.

The former Yugoslav Republic of Macedonia

I welcomed the release of journalist Zoran Bozinovski from prison on 21 November 2006. Mr Bozinovski was sent to prison earlier in November, following a three-month sentence handed down in 2004 for defamation. Since then, on 10 May 2005, the Parliament in Skopje abolished the imprisonment penalty for defamation. I am satisfied with the decision of the Skopje authorities to immediately release MrBozinovski.

Moldova

In a letter to the Deputy Prime Minister and Minister of Foreign Affairs dated 19 December 2006, I expressed my concern about the disruption of the nationwide transmission of the *Antena-C Radio* Station and the way the privatisation of *Antena-C* and *Euro-TV* was initiated.

On 14 December 2006, the Chisinau Municipal Council decided to tender out the allocation of the frequencies of *Antena-C* and *Euro-TV*, two Chisinau-based public service broadcasters, as stipulated by the country's new Audiovisual Code.

I fully support the implementation of the Broadcasting Code, which took into consideration many of the recommendations made by my Office (see section on *Legal Reviews*). However, in the letter I emphasised that the privatization process should be fair, independent and transparent. I received a reply to my letter on 26 March 2007, in which I was assured that my requests are being duly considered by the authorities in Chisinau.

Meanwhile, both municipal outlets are privatised, and *Antena-C* is now back on air with a new owner, new management, and a modified profile, offering more entertainment programs than news broadcasts. As *Antena-C* was always considered a highly professional contributor to the public debate on political issues, it is regrettable that the privatization process so far has diminished pluralism instead of enriching it.

The Netherlands

On 29 November 2006, in a letter to the Foreign Minister, I raised my concern over the detention by an investigating judge of two Dutch journalists for refusing to reveal their sources. Bart Mos and Joost de Haas of the Dutch daily '*de Telegraaf*' were detained in The Hague on 27 November

and ordered to disclose their sources in the Dutch Intelligence Service, who had supplied them with confidential information about contacts between local criminals and law enforcement officials. I was satisfied to hear that the journalists were released on the same day, following a District Court Decision.

Despite the fact that the principle of the protection of journalists' sources has been recognized by the jurisprudence of the Dutch Supreme Court, I stressed that because the Supreme Court judgement did not set guidance to lower courts, a statutory protection of journalists' confidential sources is required in order to help to avoid future discrepancies between different court rulings.

Romania

I am concerned by the decision of the Constitutional Court of Romania of 18 January 2007, which annulled the decriminalization of defamation, an amendment which was passed by Parliament in 2006. The Court found that the repeal of libel and insult articles from the Criminal Code produced a legal situation inconsistent with the Constitution.

In addition to my Office's longstanding efforts towards decriminalisation, this decision also goes against the May 2006 call by Mr. Terry Davis, Secretary General of the Council of Europe, addressed to all CoE Member States, to move the handling of defamation offences from the criminal to the civil-law domain. I view the ruling as a setback in achieving a free and a more favourable working environment for the Romanian media.

Nevertheless, I hope that the Parliament will consider other measures to address the 'protection of dignity' concerns stated by the Constitutional Court, rather than restoring the old articles of the Criminal Code. My Office will continue to monitor the developments.

Russia

I received a reply from the Russian authorities on 27 November, in response to my letter of 27 September 2006 regarding the case of Vladimir Korolev, a correspondent with the weekly business newspaper *Permski Obozrevatel'*, who 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 Individual'. The letter gave details of the legal justification for Mr Korolev's detention. The first court hearing was held on 22 February and, as one of the charges against Mr Korolev is "Dissemination of State Secrets", the trial was closed to the public.

In a further hearing on 9 March 2007, the court decided that the investigation of the case is incomplete and returned the case to the prosecution for further investigation. During the ongoing investigations Mr Korolev remains in detention. My Office will continue to monitor the developments.

On 5 March 2007, I wrote to the Russian authorities regarding the death of Ivan Safronov, a military analyst for the Russian weekly *Kommersant*. Mr Safronov died on 3 March following a fall from a window in his Moscow apartment block. Given the worrying details and the ensuing questions in the Russian and international media regarding the cause of his death, I have requested timely information from the authorities regarding the progress of the investigation.

Regarding the murder on 7 October 2006 of the journalist Anna Politkovskaya in Moscow, covered in my previous report to the Permanent Council, I am still waiting for information from the authorities on the progress of the case.

Serbia

On 29 November 2006, I wrote to the Republican Prosecutor of Serbia, raising the case of Snezana Nikolic, a journalist for the Novi Sad newspaper *Dnevnik*. Ms Nikolic was sentenced to six months of imprisonment with two years of probation for libel. This sentence was confirmed by a second instance court in January 2006, which should not have taken place, since starting on 1 January 2006, the Serbian Criminal Code no longer punishes defamation with imprisonment.

In May 2006, in a joint statement with the OSCE Mission to Serbia I voiced concern over the closure of BK Television and the subsequent decisions of the Republican Broadcasting Agency (RBA).

Despite the decision of the Supreme Court annulling the revocation of BK Television's license, RBA prolonged the revocation of the license for an additional 30 days in May. Additionally, RBA rejected the appeals of three other broadcasters.

The RBA Council also succeeded in initiating amendments to the Broadcasting Law, which were adopted by Parliament in a repeat vote in September 2006. These amendments gave the RBA Council the authority to revoke licenses without delay, thus depriving the affected broadcasters of due legal remedy.

Kyrgyzstan

I am pleased to report on two very positive developments in Kyrgyzstan this week. On 25 March, President Bakiyev withdrew his former objection to the draft law "On setting up public television" and on 27 April, the Kyrgyz parliament voted to abolish criminal libel and insult laws. In my public statement of 27 March I welcomed these decisions as 'first-of-a-kind' in Central Asia

The new draft law opens up the possibility for truly independent broadcasting while the parliament's decision to decriminalise libel is a sign of the country's commitment to freedom of media. I commend these courageous decisions and hope there will be no delay in passing these laws.

Kosovo

The Special Representative of the UN Secretary General in Kosovo promulgated on 28 February 2007 the civil Law against Defamation and Insult. This is in line with my recommendations to the OSCE participating States to adopt adequate civil defamation provisions. However, under the existing UNMIK penal code, defamation remains a criminal offence, with media exempted from insult charges.

The law is generally in line with modern concepts of decriminalizing speech offences. Under the new law, true statements may not be regarded as defaming. The media's compliance with recommendations of the Press Council is a mitigating factor for setting damages in defamation lawsuits. Public figures have to accept to be under a stronger regime of criticism.

There is scope for further improvements as the new law does not exempt the media from liability for insult, unlike the penal code. This raises anxiety among media experts of a potential wave of media-related insult cases in Kosovo courts. Besides, defamation provisions should still be deleted from the penal code.

Switzerland

In my letter dated 16 March 2007, I informed the Swiss authorities, that the first instance verdict of 9 March 2007 against the Turkish politician, Dogu Perincek, for denying that the killings of Armenians in 1915 amounted to genocide was inconsistent with the relevant jurisprudence of the European

Court of Human Rights. The ECHR holds that only denials of genocide recognized by an international court since 1945 or by other relevant international legal instruments may be exempt from protection under free speech. Other historical events must remain open for debate by the public and the scientific community alike. As an appeals procedure is pending, my Office will continue to monitor this case.

United Kingdom

I welcome the decision of the Court of Appeal in the United Kingdom, which ruled on 21 February 2007, following seven years of litigation, that journalist Robin Ackroyd did not have to reveal his confidential source.

Ackroyd was behind a Daily Mirror story, published in December 1999, which revealed the type of treatment being meted out to a criminal during a hunger strike. Ever since, the hospital has sought to discover how he obtained the medical records on which the story was based.

I am glad that Mr Ackroyd's right to protect his sources was affirmed, thereby setting an important case law precedent that confirms that journalists will not be forced to reveal their sources.

The United States of America

I welcome the passing by the House of Representatives in the United States of a package of open-government bills on 14 March 2007. These bills would streamline access to government documents and expand safeguards for government whistleblowers.

I equally welcome the recent decisions of the Washington State Senate and the House of Representatives, which passed bills granting reporters

an absolute privilege to protect their confidential sources. With these bills, Washington will become the 33rd state to enact such legislation.

Regrettably, Joshua Wolf, a freelance videographer who refused to cooperate with a grand jury investigation, is still in prison. He has become the longest incarcerated journalist in modern U.S. history. Mr Wolf has been in prison since August 2006 after refusing to submit his unedited videos of a street protest in which a police officer was injured and a police car damaged. This is a federal procedure; under the Californian state law, Mr Wolf would not have been obliged to reveal his sources and could lawfully have retained his materials.

In letters to the Chairman of the House International Relations Committee and to the members of the Senate who last year initiated a "Free Flow of Information Act", I urged them to reintroduce the Act in the 110th Congress so that journalists would also not have to disclose their sources at the federal level.

Uzbekistan

On 13 March 2007, I wrote to the Uzbek Foreign Minister regarding the charges brought against the Uzbek journalist and human rights activist, Ms. Umida Niyazova.

Ms Niyazova was detained by police in Andijan on 22 January 2007 and charges have since been brought against her under the criminal code "Illegal Border Crossing" (Article 223) and "Collecting and distributing material that threatens public security" (Article 246). The maximum penalty for the charges is ten years imprisonment.

In my letter, I stressed that journalists, including those investigating disturbances or conflict, should and must be allowed to collect and store

information for publication. By penalising journalists for so doing, the authorities prevent the debate of matters of public interest. I have appealed to the authorities to discontinue the criminal case against Ms Umida Niyazova and to facilitate her timely release from pre-trial detention.

In my letter to the authorities dated 28 March 2007, I asked for more information about the criminal charges brought against Natalya Busheyeva, an Uzbek citizen and reporter for Deutsche Welle, which was denied accreditation in 2006. The charges reportedly relate to concealment of income and non-payment of taxes in connection with her work for a non-accredited foreign news agency.

Concerning all participating States

I welcome the 4 January 2007 adoption of United Nations Resolution 1738, which condemns attacks on journalists in conflict areas. The measure, unanimously adopted by the UN Security Council, came amid numerous deadly attacks on media professionals, including in the OSCE area.

I believe that at a time when journalists are facing increasing risks, this resolution is a necessary reminder to all governments of their obligations under international law to allow the media to function freely. It is also a call to governments to fight against the impunity too often enjoyed by those committing crimes against media professionals.

Registration of Print Media in the OSCE area: Special Report

I am pleased to present the second in a series of Special Reports that seeks to clarify problematic aspects and best practices of the administrative framework for the media in the OSCE area.

The first paper, published in October 2005, examined the function of accreditation and concluded that while the participating States have made commitments to facilitate the work of the media, there remains much work to be done to create an enabling working environment for journalists.

The second Special Report examines the issue of Registration of the Print Media in the OSCE area. A number of recent cases illustrate how rigid registration schemes result in an unnecessarily restrictive administrative framework, particularly for the independent press.

The report attached here as an annex contains a set of recommendations to assist the participating States to improve this aspect of the administrative framework for the print media. It is available for download in Russian and English at the following address:

https://www.osce.org/documents/rfm/2007/03/23735_en.pdf

https://www.osce.org/documents/rfm/2007/03/23735_ru.pdf

Access to Information Report

I would like to express my thanks to the 38 Governments who have already completed the Access to Information Questionnaire regarding the legislative framework governing access to information. In addition to the official replies, my Office has also gathered data from other sources, such as the OSCE field operations and national media NGOs.

The findings from the survey, including an analysis of laws and practices on access to information practices in the OSCE area, will be announced on the eve of the 2007 World Press Freedom Day, 3 May 2007.

Assessment Visit to Bosnia and Herzegovina

I visited Bosnia and Herzegovina (BiH) on 5 – 7 February 2007. My first visit to BiH came at the joint invitation of the High Representative and European Union Special Representative for BiH and the Head of the OSCE Mission to BiH.

This invitation was prompted by the decision of the Republika Srpska (RS) Government to cease cooperation with the state public television network, BHT1, and later to deny its journalists access to a governmental press conference.

Because the RS government aimed its boycott specifically at the state-level public broadcaster, and because of the role played by state-controlled broadcasters in the 1990's in fuelling the rush to war in the region, I decided to make the public broadcasting system in BiH the focus of the report, together with the responsibilities of the authorities with regard to public broadcasting.

The overall situation of media freedom in BiH is commendable. The legal framework for the protection of freedom of expression is largely in place. However, BiH has yet to complete the reform and unification of its three public broadcasters.

Recommendations on how to further strengthen freedom of the media in general, and public service broadcasting in particular, in BiH, can be found at the conclusion of the attached report and is available to download from the OSCE website at:

https://www.osce.org/documents/rfm/2007/03/23751_en.pdf

Projects & Activities since the last report

This section contains details of the work of my Office in media self-regulation, internet governance and assistance to the participating States in reviewing their media legislation. It also provides a chronology of additional activities undertaken by my Office since the last report.

Media self-regulation

- On December 15-16 2006, my office supported a conference organized by the **Azerbaijan** Press Council in Baku. This event focused on helping new democracies to develop media self-regulation models. It brought together more than 40 journalists and chief editors of major media outlets in Azerbaijan, and press council representatives from other OSCE participating States, including Georgia, Kyrgyzstan, Switzerland, Turkey, Ukraine and the United Kingdom. The conference was also an opportunity for the Azerbaijan Press Council to review the main difficulties encountered by the body since its establishment in 2003, and to discuss possible improvements in its workings.
- On 30 January 2007 my Office attended a meeting in Moscow for **Russian** regional journalists and self-regulation bodies. The event, organised by the NGO 'Internews Russia' and EU TACIS, aimed to discuss the state of self-regulation in Russia and to present positive examples of existing regional self-regulatory mechanisms in Russia and to discuss international ethical standards.
- On March 15-16 2007, my Office supported a seminar on media ethics in **Armenia**, organized by the Yerevan Press Club and the OSCE Office in Yerevan. The event brought together more than 50 participants from the Armenian National Assembly, local media outlets, and international organisations, as well as media experts from Azerbaijan, Bulgaria,

Georgia, Romania and Turkey. The newly established self-regulatory body, the “Media Ethics Observatory” was presented during the seminar.

- Following a request from the authorities of **Kazakhstan**, my Office, together with the OSCE Centre in Almaty, held a seminar on media self-regulation in Astana on 20 March 2007. Raising awareness about the benefits of media self-regulation was the aim of this seminar, that gathered civil society representatives, media professionals, international experts and state officials.
- My Office is also developing a practical **handbook** to assist OSCE participating States to identify and overcome challenges that civil society groups and media professionals face on their way to achieving effective media self-regulation systems. The publication will provide short answers to frequently asked questions on media self-regulation.

I am pleased to announce that media self-regulation will be the focus of our 2007 regional media conferences in Central Asia and the Caucasus. I would like to express my gratitude to those who are already committed to support our regional media conferences and the new publication. I hope to count on further generous donations for the success of these major projects.

Internet Governance

- My Office participated in the first UN Internet Governance Forum (IGF) in Athens in November 2006 in two workshops organized by UNESCO and Privacy International. As a follow-up to the Athens IGF, in February 2007, my Office participated in Geneva at the foundation of a so-called “dynamic coalition” on Internet freedom, under the UN umbrella. Its purpose is to provide a platform to exchange information, advance initiatives in the field of Internet governance and freedom of the media.

- **E-society project in the former Yugoslav Republic of Macedonia.**
My Office participated in the 'e-Society.MK' event in Skopje, organized by the OSCE Spillover Monitor Mission to Skopje on 15 – 17 November 2006, in co-operation with media NGO Metamorphosis. In addition, my Office conducted a half-day workshop on "Media Freedom on the Internet" with participants from the media, industry and the authorities.
- **Paris Expert Workshop on Internet Governance.** As part of the ongoing project 'Internet Governance in the OSCE Region' an Expert Workshop took place on 15 – 16 December 2006 in Paris. The workshop was co-hosted by the 'Forum des Droits sur l'Internet', and brought together the authors to discuss content, structure and methodology of an upcoming publication on the topic. My Office extends its thanks to the Governments of **France** and **Germany** for jointly funding the project. The publication 'Internet Governance in the OSCE Region' will be presented to participating States in May this year, thus formally concluding the project.
- **UNESCO conference: New Media and Freedom of Press.** On 15-16 February 2007, my Office participated in a conference "New Media: The Press Freedom Dimension, Challenges and Opportunities of New Media for Press Freedom" at the UNESCO Headquarters in Paris.

Legal Reviews

- My Office presented an expert review of **Armenia's Draft Plan for Digital TV and Radio Broadcasting** in Yerevan on 22 November 2006. The review was prepared at the request of the Armenian authorities, following my recommendations to establish the necessary legislative framework allowing the upcoming switchover to digital broadcasting.

- On 20 March 2007 my Office submitted to the Speaker of Parliament of **Moldova** a review of the new Audiovisual Code and of the Regulation on Broadcasting Licences.
- In **Croatia**, we are currently reviewing the draft *Law on Data Secrecy*. It will be forwarded to the Croatian authorities early April.
- Following a discussion with the Kazakh authorities regarding the adoption of new legislation governing the media in Kazakhstan, in my letter to the authorities dated 20 December 2006, I reiterated the willingness of my Office to review the entire legislative framework for the media and make recommendations to bring legislation in line with international standards.

Other activities, in chronological order:

EBU Broadcasting Conference, Budapest

On 3 November 2006, along with EU Commissioner for Information Society and Media, Viviane Reding, I gave a keynote speech at a conference organized in Budapest by the European Broadcasting Union and Hungarian TV, focusing on methods to ensure the political and financial independence of public service broadcasters. I presented a paper detailing the current crises for public broadcasters in Europe and increasingly in the former CIS countries, and also introduced the main conditions for sufficient public-service media financing.

I was pleased to note that some of the best initiatives to guarantee the financial independence of public service broadcasters originate in the new democracies of Europe and the Caucasus, for example in **Georgia and Latvia**.

High Level Policy Meeting

“Further Improvement of Media Legislation in Ukraine”

On 8 November 2006, I participated in the first High Level Policy Meeting on Mass Media Issues in Kyiv. At the meeting, a long-term project was launched by the Office of the Project Coordinator in Ukraine, supported by the **Danish** government. The project aims to review and revise the entire legislative framework for the media, in order to bring it in line with international standards.

I am pleased to be part of this wide-ranging project. I also hope that the laws developed in the course of the project will serve as examples of best practice for other OSCE participating States.

Association of European Journalists

On 13 November, I was invited to speak at the regular meeting of the London branch of the Association of European Journalists (AEJ). In November 2007 I will give a keynote speech to the Annual General Meeting of the AEJ in Dublin.

Press Officer Training Courses

My Office continued its successful training courses “Interaction between the media and state press services in a democratic society”. The goals of the training are: to improve the professional skills of government press officers, as well as of journalists; to inform them of general strategies for, and the legal basis of, their interaction with journalists; to provide an overview of international experience.

In co-operation with the OSCE Centre in Almaty, my Office organised a two-day training course on 24-25 November for media professionals and civil servants from **Kazakhstan**. Similar training courses are planned in **Armenia**,

Belarus and **Tajikistan** in 2007 (see section *Project activities confirmed for the next period*).

Ankara Conference

On November 30 – December 2 2006, my Office attended the international conference “Freedom of Expression: Principles and Turkey”, in Ankara and made a presentation in the session dedicated to “Principles, international standards and Turkey”. This event was jointly organized by the Faculty of Political Sciences at Ankara University and the Joint Platform for Human Rights.

Visit of Kyrgyz Journalists to the OSCE Vienna

Following a request of the Head of the Kyrgyz Delegation, my Office organised a programme to increase awareness of the OSCE among a diverse group of journalists from **Kyrgyzstan** on 12 – 15 December 2006. The group consisted of ten journalists from several regions of Kyrgyzstan, representing the print and broadcast media. On their return, the journalists published articles recounting their impressions of their visit; these are available from my Office in hard copy for interested Delegations. I would like to express my thanks to the OSCE Press and Public Information Section and the OSCE Centre in Bishkek for their assistance in the organisation of the event.

Visit of the Albanian Parliamentary Committee on Education and Media

On 29 – 30 January 2007, my Office hosted six members from the **Albanian** Parliamentary Committee on Education and Media, representing different parties. During the two-day visit, my office made several presentations to the Parliamentarians on many contemporary issues. The visit also enabled a

useful exchange of views between the Parliamentarians themselves. I would like to thank the OSCE Presence in Albania for this initiative.

Address to Winter Session of the OSCE Parliamentary Assembly

On 22 February 2007, I addressed the OSCE Parliamentary Assembly's General Committee on Democracy, Human Rights and Humanitarian Questions. My presentation focused on the implementation of OSCE media freedom commitments by participating States. I also updated the members of the General Committee on the activities carried out by my Office since my last address.

The Draft EU Directive on Audiovisual Media Services (AVMS)

On 28 February 2007, my Office co-hosted a seminar at the European Parliament (EP) in Brussels, entitled 'Freedom of Speech and the Audiovisual Media Services Directive: Conflicts and Solutions. At the event, I presented my Office's position on the AVMS, alongside experts from the European Commission, industry associations, and academics. The EP has just completed its first reading of the Directive, which should prepare the European Union for handling the abundance of television content in the upcoming digital convergence era.

I also recommended, that a strong reference to Article 10 of the ECHR should be made in the Directive, and that the so-called "country of origin" principle should be guaranteed in order to enable the free flow of audiovisual media within the European Union. I asked the Members of the European Parliament to take into consideration the media freedom implications during the Parliament's second reading.

Commemoration of Charter '77

On 21 March 2007, along with former Czech President Vaclav Havel, and former OSCE High Commissioner on National Minorities Max van der Stoep, I made an opening statement to participants at an international conference in Prague, organised to mark the 30th anniversary of Charter '77. The participants honoured the significance of the 1975 Helsinki Agreements for the ensuing development in the field of human rights in Central Europe.

Project activities confirmed for the next period

Supplementary Human Dimension Meeting (SHDM) 29/30 March 2007

The third session of the forthcoming SHDM on 'Freedom of Association, Assembly and Expression' will take place on 30 March 2007, devoted to 'Freedom of Expression and the role of the media in a pluralist' society, in which my Office will participate. The session will address the roles and responsibilities of the media in diverse societies

Training for Judges

The first of the three planned seminars on defamation law for judges in **Moldova** will be organized by my Office, together with the OSCE Mission to Moldova, on 23 – 24 April 2007.

Belarus

Following a discussion with the authorities during the Ministerial Conference in Brussels in December 2006, we have received a positive response from the authorities on a number of joint activities for 2007. Areas of cooperation would include a joint training for press officers and journalists, representing state-owned and independent press, scheduled to take place on 4 – 5 June

2007 in Minsk. A discussion on best practices for internet regulation is also envisaged in 2007.

Further press officer training sessions are being planned in **Armenia** and **Tajikistan**.

[http://www.osce.org/documents/rfm/2007/03/23842_en.pdf]

June 21, 2007 Regular Report to the Permanent Council

FOM.GAL/2/07/Rev.1

Mr Chairman, Excellencies, Ladies and Gentlemen

This is my second report to the Permanent Council in 2007. Since the March 2007 report my Office has witnessed a number of positive developments and these are reported below. Unfortunately, in the same period, the situation in some countries has deteriorated significantly, despite a number of interventions by my Office.

This report provides details of issues raised with participating States since March 2007 and reviews our co-operation on recent and planned project activities. It also presents a new Special Report on the handling of the media during political demonstrations.

Issues raised with Participating States

Albania

In close co-operation with my Office, the OSCE Presence in Albania reminded the National Council on Radio and Television (NCRT) that the implementation of a frequency plan for broadcasting should be handled in the least intrusive fashion, in order not to jeopardize media pluralism.

NCRT had earlier shut down some transmitters, which were using illegally occupied frequencies, but without presenting a blueprint for the re-allocation of frequencies.

My Office also provided a non-paper commenting on the new draft law on digital broadcasting. The law, adopted by Parliament on 28 May, incorporates my Office's comments.

Azerbaijan

I am particularly alarmed about the continuous harassment of independent media and journalists by the authorities in Azerbaijan. In recent months, a wave of imprisonments and violence against journalists has reached a critical point.

Over twenty independent journalists recently turned to foreign embassies in Baku asking for political asylum, some of whom went on a hunger-strike to protest against the situation.

Currently, there are seven media professionals in prison for 'defamation' or 'incitement', all of them from non-government outlets. Their only "wrongdoing" was criticism of officials or questioning of conventional wisdom. Most of them are held on charges filed by public officials. The journalists are:

- Mirza Zahit Zahidov (*Azadliq*)
- Faramaz Novruzoglu (*Nota Bene*)
- Eynulla Fatullayev (*Realnyi Azerbaijan*)
- Rafiq Tagi and Samir Sadegetoglu (*Senet*)
- Rovshan Kebirli and Yashar Agazadeh (*Muxalifet*)

When I met President Aliyev in April, I brought to his attention the fact that the lack of government action against the criminalization of journalists may unleash violence against them, as happened in 2005 when journalist Elmar Husseyinov was killed after he being indicted in numerous cases. The latest example of this chilling sequence was the brutal attack on reporter Uzeyir

Jafarov, shortly after his editor, Eynulla Fatullayev, was sentenced to prison in April.

Beside the harsh imprisonment sanctions, the two largest independent newspapers *Realniy Azerbaijan* and *Gundalik Azarbaycan* ceased to exist after they were evicted from their premises by the Ministry of the Emergency Situations on 20 May.

On 25 May, the Supreme Court denied the appeal of *Azadliq*, the biggest oppositional newspaper, the Turan news agency, and the Institute for Reporter Freedom and Safety, against their eviction from their premises in November 2006.

On April 27, I greeted the long-awaited re-licensing of *ANS* Television Company as a positive development.

At the same time, I remain concerned about the general situation for the media and I urge the authorities to decriminalize defamation; to bring to justice all those who assault and murder journalists; to release all those media professionals who are currently serving prison sentences for their work and to end the persecution of the remaining independent media in the country.

Bulgaria

On 22 March, I advised Parliament against introducing amendments to the Access to Public Information Act, which would make access to information both more difficult and more expensive. I was glad to hear that the initially proposed amendments were considerably changed in a positive way.

Modern democracies should facilitate non-bureaucratic access to information, which is a prerequisite for the media's professional coverage of

government. Bulgaria does possess such a regime now; therefore, I hope that the implementation of the new law will not retreat from its advanced information access system.

In my letter dated 1 June to the Foreign Minister, I asked for more information about the results of the investigation into the case of photojournalist Emil Ivanov, who complained of being assaulted by police officers in the course of his work.

France

In my letter of 12 June to the Minister of Justice, I recalled the commitment of her predecessor to include the protection of journalists' confidential sources in the Press Law of 1881, which was also a promise made by Mr. Sarkozy during the recent presidential campaign.

Recent cases of investigations into *L'Equipe* in May 2006, *Midi Libre* in November 2006 and the attempt to search the *Canard Enchaîné* offices in May 2007 all aimed at disclosing journalists' sources and accentuate the need to guarantee the confidentiality of media sources in France.

Ireland

On 29 March, the Irish Supreme Court approved a High Court decision allowing the *Sunday Business Post* and other media to publish material circulated by the Mahon Tribunal prior to a public hearing, but marked as confidential. The Supreme Court dismissed the tribunal's request to prevent the publication.

I view the decision of the Supreme Court as a sign of commitment to freedom of expression.

Kazakhstan

On 24 May, the TV channel *KTK* and the weekly newspaper *Karavan* were suspended, each for three months, following a court ruling in Almaty which cited Article 159 of the Civil Procedural Code. However, an earlier intervention by the Almaty Prosecutor's Office on 22 May demanded that *Karavan* and *KTK TV*, refrain from showing 'unauthorised coverage' of an ongoing criminal investigation at Nurbank.

On 6 June, an official of the presidential administration was appointed General Manager of *KTK TV*, following which news programmes have ceased to be aired. Following an Almaty district court decision, the decision to suspend *Karavan* was reversed, and the newspaper is now publishing, but on the condition that it does not publish any information about events concerning Nurbank. Additionally, the chief editor has been removed from his position.

Against the backdrop of recent events in Kazakhstan involving the family of the President, it is clear that the closure of these media outlets was politically motivated. By issuing an arbitrary order regarding news content, the prosecutor has participated in an act of State interference into the media.

My Office will continue to monitor the implications for the media in the country.

I welcome the decision of the Kazakh authorities to abandon a restrictive draft law on publishing, and the withdrawal of draft legislation in April that proposed to increase the penalties for insult. I look forward to the future parliamentary debate on a new draft media law that has been proposed by a group of NGOs.

Kyrgyzstan

In my letter of 20 April to the Foreign Minister, I raised my concern over the decision by the Prosecutor General to issue a confiscation warrant against four independent newspapers following political demonstrations in Bishkek. In addition to the print run, the authorities confiscated printing plates and electronic files.

Set against a background where journalists reported being beaten and having their equipment damaged while covering demonstrations, I consider this to be an act of censorship. In my letter I asked the Minister to do everything possible to allow journalists to continue to report on political events without fear of interference by law-enforcement officials.

FYR Macedonia

In a letter dated 6 June 2006 to the Foreign Minister I asked for additional information on a reported abduction on 2 June of the Deputy Director of the Macedonian Radio Television (MRT), Nazif Bushi, who was held for several hours by unknown gunmen without explanation, along with two other journalists and their driver.

Russian Federation

In my letter to the Russian authorities dated 17 April, I raised my concern over the treatment of journalists at recent demonstrations in Nizhny Novgorod, St Petersburg and Moscow. Media workers have reported being beaten and detained alongside political demonstrators.

In my letter, I stated that although the locations for the demonstrations were not sanctioned by the authorities, it remains the responsibility of journalists to cover events of a national political nature, and that the media should be protected, rather than hindered, when doing their job.

In a reply from the authorities dated 7 May, a statement from the Press Office of the Ministry of the Interior pledged to improve the handling of journalists during similar events in the future. In a letter to my Office on 7 June 2007, it is stated that as none of the detained journalists have filed official complaints to the police, further investigations cannot be opened. Regrettably then, it appears that Russian law-enforcers will not be held accountable for any acts of violence against journalists during the recent political demonstrations.

A Special Report dedicated to demonstration coverage issues in the OSCE area is attached to this report.

In a reply dated 30 April regarding my interventions in cases of murdered Russian journalists, the Russian authorities informed my Office of the status of the investigation into the murder of seven Russian journalists. In three cases, sentences have been passed, in three more investigations are underway in Russia and in one case the handling of the investigation has been passed to the Moldovan authorities. I welcome the receipt of this information.

Investigations continue into the murder of Paul Klebnikov, Anna Politkovskaya and Ivan Safronov, and I look forward to receiving a similar update on the progress of these investigations in due course.

In my letter to the Russian authorities dated 19 June, I signalled my concern about a civil libel case brought by President Ramzan Kadirov of Chechnya against the Russian newspaper *Kommersant* in June 2006 because of an opinion piece written by a North Ossetian parliamentarian and published by *Kommersant*.

In my letter, I referred to the position of the European Court of Human Rights which holds that public officials, compared to ordinary citizens, should be more restricted to sue for personality damages, and have to endure harsher

criticism. The rationale for this standard is to keep the democratic discussion of public issues ongoing and fearless.

The procedure followed in this case, especially the steep increase in moral damages awarded to President Kadirov on appeal, are contrary to these principles, and conducive to a self-censorship in public discussion.

In my letter I also expressed my regret that attacks on Russian journalists continue, referring to three recent incidents where media professionals have been subjected to violence, reportedly in connection with their work:

- On 15 June, Andrei Kalitin, an investigative reporter with the Russian national television channel ORT, was shot in the shoulder in Moscow.
- On 15 June, Vadim Guzinin, a journalist with the information agency PIA RIM, was a victim of an armed attack in Pskov.
- On 16 June, Mikhail Afanasiev, chief editor of the online journal *Novy Fokus* and recipient of the Sakharov Prize for journalism in 2004, was kicked and beaten unconscious.

I asked the Russian authorities to take whatever action is necessary to send a strong signal that such attacks on journalists are unacceptable in a democratic society. Sending such signals is as important as bringing the perpetrators to justice.

Serbia

In a public statement released on 16 April, I joined the OSCE Mission to Serbia in condemning the 14 April attack against the prominent Serbian journalist Dejan Anastasijevic. A hand grenade exploded outside his Belgrade apartment, shattering the windows but leaving the journalist and his wife unharmed.

I hope that the Serbian law enforcers will quickly find the perpetrators of this crime. It is crucial for any democracy that the police and the judiciary remain responsive to such manifestations of aggression against media workers.

Switzerland

In Switzerland, three journalists of the weekly *Sonntagsblick* were acquitted by a military tribunal on 17 April of having inflicted damage to the defence capabilities of the Swiss Army. I welcome this specific verdict. However, I recall that in my letters to the Swiss Ministers of Justice and Defence of 18 January, I invited the Swiss government to modernize the civil and military penal code by introducing the public interest as a factor for judges to consider when deciding on the publication of classified information. A respective parliamentary motion is pending.

Turkey

On 13 April police forces raided the premises of Turkish magazine *Nokta*, following an article published on 29 March which revealed an alleged plan for a coup d'état by senior military officers in 2004. Police officers remained in the magazine's offices until 16 April. Shortly after, the owner of the magazine decided to stop its publication.

Criminal cases were opened against the magazine's chief editor based on libel and insult provisions. Two journalists who covered the case were also indicted under Article 301, for 'publicly denigrating the military.' All are facing multi-year prison sentences.

In a letter to the Turkish authorities on 11 June I reiterated the need to abolish Article 301 and other criminal provisions that hinder open public debates.

I will also be monitoring the implications of Law No. 5651 “On the preparation of Internet publications and crimes connected with these publications”, ratified by the President on 22 May. Under the new law, it will be a punishable offence to provide web space to internet publications “insulting the memory of Ataturk”, the founder of the Turkish Republic.

Ukraine

In my letter of 28 March, addressed to the Foreign Minister, I asked for additional information about the closure of the political talk-show *Toloka* by the President of the First National Channel *UT-1*.

I was glad to receive a timely answer regarding Toloka on 19 June, in which the authorities shared with my Office the results of the ongoing inquiry. I welcome the readiness of the authorities to continue a dialogue with my Office on strengthening media freedom in Ukraine.

The United States of America

I welcomed the release of Joshua Wolf from jail on 3 April. Wolf, a blogger from California, was jailed by a Federal district court on 1 August 2006 for refusing to turn over a collection of videotapes he recorded during a July 2005 demonstration in San Francisco. He posted the unpublished footage on his blog on 3 April after being assured that he would not have to testify about the footage.

This event again demonstrated the need for a federal shield law in the country. I welcome the re-introduction of the Free Flow of Information Act into Congress on 2 May. This Act aims to protect journalists from being forced to disclose their sources at the federal level, as is the current practice in most states. I encourage swift action by Congress in adopting the Act.

Uzbekistan

On 28 March in my letter to the authorities of Uzbekistan, I requested further information about the charges brought against Natalya Bushuyeva on 23 March under article 184 of the Criminal Code 'Concealment of Income and Non-Payment of Taxes'. Ms Bushuyeva had been working as a stringer for *Deutsche Welle*, which lost its accreditation in 2006 following the adoption of a set of provisions regulating the professional activities of foreign correspondents.

In my public statement of 2 May, I expressed my regret at the seven years sentence passed on Uzbek journalist Umida Niyazova. Ms Niyazova was sentenced on 1 May on three counts, including 'production and distribution of materials containing a threat against public safety or public order'. By the time of sentencing Ms Niyazova had already served more than three months in detention. On appeal, the sentence was commuted to a three year suspended sentence, conditional on a guilty plea.

In a similar case in Uzbekistan, the six year sentence passed on Gulbakor Turaeva in May on charges of anti-government activity was commuted to a three year suspended sentence on appeal on 12 June, on the condition that Ms Turaeva denounced human rights workers and journalists in Uzbekistan.

While I welcome the release of both Ms Niyazova and Ms Turaeva, the fact that both were granted their freedom in exchange for denouncing their work with international organizations, human rights workers and international journalists, is unacceptable in an OSCE participating State.

Regrettably, a shipment of OSCE/RFoM books sent to the Project Co-ordinator's Office in May 2006 remains held up in customs in Tashkent. Customs officials informed the OSCE that the content of the publication – the concluding publication from the 2005 Central Asia Media Conference – violated Uzbek regulation of content and requested that payment be made

to return the shipment to Vienna. In my letter to the authorities of 18 May I asked again for assistance to resolve this matter.

Handling of the Media during Political Demonstrations: Special Report

I am pleased to present the third in a series of Special Reports that seeks to clarify problematic aspects of the administrative framework in which the media operates in the OSCE area. The first two reports focused on the function of journalists' accreditation and issues related to registration of the print media.

The third Special Report on the *Handling of the Media during Political Demonstrations* addresses the issues that have been raised by governments and journalists in recent months and offers some recommendations to improve the possibilities for journalists to cover public events safely.

The report is attached as an attachment to this report and is available for download in Russian and English at the following address:

http://www.osce.org/documents/rfm/2007/06/25176_en.pdf (English)

http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf (Russian)

A future Special Report will address the administrative framework for printing, publishing and distribution of the print press within the OSCE area.

Access to Information Survey

On 2 May in Brussels, **Belgium** on the occasion of World Press Freedom Day, I announced the results of the survey on media access to information in the 56 OSCE participating States. I would like to thank the 2006 Belgian

Chairmanship for supporting this pioneering project; I am also grateful to those Governments which provided information for analysis, as well as the OSCE field operations and NGOs which helped gather data for the survey.

Although some data is yet to be provided, the survey has allowed my Office to analyse the major trends and deficiencies, and to offer recommendations for the consideration of the participating States.

The survey covered freedom of information laws; classification rules; punitive laws on breach of secrecy and the protection of journalists' confidential sources.

Summary of findings

- The general public in the participating States have more access to information than ever before, but weak laws and prosecution against the media diminish journalists' investigative abilities.
- In the past ten years, most OSCE nations have passed good basic laws to balance the rights of the public to know with government classification needs. However, in most countries this balance is upset when it comes to journalists' daily struggle with secrecy.
- Freedom of information laws are in vigour in 80 per cent of the OSCE participating States, including 'old democracies' such as **Germany**, **Switzerland** and the **UK**, and 'new democracies' such as **Armenia**, **Azerbaijan** and **Kyrgyzstan**.
- Against the backdrop of the Helsinki principle of the free flow of information, the survey reveals that most governments define State secrets too broadly and thereby hide too much information that is important for society.

- In at least 29 OSCE participating States the criminalization of “breach of secrecy” is not limited to those who have a duty to protect the secrets but mechanically extends to each and every citizen who played a role in passing on or publishing classified data. The survey lists dozens of cases when journalists have been prosecuted for handling confidential data.
- Almost all OSCE nations recognize in law the importance of the protection of journalists’ confidential sources but less than half offer adequate protection from coercion by the judiciary to disclose sources. Prosecutorial methods include “contempt of court” charges in the **United States**, which result in imprisonment, and raids on editorial premises and wiretapping journalists’ communications in Europe.

The survey is being continuously updated as new responses from participating States arrive. At the time of writing we have collected data on 53 participating States.

The summary of the findings of the survey are available to download at:
<http://www.osce.org/item/24250.html>

Country reports are available to download at:
<http://www.osce.org/item/24251.html>.

Projects & Activities since the last report

Visit to Belarus

On 4-5 June my Office, in cooperation with the OSCE Office in Minsk and the Ministry of Foreign Affairs of **Belarus**, organised a training course for approximately 30 journalists and government press secretaries in Belarus. During my visit, I met the Deputy Foreign Minister; the Deputy Minister of Information; the Chairman of Parliamentary Committee on Human Rights,

Ethnic Relations and the Media; chief editors of non-State newspapers and the Belarusian Association of Journalists (BAJ).

In my public statement of 4 June, I noted that the actual situation of the independent media has not improved since my last visit in 2005. The independent media continues to work against hardships of administrative restrictions, arbitrary registration regime, discriminatory distribution and subscription services, and politically guided printing and advertisement markets.

During my visit, I provided the authorities with a review of the draft law 'On Information, Informatization, and Protection of Information'. I greeted the fact that Parliament invited BAJ to comment on this law. I hope that these discussions will lead to a less restrictive legal environment for the media.

Update on the decriminalization of defamation

Progress continues to be made in the OSCE area in the sphere of decriminalization of defamation.

In **Albania**, I have observed with satisfaction the reinvigorated efforts to decriminalize defamation. On 3 May, the Prime Minister declared that the Government plans to approve a bill on amending the Criminal Code and the Civil Code aimed at decriminalizing libel and insult. On 4 May, the Council of Ministers approved the bill and sent it to the Assembly of Albania for consideration.

This Government-sponsored bill is a project initiated and advocated by civil society groups and the amendments have been supported by the OSCE Presence in Albania and my Office throughout.

In **Kazakhstan** on 13 April, the parliament rejected amendments to the Criminal Code that had been introduced by the government. The amendments envisaged, *inter alia*, stronger criminal punishment for libel against candidates for presidency, members of parliament, and regional and district 'akims' (heads of administration) during election campaigns.

I recommend Kazakhstan's legislators to enact into law current NGO proposals to fully decriminalise libel and insult.

Regrettably, I am obliged to report negative developments in the decriminalisation of libel in **Kyrgyzstan**. As stated in my former report to the Permanent Council, a set of amendments to remove libel and insult from the Criminal Code were accepted by the Jogorku Kenesh during the first reading.

However, I have now been informed that following a heated parliamentary debate, these amendments were recalled in a subsequent reading. Regrettably, libel and insult remain criminal offences in Kyrgyzstan.

I urge the authorities of Kyrgyzstan to reconsider this decision and to take all possible measures to decriminalise libel and insult and thereby set a positive example in the region.

Self-regulation

My Office continues to promote self-regulation in the OSCE area and the development of a practical handbook on this topic is currently underway. I would like to thank **France, Germany, Ireland** and the **United Kingdom** for their generous extra-budgetary contributions to the project. A discussion of the content of the handbook will be a central feature of the 2007 regional media conferences, planned for autumn 2007.

On 8-9 June, my Office participated in an international workshop, organized by the Budapest Centre for Independent Journalism in **Hungary**, on the topic of patterns and models of media self-regulation in Europe. The workshop focused on creating a code of ethics and a press council for Hungary.

Legal Reviews

On 23-24 April, my Office in cooperation with the OSCE Mission to Moldova organised the first of three planned seminars on defamation law for judges.

My Office reviewed the draft Law on Data Secrecy in **Croatia**. It was forwarded to the Croatian authorities in April.

My Office reviewed the **Belarusian** draft law on Information, Informatisation and Protection of Information (see section *Visit to Belarus*).

http://www.osce.org/documents/rfm/2007/06/25078_en.pdf

Internet

On 2 May, my Office delivered a presentation at the Computers, Freedom and Privacy Conference in Montréal, **Canada**. The presentation focused on Internet content regulation in Europe and the RFOM project “Internet Governance in the OSCE Region”.

On 23 May, during open consultations in Geneva, **Switzerland**, within the UN-led preparation of the 2007 Internet Governance Forum (IGF), my Office contributed to a position paper by the ‘Dynamic Coalition on Freedom of the Media and Freedom of Expression Online’.

Participation in OSCE and external events

On 19-22 April, I attended the Eurasia Media Forum in Almaty, **Kazakhstan**, and participated in a panel dedicated to Media Law and Freedom in the Post-Soviet Republics.

On 26-28 April, I moderated a panel at an international conference organised by the Organization of Islamic Conference in Baku, **Azerbaijan**, on the 'Role of the Media in the Development of Tolerance and Mutual Understanding'. During my visit, I met President Aliyev for an open discussion regarding the grave media situation.

On 26-27 April, my Office participated in a conference dedicated to the role of media in conflict prevention, hosted by *Deutsche Welle* in Bonn, **Germany**.

On 2 May I participated as a keynote speaker in an event at the European Parliament, organized by the European Federation of Magazine Publishers. The new EU Audiovisual Media Services Directive and the situation of press freedom in the EU and the OSCE region were discussed.

On 3 May, I participated in a debate organized by UNESCO-**UK**, on the topic of the state of world media freedom.

On 12-15 May, I participated in the 56th General Assembly of the International Press Institute in Istanbul, **Turkey**. I addressed the topic of "Reporting in a World Where We are All Others".

On 27-30 May I gave the keynote speech at the Congress of the International Federation of Journalists in Moscow, **Russia**. I focused on the link between the criminal punishment of journalistic activities and violence against journalists, and highlighted the problem of impunity before the law of

those who murder journalists for their work. The text of my keynote speech is available at

http://www.osce.org/documents/rfm/2007/06/24811_en.pdf

On 7-8 June during the OSCE Conference on Combating Discrimination and Promoting Mutual Respect and Understanding in Bucharest, **Romania**, I moderated the plenary session on “Addressing racist, xenophobic and discriminatory public discourse spread through, *inter alia*, the media, internet, satellite TV and textbooks, while respecting freedom of expression”.

On 13-14 June, my Office participated at the Hambacher Fest in **Germany**. During the event, my Office gave a presentation on press freedom in the OSCE region and conducted a workshop for young journalists on media freedom.

On 14 June, I participated in a roundtable of Samizdat ‘Forschungstelle Osteuropa’ at the University of Bremen. The occasion to discuss the situation for the free press, past and present, was the 25th anniversary of the establishment of the organisation in 1982.

Project activities confirmed for the next period

Annual Regional Media Conference

I am pleased to announce that the next South Caucasus Regional Media Conference will take place in Tbilisi, **Georgia** on **11-12 October**. The Central Asia Regional Media Conference will be held in Dushanbe, **Tajikistan** on **1-2 November**. The focus of these conferences this year will be on media self-regulation.

My Office is preparing both events in close cooperation with the OSCE Mission to Georgia and the OSCE Centre in Tajikistan. I would like to express my gratitude to participating States who have already pledged funding for these important projects and would like to encourage other participating States to consider pledging donations. In order to complete the funding, we are seeking an additional 30,000 Euro.

Joint Journalists' and Press Officers' Training

In addition to the successful training courses run in **Azerbaijan, Belarus, Kazakhstan** and **Ukraine** in 2006/7, new and follow-up training courses are planned in *inter alia* **Armenia, Georgia, Tajikistan** and **Ukraine** before the end of 2007.

[http://www.osce.org/documents/rfm/2007/06/25255_en.pdf]

November 15, 2007 Regular Report to the Permanent Council

FOM.GAL/3/07/Rev.2

Mr. Chairman, Excellencies, Ladies and Gentlemen,

I begin my last report of the year to the Permanent Council with a commemoration of a young journalist whose promising career was cut short by an act of brutality. On 24 October, Alisher Saipov, who had worked for the reputable media outlets *Ferghana*, *Radio Free Europe* and *Voice of America*, and had run an Uzbek-language newspaper, was murdered in downtown Osh in southern Kyrgyzstan. Mr. Saipov was 26 years old and left behind a newborn child.

My Office immediately issued a statement condemning the murder of Saipov. In a letter to Kyrgyzstan's Foreign Minister Ednan Karabaev, I expressed optimism for a vigorous and transparent investigation by the authorities, particularly in light of the welcome fact that President Kurmanbek Bakiev took the investigation under his personal auspices.

However, I was disheartened to hear that the Ministry of Interior of Kyrgyzstan, immediately after the death, instead of reporting on the perpetrators, had issued a statement practically blaming the victim for having done what in fact was his vocation: covering sensitive issues in his region of the world.

You will find that in the more than two dozen cases where my Office intervened in the last four months, one in five incidents involved violent attacks against journalists. After the tragic deaths of Georgy Gongadze, Paul

Khlebnikov, Elmar Husseyinov, Ogulsapar Muradova, Anna Politkovskaya and Hrant Dink, I repeatedly asked the participating States to bear in mind that violence against journalists is not crime as usual. It is also meant to terrorize democracy's basic institution, the press.

Violence imposes censorship far beyond the context of the actual controversy; it impedes the press in performing its most important social service, covering human rights abuses and corruption. Violence against the press should be put visibly high on the national agenda. The investigations should be given a public-friendly handling. Governments must be aware of the linkage between the lack of their own respect for media, and societal violence against the media. Not allowing impunity for assaults against journalists; ending criminal handling of professional mistakes by the media; stopping discrimination against the independent press; tolerating media coverage of demonstrations; these are all measures by which Governments can contribute to eliminate this plague.

My Office will prepare a special report on violence against journalists and will present it to the Permanent Council.

The following report provides details of issues raised with participating States; it reviews our cooperation on recent and planned project activities. It also presents a special report on "examination of modalities for media twinning" in response to PC Decision (PC.DEC/759) of 5 December 2006 in Brussels.

Issues Raised with Participating States

Armenia

In my 28 June letter to the Chairman of the National Assembly, the Minister of Foreign Affairs and the Minister of Justice, I shared my concerns about the draft laws "On Introducing Amendments to the Republic of Armenia Law

on Television and Radio”, and “On Making Amendments to the Republic of Armenia Law on State Duties”. These proposals could potentially ban re-broadcasting of foreign public-service programmes’ in Armenia, including Radio Liberty. The first law would have affected the Armenian state TV and radio, and the second law, via higher duties, would have concerned private broadcasters. I asked the National Assembly to prevent the adoption of the two bills. I was glad to learn that the amendments were not adopted. However, shortly after their rejection, the Council of the Public Television and Radio Company notified all foreign broadcasters that their programmes would no longer be retransmitted on public frequencies. As a result, Radio Liberty had to sign a contract with a private radio station in order to continue its broadcasts in Armenia.

Azerbaijan

I remain concerned with the grave situation of the independent media in Azerbaijan. Two more media workers were arrested last week, thus increasing the number of Azerbaijani journalists who are currently in prison to nine. On 6 November, Nazim Guliyev, the editor of *Ideal* newspaper, was sentenced to two and a half years of imprisonment for libel and defamation. As in many previous cases, the lawsuit was initiated by the Ministry of Interior.

On 11 November, Genimet Zahidov, chief editor of *Azadliq* newspaper, was sentenced to two months of pre-trial detention for hooliganism. Genimet’s brother, Sakit Zahidov, a sharp-tongued critic of the government, has been in prison since October 2006 for alleged drug possession.

On 30 October, one of the seven already jailed media workers, Eynulla Fatullayev, was sentenced to a new, combined prison sentence of eight and a half years for libel, insult, incitement to ethnic and religious hatred, threat of terrorism, and even tax evasion. Additionally, he was ordered to pay an

exorbitant fine of approximately 164,000 euros, and the computers of his papers, *Realny Azerbaijan* and *Gundelik Azerbaijan*, were confiscated.

The trial was a textbook example of the arbitrary use of repressive laws, aiming to criminalise journalism and silence critical voices. It completed the campaign that was started to silence Mr. Fatullayev and to eliminate the country's two most-read newspapers. Several fresh defamation cases against journalists, all initiated by public officials, are currently pending, and they might result in further incarcerations.

I reiterate my call on the Azerbaijani authorities to release the imprisoned journalists, decriminalise speech offences in general, and defamation in particular, and transfer their handling into the civil-law domain. Progress in quality journalism should not be a pre-requisite to relieve journalists from fear of criminalisation. On the contrary, responsible journalism can only develop under guaranteed freedom to debate and to criticise.

Continuing my Office's co-operation with the relevant authorities, I fulfilled the request for assistance from Nushiravan Maharramli, Chairman of the National Television and Radio Council, regarding the regulation of Internet-based broadcast media. In my letter on 8 October, I offered recommendations on the topic, and the support my Office could provide when drafting legislation on this subject.

I hope to be able to continue the dialogue with the Government of Azerbaijan on how to improve the situation of the independent media and its legal environment.

Belarus

In my letter of 22 August to the Head of the Permanent Delegation of Belarus, I welcomed that some of my Office's recommendations on the

draft “Law On Information, Informatization and Protection of Information” were taken into account by the drafters. The law would define rules of classification of – and journalists’ access to – governmental information, and it may ensure compliance with relevant commitments regarding the working conditions of independent journalism in the country.

Additionally, in a letter written on 28 September to Yuri Kulakovsky, head of the parliamentary committee responsible for media issues, I offered assistance in the planned drafting of Internet regulation. I was glad to receive his response on 24 October, assuring that the draft law will be forwarded to my Office for review.

Belgium

I welcome the 18 June court decision in the case of journalist Ms. De Graaf of *De Morgen* newspaper, which reaffirmed the right of journalists to protect their confidential sources. The rejection of the prosecutor’s claim shows that Belgium’s ‘shield law’ of 2005 on the protection of journalists’ sources works as planned.

Croatia

I sent a letter to the Minister of Foreign Affairs on 25 October, raising concern about the case of journalist Zeljko Peratovic. He was detained on 17 October for one day, in connection with his alleged revealing of state secrets. If charged, Peratovic will face up to three years of imprisonment. I asked the Minister for details of this case, and reiterated the need for new laws that can secure that criminal liability for disclosing secrets applies only to officials in charge of protecting classified information.

Czech Republic

On 26 July, I sent a letter to the Minister of Justice of the Czech Republic about the new draft Criminal Code. I regret that the proposed changes failed to decriminalise defamation. The draft even maintains imprisonment as a form of punishment for defamation, in spite of the clear jurisprudence of the European Court of Human Rights. I reminded the Minister that, if appealed to Strasbourg, any potential imprisonment sentence for journalists by the Czech judiciary would be ruled out by the Court.

Georgia

On 8 November 2007, I expressed concern about the suspension of the work of *Imedi TV*, Georgia's most watched independent broadcaster, and *Kavkasia TV*, which transmits in Tbilisi. The closure took effect late on 7 November, before a presidential decree announcing a state of emergency entered into force.

I urged the Georgian authorities to cease the selective silencing of *Imedi TV* and *Kavkasia*, as pluralism in broadcasting is essential for a democracy. Introducing a state of emergency may be in accordance with the country's Constitution, but the media must also be able to fulfill its constitutional responsibility to inform the society about the developments in the country. My Office, together with our colleagues from the OSCE Mission to Georgia, will continue to closely follow the situation in the country. We are also in touch with Peter Semneby, the EU Special Representative for the South Caucasus, who is currently in Tbilisi.

Germany

On 9 August, I wrote to Federal Minister of Justice Brigitte Zypries, asking Germany to cease criminal proceedings against 17 journalists of the country's most prestigious newspapers. The journalists published

allegedly classified information on German intelligence activities, and on the Parliamentary Committee examining them.

I was pleased to receive the reply of the Minister about the suspension of the court proceedings against most of these journalists. I hope to hear soon about the termination of the still ongoing litigations.

The Minister also sent to me a draft law on court proceedings, with the planned list of exemptions from the duty to testify, including the right of journalists to protect their sources. In my reply, I asked her to ensure that the journalists' privilege falls into the strongest protection category. Unfortunately, when the law was adopted on 9 November, a general provision offering a more robust protection to media professionals was not included. However, electronic data found with journalists by coincidence may not be used by judicial authorities.

Greece

On 11 July, I wrote to President Karolos Papoulias, expressing my concerns about his promulgation of a new law on 'Concentration and Licensing of Media Enterprises and other Provisions' in Greece.

The law sets unnecessarily high requirements for obtaining a radio broadcasting license, for example in terms of a minimum number of employees, or a deposit for radio stations. These provisions may make it difficult for minority, community, alternative, and other low-cost broadcasters to put their programs on air, potentially diminishing effective pluralism.

In her reply, conveying the government view, the Permanent Representative assured me that the new law in question was aimed solely at a necessary regulatory overhaul of the media landscape, and that the Government will

continuously monitor the ensuing situation with regard to safeguarding media pluralism.

Hungary

On 22 June, the brutal attack against a Hungarian journalist investigating the so-called “oil deals” of the 1990s prompted me to turn to the authorities, urging them to take resolute action to prevent similar assaults in the future. However, five months into the case, I am still waiting to see the concrete results of the investigation.

My Office was consulted by the Government on the ongoing reform of the classification rules, and the relevant Criminal Code provisions on ‘breach of secrecy’. I hope that the upcoming legislation will serve the cause of journalists’ access to governmental information in a fashion to match the most advanced standards.

Ireland

In September 2007, an independent press council was established in Ireland. I welcome the creation of this self-regulatory body that will accept complaints on the media from the public as of 1 January 2008. I hope that its creation will offer additional incentive to the legislators to fully decriminalise defamation in the pending reform bill.

During my visit in Dublin 9-10 November, on the occasion of the Congress of the Association of European Journalists, I discussed with the authorities the prospect of making the new defamation bill fully compatible with OSCE commitments, CoE standards, and Strasbourg case law.

I also discussed the option of passing a statutory rule on the protection of journalists’ confidential sources that could guide the courts in the future.

The topicality of the issue was provided by the worrying ruling of the Irish High Court in Dublin of 23 October. It ordered the leading journalists of *The Irish Times* to testify before a tribunal on the source of their story about cash payments to Prime Minister Bertie Ahern in 1993, when he was the Finance Minister. I also met the newly appointed Press Ombudsman of the Press Council, and was glad to see the new body's devotion to increasing fairness and professionalism in the press.

Kazakhstan

Since I took office in 2004, I have been following the preparations aimed to reform the country's media and other laws regulating speech rights. Currently, upon a request of the Delegation of Kazakhstan to the OSCE, my Office is reviewing the draft Media Law submitted to the Parliament in April of this year. The review will be completed soon. Please also see this report's section on legal reviews.

On 8 October, I expressed my concerns in a letter to the Ministry of Internal Affairs regarding its amendments to the defamation provisions of the Criminal and Civil Codes. If tabled with the Parliament, these proposals would have substantially reduced the scope of decriminalisation proposed in the April draft Media Law. In the letter I also noted that these new amendments were at variance with the intention of relieving journalists of the burden of criminal defamation, as declared by the Minister of Information and Culture, Yermukhamet Yertysbayev, at the 26 July 2007 meeting of the Permanent Council. In his response early November, the Ministry of Culture and Information and the Ministry of Internal Affairs prepared a new, jointly drafted version of the Criminal and Civil Code amendments, which the Kazakh Delegation to the OSCE also submitted to my Office for a review.

In order to handle all these proposals in a transparent way, my Office, with the help of the OSCE Centre in Astana, will send a legal expert to

Kazakhstan on 16 November, in order to discuss the different drafts with all stakeholders, including the NGOs that have drafted the law, and the representatives of the authorities.

The former Yugoslav Republic of Macedonia

On 25 and 26 September, when covering public events, Lirim Dullovi and Igor Ljubovcevski, journalists of local TV stations, were physically abused by a bodyguard of a political party and by police officers.

The OSCE Spillover Monitor Mission to Skopje intervened with the Prime Minister. I remain confident that both investigations will be conducted with the necessary determination, and will help prevent such incidents in the future. I discussed these cases with the Head of the Permanent Mission to the OSCE, stressing that such cases need a public-friendly and resolute handling in order to prevent their spreading.

Moldova

In my letter of 19 October, written to the Deputy Prime Minister and Minister of Foreign Affairs Andrei Stratan, and to the Chairman of the Audiovisual Coordination Council, I asked for information about the sudden revocation of the re-broadcasting licence for the Romanian public television channel *TVR 1*. As viewers' statistics demonstrate, the channel is a popular choice in Moldova, thus, its removal may effectively damage the pluralism of the media scene.

On 5 November, I received a response from Minister Stratan. He informed me that the Audiovisual Coordination Council was looking into the matter, and that he would provide me with results soon.

Montenegro

In my 4 September letter to the Minister of Foreign Affairs of Montenegro, I shared my concerns about the brutal attack on Zeljko Ivanovic, the director of the daily newspaper *Vijesti*. The attack by three men took place on 1 September, and as a result, Ivanovic suffered a fracture. I was glad to learn that the case was solved following the confession of two persons of having committed this attack.

However, another attack on a journalist occurred in the meantime. Tufic Softic, a journalist working for *Radio Berane* and the daily newspaper *Republika* was attacked and severely beaten by two masked assailants on 1 November, in front of his home in Berane. This new attack shows how easily the violent intimidation of journalists can spread if it is left unpunished. I call on the Montenegrin authorities to treat such attacks not as ordinary crimes, but as acts targeting a basic institution of democracy and exercising censorship. Proactive measures are needed to ensure a safe working environment for media workers.

Poland

Unfortunately, within the last several months, with a series of prosecutorial and court decisions, Poland has become the only nation in the European Union that imprisons journalists for defamation. By doing so, Poland disregards the established jurisprudence of the European Court of Human Rights, which has been consistently rejecting even suspended prison sentences for verbal violations of personality rights. Furthermore, Terry Davis, the Secretary General of the Council of Europe, has called on all member states to decriminalise these offences.

Since 2004, I had to intervene with the Polish authorities in three defamation cases, and asked the authorities to decriminalise defamation. It is against that background that, in a letter written to the Minister of Justice of Poland

on 2 August, I expressed concern about a fourth case, the sentencing of Jacek Brzuszkiewicz, a journalist of *Gazeta Wyborcza*. He was sentenced to a suspended six-month prison term and a hefty fine for criminal defamation against a judge in a series of articles. In these pieces he argued that the judge and a defender, who won a case in that judge's court, were acquaintances.

In his 4 October response to my intervention, the Polish Deputy Attorney General presented general arguments against the decriminalisation of libel and insult, referring to the Polish Constitutional Tribunal's decision on the constitutionality of criminal prosecution of defamation. However, he did not address my major concern of sanctioning defamation with imprisonment, practically ignoring the above mentioned case law of the European Court of Human Rights, and upholding a clearly outdated standard by heeding the call for decriminalisation by the Council of Europe.

Finally, I regret to report about a new case of media criminalisation. On 30 October, a Warsaw court ordered two journalists of the weekly *Gazeta Polska* to be arrested prior to their upcoming libel trial in December. Treating journalists as criminals, who are likely to escape their court appearance, is the latest in a chain of prosecutions against Polish journalists.

I hope that the new Government of Poland will realise that 21st-century democracy has to liberate the media from fear of imprisonment for possible professional mistakes, and let those offences be handled between citizens, via civil-law courts.

Russian Federation

In my 19 June letter to the Head of the Permanent Mission of the Russian Federation to the OSCE, I raised the libel case initiated by the Chechen President Ramzan Kadyrov against the *Kommersant* newspaper, citing the

standard that, for the sake of freedom of debate in society, public officials need to exercise self-restraint in suing for personal damages.

I also addressed the violent attacks against journalists Andrei Kalitin, Vadim Guzinin and Mikhail Afanasyev. In his response on 31 July, the Head of the Permanent Mission informed me that local prosecutors have started investigations into the three cases of violence, but no results were available yet.

In a letter to Minister of Foreign Affairs Sergey Lavrov written on 26 July, I expressed concern regarding a series of amendments to the 'extremism' laws, signed by President Vladimir Putin on 26 July. I asked the Russian authorities to re-examine the legal framework on 'extremism', especially the parts that touch upon the media's right to report on controversial issues.

I criticised the lack of a clear definition of 'extremism'. I pointed to the heterogeneous and wide array of offences that are termed as extremist, such as 'public justification of terrorism', 'mass distribution of knowingly extremist materials', 'libellous accusations of extremism against public officials', and 'provision of information services to extremists'. Such provisions may hold the media back from reporting on issues of public interest out of fear to be labelled as engaging in 'extremism'.

The Head of the Permanent Mission informed me that Minister Lavrov received my letter, and it is being given due consideration. In the meantime, my Office is monitoring 'extremism' cases pending in Russia's courts.

In my letter of 22 August to Boris Boyarskov, Director of the newly established federal service supervising media and communication ('Rossviazokhrankultura'), I expressed my concerns regarding the suspension of the re-broadcasting of *BBC* on the Moscow FM Radio Station *Bol'shoye Radio* in August 2007. *Bol'shoye Radio* was *BBC's* last FM

distribution partner station. I asked “Rossviazokhrankultura” to review this decision that damages information pluralism in the country. To date, I have received no response.

On 10 September, I commended the recently announced partial progress in the cases of murdered journalists Anna Politkovskaya and Igor Domnikov, but warned that violence against journalists can end only if those ultimately responsible are identified and prosecuted without political interference. The welcome announcement in the Politkovskaya case was, unfortunately, accompanied by unsubstantiated political allusions, and followed by news of procedural mistakes. I called for vigorous and independent investigation of the cases of murdered journalists.

In this regard, I was glad to learn that on 28 October the investigation into the death of Yuri Shekhochikhin, another *Novaya Gazeta* journalist, was re-opened. He died in 2003.

In a similar development, on 10 November the criminal case into the case of murdered *Novaya Gazeta* journalist Igor Domnikov was also re-opened, with the intent to bring the behind-the-scene organisers of his murder to justice. He was killed in 2000, and the actual perpetrators were convicted this year. These developments may bring some relief to the staff of *Novaya Gazeta*, which has witnessed the deaths of three of its journalists since 2000.

Slovenia

A ‘Petition against Censorship and Political Pressure on Journalists in Slovenia’, signed by more than 400 journalists, has been widely distributed and it has also reached my Office. The Slovenian Ambassador to the OSCE, in his response to my request to present the Slovenian Government’s view on the concerns raised in the petition, refuted them as baseless. My Office will continue to monitor the media situation in close contact with the NGOs involved.

Spain

I raised the case of the *El Jueves* magazine with the Head of the Permanent Mission of Spain in a letter on 24 July. A High Court judge ordered the seizure of copies of the weekly because it had published a cartoon of the royal couple, which was considered by the judge as violating their honour and dignity. The two cartoonists were fined 3000 euros each on 13 November.

Recently, judicial proceedings were started against three other journalists for publishing a photographic collage disrespectful of the King. These cases highlight the importance of abolishing all antiquated insult provisions that end special protection to officials and dignitaries. Those rules do not fit with democracies proud of their freedom of public debate.

Switzerland

On 4 July, I sent a letter to the Head of the Swiss Delegation to the OSCE about an appeal court conviction of a Turkish politician for refusing to call the killings of Armenians in the Ottoman Empire in 1915 a genocide. I reminded the Swiss Government that, according to the case-law of the European Court of Human Rights, only denial or belittling of genocides recognized by international courts or by relevant international legal instruments should be exempt from legal protection as free speech. Other historic events should be open to debate.

Tajikistan

On 21 September, I called on Tajikistan to revoke the amendments to Articles 135 and 136 of the Criminal Code that were recently signed into law by President Emomali Rahmon. I noted that under this provision any factual mistake or strong opinion published, re-published, reported or discussed on the Internet can be penalized. I therefore asked the Majlisi

Oli, Tajikistan's Parliament, to bring the legislation in line with the country's OSCE commitments to protect the free flow of information. Regardless of whether such content is published on the Internet or in any other media, I reiterated that only explicit incitement to violence or discrimination should be criminalised. Judgement on other verbal offences should be in the realm of civil courts.

I was glad to meet Deputy Foreign Minister Erkin Kasimov during the Central Asia Media Conference in Dushanbe this month. I raised the importance of not letting precedent decisions be created based on the new defamation provisions. He assured me of Tajikistan's readiness to study international best practices and standards. We also discussed future co-operation on projects and legal advice.

Turkey

Congratulating Prime Minister Recep Tayyip Erdogan on his re-election, I asked him to seize the moment and repeal Article 301 of the Turkish Penal Code, which makes it an offence to "insult Turkish identity" and which continues to target journalists and writers with dissenting views on history. I referred to the proliferation of cases launched under this article which allows it to criminalize a broad range of critical opinions, given its vague wording.

Soon after my 18 September letter, on 11 October, a suspended one-year jail sentence was handed down on Arat Dink and Serkis Seropyan, the editor and the owner of the Armenian and Turkish language weekly *Agos*. The two were convicted for reprinting remarks of murdered journalist Hrant Dink, the father of Arat Dink, in which he called the 1915 killings of Armenians a genocide.

In a 17 October letter, referring to the fate of Hrant Dink, I emphasized that the failure to abolish Article 301 continues to expose persons with dissenting

views to prosecution and may single them out for violence. I welcome the announcement by Justice Minister Mehmet Ali Sahin of 7 November that Article 301 will be changed.

The United States of America

I welcome that the House of Representatives approved their version of a “Free Flow of Information Act” on 16 October. This decision is the first step towards the adoption of a comprehensive federal ‘shield law’, one that can prevent the jailing of journalists for refusal to disclose their confidential sources. Since then, the Senate Judiciary Committee has also recommended for consideration a Federal journalists’ privilege to safeguard the freedom of the press.

As the version of the Act approved by the House provides for relatively wide exemptions, and the definition of a “journalist” is too narrow compared to the wide variety of modern forms of journalism, I look forward to the debate of this bill with the hope that the Senate will adopt an improved version.

In a letter written to the Chief of the United States Mission to the OSCE on 6 August, I requested additional information regarding the murder of Chauncey Bailey. The editor of the *Oakland Post* was killed on 2 August. I was informed that a suspect in this case had been detained who had confessed to killing the journalist.

Twinning: Special Report

At the Brussels Ministerial Council in December 2006, the Permanent Council adopted PC.DEC/759 on “Media twinning: Capacity building in support of professional media through peer-to-peer exchanges”. The task of my Office to examine the modalities of media twinning was conducted

by using the method of a detailed questionnaire to the OSCE executive structures.

Twinning is a very valuable instrument in the toolbox of media development, and it is widely practised within the OSCE. However, compared to the overall twinning activities carried out by other organisations, especially NGOs throughout the OSCE area, those of the OSCE executive structures are rather small.

The report concludes that the co-ordination of peer to peer exchanges within the OSCE is and should remain in the realm of the OSCE field presences, while the RFOM and the CPC should continue to be notified of such activities.

A change of responsibilities is not recommended. Furthermore, stronger centralisation of twinning activities would be rather counterproductive, as Field Presences are best suited to initiate and implement media twinning, incorporating their needs assessments.

Based on the feedback from the field presences, the report also concludes that in case twinning activities are to be increased within the OSCE, additional resources are imperatively needed. The report is attached to this report and is available for download at my Office's website at <http://www.osce.org/doc>

Projects & Activities since the last report

Regional Media Conferences

This year, my Office organized another round of the Regional Media Conferences in the South Caucasus and in Central Asia. The participants

included journalists, representatives of media organizations, state officials, as well as local and foreign experts.

As in previous years, these conferences provided a unique platform to exchange views on cutting-edge media topics, and to create new professional bonds between the media professionals of the participating countries. This year the focus of both events was media self-regulation. The discussions clarified that the two areas face substantially different challenges in the domain of media self-regulation.

I would like to express my gratitude to the donor countries, **Austria, Germany, Ireland, Sweden** and **the United States**, for making these two events possible. Let me also thank the Government of Georgia and the Government of Tajikistan for their hospitality.

The Fourth South Caucasus Media Conference in Tbilisi

The event, held in Tbilisi on 11 and 12 October, was organized jointly by my Office and the OSCE Mission to Georgia. 70 journalists from Armenia, Azerbaijan and Georgia discussed recent media developments in the three countries.

The special focus on media self-regulation was praised for both its relevancy and timeliness. The need to increase the quality of journalism while preserving editorial freedom was evident from various requests coming from civil society groups and Field Presences.

Renowned international experts shared their knowledge and experience regarding the development of media accountability mechanisms, while local experts provided information on the current state of media self-regulation in the three countries.

The conference welcomed the recent creation of the prototype of a self-regulatory body in Armenia. However, it also highlighted the many obstacles standing in the way of the effective functioning of self-regulation in the area. Lack of independence, lack of public awareness about the right to complain, and lack of journalistic professionalism were reported as the major problems for the press council of Azerbaijan, which was created in 2003. In Georgia, the Media Ethics Observatory has ceased to operate due to the lack of financial resources. At the event, strategies for the sustainability of self-regulatory bodies were also discussed.

A declaration on the findings and tasks was adopted at the end of the conference. It is accessible on the RFOM website (<http://osce.org/item/27325.html>).

The Ninth Central Asia Media Conference in Dushanbe

The latest of our media conferences in Central Asia was jointly organized by my Office and the OSCE Centre in Dushanbe, on 1 and 2 November. The event gathered journalists from Kazakhstan, Kyrgyzstan and Tajikistan.

I regret that colleagues from Turkmenistan and Uzbekistan were unable to attend the conference. I hope that they will be able to participate next year, enriching both their and their colleagues' experiences.

As no effective or sustainable self-regulation mechanisms have yet been established in Central Asia, the participants learned of the merits of media accountability systems and the various models of media self-regulation that have been already successfully functioning elsewhere in the OSCE area.

International experts put emphasis on how media self-regulation can guarantee the quality of information for the public, and how it can also prevent lengthy court procedures by quickly resolving legitimate complaints.

Experts also underlined the fact that while media self-regulation promotes ethical standards, it also preserves editorial independence.

The fact that Governments seem to utilise the creation of self-regulation mechanisms as a precondition for reform prompted a few participants to caution against a too early introduction of self-regulated ethics. However, others have pointed to the fact that self-help in cultivating professionalism provides a valuable moral base in the fight for media freedoms.

The conference contributed to an increased understanding of the role of media self-regulation in Central Asia. The declaration adopted at the conference can be found at the RFOM website (http://www.osce.org/documents/rfm/2007/11/27937_en.pdf).

Access to Information

The results of the survey on media access to information in the 56 OSCE participating States, outlined in my last report, were used in the recommendations for the Council of Europe's Committee on Human Rights, which is in the process of elaborating a "European Convention on Access to Official Documents".

Let me kindly remind the Delegations that the database on this survey is constantly updated; new information received by my Office is entered and can be consulted at <http://osce.org/item/24251.html>.

Co-operation with other international organisations

I welcome that on 26 September the Committee of Ministers of the Council of Europe adopted the "Recommendation of the Committee of Ministers to member states on promoting freedom of expression and information in the new information and communication environment", "Guidelines of the

Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis”, “Declaration by the Committee of Ministers on the protection and promotion of investigative journalism”. These documents set and reinforce important standards in the field of media freedom. They directly engage those OSCE participating States which are also Council of Europe members, but their importance resonates beyond that.

Update on the decriminalization of defamation

I welcome the adoption on 4 October of Resolution 1577 (2007) “Towards Decriminalisation of Defamation” by the Parliamentary Assembly of the Council of Europe (CoE). The resolution calls on the CoE member states to, *inter alia*, abolish imprisonment for defamation without further delay, and guarantee that there is no misuse of criminal prosecutions for defamation. It also asks the states to remove any increased protection for public figures in accordance with the European Court of Human Rights’ case-law, as well as to set reasonable and proportionate awards for damages and interest in defamation cases. This Parliamentary Assembly’s resolution concurs with the clear position expressed by the Secretary General of the Council of Europe, who, in 2006, called on all member states to decriminalise defamation and handle it in civil courts.

Training

I am pleased to report that our training courses for journalists and press officers continue to be in high demand. Since my last report, two courses were held by my Office:

- On 12 September, in Lviv, *Ukraine*, on “*Co-operation between journalists and press officers: corruption and other challenges for professionalism*”;

- On 19-20 September, in Yerevan, **Armenia**, on "*Interaction between the press and press services in a democratic society*".

My Office, together with the Mission to **Moldova**, continued the training of judges on *libel and defamation legislation*. The project started last year, and continued in April of this year. On October 8 and 11, two seminars were carried out for judges from the Cahul and Comrat Courts of Appeal, in the south of Moldova.

The participants gained deep knowledge on the Moldovan defamation case law and on the practice of the European Court of Human Rights. Practical trainings were organized, during which the participants delivered judgments on hypothetical defamation cases in the media. Judges have also received relevant documentation and training materials for future use.

Legal Reviews

I am glad that the Parliament in **Croatia** adopted an improved version of the Data Secrecy Law on 13 July, following the legal review with recommendations that my Office submitted earlier this year to the Croatian Government.

Following a request by the Permanent Mission of the Republic of **Kazakhstan**, my Office is currently reviewing the draft Media Law elaborated by the Congress of Journalists of the Republic of Kazakhstan, and submitted to the Parliament on 18 April 2007. Furthermore, my Office was asked to assess a new version of the Criminal and Civil Code amendments, jointly drafted by the Ministry of Information and Culture, and the Ministry of Internal Affairs.

Internet

At this very moment, my Office is participating at the second UN-led Internet Governance Forum (IGF) in Rio de Janeiro. The IGF is a follow-up of the World Summit on the Information Society held in Geneva in 2003 and Tunis in 2005. At the current IGF, my Office is hosting a joint workshop on “Media Freedom Online”, together with the Council of Europe and UNESCO.

My Office is also a founding member of the so-called ‘Dynamic Coalition on Freedom of Expression and Freedom of the Media Online’, which serves as a platform for state and non-state actors, including governments, civil society, industry and academia, to informally contribute to the IGF process.

Visits by the Representative

On 29 July, in the framework of my Office’s efforts to promote the recent RFOM survey on access to information, I gave a keynote speech at the conference of the Hungarian Civil Liberties Union in **Budapest**, presenting the main findings of the survey in the light of Hungary’s position in the issue.

On 22 August, I participated at the closing round of public discussions held at the Prime Minister’s Office in **Budapest**, concerning the on-going reform of the Hungarian secrecy law. I presented the governmental and civil participants with a list of recommendations based on international good practices, namely laws that managed to find balance between respecting the public’s right to know and the government’s need to protect exceptionally sensitive information.

On 14-15 September, I participated at the opening conference to launch an international journalism school in **Yaremche** in West Ukraine. The envisaged curriculum represents the highest standards and has the potential to make the school a stronghold for teaching future journalists. The program includes special trainings for journalists on how to deal with difficult situations, such as

safely covering conflicts and demonstrations, and knowing their legal rights when authorities hinder journalists in their work.

On 24 September, I delivered an opening speech at the Human Dimension Implementation Meeting (HDIM) in **Warsaw**. On 4 October, I gave a keynote speech in the HDIM working session on “Freedom of expression, free media and information”, focussing on some of the main challenges faced by the media: impunity of perpetrators, criminalization of journalism activities, and discrimination against the independent press. Together with Ambassador Christian Strohal, I held a joint side event on “Freedom of expression and hate speech: combating intolerant discourse within a human rights framework”.

On 9 November, I gave a speech at the roundtable discussion on freedom of expression and racism in **Dublin**, organized by Ms. Anastasia Crickley, Chairperson of the European Union Fundamental Rights Agency, and Personal Representative of the Chairman-in-Office. The topic has been in the forefront of our activities, with a special focus on promoting self-regulation.

On 10 November, I was a panel member at the Congress of the Association of European Journalists in **Dublin**. The event provided an opportunity to meet with numerous prominent media professionals, to discuss the current threats to media freedom, and debate journalistic ethics and professional standards in Europe.

Participation of the Office in OSCE and external events

On 29-30 June, my Office was invited to address the Swiss Centre for Studies on the Global Information Society at a conference “On Media Monitoring – The Media and their Contribution to Democracy” in **Zurich**.

On 3 September, the Office participated at the Internet Governance Forum Consultations in **Geneva** for the upcoming IGF.

On 13-14 September, my Office participated in a conference on “Ethics and human rights in information society”, jointly organised by Council of Europe and UNESCO in **Strasbourg**.

On 13-14 September, my Office was invited to address the “European Journalists Association-The Communication Network” annual conference in **Bucharest**.

On 20-21 September, my Office participated in the Annual Meeting of the Alliance of International Press Councils in Europe, held in **Edinburgh**. More than 25 countries were represented at this event, which provided a very useful platform for getting updated information on media self-regulatory bodies and on the current challenges faced by these institutions and their members.

On 1-2 October, my Office contributed to a regional conference jointly organised by the Council of Europe and the OSCE Spillover Monitor Mission to Skopje entitled “Converging Media- Convergent Regulators?” The event in **Skopje** addressed the important issue of how to best compose a regulatory authority in the digital age for broadcast and telecommunications.

On 9-10 October, my Office participated at the **Cordoba** OSCE Chairmanship Conference on Intolerance and discrimination against Muslims.

On 7-9 November, my Office participated as a panellist at the **Munich** Media Days 2007, focusing on regulatory issues of the Internet.

Project activities confirmed for the next period

- On 17 November, I will address the Liberal Thinkers' Conference on "The Future of Freedom" with a focus on media, which was organised by the Friedrich-Naumann- Foundation, to mark 60 Years of the Liberal International, in Hamburg.
- The US Helsinki Commission, chaired by the former OSCE Parliamentary Assembly President Alcee L. Hastings, invited me for a hearing or briefing on the state of media freedom in the OSCE region in Washington D.C. early December.
- As in the past years, I intend to issue a joint declaration together with my counterparts of the United Nations, the Organisation of American States and the African Union. These international mechanisms to promote freedom of expression will hold their annual meeting on 7 December in Amsterdam. It will focus on broadcast licensing in the digital age.

Future Joint Trainings for Journalists and Press Officers

Training seminars are planned in Georgia, Tajikistan and Kyrgyzstan in late 2007 and early 2008. A particular focus will be placed on self-regulation.

Special Reports

Special Report: Registration of Print Media in the OSCE area Observations and Recommendations

29 March 2006

This paper is the second in a series issued by the Office of the OSCE Representative on Freedom of the Media that seeks to offer clarification about both problematic **aspects and best practices of the administrative framework** for the media in the OSCE area.

The first paper, published in October 2005, examined the function of **accreditation** and concluded that while the participating States have made commitments to facilitate the work of the media, there remains much work to be done to create an enabling working environment for journalists.

This Special Report examines the issue of **registration of the print media**. A number of recent cases illustrate how rigid registration schemes result in an unnecessarily restrictive administrative framework, particularly for the independent press.

The report also contains a set of **recommendations** to assist the participating States to improve this aspect of the administrative framework for the print media.

Registration, Notification and Licensing

Many terms are used to describe registration in legislation. For example, **“Registration”**, **“Notification”** and **“Licensing”** are often used interchangeably, even though each term describes a different procedure,

depending on the type of media and the aim of the process. For this reason, it is worth defining the terms and describing how each is used.

Notification

The term '**notification**' describes the procedure whereby a **print media** outlet informs the authorities of its existence and is entered into a **national register**. In this way, the print media registers itself for tax and other social obligations, as would any business. Information included on the notification form includes, for example, the names of the business owner(s), the business's legal address and other administrative details. The procedure is carried out by an independent body, often one which deals with new businesses. The fee is minimal and is intended to cover administration costs only.

The Russian language term for this procedure is 'уведомительная регистрация' (uvedomitelnaya registratsia).

Registration

The term '**registration**' is used for something that is more than a notification procedure, and describes an **official authorization**, or '**permissive**' procedure. When the law requires that registration is obtained, typically a government agency is responsible for registering a print media outlet, without which, the outlet is not permitted to open for business. The registration procedure requires the applicant to submit **substantive information**, and answer an **unspecified number of questions** from the authority holding the register, before registration is approved. Often, a **disproportionately high, or unspecified fee** is payable in order to obtain a registration.

The Russian language term for this procedure is 'разрешительная регистрация' (razreshitelnaya registratsia).

Licensing

Licensing is the term used in relation to the **broadcast media**, and is applicable to the allocation of **scarce or finite resources**, such as FM frequencies. In principle, the scarcer the transmitting medium, the greater the justification for issuing a government license for the media outlet using it. **Broadcast licences** should be issued by an independent and impartial body and allocated according to standards that support the aims of pluralism, in spite of the scarcity of the medium.

As the **internet** does not have bandwidth restrictions and itself is a guarantee of pluralism, there is no need or requirement to register or license it.

Licensing of the **broadcast media** is set to change dramatically after the introduction of digital-terrestrial transmission in Europe: the implications for the future of licensing for electronic, digital and broadcast media will be discussed in a subsequent Special Report.

The Russian language term for this is 'лицензия' (litsenzia).

Registration or Notification?

The rationale and justification for **notification** and **registration** procedures are essentially the same: both procedures lead to a valid **register** of existing print press outlets. Several agencies or bodies use the information gathered during the course of this process. For example, the Ministry of Finance uses the data in order to collect taxes and the Ministry of Economy uses this data to compile statistics or to ensure that media ownership complies with national anti-monopoly regulation. In case of a dispute involving the outlet, the Court can look up details of the outlet on the register.

The difference between registration and notification

The essential difference between the two terms is that *notification* allows a newspaper owner to inform the government of its existence, while *registration* allows the government to inform a newspaper that it may exist. By adopting a registration system in preference to a notification system, the government grants itself discretionary powers over the existence of a single newspaper, or over the shape and scope of the whole media space.

For these reasons, only the **notification** type of procedure is compatible with OSCE Commitments on freedom of the media, particularly those enshrined in the Moscow Document, the essence of which is:

- To serve pluralism
- To reduce limitations and restrictions to the free functioning of the press
- To remove any possibilities for government interference into the workings of the press¹.

Positive examples of the adoption of a notification procedure are found for example: in **Montenegro**, the *Law on Mass Media* states “a medium shall be founded by a Deed of Foundation, freely and without obtaining any approval, and shall be entered in the media record” (art 8); in **Albania**, there isn’t any obligation to notify the authorities about print media, unless the outlet operates on a commercial basis, in which case the general law on commercial companies applies; in **France**, a written publication may issue content immediately the notification is sent to the State Prosecutor, without waiting for an approval: In **Azerbaijan**, a newspaper can be issued as soon as the notification documents have been sent to the Ministry of Justice, who contacts the owner subsequently only if there are discrepancies in the documentation.

¹ Moscow Meeting of the Conference on the Human Dimension of the CSCE (October 1991) (26, 26.1, 28.9); see also the Cracow symposium, 1991 (6.2)

Registration is a much more detailed procedure and obliges owners to provide extensive information about all aspects of the newspaper. The registration system also grants discretionary powers to the authorities to ask any number of questions and creates the possibility for arbitrary refusal of registration on the basis of partial political considerations.

For example, according to Resolution No 418 “*On Further Improvement of the procedure for state registration of media in the Republic of Uzbekistan*” all forms of media, including print, audio, audio-visual and electronic media are subject to a registration procedure, whereby the outlet is required to list numerous details about the outlet, including *inter alia* the proposed audience, its aims and tasks, its suppliers of equipment and its sources of financing. In addition, the outlet is required to submit substantial and extensive documentation, confirmed by a notary, about the founding documents, the legal owner and other financial and tax obligations. The resolution also grants the authorising agency the right to refuse registration on a number of administrative grounds.

1. ***RFoM recommends that the arbitrary system of permissive registration be abolished for the print media. The possibility to refuse registration of print press outlets based on grounds of content, subject matter or intended audience should be removed. Restrictions on content, where applicable, should be provided for in general legal provisions and not used as a basis to deny the existence of a newspaper***

Institutional Framework

The function of the agency responsible for the register

The function and purpose of the agency responsible for compiling the register for print media is to assist the media outlet to get started on a legal basis, with a minimum of administrative and bureaucratic hurdles.

Authority to complete the procedures should be handed to an independent agency that is free from government influence and should follow a standard procedure, in order to ensure impartiality in the decision-making process about media start-ups. Typically, the agency is a business registration service that receives data from new print media outlet founders and disseminates aggregate data to interested parties, such as Statistics Office. Preferably, such information should be posted on the internet.

For example, in **Sweden**, notification procedures for a new print media outlet is handled by the Swedish Patent and Registration Office; in **Croatia**, the procedure is dealt with by the Croatian Chamber of Economy, an independent professional and business unit dealing with all legal entities engaging in business.

Sometimes, notification is sent to an independent judicial body. For example, in **Bulgaria**, notification of a new media outlet is sent to the local court, which registers the incorporation of a new company. In **France**, no notification is required at all: instead, the director of the publication sends two signed copies of the publication to the public prosecutor's department and ten copies to the Ministry of Information (for those published in Paris) or to the Prefecture (for those published in the regions).

There are instances in OSCE participating States where those responsible for the register are **closely aligned with the government**. This proximity sometimes has negative implications for the media, particularly the independent media.

For example, in **Kazakhstan**, the agency authorised to register newspapers is not defined in the law but registration is carried out in practice by the Ministry of Information. RFoM has received complaints from independent newspapers which have waited months for registration, despite the 15-day limit prescribed in the law.

In **Turkmenistan** provision for registration of mass media is made in the *Law on Press and Other Mass Media*, however, the actual registering organ is defined only as ‘public administration bodies’. In practice, there is considerable confusion over which agency or department is responsible for registering the print press and consequently, new media outlets are rarely registered.

In some cases, the law allows newspaper loyal to the government to bypass registration completely, creating an unfair conditionality for other newspapers.

For example, in **Tajikistan**, special provision is made in the *Law on Printing and other Mass Media* to exempt government publications from the registration procedure prescribed by law. In the **Russian Federation**, mass media outlets that are founded by government organs are also exempt from registration according to the law. This places non-government newspapers at disadvantage in the marketplace, particularly as the law allows the registering organ to refuse registration, by extension, only to non-government newspapers.

2. *The body responsible for receiving notification of the existence of new print media should be an agency with operational independence from the government and should work out a set of standard criteria for all media outlets, not just those which support the government.*

The Notification Procedure

A simple **notification** procedure provides the necessary information to enter the newspaper’s details into the register, thereby ensuring compliance with the normal legal requirements for a business start-up. Information provided

by the owner on the notification form should serve this function only – no additional information should be required.

The notification form should be standard for all outlets and published on the internet. The questions should be designed so that there isn't room for evaluation by those compiling the register; the content of the form should not lead to deliberation by a higher authority.

Annex 1 contains an example of a notification form for print media from **Sweden**. The form asks for basic information about the publication (title, periodicity, location), and the contact details of the chief editor and the newspaper's owner. There isn't any room for interpretation of this basic data on the form and therefore serves as a good example.

In case of changes to any of the details submitted on the original notification form, the only obligation on the owner is to resubmit the changes to the register. In case of missing data, the holder of the register should contact the outlet to provide only the missing information. For example, should the chief editor be replaced, the obligation on the owner is to resubmit only the contact details of the new chief editor; should the name of the publication change, the same principle applies. Administrative changes regarding, for example, the composition of the editorial office, should not be the basis on which an owner is obliged to register a completely new business.

Re-registration

In some OSCE participating States, additional obligations are imposed on the print media that requires outlets to *re-register* in the event of even the most innocuous changes to their founding data.

For example, in **Belarus**, the *Law on Print and other Mass Media* (art. 11) requires outlets to re-register in the event of changes in the founder's

details or in the name of the publication, or in the event of two government decisions in one year to halt the activities of the publication. Outlets are required not just to submit the details of the changes in order that the data may be updated but instead are required to repeat the whole registration process, which can take months, during which time they may not publish. An example of the arbitrary nature of the system was seen when, following a Presidential Decree in June 2005 which banned the use of the word “Belarusian” in non-official publications, many of the independent newspapers were forced to re-register. Notably, this requirement forced the re-registration only of non-government outlets.

Following the adoption of a set of amendments to the existing media law in June 2006 in **Kazakhstan**, and a statement by the Minister of Information, referring to an alleged excess in the number of media outlets in the country, media outlets became subject to the full re-registration procedure in case of changes to any of the following data: the owner; the legal status of the owner; the name of the outlet; the language of the publication; the scope of distribution; the main subject of the publication; its editor. This requirement to re-register the print media following any changes in the outlet’s data is not only contradictory to spirit of the OSCE Commitments, but can serve as a pretext for preventing the publication of critical media.

If the register is believed to be out of date, the government should not require print media to re-register: rather, a simple notification procedure allows the register to be updated while the newspaper continues to publish as normal. By creating a simple procedure, rather than a bureaucratic hurdle, outlets will be more willing and able to comply.

Fees

The fee for informing the register of a new outlet, or for changes in the statute later on, should not serve as a barrier to a media start-up and

should be proportionate to the task. Ultimately, the market will decide which independent outlets should survive: governments or their representative agencies should not take a hand either in limiting the start-up or maintaining a loss-making business².

For example, in **Hungary**, the Ministry for National Cultural Heritage does not charge a fee at all for entering print media into the commercial register; in the **United Kingdom**, the Registrar of Companies charges 50p (0.8€/ \$1) for registration unless numerous proprietors are named on the founding documents, in which case a fee of £1 (1.4€/ \$2) is payable.

However, in some OSCE participating States, a disproportionately high fee serves as a barrier to entry.

For example, in **Tajikistan**, art 13 of the *Law on Printing and other Mass Media* states that registration fees are established by other Tajik laws, leaving significant scope of for interpretation; in **Uzbekistan**. Art 14 of the *Resolution On Further Improvement of the procedure for State Registration of Media in the Republic of Uzbekistan* gives a sliding scale for payment of up to multiples of 50 times the minimum wage, depending on the type of publication.

When limits are not prescribed clearly and fairly, the independent media, which are often the only type of media required to register, are unfairly discriminated against. To prevent this, a cap or ceiling should be prescribed clearly in the law and should be proportionate to the task. Without such limits, the registering body can set unreasonably high fees for a service, which in itself is discriminatory to an emerging independent media, which is not privileged with government subsidies.

² The exception to this principle is the official gazette, which is the government's tool to inform the public of government activities, providing, for example, the full text of draft legislation.

- 3. *In the event of changes to the charter of a media outlet, the only requirement should be to submit only those changes to the register. The requirement to re-register should be abolished completely. Fees for this service should be minimal and consistent with the task.***

The role of the media in the civil society landscape

The issue of registration of the media has taken on a broader significance during the last year, following the adoption of restrictive registration and re-registration provisions for NGOs in some OSCE participating States, including **Russia, Belarus and Uzbekistan**. These laws allow governments to intervene against public organisations with a re-registration order, justified by the need to update a national register.

Additionally, the existence of arbitrary registration and re-registration requirements can threaten critical media at any point in time: this threat is particularly onerous in the lead up to a significant public event, such as a general election.

It is inappropriate for a democratic society with a free media to impose an ‘approval’ procedure, with its inherent arbitrariness, on the print media. The newspaper industry is a civil societal endeavour and governments should not have the power to deny the print press the right to publish. New print media should be subject only to a notification procedure which is processed by an independent body. Registration procedures, where they still exist, should be de-politicised and transformed into a simple notification system.

Recommendations

- 1. *RFoM recommends that the arbitrary system of permissive registration be abolished for the print media. The possibility to refuse registration of***

print press outlets based on grounds of content, subject matter or intended audience should be removed. Restrictions on content, where applicable, should be provided for in general legal provisions and not used as a basis to deny the existence of a newspaper.

2. The body responsible for receiving notification of the existence of new print media should be an agency with operational independence from the government and should work out a set of standard criteria for all media outlets, not just those which support the government.

3. In the event of changes to the charter of a media outlet, the only requirement should be to submit only those changes to the register. The requirement to re-register should be abolished completely. Fees for this service should be minimal and consistent with the task.

The Office of the OSCE Representative on Freedom of the Media reiterates its willingness to assist the participating States to amend their registration procedures in favour of a simple notification system for the print press.

[http://www.osce.org/documents/rfm/2007/03/23735_en.pdf]

The State of Media Freedom in Bosnia and Herzegovina:

The Public Service Broadcasting Observations and Recommendations

The OSCE Representative on Freedom of the Media (RFoM), Miklós Haraszti, visited Bosnia and Herzegovina (BiH) on 5 – 7 February 2007, accompanied by Roland Bless, the Director of his Office, and Arnaud Amouroux, Project Coordinator. This was his first visit to BiH.

The Representative visited BiH at the invitation of Dr. Schwarz-Schilling, the High Representative and European Union Special Representative for BiH (OHR/EUSR), and of Ambassador Douglas Davidson, the Head of the OSCE Mission to BiH, on behalf of the Steering Board Ambassadors of the Peace Implementation Council in order to address concerns over the state of media freedom in Bosnia and Herzegovina.

This invitation was prompted by the decision of the Republika Srpska (RS) Government to cease cooperation with the state public television network, BHT, and later to deny its journalists access to governmental press conference. The purpose of the trip was, however, also to assess the overall state of media freedom, with a particular emphasis on the current state of broadcasting and especially public broadcasting.

The Representative visited Sarajevo and Banja Luka. He met with officials from OHR, the OSCE Mission, and the governments of BiH and the RS as well as with journalists and representatives of non-governmental organizations.

Among those he met with from OHR/EUSR were:

- Dr. Christian Schwarz-Schilling, the High Representative and EU Special Representative in BiH;
- Ambassador Peter Bas-Backer, Senior Deputy High Representative;
- Chris Bennett, Director of Communications;
- Darja Lebar, Senior Media Development Officer.

Meetings with OSCE Mission members included:

- Ambassador Douglas Davidson, Head of the OSCE Mission to BiH;
- Ambassador Vadim Kuznetsov, Deputy Head of Mission;
- Giorgio Blais, Director, Regional Centre Banja Luka;
- Alexandra George, Spokesperson and Director of Press and Public Information Department;
- Mersiha Causevic-Podzic, Deputy Spokesperson;
- Aida Besic, Press Officer;
- Radmila Trifkovic, Press Officer.

Meetings with BiH and RS officials included:

- Nikola Spiric, Chairman of the BiH Council of Ministers;
- Milorad Dodik, RS Prime Minister;
- Igor Radojicic, President of RS National Assembly.

Meeting with other interlocutors included (in alphabetical order):

- Mehmed Agovic, BHRT Director General;
- Senada Cumurovic, Director, BH Radio 1;
- Zeljko Kopanja, Editor-in-chief of *Nezavisne Novine*;
- Mirolad Labus, Chairman, Association of Young Journalists in RS;
- Sejad Luckin, Editor-in-chief of *Dnevni Avaz* and President of the Press Council;
- Frane Maroevic, European Commission Spokesperson;
- Dunja Mijatovic, Director of Broadcasting, Communications Regulatory Agency of BiH;

- Mirolad Milojevic, Association of Young Journalists in RS;
- Adnan Osmanagic, Director, Association of Electronic Media;
- Borka Rudic, Journalists' Association of BiH;
- Tanja Topic, Friedrich Ebert Foundation;
- Ljiljana Zurovac, Press Council of BiH.

This report was prepared in close cooperation with the OSCE Mission to BiH. It offers practical recommendations on how to improve freedom of the media in general and public service broadcasting in particular.

General overview

The general media freedom situation in BiH is commendable. The legal framework for the protection of freedom of expression is largely in place. Since 2002 BiH has fully decriminalized libel and defamation. It has, however, yet to complete the reform and unification of its three public broadcasters.

BiH has an advanced legal regime governing freedom of the media. The essential pieces of legislation are in place. Laws decriminalizing libel and defamation have, for instance, been in force in RS since June 2001 and in the Federation since November 2002.

The BiH media landscape is determined by the country's complex constitutional structures, the still ongoing post-war reconciliation process, and the recovering economy.

Ethnic divisions are also reflected in the public broadcasting structure.

Since the end of the war in 1995, the international community has attempted to develop an independent local media and the legal and institutional framework necessary to protect and preserve that independence. A number of governments have invested significant sums of money to support the

establishment of both private and public print and broadcast media, and related bodies, in BiH over the past decade. These same governments, together with a number of international organizations, including the OSCE Mission to BiH and OHR – worked on creating institutions such as the Communications Regulatory Agency (CRA) and the Press Council, with the aim to bolster the media's independence from governmental and political influence.

Today the CRA is responsible for licensing and regulating broadcasting and telecommunications, while the Press Council, a voluntary and self-regulatory body, deals with complaints about the print press. Currently, the OHR focuses its media-related efforts on a single media reform issue – the unification of the country's dual entity public broadcasters with the state public broadcaster. This will bring BiH in line with established European practice and it is also a precondition for the signing of a Stabilization and Association Agreement (SAA) with the European Union.

Overall, a high degree of media pluralism exists in the country. BiH has an elevated number of media outlets, particularly broadcast. The experts consulted estimated the number of broadcasters in BiH to be between 180 and 190. Some analysts consider this excessive for a country with a market of just over four million consumers of no high average income. The domestic press consists of six daily newspapers and 40 weeklies and monthlies.

Many observers, however, identified a growing uniformity of views in the broadcast media in RS, and ascribed the disturbing trend towards self-censorship not to legal or financial, but to political motives. Because RS aimed its boycott specifically at the state-level public broadcaster, and because of the destructive role played by state-controlled broadcasters in the early 1990s in fueling the rush to war in the region, the Representative decided to make the public broadcasting system in BiH the focus of his

report, together with the responsibilities of the authorities with regard to public broadcasting.

Recommendations on how to further strengthen freedom of the media in BiH, in general and for public service broadcasting in particular, can be found at the end of each chapter and in the conclusions of this report.

The boycott and the role of the RS authorities

The boycott: description of the incident

On 17 January 2007 journalists of the state-level public television service, BHT1, found themselves barred from entering the building where RS President, Milan Jelic, was holding a press conference. This move escalated an already ongoing dispute between BHT1 and the RS Government that began several days earlier, when RS Deputy Premier Anton Kasipovic officially announced on 12 January 2007 that government officials would no longer give statements or interviews to BHT1. The ban was attributed to an allegedly disparaging news coverage of the RS Entity Day on 9 January 2007, and the allegedly “hostile” treatment on BHT1 of both RS Prime Minister Dodik on 9 January 2007, and BiH Council of Ministers Chairman Nikola Spiric on 11 January 2007.

The RS government publicly characterized BHT1’s editorial policy as “politicized, malicious and unprofessional.” In response to these allegations, the network’s news editor, Amir Zukic, immediately denounced the government’s decision as “political interference in the editorial policy of a public broadcaster.” On 16 January 2007, the Steering Board of the Public Broadcasting Service dismissed General Director Drago Maric on the very day his term in that post would have ended. Maric had previously signaled his preparedness to continue his functions. However, the Board then swiftly appointed Mehmed Agovic to replace him.

The OSCE Mission to BiH expressed its concern over this chain of events, noting in a press statement on 18 January 2007 that the RS Government's ban on contacts with BHT1 was "preventing the state broadcaster from fulfilling its role of contributing to an informed citizenry – something that is essential to any successful democratic state."

On 30 January 2007, RS Deputy Premier, Anton Kasipovic, and new General Director of BHT1, Mehmed Agovic met and decided that RS Government's boycott should be lifted and relations re-established with BHT1.

Endangering the free flow of information

The boycott and the incidents surrounding it prompted the invitation to RFoM to visit BiH; the reason for the visit was clearly related to this incident and not because media freedom in general was in danger in BiH.

The incident showed RS Government's apparent failure to fully comply with the OSCE commitment assumed by BiH as a participating State to ensure the free the flow of information to the citizens of the country.

Denying access to a public broadcaster even for a moment poses concerns – all the more when the call comes from public officials – for it harbors the potential to constitute the first step towards censorship. Interfering with the free flow of information as a retaliatory measure is thus an unacceptable reaction by government officials under the terms of these commitments, even when they feel the media is misinterpreting or distorting their policies and views.

Governments are "information providing machines," in accordance with these OSCE commitments. They therefore have a duty to provide equal treatment to all media. Public broadcasters in turn have the obligation to

fulfill the vital function in a democracy of informing citizens regardless of their social, political or other affiliations in a timely and impartial manner.

During his visit, the Representative received assurances that the incident would not cement itself into “normal” governmental behavior. All the high officials who met with Representative stressed that it was an “isolated incident.” Several interlocutors from the media world also seemed convinced that “the Government had learned its lesson.”

Complaints mechanism

Media reporting is never perfect. This explains the need for mechanisms that redress mistakes and imperfections. BiH is fortunate enough to have one of the most advanced self-regulatory mechanisms in Europe. Complaints about broadcasting are sent to the Communications Regulatory Authority (CRA), which has the right to consider a complaint in any case where a given programme, advertisement or broadcast appears to have been biased, incorrect, offensive or harmful; to have endangered privacy, harmed the physical, mental or moral development of children; or to have incited racial, religious or national hatred.

All citizens, including officials, have the right to lodge a complaint. Public figures, however, also have the obligation to maintain a higher degree of tolerance for criticism than private citizens precisely because of their public role.

This complaints mechanism has been established long ago. It is widely used by citizens, institutions, organizations, public officials, political parties, i.e. by all interested parties. Ever since the Agency was established the public was informed of the complaint mechanism and the possibility of its usage. Over the years, awareness of using this mechanism has largely increased.

By now, it is a well recognized system used by all communities as well as by government officials.

However, the recently elected RS Government has, to date, never lodged a complaint with the CRA, and not on this particular case. In the past, the CRA did receive complaints lodged by the previous RS government.

Using the legally-prescribed complaints mechanism would bestow many benefits: it would give moral redress to the complainant if his or her complaint were found to be justified; it would educate other media; and, thanks to the public nature of the proceedings, it would promote higher standards in broadcast journalism in general. In a country like BiH, with a legacy of recent warfare, these redress mechanisms carry an even greater importance, for in such a precarious and still-sensitive environment, the legal redress of grievances becomes imperative as the only acceptable alternative to the less savory means employed in the past.

Endangering the free flow of information is a breach of BiH's OSCE commitments;

Under no circumstances should a public broadcaster whose mission is to inform all citizens regardless of their social, political or other affiliations be the object of a boycott by a government or governmental body;

If public officials feel offended or dissatisfied with media treatment, they should lodge a complaint with the relevant regulatory body, which in the case of broadcasting in BiH is the CRA;

Despite successful awareness campaigns in the past on how to lodge a complaint, the boycott incident shows that such efforts must be repeated as newly appointed officials come to power;

RFoM calls upon all public officials in BiH to exercise recourse to the law-prescribed complaint mechanisms to settle their grievances with the media. For a complaints mechanism to be credible, it is imperative that public officials make use of it;

Media professionals also have a duty to be accurate, objective, and accountable. The existing and independent regulatory mechanisms help preserve such important journalistic standards by disciplining those who violate them;

In order to function as a credible and remedial instrument, the political and financial independence of CRA must continue to be guaranteed.

Public Broadcasting: the situation at present

Currently BiH has three public broadcasters – BHRT, RTFBiH, RTRS – and three main commercial broadcasters – OBN, TV Pink BiH, and Mreza Plus. After years of domination, the public broadcasters have begun to lose their leading positions in the market. The market share of the three public channels fell to 32 per cent in 2005 and has continued to decline since then. The market share of the commercial networks, on the other hand, has steadily increased; they now have around 48 per cent of the market. The rest of the audience is watching foreign television stations and satellite television channels.

Although BiH's three major commercial networks are thriving, smaller commercial broadcasters face very difficult conditions. It is a puzzle how such a large number of broadcasters (around 20) are able to survive in such a limited market. All over BiH, many broadcasters exist without any apparent commercial viability and even without any apparent demand for their programming on the part of audiences. In addition there are several small size municipal radio and TV stations which are heterogeneous in

size, programming, audience and financial back up. Governmental financial support for local media outlets throughout the country, especially at the cantonal and municipal levels in the Federation and Republika Srpska (RS) respectively, distorts both the market and potentially the editorial independence of these broadcast outlets.

The public broadcasting system

The media – and particularly the broadcast media – played an important, if destructive, part in the break-up of the former Yugoslavia and the war that followed. Political leaders who controlled the local outlets of the state broadcasting network of the former Yugoslavia used their broadcasts to promote ethnic nationalism and hatred and to arouse fear of the others. The international community thus finds it essential, in the interests of conflict prevention, to prevent the mass media from once again falling under the thumb of government officials or political party leaders.

In 2003 the European Commission issued a *Feasibility Study* outlining the conditions BiH would have to meet in order to enter into negotiations with the European Union on a Stabilisation and Association Agreement (SAA). This Study required BiH to make significant progress in sixteen areas. One of them was the establishment of a unified public service broadcasting system with state-level management.

Unfinished reform

The creation of a single, state-wide public broadcasting system required BiH, among other tasks, to adopt four laws. It has managed to enact only three of them to date. The absence of the fourth continues to block the completion of this new public broadcasting system.

The first law, on the **Public Broadcasting System of BiH (or System Law)**, outlines the structure, governance, financing, management of common resource base, and other responsibilities of the overall Public Broadcasting System. It was adopted on 5 October 2005.

The second law, on the **state-wide Public Service Broadcaster of BiH (or BHRT)**, was adopted on the 28th December 2005.

The third law, on the entity Public Service Broadcaster of the Republika Srpska (RTRS), was adopted in May 2006.

The fourth and final is the law on the **entity Public Service Broadcaster of the Federation of Bosnia and Herzegovina (RTFBiH)**, passed in the Federation Parliament in June 2006. The Croat members of this Parliament, however, voted against it. After it was adopted in the upper chamber of that parliament, the House of Peoples, the Croat members exercised their right to block its entry into force on the grounds that it violated the Vital National Interest of the Croat constituent people. On July 16th 2006, the Constitutional Court of the Federation held that some elements of the law “do not guarantee that the Croat people will not be discriminated against in implementation of the rights guaranteed by the Constitution of the Federation of BiH.”

In October 2006, the Bosniak caucus in the Federation House of Peoples submitted an appeal to the State Constitutional Court, asking it to annul the Federation Constitutional Court’s ruling. They argued that this ruling contradicted a ruling handed down in July 2005 by the same State Constitutional Court, to the effect that the Public Broadcasting System Law did not endanger the Croats’ vital national interest. Also pending before the State Constitutional Court is an appeal submitted in February 2006 by the Croat member at that time of the three-person presidency of Bosnia

and Herzegovina, Ivo Miro Jovic, in which he requested a review of the constitutionality of twenty articles of the Public Broadcasting System Law.

At issue, ultimately, is the long-standing Croat demand for an exclusively Croat-language public broadcaster. Many Croats argue that the Federation Television is for all intents and purposes Bosniak in nature and Bosnian in language, which leaves Croat views underrepresented.

Stronger coordination and cooperation

Until now, the public broadcasting system of BiH has consisted of BHRT, the state-wide public broadcaster, and the separate entity broadcasters RTFBiH and RTRS.

The Law on the Public Broadcasting Service, however, stipulates the creation of the Corporation of Public Broadcasting Services (or Joint Corporation). This is to be an umbrella organization over all three public broadcasters. It is supposed to set development strategy, coordinate the technical and human potential of the three broadcasters, and harmonise the differing systems, policies, and procedures of the current three broadcasters. The law also establishes a board for the public broadcasting system that will run the Public Broadcasting Corporation, consisting of members selected by the steering boards of the three broadcasters.

The new law thus attempts to provide a framework for a unified system of public broadcasting. Some functions currently performed separately by the three public broadcasters would be centralised under this law. Among the most important of these are the collection of licence fees and the sale of advertising space. The new law would also make the three public broadcasters a single legal subject, while still providing each with a certain degree of autonomy. This political compromise should enable cooperation among broadcasters that were, until recently, competitors.

Considering the large number of outlets surviving in such a limited and underdeveloped market, broadcasting is likely to undergo significant consolidation in the future;

RFoM calls upon the authorities of the Federation of BiH to complete the public broadcasting system reform by adopting the Law on the Public Service Broadcaster of the Federation of BiH (RTFBiH);

All constituent peoples and their political leadership should fully support this framework for a unified system of public broadcasting, thus creating conditions for closer cooperation among the three public broadcasters, as well as for the achievement of BiH's commonly-shared aspirations for closer integration with the European Union;

In order to complete the establishment of the BiH public service broadcasting system, the remaining public municipal radio and TV stations should be privatized.

Other PSB related issues

Overall sensitivity to be acknowledged

A reformed and unified public service broadcasting system can also contribute to reconciliation among peoples in BiH. In order to reach this result, however, the new public broadcasting system must do its utmost to offer programmes that take into consideration the prevailing sensibilities and sensitivities in the country and that foster ties among its peoples, including national minorities. It should, as far as possible, therefore become a country-wide and well accepted broadcaster, with joint newsrooms and an editorial staff of varied ethnic and national backgrounds.

The present paucity of viewers of BHT1 is thus worrying. It is evident that BHT1 is not widely regarded as the public broadcaster of choice. It would be preferable if it emerged as such when the unification of the public

broadcasting system is completed. Even if this happens, however, BHRT should not seek to compete for viewers with commercial broadcasters. Instead, as the lone state-wide public broadcaster, it will have a fundamental obligation to broadcast programmes whose aim is to improve mutual understanding and not to reinforce one or the other of the competing identities and political visions in the country.

Joint Media Centre

The Public Broadcasting System Law foresees a joint newsroom and editorial operation. Three editors will jointly make decisions about programming and content. The goal is to send one camera to an event and not three, as now happens. This joint newsroom – or “Media Centre” – should help diminish reporting along ethnic lines.

This is probably one of the most promising features of the new Public Broadcasting System Law, as it remarkably embodies the notion of pluralism. For that reason it should be supported by all, without any reservation.

Submission of yearly activity report

Although required by law (Article 26.9 of the PBS law), the state-level public service broadcaster has to date not submitted an activity report to the BiH Parliamentary Assembly, the FBiH Parliament, and the RS National Assembly. Such annual reports are supposed to include financial information together with the results of the audit on its financial operations. The BHRT management board must become aware of all their obligations under the public broadcasting system law and accordingly comply with them.

During his meeting with the Representative, the new BHRT Director did acknowledge the need for that.

Collection and distribution of license fees

The most important source of revenue for all three public broadcasters is the broadcast license fee, which costs currently six Marks (three Euros) per month. The second important source of revenue is advertising. As it stands now, the public broadcasting service's budget derives 85% of its funds from licence fees and 15% from advertisement revenues.

RTFBiH receives almost twice as much revenue from advertising as do the other two broadcasters. According to the Law on the Broadcasting System of BiH, revenue from both advertising and license fees is now supposed to be collected centrally and then shared, so that BHRT as the state-wide broadcaster should get 50 percent, and RTRS and RTFBiH 25 percent each.

License fees are currently part of the bill for fixed telephone lines. The current rate of collection is only 65% of the outstanding sum; according to BHRT General Director, the year 2006 saw one of the lowest collection of fees in 11 years. Some estimate that a collection rate of 85% would be enough to cover needs. Others dispute this.

The future of the dual system

As the 25/25/50% income sharing agreement was the result of a hard political debate, RFoM is of the opinion that the new system based on centralized collection of fees should be first implemented in good faith so that the financial foundation for the completion of the public service broadcasting system can be laid.

But in the longer term, BiH's so-called "dual" media system, in which public and private broadcasters coexist, may not be financially sustainable in its current configuration, as it has been proven in other new democracies in Europe. This is because the fee collection for the public service broadcasting throughout the less wealthy OSCE area is in danger, as public broadcasters

competing for a slice of the advertising market erode their own public-service programming. Should this trend reach worrying proportions in the future, RFoM would be ready to assist with further reform, including legal advice and best practices.

Digitalization

By 2012 broadcast media should be fully digitalized in Europe. BiH, however, lags significantly behind other states in Europe in introducing Digital Terrestrial Television (DTT). DTT penetration is still close to zero.

There is no evidence of a serious plan on the part of the authorities for making the shift from an analogue to a digital signal and there has been no public debate whatsoever on the digitalization of broadcasting, much less on the overall introduction of new media technologies. Here the CRA has a crucial role to play. Considering the challenging topography of BiH, which prevents any terrestrial broadcaster from economically covering one hundred percent of the country, the switchover from an analogue to a digital signal is imperative. Both public and commercial broadcasters should be allowed to use such signals without discrimination.

The EU is currently discussing a new directive on audiovisual services, which would include both classic television channels and other non-linear services. In order to further BiH's aspirations to become a member of the EU, the State Parliament should enact legislation sooner rather than later, in order to comply with these new rules.

Public broadcasters should consider programs that aim at improving mutual understanding and are respectful of cultural sensitivities;

RFoM recommends the earliest possible creation of a joint newsroom or Media Center, for this would help diminish polarized reporting along ethnic lines;

The public broadcasting service has a legal obligation to submit activity reports to the various parliamentary assemblies of BiH once a year and should, therefore, do so;

The system of collection and distribution of revenues raised by both advertising and license fee collection as prescribed in the new Public Broadcasting System Law is a step in the right direction and should be swiftly implemented;

At some future stage, a public broadcasting service that does not rely on advertisements for revenue at all is ultimately a better option for BiH;

A comprehensive plan for the digitalization of broadcasting, preparing the ground for the shift from analogue to digital terrestrial services, and for the introduction of other new media technologies should be initiated and actively debated in the very near future.

Recommendations

Endangering the free flow of information is a breach of BiH's OSCE commitments;

Under no circumstances should a public broadcaster whose mission is to inform all citizens regardless of their social, political or other affiliations be the object of a boycott by a government or governmental body;

If public officials feel offended or dissatisfied with media treatment, they should lodge a complaint with the relevant regulatory body, which in the case of broadcasting in BiH is the CRA;

Despite successful awareness campaigns in the past on how to lodge a complaint, the boycott incident shows that such efforts must be repeated as newly appointed officials come to power;

RFoM calls upon all public officials in BiH to exercise recourse to the law-prescribed complaint mechanisms to settle their grievances with the media. For a complaints mechanism to be credible, it is imperative that public officials make use of it;

Media professionals also have a duty to be accurate, objective, and accountable. The existing and independent regulatory mechanisms help preserve such important journalistic standards by disciplining those who violate them;

In order to function as a credible and remedial instrument, the political and financial independence of CRA must continue to be guaranteed;

Considering the large number of outlets surviving in such a limited and underdeveloped market, broadcasting is likely to undergo significant consolidation in the future;

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[http://www.osce.org/documents/rfm/2007/03/23751_en.pdf]

Access to information by the media in the OSCE region: trends and recommendations

Summary of preliminary results of the survey¹

Vienna, 30 April 2007

With the support of the 2006 Belgian OSCE Chairmanship, the Office of RFOM started a survey in May 2006 on access to information by the media in the OSCE participating States. RFOM sent a Questionnaire to all Governments of the OSCE participating States on the state of relevant legislation and practice in their nations.

This summary presents the preliminary results of the survey to the Permanent Council of the OSCE. The underlying 450-page database, compiled from the answers, remains an open document which will be updated as more Governments reply and laws change. Both this report and the database will be uploaded on the www.osce.org/fom website³.

Although data for some countries are not yet complete, the survey enables us to draw up the **major trends in deficiencies**, and offer **best practices** for consideration.

The four surveyed areas

The survey covered four basic issues that inform the level of journalists' access to governmental data.

³ So far, 41 Governments of the OSCE participating States (over 70 per cent) have filled out the Questionnaire. With the responses from OSCE field operations, local NGOs and experts, the responses cover 48 out of 56 participating States.

Freedom of information laws (FOI)

Modern FOI principles constitute a Copernican revolution for the development of the free press. By passing them either as Constitutional amendments or basic laws, the states give up their absolute right to withhold information, and introduce the primacy of their citizens' right to know about the government, making it an exception defined in law when the government still has the right to classify information.

Classification rules (“What is a secret?”)

They define the scope and the oversight mechanism of classification, and determine the amount of governmental information available for the media by default or by request. These rules should be adjusted to FOI principles, defining state secrets as narrowly as appropriate for the sake of openness.

Punitive laws and practices (“Breach of secrecy”)

As the media often recur to unauthorised disclosure of classified information, opportunities for investigative journalism to access information will also be defined by the ‘breach of secrecy’ provisions of the penal code. Is ‘breach of secrecy’ only applied to the officials who fail to protect the secrets, or also to civilians who pass them on, journalists among them? Penal sanctions also should be consistent with FOI principles, and should enable courts to look into the public-interest value of questionable publications.

Protection of journalists’ confidential sources

For the sake of freedom of investigative reporting, in a modern FOI regime media workers should not be forced to reveal their confidential sources to law enforcement agencies or to testify about them in court. This privilege also includes the protection of journalists’ records, exemption from

searches of their homes and offices, and from interception of journalists' communications, if these are done in order to identify their sources.

I. FREEDOM OF INFORMATION LAWS

The FOI trend in the OSCE participating States is positive. Out of 56 OSCE participating States, 45 started their “Copernican revolution” in favour of the public’s right to know, by adopting national laws on access to information. This happened in equally high numbers in all regions of the OSCE area.

- In the past 10 years, dozens of OSCE states have adopted FOI laws. These include older democracies such as the **UK** (2000), **Switzerland** (2004), and **Germany** (2005), and new democracies such as **Armenia** (2003), **Kyrgyzstan** and **Azerbaijan** (both 2006).
- Of the remaining states, a number, including **Luxembourg**, the **Russian Federation** and **Malta**, are currently developing or considering proposals for FOI laws.

However, behind the composite good news hides the fact that FOI principles in many participating States remain only on paper.

Deficiencies despite successes

The mere existence of FOI laws does not ensure their appropriate implementation and functioning.

Adopting freedom of information laws is part of a **culture shift that can take time**. In some countries, the problem is often related to inherited difficulties with freedom of expression.

- In **Tajikistan**, a monitoring project found that basic information, including the number of persons sick from typhoid fever, anthrax, brucellosis and flu, statistics of divorce cases, the number of suicides, funds spent for events on the Day of Youth, the total amount of drugs seized by the police, bathing deaths and natural disasters, was being denied.⁴
- In **Uzbekistan**, since the incident in Andijan, access about what happened there has been limited.

In other places, the laws themselves are **not adequate**.

- In **Italy**, the 1990 law on Administrative Procedure limits access to “stakeholders” who have a “direct, practical, and actual interest based on a legally regulated case in relation to the document for which access is required.”⁵
- In **Austria**, the broadly defined exemptions in the law have led commentators to describe the right of access as “often illusory”.⁶
- The **Spanish** law on administrative procedures gives citizens a right to access files and records held by authorities but the Spanish government does not recognize it as a freedom of information act and a study found that requests are not answered.⁷

Finally, there has been some **withdrawing of openness** even in countries with advanced FOI regimes. Those happened either due to heightened security needs, or by introducing more restrictive fees for FOI requests:

- In the **United States**, there has been considerable controversy over reductions on access to data on internal decision-making, based on the

4 NANSMIT, Monitoring 2005. http://old.cafspeech.kz/tj/monitoring_en.htm

5 Law No. 241 of 7 August 1990, §22(1).

6 ARTICLE 19, Advance Summary of Concerns on Respect for Freedom of Expression in Austria, Submission to the United Nations Human Rights Committee, March 2007.

7 Transparencia y Silencio” Estudio Sobre el Acceso a la Información en España, Octubre de 2005. http://www.sustentia.com/transparencia_y_silencio_espana.pdf

claim of ‘Executive Privilege’⁸. However, the Congress is in the process of amending legislation to resolve these problems.⁹

- In **Ireland**, amendments to the Freedom of Information Act imposing high fees on applications and appeals have reduced the use of the act significantly. The changes have had an especially strong effect on the media, whose requests declined by 83 per cent between 2003 and 2004.¹⁰
- In the **United Kingdom**, the Government expects a pending proposal to impose fees significantly to reduce media use of the FOI Act.¹¹ The Lord Chancellor said: “Freedom of information was never considered to be, and for our part will never be considered to be, a research arm for the media”.¹²
- In **Bulgaria**, the Government has proposed amendments to require that some requestors show that they are “interested persons” and would extend timeframes and increase fees.¹³

Recommendations on FOI laws

For the sake of free flow of information in society in general, and for freedom of the media in particular:

All participating States should adopt freedom of information legislation that gives a legal right to all persons and organizations to demand and obtain information from public bodies and those who are performing public

⁸ See Open the Government Coalition, Secrecy Report Card 2006. <http://www.openthegovernment.org/>

⁹ House Passes Open-Government Bills, Washington Post, 15 March 2007.

¹⁰ Office of the Information Commissioner, Review of the Operation of the Freedom of Information (Amendment) Act 2003, June 2004.

¹¹ See CFI, The Government’s proposals to restrict the Freedom of Information Act. <http://www.cfoi.org.uk/feesproposals.html#otherresponses>

¹² Speech by Lord Chancellor and Secretary of State for Constitutional Affairs Lord Falconer of Thoroton, Lord Williams of Mostyn Memorial Lecture, 21 March 2007. <http://www.dca.gov.uk/speeches/2007/sp070321.htm>

¹³ See OSCE Representative urges Bulgaria to prosecute attackers of journalists, warns against changes to law on information, 23 March 2007.

functions. Individuals should also have a right to access and correct all personal information held about themselves.

Public bodies should be required in law to respond promptly to all requests for information. Requests for information that are time-sensitive or relate to an imminent threat to health or safety should be responded to immediately. The process for requesting information should be simple and free or low-cost.

Some information of a sensitive nature may be subject to withholding for a limited, specified time for the period it is sensitive. The exemptions should be limited in scope. The official who wishes to withhold the information must identify the harm that would occur for each case of withholding. The public interest in disclosure should be considered in each case. In cases where information may be deemed sensitive by any other law, the FOI law must have precedence.

There should be an adequate mechanism for appealing each refusal to disclose. This should include having an independent oversight body such as an Ombudsman or Commission which can investigate and order releases. The body should also promote and educate on freedom of information.

Government bodies should be required by law affirmatively to publish information about their structures, personnel, activities, rules, guidance, decisions, procurement, and other information of public interest on a regular basis in formats including the use of ICTs and in public reading rooms or libraries to ensure easy and widespread access.

There should be sanctions available in cases where it is shown that an official or body is deliberately withholding information in violation of the law.

II. CLASSIFICATION RULES

Unfortunately, many countries retained the right to classify a too wide array of information as ‘state secrets’. In fact, the majority of the OSCE participating States have not yet adjusted their rules of classification to the FOI principles, that is, they disregard the primacy of the public’s right to know.

The survey offers a large spectrum of best practices from the point of view of media freedom.

Best classification practices (and some not so good ones)

Types of Information to be Protected. A FOI-friendly state secrets act protects only information the disclosure of which would seriously undermine national security or the territorial integrity of a nation.

- In **Lithuania**, a state secret is limited to information that would “violate the sovereignty of the Republic of Lithuania, defence or economic power, pose harm to the constitutional system and political interests of the Republic of Lithuania, pose danger to the life, health and constitutional rights of individuals”.¹⁴
- In the **former Yugoslav Republic of Macedonia**, the information must be related to the “county’s security and defense, its territorial integrity and sovereignty, constitutional order, public interest, human and citizen freedom and rights.”¹⁵
- The **U.S.** Executive Order on Classification sets out eight areas that are eligible for classification:
 - military plans, weapons systems, or operations;
 - foreign government information;

¹⁴ Law on State Secrets and Official Secrets, §2(2).

¹⁵ Law on Classified Information, §5(2).

- intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- foreign relations or foreign activities of the US, including confidential sources;
- scientific, technological or economic matters relating to national security, which include defence against trans-national terrorism;
- U.S. government programs for safeguarding nuclear materials or facilities;
- vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security, which includes defence against trans-national terrorism;
- weapons of mass destruction.¹⁶

Duration. For the media, it is very important that classified information had a short “life cycle”¹⁷. Modern state secrets acts classify information for only as long as it is necessary for the protection of the interests involved.

- The Law on Classified Information of the **former Yugoslav Republic of Macedonia** limits State Secrets to 10 years, Highly Confidential information to five years, Confidential information to three years and Internal information to two years.
- In **Albania**, secrets are limited to ten years under the Law on Classified Information. The U.S. Executive Order sets a default of ten years unless it can be shown that it needs a longer duration.

A few laws impose long or no limits. This results in information being kept secret for far longer than its sensitivity requires.

¹⁶ Executive Order 13,292, Further Amendment to Executive Order 12958 Classified National Security Information, March 28, 2003. Also See Ireland Freedom of Information Act, Section 24; Canadian Access to Information Act, Section 15; Bulgarian Law for the Protection of Classified Information, Appendix No. 1 of Article 25.

¹⁷ See Background on the Principles and Process of “Life Cycle Risk Assessment”, <http://www.opsec.org/opsnews/Sep97/protected/Secrecy.html>

- In **Hungary**, information can be classified for 90 years (a reform is pending).
- Most of the laws in **Central Asia** do not provide for set limits.
- The current and proposed laws on secrets in **Croatia** do not set any firm time limits.

Reviews. FOI principles require that there are periodic reviews of classification.

- The **Georgian** and **Estonian** State Secrets Act require that each possessor of secrets review the classification yearly and note when it has been declassified.
- In **Sweden**, the classification is re-evaluated each time the document is accessed.
- In **Moldova**, the reviews must happen “regularly”.
- **Uzbekistan** and **Turkmenistan** require that information is reviewed every five years.

Prohibitions on the Classification of Information. FOI-capable secrets acts typically ban certain categories of information from being classified.

- The **US** Executive Order states that information cannot be classified to “conceal violations of law, inefficiency, or administrative error, prevent embarrassment to a person, organization or agency, retain competition, or prevent or delay the release of information that does not require protection in the interest of national security information”. It also prohibits basic scientific information not clearly related to national security from being classified.
- The **Moldovan** Law on State Secrets prohibits classification of the “true situation in the sphere of education, health protection, ecology, agriculture, trade, and justice”.
- The **Georgian** Law on State Secrets prohibits classification of information on “natural disasters, catastrophes and other extraordinary events which

have already occurred or may occur and which threaten the safety of the citizens”.

Oversight. In good state secrets laws, a specialized body is created to make decisions on the categories of information to be classified, and provide vetting of those who are authorized to access classified information. It can also review decisions on classification.

- In **Bulgaria**, the Law for the Protection of Classified Information created the State Commission for the Security of Information (SCSI).¹⁸ The SCSI controls the handling of classified information and even provides training.
- In **France**, the 1998 law on classification of national security information¹⁹ created the Commission consultative du secret de la défense nationale (CCSDN). This gives advice on the declassification and release of national security information in court cases. The advice is published in the Official Journal.²⁰
- In **Hungary**, under the Secrecy Act of 1995, the Parliamentary Commissioner for Data Protection and Freedom of Information is entitled to change the classification of state and official secrets.²¹
- In **Slovenia**, the Information Commissioner can check the accuracy of the classification.

Recommendations on classification rules

The definition of state secrets should be limited only to data that directly relate to the national security of the state and where their unauthorized release would have identifiable and serious consequences. Information designated as “Official” or “work secrets” should not be considered for

¹⁸ Law for the Protection of the Classified Information. Prom. SG. 45/30 Apr 2002, corr. SG. 5/17 Jan 2003.

¹⁹ Loi no 98-567 du 8 juillet 1998 instituant une Commission consultative du secret de la défense nationale, <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=DEFX9700140L> See Rapport 2001 de la Commission consultative du secret de la défense nationale, <http://www.ladocumentationfrancaise.fr/brp/notices/014000754.shtml>

²⁰ For a copy of decisions, see <http://www.reseauvoltaire.net/rubrique387.html>

²¹ Hungary, Act LXV of 1995 on State Secrets and Official Secrets.

classification as state secrets. Limits on their disclosure should be found in the access to information law.

Information relating to violations of the law or human rights, maladministration or administrative errors, threats to public health or the environment, the health of senior elected officials, statistical, social-economic or cultural information, basic scientific information, or that which is merely embarrassing to individuals or organisations should not be classified as a state or official secret.

Information should only be classified as a state secret for a limited period of time where the release of the information would cause a serious harm to the interests of the nation. Information that is classified should be regularly reviewed and have a date after which it will be declassified and released. It should be presumed that no information should be classified for more than 15 years unless compelling reasons can be shown for withholding it.

Governments should institute a review of all secret information over 15 years old and automatically declassify and release it. All information that was designated as secret by a previous non-democratic government should be declassified and presumptively released unless it is shown that its release would endanger the national security or be an unwarranted invasion of privacy.

An independent body that is not part of the intelligence, military or security services should have oversight over classified information and ensure that the system is operating properly, receive complaints about improperly classified information and review and order the declassification of information.

There should be sanctions for those who deliberately and improperly designate information as secret or maintain excessive secrecy.

III. CRIMINAL SANCTIONS

The lack of adjustment of criminal law and practice to FOI principles is one of the greatest dangers for the free flow of information and fearless journalism. Many journalists in the OSCE participating States are prosecuted for unearthing information that the public should know about even if it is classified.

In at least 29 OSCE participating States, the criminalisation of “breach of secrecy” is not limited to those who have a duty to protect the secrets but mechanically extends to each and every citizen who played a role in passing on or publishing classified data.

The courts in these countries are not allowed to acquit any citizen caught with governmental secrets, not even in case of obvious public interest in the disseminated information. In most cases, the only way for journalists to avoid conviction – which may come with imprisonment – is to prove that the data was insufficiently classified.

Let us add to the list of dangers that criminalisation of ‘breach of secrecy’ punishes not professionally weak journalism but precisely demanding investigative reporting that is essential for the role of the press.

Best practices

- In the **United States**, there are no provisions on disclosure of state secrets. The closest law is the Espionage Act adopted in 1917, which includes limited prohibitions on the disclosure of defence information with the intent to harm the US.²² It is generally accepted that this does not apply to the publication of state secrets by newspapers, and there has

²² 18 USC 793 et seq.

never been a prosecution of a journalist or newspaper in the history of the law.

The necessary differentiation can be done in the punitive law or in the press law:

- In **Norway**, the duty of secrecy, defined in the Security Act and the Penal Code, does not apply to members of the public in general.
- In **Georgia**, the Law on Freedom of Speech and Expression says that the prohibition on publishing secrets only applies to officials and government employees.
- In contrast, the **Belarusian** Press Law bans the mass media from publishing state or other protected secrets.

The future belongs to the so-called 'public-interest scrutiny': ensuring that information of importance to the public is not suppressed because it is classified as secret. The protections can apply to both insiders (whistleblowers) and to the media.

- In **Austria**, the criminal code provides that state secrets are not violated when there is a justified public or private interest.²³
- In **Moldova**, Article 7(5) of the Law on Access to Information states that no one can be punished if the public interest in knowing the information is larger than the damage that can result from its dissemination.
- In **Georgia**, the Law on Freedom of Speech and Expression says that those who disclose state secrets are not liable "if the purpose of disclosure of a secret was protection of the lawful interests of the society, and if the protected good exceed the caused damage".

Recent cases in OSCE participating States

In the past few years, thanks to prosecutors with no taste for the FOI principles, there has been an increase in the number of cases against the

²³ StGB §122(4).

media. Fortunately, in many of these cases, the courts have found that the actions of the police or even the laws were damaging freedom of the press. As in the following:

- **Canada** – In January 2004, *Ottawa Citizen* reporter Juliet O’Neil was threatened with prosecution under the Security of Information Act and her home and office were searched after the *Citizen* published an article in November 2003 on the controversial arrest and transfer to Syria of Martian Arar on allegations of terrorism. The Ontario Court of Justice ruled in October 2006 that the Act violated the Canadian Charter of Rights and Freedoms.²⁴
- **Denmark** – Two journalists and the editor of *Berlingske Tidende* were prosecuted under the Criminal Code in November 2006 after publishing material leaked from the Defense Ministry. The court found they had acted in the public interest in publishing the information and acquitted them.
- **Germany** – The *Cicero* editor-in-chief was charged and paid a €1,000 fine, but refutes any liability implied by having paid the fine. The Constitutional Court found in February 2007 that the police search and seizure of the offices of *Cicero* because of the publication of the state secret was unconstitutional.²⁵
- **Hungary** – In November 2004, Rita Csik, a journalist with the *Nepszava* newspaper was charged under the Hungarian Penal Code for writing an article that quoted a police memorandum on an investigation of an MP. She was acquitted in November 2005 by the Budapest municipal court, which said that the document was not legally classified. The decision was affirmed by the Court of Appeals in May 2006. In December 2005, *HVG* magazine reporter Antónia Rádi was charged with disclosing classified information after writing an article on a police investigation of the mafia. The case is still pending.

²⁴ Canada (Attorney General) v. O’Neill, 2004 CanLII 41197 (ON S.C.), (2004), 192 C.C.C. (3d) 255.

²⁵ 1 BvR 538/06; 1 BvR 2045/06, 27 February 2007.

- **Lithuania** – State Security officials raided the offices of *Laisvas Laikrastis* newspaper and arrested the editor for possession of a state secret in September 2006 after the newspaper wrote a story about a corruption investigation. 15,000 copies of the newspaper, computers and other equipment were seized.²⁶ The raid was strongly criticized by the President.
- **The Netherlands** – Reporter Peter de Vries was charged in December 2005 under the Criminal Code after he revealed information on his television show from two disks left by an intelligence officer in a leased car two years earlier. In February 2006, the public prosecutor announced that he would not be prosecuted.
- **Romania** – In February 2006, six journalists were questioned and two were arrested for receiving classified information on military forces in Iraq and Afghanistan from a former soldier. The journalists did not publish the information and handed over the information to the government. The Supreme Court ordered the release of one journalist after she had been detained for two days.
- **Switzerland** -Two *Sonntags Blick* reporters and the editor were prosecuted under the military penal code for publication of Swiss military interception of an Egyptian government fax about press reports on secret prisons run by the US government. On 17 April 2007, they were acquitted by a military tribunal of having inflicted damage to the defence capabilities of the Swiss Army.
In 2003, the government opened proceedings against the editor of *Sonntags Blick* for publishing photos of an underground military establishment.
- **UK** – Neil Garrett of *ITV News* was arrested in October 2005 under the Official Secrets Act after publishing internal police information on the mistaken shooting of Jean Charles de Menezes. In November 2005, the government threatened to charge several newspapers with violating the

²⁶ Committee to Protect Journalists, Newspaper issue seized; editor briefly detained; newsroom, editor's home searched and hard drives confiscated, 11 September 2006.

Official Secrets Act if they published stories based on a leaked transcript of conversations between PM Tony Blair and President George Bush about bombing *Al Jazeera* television.

- In **Ireland**, *Sunday Tribune* journalist Mick McCaffrey was arrested in February 2007 under the Commission of Investigations Act for publishing information from a leaked report on how the police had mishandled a murder investigation in 1997.

Two journalists from the *Irish Times* are also under investigation after published leaked information about the investigation of the Prime Minister for receiving payments from a businessman.²⁷ The Supreme Court rejected an effort by the Tribunal to prohibit the newspaper from publishing related information in March 2007.²⁸

*Recommendations on criminal sanctions for 'breach of secrecy':
Criminal and Civil Code prohibitions should only apply to officials and others who have a specific legal duty to maintain confidentiality.*

'Whistleblowers' who disclose secret information of public interest to the media should not be subject to legal, administrative or employment-related sanctions.

The test of public interest in the publication should become an integral part of jurisprudence on disclosure of information.

²⁷ Committee for the Protection of Journalists, Journalist arrested in Ireland; two others investigated, March 5, 2007.

²⁸ Mahon -v- Post Publications [2007] IESC 15 (29 March 2007).

IV. PROTECTION OF SOURCES

Prosecutors recently have been attempting not only to put journalists themselves on the bench of the accused for the crime of ‘breaching secrecy’. In the wake of heightened security concerns there have been many attempts to force journalists to reveal their confidential sources, using the citizen’s duty to testify.

Protection of confidential sources is crucial for the media’s ability to gather information. As noted by European Court of Human Rights:

*“Without such protection, sources may be deterred from assisting the press in informing the public in matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected.”*²⁹

Protections should extend to the use of searches and wiretaps to obtain information on sources.

Unfortunately, the trend is the worst of all among the covered dimensions of access to information. Only a minority of the OSCE participating States have ‘shields’ for journalists from demands to reveal sources.

Best practices

- **Belgium** is one of the few countries that have adopted a free standing law on a comprehensive system of protection of sources. Such laws also exist in more than 30 **U.S.** States, but, ominously, not on the federal U.S. level.

²⁹ Goodwin v. The United Kingdom - 17488/90 [1996] ECHR 16 (27 March 1996).

- Good 'shield' provisions are also at work in **Armenia, Austria, Croatia, Cyprus, Denmark, Finland, France, fYR Macedonia, Georgia, Germany, Liechtenstein, Lithuania, Malta, Norway, Poland, Portugal, Romania, Sweden, and Turkey.**
- They could be given in constitutions, press laws, criminal procedure rules, or, as in **Germany** since the *Cicero* case, in Constitutional Court case law. In the **UK**, the protection is included in the Contempt of Court Act.

In these states journalists cannot be ordered to reveal their confidential sources, or public-interest scrutiny is provided.

Paradoxical trends

One surprising result of the survey is that prosecutors are out against the journalists' privilege mostly in the countries which provide some 'shield'.

- 67 per cent of all cases when journalists were requested by prosecutors to give up their 'shield' privilege have been registered in the pre-1989 democracies. Most of these countries have some degree of sources protection.

The other paradox lies in the fact that these attempts were quite regularly overturned by the courts, except in federal cases in the **United States**. All recorded cases of journalists actually punished for not revealing sources have resulted from this legislative deficiency at the U.S. federal level.

- In the **U.S.**, at the federal level, there are guidelines for prosecutors issued by the U.S. Department of Justice which apply to subpoenas of the news media.³⁰ The guidelines as such amount to a protection of

³⁰ 28 C.F.R. § 50.10.

confidentiality of sources in 'public-interest' publications. Nevertheless, the current and the previous Attorney Generals have consistently attempted to break the journalists' privilege. Several bills are now pending in the US Congress to incorporate the provisions into law.

The final paradox is the insignificant amount of both 'breach of secrecy' and of 'protection of sources' cases in the **CIS region**. Here, prosecutors often apply other criminal provisions against journalists, so the small amount of such cases is probably caused by a relative underdevelopment of investigative journalism in the CIS region.

In **Central European states**, the number of cases is also small. It seems that courts or prosecutors there try to prevent leaks by prosecuting journalists for disclosure of secrets, rather than by demanding disclosure of their sources.

Recent cases

Regardless of the protections, there have been numerous cases in OSCE participating States in the past few years, where journalists have been arrested, newsrooms searched, and equipment seized in an effort to identify sources or force journalists to cooperate in investigations:

- In the **U.S.**, journalists have been incarcerated for 'contempt of court' after refusing to reveal their confidential sources. In 2005, Judith Miller of the New York Times spent 85 days in jail for refusing to reveal the identity of her source; in 2001, freelance writer Vanessa Leggett spent 168 days in jail for not providing her notes and tapes; in 2006, blogger Josh Wolf spent 226 days in jail for refusing to produce raw footage.
- In **the Netherlands**, two journalists from the newspaper *De Telegraaf* were detained in November 2006 after refusing to disclose the source of intelligence dossiers on a criminal.

- Police in **Italy** searched the offices of *La Repubblica* and the *Piccolo* newspapers and two journalists' homes for files in 2003. Also in 2003, the police raided *Il Giornale* and seized a reported 7,000 files.
- In **Belgium**, *Stern* reporter Hans-Martin Tillick was detained and his office and home were searched after he wrote an investigative story based on internal documents from the European Union's Anti-Fraud Agency (OLAF). The European Court of Justice rejected a challenge in October 2006 to force the return of the documents. Belgium has since amended its law.
- In **France**, the police searched the offices of *Le Point* and *L'Equipe* and seized computers following the publication of stories about sports doping investigations. The Minister of Justice Pascal Clément promised in June 2006 to strengthen the law protecting journalists. However, in July 2006, police searched the offices of *Midi Libre* following a complaint that it broke professional secrecy.
- In the **Russian Federation**, twenty armed police searched the offices of *Permsky Obozrevatel* in August 2006 and seized computers and other equipment, claiming that the newspaper had obtained classified information.

Recommendations on protection of sources

Each participating State should adopt an explicit law on protection of sources to ensure these rights are recognized and protected.

Journalists should not be required to testify in criminal or civil trials or provide information as a witness unless the need is absolutely essential, the information is not available from any other means and there is no likelihood that doing so would endanger future health or well being of the journalist or

restrict their or others ability to obtain information from similar sources in the future.

[http://www.osce.org/documents/rfm/2007/05/24250_en.pdf]

Special Report: Handling of the media during political demonstrations – Observations and Recommendations

21 June 2007

This Special Report is the third in a series issued by the Office of the OSCE Representative on Freedom of the Media that seeks to offer clarification about problematic aspects and best practices of the framework for the media in the OSCE area.

The first two reports, issued in October 2006 and March 2007, examined the function of journalists' accreditation and the issue of registration of the print media.

This Special Report examines the treatment of journalists by law enforcement officials during political demonstrations.

There have been a number of instances recently where journalists have received particularly harsh treatment at the hands of law-enforcers while covering public demonstrations. This has highlighted the need to clarify the *modus operandi* of both law-enforcement agencies and journalists at all public events, in order that the media is able to provide coverage without hindrance.

The OSCE participating States have committed to freedom of expression and freedom of assembly and have guaranteed to create the conditions whereby journalists are able to work without legal or administrative

obstacles³¹. Particularly, they “condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.”³² In addition, the ODIHR *Guidelines on Freedom of Peaceful Assembly* clarifies the role of the media.³³

Recent conflicts in connection with public demonstrations touch on both freedom of expression issues and those related to freedom of assembly. But safe reporting on demonstrations is demanded not only by freedom of the media and free flow of information principles: uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech.

Both law-enforcers and journalists have special responsibilities at a public demonstration. Law-enforcers are responsible for ensuring that citizens can exercise their right to peaceful assembly, for protecting the rights of journalists to cover the event regardless of its legal status, and for curbing the spread of violence by peaceful means. Journalists carry the responsibility to be clearly identified as such, to report without taking measures to inflame the situation, and should not become involved in the demonstration itself.

This report examines some of the issues that have become a recurring problem in the OSCE area and proposes recommendations to improve the handling of the press in similar circumstances in the future.

31 Copenhagen Meeting Of The Conference On The Human Dimension Of The CSCE (June 1990) (7.8)

32 Towards a Genuine Partnership in a new era (CSCE Summit, Budapest) Chapter VIII, Human Dimension Tolerance and non-discrimination.

33 “Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants and be given as much access as possible by the authorities.” Section A ‘Implementing legislation on Freedom of Peaceful Assembly’ (9) p17.

Responsibilities of the authorities and law enforcement agencies

Law-enforcers have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations, and journalists have a right to expect fair and restrained treatment by the police. This flows from the role of law-enforcers as the guarantor of public order, including the right to free flow of information, and their responsibility for ensuring the right to freedom of assembly.

There are of course practical considerations. The police have to distinguish between journalists and demonstrators at a time when the emotions of large crowds are running high. Therefore, there needs to be a mechanism whereby the police can quickly assess who should have access.

The solution found in **Belgium** is linked to the National Press Card. According to the Law of 30 December 1963, journalists recognised by the national union are issued with a press card, which gives the journalists maximum access to any public space, including demonstrations. On the back of the press card, it is stated: “The authorities are requested to give the owner of this card all facilities in as far as they are compatible with the needs of public order and traffic.”



Belgium Press Card (front)

Belgium Press Card (back)

On presentation of the card, journalists can expect to be granted access to the demonstration area in order to cover the event.

However, even on presentation of their credentials, this right of access is not always given to journalists. Disregard for the role of both journalists and law-enforcers at the time of a demonstration has led to overzealous policing and resulted in physical attacks on journalists. For example, this year:

- During the so-called “Marches of the Discontented”, organized by an opposition alliance on 3 March 2007 in St. Petersburg, on 24 March in Nizhny Novgorod, and on 15 April in Moscow, **Russia**, the media reported that several Russian and foreign journalists were detained or beaten in each instance, despite some of them wearing a bright jacket identifying them as journalists.
- On 12-14 April, four cases of journalists being beaten during demonstrations in Bishkek, **Kyrgyzstan** were recorded in a joint statement by four leading media NGOs in Kyrgyzstan.
- On 28 April in Tallinn, **Estonia**, two Russian journalists covering demonstrations against the transfer of a war memorial reported that police beat them about the head with police batons when they resisted seizure of their reporting equipment.
- On 1 May in Istanbul, **Turkey**, journalist groups reported the use of tear gas and other forms of violence by law-enforcers to restrain demonstrators and journalists.
- On 2 May in Los Angeles, **USA**, officers from the Los Angeles Police Department beat several TV journalists with batons during an immigrants’ rally.

Examples from earlier years:

- On 2 March 2006 in Minsk, **Belarus**, in the run-up to the presidential elections, domestic and foreign journalists seeking to cover the detention of an opposition candidate, were beaten and detained by riot police; some of them were hospitalized with minor injuries and police also confiscated their cameras.
- On 11 October and 26 November 2005 in Baku, **Azerbaijan**, dozens of journalists fell victim to police assaults during demonstrations. The journalists were wearing bright jackets identifying them as members of the press.

In a letter to the Office of RFoM from the Russian authorities dated 7 June 2007, it is stated that as none of the journalists detained during recent demonstrations have filed official complaints to the police, further investigations cannot be opened. Regrettably then, it appears that Russian law-enforcers will not be held accountable for any acts of violence against journalists during the recent political demonstrations.

A statement made in April by the Press Office of the Russian Ministry of the Interior pledges to improve the police handling of journalists during such events in the future.

“Unsanctioned” Demonstrations

International standards commit States not to place any restrictions “on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”³⁴

³⁴ International Covenant on Civil and Political Rights, article 21. See also ECHR, Article 11 ‘Freedom of assembly and association’.

So while the very notion of an **'unsanctioned demonstration'** is sometimes viewed as an anomaly, there are legitimate reasons that the authorities can refuse the use of certain locations, either on the grounds of security or disruption to public transport.

However, the very fact that a mass demonstration takes place – whether it be sanctioned or unsanctioned – is certainly newsworthy, is of public interest and therefore, journalists should be protected by the same rights as if they were covering any other public event.

In responding to their treatment of journalists during these public events, governments have sometimes tried to explain away a disproportionate reaction of law-enforcers against journalists and demonstrators by citing the 'unsanctioned' nature of the demonstration.

For example, in a recent public statement by the Director of the Department for Public Relations of the Russian Ministry of Interior, commenting on the conduct of the police during demonstrations in Moscow, St Petersburg and Nizhny Novgorod, he referred to the *unauthorised* nature of the wave of recent demonstrations.³⁵

The media is impartial to the circumstances under which an event takes place, be it planned or spontaneous. Simply, it is their duty as media professionals to provide coverage and should be afforded the same privileges by the police as if the demonstration were 'sanctioned'.

1. Law-enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by the police.

³⁵ Press briefing by the Head of Public Relations of the Ministry of Internal Affairs, 21 April 2007.

2. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behaviour will not be tolerated.

Accreditation to cover political demonstrations

The issue of journalists' accreditation for public demonstrations has also been raised recently, particularly in the context of unsanctioned demonstrations³⁶. The RFoM Special Report on "Accreditation for Journalists in the OSCE area" clarifies the conditions under which it is necessary for journalists to obtain accreditation:

"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."³⁷

Accreditation is required therefore only when access is necessarily restricted, such as access to the press gallery in a parliament building. In a public place, such as a town square, space is not limited and therefore there is no requirement for special accreditation.

³⁶ Ibid

³⁷ http://www.osce.org/documents/rfm/2006/10/21826_en.pdf

3. There is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited. Journalists who decide to cover 'unsanctioned demonstrations' should be afforded the same respect and protection by the police as those afforded to them during other public events.

Respect for printed material and equipment

Naturally, the personal equipment of journalists should be respected at all times. Confiscation of the tools of their trade, such as cameras or recording equipment is a criminal offence and is rather like switching off the microphone of the main speaker of a sanctioned demonstration. If police break or smash equipment deliberately, this should be considered a criminal offence and those responsible should be held accountable.

The Office of RFoM has also recorded a number of cases where printed material has been directly confiscated by the authorities immediately prior to a mass demonstration. For example:

- In Bishkek, **Kyrgyzstan**, on 11 April, in accordance with a confiscation warrant from the Prosecutor's Office, the latest editions of four main opposition newspapers were seized, as well as printing plates and electronic files.
- In Samara, **Russia** on 11 May, one week prior to the 'March of the Discontented' demonstration planned for 18 May, media groups reported a police raid on the local bureau of the independent newspaper *Novaya Gazeta*, during which computers and financial records were seized. At least two other large seizures of the opposition newspaper 'March of the Discontented' reportedly took place prior to similar demonstrations on 20 March and 30 April in Nizhny Novgorod and St Petersburg.

4. Wilful attempts to confiscate, damage or break journalists' equipment in an attempt to silence reporting is a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards. The role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management.

Responsibilities of journalists

The ODIHR Guidelines on Peaceful Assembly summarise the responsibilities of journalists:

“Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants and be given as much access as possible by the authorities. In order to avoid confusion and facilitate such access, it may be necessary to require journalists and other media personnel to be clearly identifiable, by wearing for instance fluorescent bibs.”³⁸

This photograph shows one mechanism by which a journalist can identify themselves. The jacket allows journalists to distinguish him/herself from other demonstrators and allows law-enforcement agencies to respond adequately to journalists' requests. The Russian-based “Centre for Journalists in Extreme Situations” distributes such jackets to journalists in Russia. When journalists are clearly identified, the likelihood that they will be caught up in the actual demonstration is significantly reduced.



³⁸ Section B Human Rights Monitors, Media and Other stakeholders, (168, p 75)

Case Study: Police-run training courses for journalists in France

Starting in 2006, the French Gendarmerie Nationale, the national military police force, has held special training sessions for journalists. The goal is to introduce journalists to security activities and public order enforcement measures during a demonstration, as well as crowd control mechanisms and crowd behaviour schemes through both theoretical courses and role-playing exercises.

The training courses, which last for four days, are attended by approximately 15 participants representing major French media outlets and TV broadcasters and are held in the National Gendarmerie Training Centre in Saint Astier.

Such training courses help to increase mutual understanding between journalists and public order officers and therefore diminish risks of accident in the course of a demonstration due to lack of discernment or judgement.

Ideally, the form of identification should be negotiated and agreed between journalists associations and law enforcement agencies, in order that both sides know and recognise the agreed emblem.

The role of journalists is to *report* on the event, it is not to become personally *involved* in it. If a journalist is politically active, on the day of a political rally, he or she must choose in what capacity to attend, *either* as a demonstrator *or* as a journalist.

Efforts are underway by the Press Emblem Campaign (<http://www.pressemblem.ch/>) founded in June 2004 by a group of international

journalists based in Geneva, to strengthen the legal protection and safety of journalists around the world. One of the aims of the organisation is to gain international recognition for an emblem that identifies media workers, similar in principle to the Red Cross emblem for medical workers.

National level efforts to introduce standards that differentiate journalists from demonstrators, and therefore offer a level of protection to journalists in conflict situations, should be also welcomed.

5. Journalists should identify themselves clearly as such, should restrain from becoming involved in the action of the demonstration and should report objectively on the unfolding events, particularly during a live broadcast or webcast. Journalists' unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media workers. Journalists should take adequate steps to inform and educate themselves about police measures that will be taken in case of a riot.

Conclusion

In three earlier Special Reports on conflict coverage, the Office of the RFoM has examined the role and the handling of the media in violent situations in Andijan (2005), Beslan (2004) and Kosovo (2004). The recommendations therein are relevant to the issues raised in this report and should be read in conjunction with the recommendations in this Special Report.³⁹

As was the case in Beslan and Kosovo, reports of direct attacks on journalists by demonstrators themselves are, unfortunately, not uncommon. For example:

³⁹ http://www.osce.org/documents/rfm/2005/03/15195_en.pdf (Andijan)
http://www.osce.org/documents/rfm/2004/04/2695_en.pdf (Kosovo)
http://www.osce.org/documents/rfm/2004/09/3586_en.pdf (Beslan)

- In Paris in November 2005, violent attacks on at least five French and foreign journalists took place during urban riots.
- In Belgrade in March 2006 a camera crew from B92 was physically attacked while reporting on the death of Slobodan Milosovic from outside the Sveti Sava hospital.
- In Novi Pazar, in April 2007 a Glas Javnosti journalist was attacked while trying to photograph a column of mourners carrying the body of Ismail Prentic.
- On 9 October 2005 during an opposition rally in Baku, Azerbaijan, unidentified individuals physically attacked and injured a Zerkalo journalist even though he was clearly identified by a blue Press jacket.

It is the role of the police to ensure that key civil rights such as personal security and freedom of movements are afforded to all citizens, including journalists. In three of the four cases mentioned above, journalists reported that assistance had been offered by the police and that their intervention had prevented an escalation of violence.

Unfortunately, attacks on journalists continue within the OSCE area. RFoM continues to receive reports about journalists who have been physically attacked in connection with their professional duties. One such example is the attack on the Kyrgyz journalist Kairat Birimkulov of the State TeleRadio Company on 16 March, who was severely beaten and hospitalised as result of his injuries.

6. Both law enforcement agencies and media workers have the responsibility to act according to a code of conduct, which should be reinforced by police chiefs and chief editors in training. Police chiefs can assist by ensuring that staff officers are informed of the role

and function of journalists. They should also take direct action when officers overstep the boundaries of these duties. Media workers can assist by remaining outside the action of the demonstration and clearly identifying themselves as journalists.

Summary of Recommendations

- 1. Law-enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by the police.*
- 2. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behaviour will not be tolerated.*
- 3. There is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited. Journalists who decide to cover 'unsanctioned demonstrations' should be afforded the same respect and protection by the police as those afforded to them during other public events.*
- 4. Wilful attempts to confiscate, damage or break journalists' equipment in an attempt to silence reporting is a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards.*

The role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management.

5. Journalists should identify themselves clearly as such, should restrain from becoming involved in the action of the demonstration and should report objectively on the unfolding events, particularly during a live broadcast or webcast. Journalists' unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media workers. Journalists should take adequate steps to inform and educate themselves about police measures that will be taken in case of a riot.

6. Both law enforcement agencies and media workers have the responsibility to act according to a code of conduct, which should be reinforced by police chiefs and chief editors in training. Police chiefs can assist by ensuring that staff officers are informed of the role and function of journalists. They should also take direct action when officers overstep the boundaries of these duties. Media workers can assist by remaining outside the action of the demonstration and clearly identifying themselves as journalists.

[http://www.osce.org/documents/rfm/2007/06/25176_en.pdf]

Examination of modalities for media twinning (PC.DEC/759)

Executive summary

At the Ministerial Council in Brussels in December 2006, the Permanent Council adopted PC.DEC/759 on “Media twinning: Capacity building in support of professional media through peer-to-peer exchanges”. This decision tasked the Office of the Representative on Freedom of the Media (RFOM) to examine the possibilities to facilitate media twinning across the OSCE area. This report contains the findings of the examination conducted by RFOM, which were compiled by method of a detailed questionnaire to the OSCE executive structures.

PC decision 759 refers to a very valuable instrument in the toolbox of media development, namely media twinning. Twinning is widely practised within the OSCE, but compared to the overall twinning activities carried out by other organisations, especially NGOs throughout the OSCE area, those of the OSCE executive structures are rather small.

The report concludes that the coordination of peer to peer exchanges within the OSCE should – by and large – remain the realm of the OSCE field presences, while the RFOM and/or the CPC should continue to be notified of such activities. The necessary structures for handling media twinning are in place.

A change of responsibilities is not recommended and, for example, a stronger centralisation of twinning activities would be rather counterproductive as field presences are best suited to initiate media twinning, based on their needs assessments. Likewise, donors willing to finance twinning are looking for partners in the field (which can be OSCE

field presences) or they use the field presences for “matchmaking” between donors and recipients.

Based on the feedback from the field presences, the report also concludes that, if twinning activities are to be increased within the OSCE, additional resources are imperatively needed.

Background information

Mr. Karel De Gucht, Minister of Foreign Affairs of Belgium, was the Chairman in Office of the OSCE (CiO) from January 2006 until December 2006. One of the priorities of the Belgian chairmanship was freedom of the media.

The Office of the OSCE Representative on Freedom of the Media (FOM) received support from Belgium in numerous ways. A Supplementary Human Dimension Meeting on Freedom of the Media was organised in July 2006 by the FOM, Belgian CiO and ODIHR. Additionally, freedom of the media was given a prominent slot at the 2006 Human Dimension Implementation Meeting. Belgium also endorsed the “Access to Information Database” produced by the RFOM (published in May 2007). The Belgian Chairmanship underlined the importance it gave to freedom of the media by introducing PC.DEC/759 on “Media twinning: Capacity building in support of professional media through peer-to-peer exchanges.”

In this context the Chairmanship organised a twinning visit to Brussels for 13 journalists, selected by the OSCE field presences on 22-26 October 2006. The participants were given the opportunity to visit the Flemish (Dutch language) and Walloon (French language) public service broadcasters, as well as some leading Belgian newspapers.

From the feedback of the participants it was clear that they very much appreciated the occasion to meet colleagues from other OSCE pS and

valued the possibility to exchange their experiences. They also stressed the possible window of opportunity this event offered for future cooperation. A spin off of this event is being organised by one of the participants, a summer school in Yerevan in July 2007.

At the ministerial council in Brussels, 4-5 December 2006, the Office of the OSCE Representative was tasked in PC.DEC/759 *“to coordinate the examination by the relevant OSCE executive structures, within their existing mandates and in consultation with media organisations, of modalities for facilitating media twinning throughout the OSCE area, including budgetary aspects, and make relevant proposals to the participating States.”*

According to this PC decision media twinning is understood as follows: *“Acknowledging media twinning as reciprocal peer-to-peer exchanges between relevant media actors in view of media capacity-building in support of the OSCE’s principles and commitments, in particular on freedom of the media, through, inter alia, study visits, training seminars, and staff exchanges. Aware that free and professional media can defend the values of peaceful coexistence.”*⁴⁰

Against this background, the Office of the Representative on Freedom of the Media wrote this report.

Methodology

The report aims to provide insight on media capacity training activities carried out by the OSCE, especially by field presences. It will assess if there is a need for increased OSCE involvement in media twinning activities, define what this involvement could be, and what implications this would have on funding.

⁴⁰ For PC.DEC/759, please see Annex 1

The FOM distributed 22 questionnaires⁴¹ to all OSCE executive structures: 18 OSCE field presences, the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM), the Conflict Prevention Centre (CPC) and the Press and Public Information Section (PPIS).

A total of 14 questions were asked, divided into four topical groups: mandate, implementation of media capacity building projects, budget and the assessment by the officer in charge. The reporting period was 2006 and 2007. The structure of this report will follow these four categories.

From the total of 22 questionnaires that were distributed, 19 were returned⁴². 16 out of 18 OSCE field presences replied.⁴³

Answers to the questionnaires by the OSCE executive structures

Field presences

Mandate

According to the answers from the questionnaires that were distributed to the field presences, 11 out of 16 answered that media development is a part of their mandate. This demonstrates that the bulk of media capacity building activities are in the field and that RFOM's own media development or twinning activities are small in comparison.

Implementation

The types of media twinning implemented by the executive structures are mainly study visits, trainings and to a lesser extend staff exchanges. Four

⁴¹ For a template of the questionnaire, please see Annex 2

⁴² For a detailed list of survey participants please see Annex 3

⁴³ As the report is based on the responses to a questionnaire that was distributed by the RFOM to all relevant OSCE executive structures, the RFOM is not responsible for any inaccuracies.

field presences indicated that they do not implement any form of media twinning. Other forms of media capacity building that are employed are: legal reviews and assistance, participation in conferences, workshops or round tables, and expert visits.

Request for such initiatives originate from different sources. However, most often they come from the media outlets themselves, the locally present NGOs or the professional media unions. To a lesser extend they are asked for by the governments of the pS. They could also follow a needs assessment of the OSCE presence itself.

The missions indicate that media twinning often is not done by them, but by other organisations such as NGOs, media outlets, professional media organisations and universities. Five OSCE missions indicated that the percentage of twinning projects carried out by the OSCE in its field of operation, is less that 5% compared to all the twinning that is conducted in their area. Two more indicated that it was less than 25% and only one mission claimed to take a 50% share. The other field presences did not answer the question.

All executive structures work in cooperation with implementing partners when conducting media development activities. These partners are mostly NGOs or professional media organisations. Both the mission and the implementing partners provide venue, funding, expertise, human resources, etc. All field presences agreed that professional organisations, media outlets or NGOs are the best implementers of such projects.

As mentioned above, media development projects are conducted in cooperation with implementing partners. These can be categorised in six groups: media outlets, professional media organisations, the government, educational institutions, international organisations and NGOs.⁴⁴

⁴⁴ For a complete list of implementing partners, please see Annex 4.

Budget

In most field presences the operational positions of the 2006 Unified Budget (UB) used to finance media twinning was less than 5%. With the exception of three missions in South Eastern Europe where between 20% and 50% of the media budget was used for twinning within their media development. In seven OSCE executive structures none of their operational budget was used for media development. Only three field operations received extra-budgetary (XB) funding for implementing media twinning activities.

17 out of 18 missions implementing media capacity building indicated that the funding (UB and XB) provided for such activities is not sufficient to ensure a follow-up and lasting effect of such activities.

Assessment

Although all field presences recognise the importance and benefits of media capacity building for the development of free media in their regions, nearly all of them recognise that other organisations, such as NGOs and professional media organisations, are better equipped to conduct such activities.

It would be possible to continue minor media twinning projects in the future within existing resources. However, if such projects were to be increased or continued with a lasting effect there would be a need for additional resources, human and financial.

OSCE Institutions and Secretariat**Office of the OSCE Representative on Freedom of the Media*****Mandate***

In accordance with the mandate, RFOM "will assist the participating States, in a spirit of co-operation, in their continuing commitment to the furthering of

free, independent and pluralistic media."⁴⁵ The FOM does conduct numerous media capacity building projects, on an ad hoc basis, as an intervention or at the request of an OSCE pS.

Following its mandate the media assistance programmes of the FOM are conducted on a case by case basis, and focus on legal issues rather than material assistance.

Implementation

In 2006, the FOM held one press secretary training seminar in Azerbaijan, two in Kazakhstan, and four in Ukraine. In 2007, seminars in Armenia, Belarus and Ukraine were held and training events are planned in Tajikistan and Georgia. These events are generally organised upon the invitation of the governments of the participating States. They may also be initiated by the FOM, OSCE field operations, or local media NGOs, but the governments always have to endorse such events before they can be implemented.

The FOM, in close cooperation with and at the request of the Permanent Delegation of the Republic of Kyrgyzstan to the OSCE, also organised a study tour to the OSCE and media outlets in Vienna for 11 Kyrgyz journalists in 2006.

Together with the OSCE Presence in Albania the FOM invited seven members of the Parliamentary Committee on Education and Media. The MPs were given a thorough briefing of the current activities and priorities of the FOM, as well as all the necessary contact details of FOM staff, and other media organisations should they need any assistance.

⁴⁵ PC.DEC/193, "Mandate of the OSCE Representation on Freedom of the Media"

In Central Asia and the South Caucasus in 2005 and 2006, IREX, with FOM funding, implemented an internet training program for young journalists in the local languages.

The implementing partners of the FOM are chosen in close cooperation with the governments of the pS, the OSCE field operations, and local NGOs.

Budget

In 2006 the FOM used about €80,000 of its operational budget for its media assistance projects described above. An estimated €40,000-50,000 of the operational budget will be used in 2007 for media development projects.

These amounts are comparatively small and reflect the fact that media development is an ad hoc or complementary activity of the RFOM.

HCNM

Mandate

The mandate of HCNM does not specifically include media capacity building. However, as it does contain conflict prevention with regard to national minority issues and media can play a key role in diffusing tension and promoting good inter-ethnic relations, the HCNM has implemented some projects in support of news broadcasting and of the training of journalists.

Implementation

In the past two years, the HCNM has conducted two media projects in Samtskhe-Javakheti and in Kvemo Kartli. Although not twinning activities as such, both projects did contain some aspects of media twinning, such as study tours. These projects were implemented in cooperation with Internews

Georgia. HCNM will endeavour to continue this sort of activities in the future, notably in Kyrgyzstan and Moldova.

Budget

The project was funded with extra budgetary contributions from the Canadian International Development Agency, UK and the Swedish International Development Cooperation Agency (800,000 Euro in total) and 30,000 Euro from the HCNM unified budget for the period 2003-2007.

Secretariat

As mentioned before, questionnaires were also distributed to PPIS and CPC. Neither of these structures implement media capacity building as described in PC.DEC/759.

PPIS does have a training programme with journalists from pS in that have an OSCE presence, but these trainings are aimed at increasing the visibility and understanding of the OSCE, and not at media development as such.

Assessment

Assessment by the Representative on Freedom of the Media

PC.DEC/759 is an excellent reminder of a very valuable method of media development, namely media twinning.

However, the coordination of peer to peer exchange within the OSCE should remain in the hands of the OSCE field presences. They are already carrying out such projects, and are more aware of the needs in the field. The RFOM and/or the CPC should be notified of such activities, in order to avoid inconsistencies or unnecessary duplications. This type of clearing is already

in place, as the CPC Project Coordination Cell consults with the FOM on media-related project proposals from the field presences.

Further centralisation of twinning activities would entail additional resources. It would require additional funds, which ideally should be part of the unified budget of the mission to secure proper follow-up of the activities. Additional human resources would be needed as well.

The OSCE is currently not the main player in media capacity building in the field. Numerous NGOs and professional organisations are conducting the bulk of such activities, and they are usually better equipped to implement them. The OSCE should continue to play a supporting role and facilitate “match-making” between donors and twinning partners.

Existing research on “Media Development by the OSCE Field Missions”⁴⁶ conducted in 2004 by the Netherlands-based NGO Press Now pointed out, amongst numerous other recommendations, the following three recommendations that are in agreement with the analysis of the RFOM:

1. “OSCE missions do not need to have ‘ownership’ of the media development strategy in their areas of responsibility. (...) The OSCE is in a good position to coordinate with intergovernmental organisations and with non-governmental organisations.” However, Press Now also warns that this “bridging position also makes the OSCE ... vulnerable to policy disagreements” between influential donors.
2. If media development activities are to be enhanced, standardised budgetary procedures, guaranteeing financing and human resources for such activities, have to be established to ensure follow-up.

⁴⁶ “Media Development by OSCE Field Missions”, Press Now, Amsterdam, 2004
http://www.pressnow.org/upload/publications/Rapport_30062004.pdf
 “The Role of the OSCE in Media Development”, Press Now, The Hague, 16 June 2005
http://www.pressnow.org/upload/publications/Rapport_13102005.pdf

3. The role for the FOM should be centred on consulting or assisting the missions in their media capacity building activities. The FOM could also be the “clearing house for the media-development needs of the missions.”

Assessment of OSCE Executive Structures

The mandate of several missions does not include media capacity building, although all contain references to democratisation, human rights, etc. which does include to a certain extent media development. All OSCE field presences agreed on the importance of media capacity building to bring the media in line with international media freedom standards, and thus promote democratic standards and good governance.

The OSCE media capacity building efforts are very much located in the Western Balkans. In almost all OSCE countries with OSCE field operations media capacity building events are usually one-off activities, done on an *ad hoc* basis.

Nearly all field presences stated that local media organisations and NGOs carry out the bulk of such activities in their area of action, and that they are also better equipped to do so. Following from this is of course the agreement on the crucial role of cooperation between the field presences and the implementing partners, stressed by all field presences.

All missions, except three, stated that funding for these activities is not sufficient to implement media capacity building projects in a consistent manner. It is also not enough to ensure that the projects will have a lasting effect and are followed-up appropriately.

Conclusion

- Media twinning will remain an important aspect of media development in the OSCE region.
- The OSCE structures to initiate or absorb media development activities, including twinning, are in place, as well as the necessary coordination mechanisms between the different executive structures.
- RFOM already conducts some media development activities, some of which could be qualified as twinning, on a case by case basis. These activities could be extended if additional funds would be available.
- The bulk of twinning activities within the OSCE, however, is with the field operations. This is an advantage in many ways: field operations are best suited to identify media development projects, which lend themselves for twinning, they are often in direct contact with donors for funding and they can serve the important role of “matchmaking” between donors and recipients.
- Overall, the media twinning activities of the OSCE are small in volume compared to twinning activities which are carried out by specialized NGOs, some foundations or the training departments of western public service broadcasters and other organisations in the field.
- If the OSCE decides to increase its media twinning activities, additional funds are needed, as all actors involved pointed out.

Annex 1: PC.DEC/759

5 December 2006

641st Plenary Meeting

PC Journal No. 641, Agenda item 5

DECISION No. 759**MEDIA TWINNING: CAPACITY BUILDING IN SUPPORT OF
PROFESSIONAL MEDIA THROUGH PEER TO PEER EXCHANGES**

The Permanent Council,

Considering that independent media are an essential instrument for ensuring democratic transparency and accountability,

Acknowledging media twinning as reciprocal peer to peer exchanges between relevant media actors in view of media capacity building in support of the OSCE's principles and commitments, in particular on freedom of the media, through, *inter alia*, study visits, training seminars and staff exchanges,

Aware that free and professional media can defend the values of peaceful coexistence and mutual understanding, thus positively contributing to early warning, conflict prevention, crisis management and post-conflict rehabilitation,

Conscious of the important role media can play as a driving force for democracy and peace in the OSCE region,

Welcoming the OSCE's media capacity building activities throughout the whole OSCE area as part of democratic institution building, initiated by the OSCE Representative on Freedom of the Media and, where applicable, OSCE field operations,

Convinced of the benefit of sharing the expertise of media organizations directly amongst peers,

Reaffirming the OSCE participating States' commitments to encourage direct contacts and international exchanges between media organizations, in particular as undertaken in the Helsinki Final Act (1975), the Concluding Document of Madrid (1983) and the Copenhagen Document (1990),

Decides to:

1. Task the OSCE Representative on Freedom of the Media to co-ordinate the examination by the relevant OSCE executive structures, within their existing mandates and in consultation with media organizations, of modalities for facilitating media twinning throughout the OSCE area, including budgetary aspects, and make relevant proposals accordingly to the participating States;
2. Call upon the participating States to consider those proposals for possible further follow up.

Annex 4: List of implementing partners⁴⁷

ABA-CEELI
 Albanian Media Institute
 Adil Soz
 AKI Press
 Ajara State Radio and TV
 Asia Plus School of Journalism
 Association of Journalists of Armenia
 Association of Journalists of the former Yugoslav Republic of Macedonia
 Association of Publishers of Kazakhstan
 Association of Young Journalists
 Azatykk Radio
 BBC World Service
 BIRN
 British Council
 Broadcasting Agency of Montenegro
 Broadcasting Council of the former Yugoslav Republic of Macedonia
 Civil Service Council of Armenia
 Coalition "All for fair trials"
 Committee for the Protection of Speech
 Council of Europe
 Danish School of Journalism
 Eurasia Foundation
 European Commission
 Freedom of Information Centre of Armenia
 House of Independent Journalists
 Independent Association of Journalists of Serbia
 Independent Journalism Centre of Moldova
 Internews Azerbaijan
 Internews Georgia

⁴⁷ As identified by the executive structures

Internews Kazakhstan
Internews Kyrgyzstan
Internews Network Tajikistan
Institute of the Media Commissioner
IMC
IMPACT
IREX
IWPR
Khoma
Karaganda Legal Centre for Media Support
Macedonian Institute for Media
Media Alliance Tajikistan
Media Consult
Media Centre NIS
Media Centre Belgrade
Media Centre Sarajevo
Media Net
Media Rights Institute
Metamorphosis Foundation
Ministry of Culture, Sport and Media of Montenegro
Ministry of Transport and Communications of Armenia
Ministry of Transport and Communications of the Former Yugoslav Republic
of Macedonia
Montenegrin Media Institute
MRT
Nansmid
National Assembly of Armenia
North Kazakhstan Media Centre
Norwegian's People's Aid
NUNS
Osh Media Resource Centre
OSI

Parliamentary Commission of Albania
Parliamentary Commission of Croatia
Presidential Press Service of Tajikistan
Press Council of Kosovo
Press Now
Pro Media
Reuters Foundation
Soros Foundation
Thomson Foundation
T Media
UNDP
UNEM
USAID

Cases of media freedom violations during the electoral campaign to the State Duma of the Russian Federation, 2007

Harassment of media outlets

- On the night of 23 – 24 November, a television crew of *REN TV* and Oleg Orlov, chairman of the human rights organization Memorial, were kidnapped, threatened with execution, and brutally beaten by armed men wearing camouflage uniforms and masks.

The journalists and the human rights expert were covering a demonstration in the Republic of Ingushetia. After the assault, the three journalists and Orlov were left in a field outside Nazran. Once they arrived at the nearest police station, they were held in custody for many hours without medical attention and a possibility to make phone calls.

- On 8 November, the computers and all documents of the Samara edition of *Novaya Gazeta* were confiscated in an inspection raid, with the stated purpose to inspect the origins of the newspaper's software. The paper had to suspend its activities.
- In Chita, the independent site *Regnovosti* was temporarily suspended without explanation on 29 November. The prosecution of Chita had also publicly claimed that the provider Sibirtelekom hosts extremist sites.
- On 27 November, the newspaper of the party Grazhdanskaya Sila *Za Liudey! Za Pravdu! Za Spravedlivost'!* was confiscated in Perm, based on a directive by a local election commission member. In the publication, one of the leaders of the party criticized the governor of the region.

- On 24 October, the head of the local unit of the Federal Security Service asked the local election commission to investigate “illegal campaigning”, because the Novosibirsk newspaper of the Communist Party *Za Narodnyu Vlast'*, in its section called “Jokes from Zyuganov”, had harshly addressed President Putin and United Russia. The Central Election Commission has not made any decision thus far.
- On 14 October, a search was held in the offices of *Irtysk-Print* printing house, and several computers were seized. Since the beginning of October, the printing house has been raided by various law enforcement, fire, sanitary and even labour inspections. The house prints electoral campaign materials.
- On 4 October, a court hearing was held where the court invalidated the registration of the newspaper *Gorod Orel* after three years of undisturbed operation. The paper recently took an opposition line against the mayor of Orel, who joined the ranks of the ruling United Russia party.
- Print campaign materials have been seized across the country. Communist Party of the Russian Federation (KPRF), Just Russia and Union of Rightist Forces (SPS) have experienced this with their campaign publications. 200,000 copies of the Just Russia publication called *Za Spravedlivost'* were confiscated in Omsk, and an office of the printing house with one million party flyers was sealed in Moscow. Three candidates for SPS went on hunger strike, in an effort to return confiscated campaign materials. One of them was shortly hospitalized with a heart attack.

Lack of equal access

The state-funded media failed to offer a balanced and objective coverage of the relevant political subjects and parties.

Despite their differing statistical methods, both the official monitoring service of the Central Election Commission and the NGO monitoring service of the Russian Union of Journalists have indicated an overwhelming coverage advantage for the ruling party on federal TV channels.

- CEC monitoring showed that approximately one third of the time granted to parties on TV went to United Russia. On *Rossiya* and *Channel One*, the time devoted to United Russia was equal, or it exceeded the combined time received by all other parties. CEC excluded from its monitoring the time devoted to activities of the government and of President Putin.⁴⁸
- The NGO monitoring measured the coverage of the President, the Cabinet of Ministers and the parties. The President's time took the largest share of the total electoral coverage time. The combined airtime assigned to the President, the Government, and United Russia was over 80% in October and November.⁴⁹ Equal access was also damaged by the arbitrary distribution of unpaid broadcast time used for political advertising:
- *The President's party ignoring TV debates, given extra unpaid airtime.* On 30 October, the Central Election Commission allocated television and radio air slots for the parties participating in the debates. Just like in the 2003 Duma elections, United Russia chose not to participate in the debates alongside the other parties. The electoral law allows for this. Instead, the party received extra unpaid airtime for political advertising (mainly featuring President Putin).

⁴⁸ For the full results of the monitoring conducted by the Russian Centre for the Training on Electoral Technologies, Central Electoral Commission, please consult <http://www.cikrf.ru/rcoit/monitoring/index.html> (in Russian).

⁴⁹ For the full results of the monitoring conducted by the Centre for Journalism in Extreme Situations, Russian Union of Journalists, please consult <http://www.memo98.cjes.ru/?p=3&sm2=on&reports=2007111> (in English) or <http://www.memo98.cjes.ru/?p=3&sm2=on&reports=200711> (in Russian).

- *In a breach of the electoral law, TV debates (without the ruling party) were downgraded and broadcast off prime time.* The parties that opted for the debates on the state channels could not make use of them, because the rule about the debates having to be broadcast in primetime was systematically violated. Channel Rossiya broadcast them between 7 and 9 in the morning, while Channel One did so between 10:50 and 11:20 in the evening.

Legislative limitations

- *Ban on 'negative campaigning'.* It is illegal to provide information which forms a negative image of candidates or parties in the minds of the electorate, or which is simply critical of them. According to the recently adopted Article 62.5.2 of the Federal Law on the Elections of Deputies to the State Duma, political parties campaigning on television channels are forbidden
 - to make appeals to vote against federal lists of candidates;
 - to predict negative consequences resulting from a candidate being elected;
 - and to disseminate information on parties or candidates combined with comments or information which create negative views of parties or candidates.
- *Media access for small parties linked to performance.* Smaller parties will be punished if they fail to reach 3% of the electoral vote. They will have to re-fund the price of the unpaid broadcast time granted to them on the federal channels.
- *Restriction on participating media.* The right to place electoral materials in print or on air can be given only to outlets which register with the local election commission. Arbitrary application of rules

- *Ban on 'negative campaigning' not applied in case of the ruling party.* For example, on 21 November President Putin called his political opponents *jackals who seek to harm the country; who want to install a regime based on corruption and lies; who are paid by foreign enemies of Russia.*
- *Ban on 'negative campaigning' applied against opposition.* On the other hand, publications, outlets or websites affiliated with candidates opposing the ruling party, were in many regions temporarily or permanently closed, seized or blocked, claiming violation of the ban on negative campaigning.
- Three days before the election, the internet site www.forum.msk.ru was suspended, without a court ruling, following a request by the Ministry of the Interior based on alleged negative campaigning against United Russia parliamentarian Liudmila Narusova. The site could reopen only after registering with a different service provider.
- *Ban on utilizing official positions for campaigning not applied in the case of the ruling party.* The law prohibiting persons campaigning for political parties to “utilize the advantages of their official positions” was regularly violated by the top candidate of the ruling party.

On 29 November, the President concluded his nationally televised speech to the country with the words “this is why I ask you to vote for United Russia on 2 December. I count on you and hope for your support.”

The Supreme Court on 20 November rejected all complaints regarding the President's 18 October televised 'direct line with the nation', where he campaigned for the federal list of United Russia which he headed.

Selective use of anti-extremism and defamation legislation

- *Extremism and defamation laws used against opposition campaign materials, but not in the case of ruling party campaign materials.* Laws passed earlier that criminalize critical reporting and opinion making, such as the laws on anti-extremism and defamation, were in vigour during the campaign, but were applied only against opposition campaign materials.
- Several media freedom violations were registered in the Saratov region during the campaign. An extremism lawsuit was filed against the newspaper *Saratovskiy Reporter* for engineered photographs of President Putin in the uniform of folklore hero Stirlitz. (Under the Russian Federal Law on Counter-Measures to Extremist Activities, some categories of defamation are considered extremist offences.) While the case was eventually dismissed by the prosecutor, a defamation lawsuit against the chief editor of the newspaper by federal parliamentarian Vyacheslav Volodin resulted in a fine of 200,000 RUR, and 180 hours of community service.

The Saratov events served as a background to an open letter signed by eleven of the region's leading editors and journalists to President Putin, citing threats to press freedom in the region.

- On 19 November, the regional newspaper *Pyshminskie Vesti* was investigated by the prosecution of Sverdlovsk for extremist activities on account of having published a joke about elections, which included a reference to limited mental capacity of parliamentarians. The journalists were repeatedly interrogated and threatened with the application of Criminal Code Article 282 (incitement to social enmity against parliamentarians as a 'social group').
- The SPS party newspaper *Problema Nomer Odin* is currently being investigated for extremism by the prosecuting authorities for quoting a

pensioners' open letter to President Putin. The letter refers to the state's social policy as 'genocide'.

[http://194.8.63.155/documents/rfm/2007/12/28666_en.pdf]

Legal Reviews

Analysis of The Audiovisual Code of the Republic of Moldova, The Regulation on the Procedure and Requirements for granting Broadcasting Licences and Re-broadcasting Authorisations, and The Statute of the Coordinating Council of the Audiovisual.

Dr. Katrin Nyman-Metcalf

February 2007

Background

This analysis deals with the Audiovisual Code of the Republic of Moldova, No. 260, adopted on 27 July 2006 and published in Monitorul Oficial No. 131 of 18 August 2006 article 679 in English translation provided by the OSCE. In addition the analysis looks at the Regulation on the Procedure and Requirements for granting Broadcasting Licences and Re-broadcasting Authorisations and the Statute of the Coordinating Council of the Audiovisual.

The expert has previously analysed the draft Moldovan Audiovisual Code in a report of 7 April 2006 as well as drafted – on 10 May 2006 – a suggested outline for a Moldovan Audiovisual Code, based on the draft code as well as other drafts and reviews put forward by different non-governmental organisations, like the Moldovan Association APEL, the Article XIX comments to the draft Code and Council of Europe comments to APEL drafts. The expert also participated in a seminar organised by the Council of Europe in Chisinau on 25-26 April 2006 to discuss the draft Code. The Council of Europe has also in May 2006 published an analysis of the draft Code. The Regulation and Statute have not been analysed by the expert earlier. The comments in this report related to the Code refer to the analysis and

suggestions made earlier and highlights where suggestions made have been taken into account.

I. The Audiovisual Code

Introduction

The Code takes into account a number of the suggestions made in the previous reports. The main points of these suggestions can be summarised as follows:

- The need for a proper board for the public service broadcaster
- The need to reduce the control and influence of the regulator over the work of the public service broadcaster
- The need to have a more de-politicised appointment process for the regulator
- The excessive attention to re-broadcasting and special procedures for this
- Stipulations in the law of rights and freedoms that should follow from the constitution and general freedoms and not be set out in detail, with the risk that this may have a limiting effect
- The need to add provisions on appeals

These comments have been taken into account in the Code in the following manner:

- The requirement that there should be a proper board for the public service broadcaster has been met in the new Code
- The Regulator still has certain powers over the public service broadcaster, but these are more in line with European practice if properly interpreted and implemented
- The appointment process of the regulator has been improved
- The provisions on re-broadcasting have been clarified to some extent but remain mainly unchanged

- The stipulations on rights and freedoms have been clarified to some extent but mainly remain unchanged
- Provisions on appeals have been added in line with comments made
- In addition, most other specific comments on various issues have been taken into account and improvements made to the Code

General issues and Structure of the law

It was stated in the previous reports that the Audiovisual Code in many respects meets European requirements albeit with certain shortcomings. Some such shortcomings remain but generally improvements have been made more in line with European standards, as is pointed out in detail below in the Article-by-Article comments. This means that the Code is even more in line with European standards.

The Code to a large extent follows the same structure as the draft, although as suggested the division into Parts One and Two has been deleted. As proposed before, it would have been more logical to have the section on setting up the regulator before detailing some of its tasks in the Oversight and Sanctions chapter, but the order is not of major significance.

The comments that were made previously as well as discussed at the seminar in April, how some provisions in the law stipulate rights and freedoms that should be self-evident and based on the constitution with no need for special mention, have not been taken into account. This probably has to do with very different legislative style as a legacy of the authoritarian system, when anything that is allowed must be spelled out, whereas in democratic rule of law states things are not presumed to be illegal just because they are not explicit in the law – rather the other way around. It would in the opinion of this expert still be better to delete provisions in the law on rights that cannot normally be enforced in a court of law or through

any other legal means and where the effect of their inclusion in a law thus does not contribute any real value.

The Code does not mention anything specific about new technologies such as digitalisation. It varies between countries if digitalisation is in a special law or in the general broadcasting and/or telecommunications law. In any case, it is an issue that Moldova should start preparing for and it is important that the matter is looked at from both the technical and the broadcasting content viewpoint.

Licensing issues

The distinction between a technical licence and the broadcasting licence is still in the law. It is better to have just one licence with different parts. In any case, the applicant should not have to make several applications but authorities should coordinate all parts of a licence. There have been improvements in the Code, read together with the Regulation, but eventually merging the licences into one should be considered. Not least digitalisation may mean new needs for cooperation in the licensing area.

The law and the Regulation are based on submission of documents in hard copy, personal collection of them and similar. It should in a near future also in Moldova be possible to make applications and similar through electronic means. It would have been suitable to make allowance for such electronic submission already now, in the Code and Regulation. This also influences the provisions on record-keeping, proof of submission, and similar.

Broadcasting policy

An Audiovisual Code should ideally contain an article stating that a broadcasting policy shall be made. Such a policy would normally be developed by the government through the responsible ministry in

cooperation with the regulatory agency, but it is also possible to have the regulatory agency doing it. Such a policy gives a possibility to spell out aims for broadcasting in a different manner than what is suitable for a law. Rights of programme consumers can be taken into account in such a policy, which can be made explicit in the article in the law that forms the basis for policy formulation. The broadcasting policy may also contain rules on such things as community broadcasting and other types of broadcasting, explicitly creating a pluralistic broadcasting sector. Currently, explicit provisions on plurality are lacking or are not clear.

There is a provision on prohibition of censorship in the Code (Article 8), which is good. It could be in an even more prominent place but as the first Article of the Code in this new version stresses freedom of expression as well as editorial independence, these pronouncements must be seen to be in line with European practice.

As was pointed out in the earlier reports, there should not be frequencies given to only re-broadcasting except in exceptional cases. In functioning European broadcasting markets, re-broadcasting tends to be a smaller part of the programme offering of broadcasters. The applicants for a licence can state in their programme proposals that they intend to have some re-broadcasting and show the necessary evidence for this. There is thus no need for a special procedure for re-broadcasting. It is known that there is a lot of re-broadcasting in Moldova, but this should not remain a permanent feature of the broadcasting sector once it is better established. By setting out special procedures for re-broadcasting, it gives a signal as if this is and will remain a major part of the broadcasting market. The link between re-broadcasting and broadcasting through means such as cable that do not use frequency resources is not clear.

Code of Conduct

The Audiovisual Code contains certain programme principles, which are good. Such principles can be set out in more detail in a broadcasting code of conduct, elaborated by the regulatory agency. It is very good that reference is made to such a Code in the law. It should be one of the main first tasks of the regulator to elaborate and issue a Code of Conduct. This will then provide the needed additional details on programme standards and related matters. Through such a Code an added mechanism is obtained to ensure that broadcasting meet European standards and that the regulator properly ensures this.

Ownership

One element still missing from the law – even if there has been an improvement from the draft – is a clear stipulation on ownership restrictions. The provision should – based on what restrictions are desired- state all or some of the following:

- That ownership is defined as having more than a certain set percentage (10% for example) of the share capital/ownership (such a definition of what ownership must be included but the exact definition can vary)
- That one physical or legal person cannot own more than [one/two/three] broadcasters, either television or radio, covering the same area
- That a physical or legal person that owns print media cannot also own broadcast media [or at least not more than on broadcast media]
- If there is a need to limit foreign ownership, the law should mention that a foreign physical or legal person cannot own more than a set percentage of a television or radio station

Although some of these provisions are included, they are not very specific and leave a lot of room for interpretation. The provisions should be clear and suitable for the media landscape in Moldova, thus being neither too

restrictive so as not to stifle the broadcasting market, nor too permissive so that there is no diversity.

Appeals

The Code in the new version includes provisions on appeal, which is an important improvement. It is important is that there is a real possibility to appeal in line with Article 6 of the European Convention on Human Rights. The Code is also clearer on sanctions, both in the sense that the gradual nature of sanctions and the fact that withdrawal of the licence is only the ultimate sanction is now spelled out and in that the violations for which sanctions can be given are clearly mentioned.

Article-by-Article comments to the Code

Chapter I General Provisions

Article 1 – The purpose and scope of the law

The Code as compared with the draft contains more explicit mention of free formation of opinion, editorial independence and freedom of expression, which is positive.

Article 2 – Definitions

The definitions have stayed mainly the same but some small amendments have been made, taking into account proposals made. This includes that the definition on European Audiovisual Works combined with the Article on such works is no longer confusing and that “internet” has been deleted from the definition of audiovisual communication in Article 2 h), so that there is no danger that the Code is presumed to apply to Internet content. A remaining comment is that the Coordinating Council of the Audiovisual could have been included in the definitions as could the MMDS technology – generally,

any specific terms used in the law should be defined. One improvement throughout the Code (but that presumably mainly was a translation error in the draft Code) is that the reference to broadcasters is no longer restricted to *radio* broadcasters.

The definition of the technical licence is unnecessarily complex and may be confusing. The definition refers to that a broadcasting licence obtained on a competitive basis gives the right to a technical licence. This appears to indicate that there is an evaluation of how a broadcasting licence was obtained before deciding to issue a technical one. As stated elsewhere, this expert does not support the idea of separate technical and other licences, but even if this is maintained and as is shown elsewhere in the Code, there should be no separate *evaluation* of the broadcast licence on the part of the body issuing the technical one – only *verification* that a proper broadcast licence has been obtained.

Article 3 – Broadcasting European audiovisual works

This Article has been amended, unclarity in the definition have been abolished and the provision follows closely the Transfrontier Television Convention and the related EU Directives. This is in line with what was suggested in the previous report. The Article allows for a staged introduction of provisions on European Audiovisual Works, linked to future EU Membership. The provision on the share of European works before EU accession (point 8) is somewhat vague, stating only that there should be a significant share. However, this is sufficient as the regulator shall supervise the provisions, so clearer rules can be issued in due course by the regulator.

Article 4 – Broadcaster operating under the legislation of the Republic of Moldova

The main part of the Article is in line with the Transfrontier Television Convention and small adjustments have brought it more in line with the Convention definitions. The Article has further been improved following suggestions in the earlier reports as the provisions on ownership have been taken out. The ownership provisions are however still not prominent enough as the content is still rather vague and the placing of the provisions (in Article 7) not very visible. However, as for Article 4, it now means this Article is a restatement of the provisions of the Transfrontier Convention, which is a correct component of an audiovisual code. The only remark is that the reference to Article 40 in point 5 is somewhat confusing as that article does not appear to contain the kind of derogations that are mentioned.

Article 5 – Classification of broadcasters

This Article has been improved following the suggestions made, including all broadcasters and not just radio and making a distinction based on coverage.

Chapter II Audiovisual communication principles

Article 6 – Guaranteeing morality and protecting minors

This Article has been amended slightly, taking into consideration the comments made in the previous report, so that the provisions are now clear. The Article is in line with European practice.

Article 7 – Political and Social Balance and Pluralism

Also this provision has been amended and refers to the regulator as well as the election body working out the detail of rules for media in election periods. Detailed rules according to the election law can be issued by the election commission or the regulatory agency or in cooperation between them. This

will be necessary if e.g. there will be a requirement for certain broadcasters to have election broadcasts. The requirement of equal broadcast time can be onerous for broadcasters especially if there are many political parties, so more substantial rules would be needed, but the basic principle of non-discrimination in this Article is good.

Also otherwise the new Article takes into account comments made, in that the time limit for news items has been taken out. The term in the English translation “conflict situations” for when multiple sources should be used is perhaps not so clear but the presumed interpretation of the provision is still understandable.

Provisions on ownership have been added as point 5 to the Article. The basic aim of the provision is good but there is a need in the Code (or possibly in regulations issued by the Regulator) for more detailed ownership rules, as stressed above.

Article 8 – Editorial independence and freedom

The Article is largely unchanged from the draft. Article 8 (4) when it talks of the interference now states that it refers to individuals outside of the broadcaster, as suggested in the previous report. The reference to self-regulation has been taken out – it does not have to be mentioned but it is hoped the deletion does not mean that self-regulation will not be promoted.

Article 9 – Free program service reception

It was suggested in the previous commentary that this Article should be deleted. The content has been improved in that the problem with the original Article from the enforcement viewpoint was that it contained issues that could not be upheld in a legal procedure. The current Article is more specialised and refers to what service providers must offer and prevents

owners of dwellings to prevent reception. Even so, the Article may be problematic and its content may be more suitable for a consumer protection law than a broadcasting one. A house owner may legitimately prevent construction of some antennas or similar and this should not risk being against the audiovisual law.

Article 10 – The rights of the program consumer

This Article should be deleted as it contains issues that cannot be upheld in a legal procedure in the way that is proposed (as elaborated also in the previous analysis of the draft code). It is very difficult to see how a reasonable legal case can be made based on the right to receive the kind of information the Article stipulates and if this Article would be called upon in a court, this may transfer elements of the regulator's work to the Courts.

Article 11 – Protection of Linguistic, Cultural and National Heritage

The Article has only been amended slightly. The percentages are high even if there is a period of time for adjustment, especially if subtitled programmes are not allowed as part of the share broadcast in the official language. The share for local production is also high.

In line with what was suggested in the previous comments, Teleradio Gagauzia that is mentioned as a special case is explained in the Code, in Article 65.

It is however still unclear what applies in areas where there are large national minorities but they are not in majority in that area. The difference between Article 11(1) and Article 11(9) is very important even if the percentage difference between groups may only be small in the respective areas covered by the different paragraphs. The regulator should make more detailed rules

for how to obtain the best division of allocated frequencies for different languages.

One of the comments in the earlier report was that the priority intended in the Article for broadcasts in the official language was vague. The equivalent provision now clearly mentions re-broadcasting, which makes it clear.

Article 12 – Protection of national information space

The content of the Article, stating that the frequency spectrum is a national resource, is quite common in broadcasting or telecommunications legislation, but the title as well as the place in the Code of this particular Article is somewhat strange. It has not been changed as was suggested.

Article 13 – Access of programme consumers to events of major importance

This is in line with European practice like the Transfrontier Television Convention and EBU provisions. The list of events is now more similar to that of many European countries. What could have been added is the right to have extracts from broadcasts. A new feature compared to the draft is the inclusion about sign language – this is good.

Article 14 – Ensuring confidentiality to information sources

This Article is good and in line with international standards. Confidentiality for sources should not just apply in the context of broadcasting, but if such general provisions do not exist in Moldova, it is better to have it in this Code than not at all. The change compared with the draft is that it is now not stated that the journalist assumes responsibility for the correctness of the information. This is an improvement as that provision could be misunderstood. It is very important that this Article is interpreted by Courts in

a proper manner so that the court order for disclosure of a source can really only be made in exceptional cases.

Article 15 – Protection of journalists

It was suggested in the previous comments that this Article should be deleted and the expert is still of that opinion. The Article has been improved in line with suggestions made as there is no mention of searching premises and as a new paragraph on coercion has been added. However, the expert would still prefer the Article to be taken out or in any case that it is monitored how it is used – if it is made reference to by authorities, in which context.

Article 16 – The right to reply, correction and equivalent remedies

The principle is good and generally in line with international instruments, as was pointed out also in previous reports. What is lacking is a provision that a reply can be shortened or in special circumstances altered before the broadcasting of it. It is possible to issue guidelines on how replies shall be handled, which can be a task for the regulator. A possible defamation process should take the provision of right of reply into consideration – this is something that court practice can establish even if it is not mentioned explicitly in the law.

Article 17 – Broadcasting state of emergency announcements

In this Article, the amendments proposed in the analyses have been made and the Article now refers to serious threats and mentions who the information requests may come from.

Article 18 – Observing the copyright and related rights

This Article has been improved in line with suggestions made. It is good that it mentions copyright obligations with reference to special legislation and

that provisions that appeared to indicate that there could be discrepancies between broadcasting and copyright legislation have been taken out. Other confusing provisions on users of broadcasting have also been deleted in line with the proposals made.

Chapter III Advertising, teleshopping and sponsorship

Article 19 – Advertising and Teleshopping

This is a long and detailed Article that is broadly in line with European standards and some small issues may be due to translation. The statement that advertising time “represents their commercial product” is still unclear and Article 19 (6)g must presumably mean that “immoral” behaviour shall not be encouraged. Paragraph 3 is also a bit unclear. The addition that broadcasters bear editorial responsibility for advertising and teleshopping content is good. It is not clear if there can be teleshopping of pharmaceutical products and what in that case applies.

Article 20 – Requirements to sponsored programmes

In this Article suggestions made have been followed, namely that the name and trademark of the sponsor must be shown just before and after the programme and clarification of what types of news and similar programmes that may not be sponsored.

Article 21 – Conditions for broadcasting commercials and teleshopping materials

Some amendments have been made in the Article in line with the comments made to clarify what is not applicable to radio and what kind of programmes are referred to in different sections as well as how often they can be interrupted. (The reference in paragraph 8 to paragraph 3 appears to be wrong.)

Article 22 – Amount of advertising and teleshopping

This is in line with European standards.

Chapter IV Licences***Article 23 – Broadcasting licence***

This Article makes a distinction between licenses for users of frequencies and general authorisations for others, which is good and in line with modern European practice. Generally the Article has been amended in line with recommendations. Conditions for licences in the law are now clearer and this combined with the regulation, means that licensing conditions are well presented and contain the kind of elements that should be taken into account in best European practice. It is now important to see that the regulator manages to also apply the provisions in this correct manner.

The mention of priority for own production and European works (paragraph 3(d)) risks creating a double obligation, as specific provisions on this are in the law. Paragraph 6 (h) should presumably be integrated in point (g).

As mentioned also in the previous report, it is positive that Article 23(11) mentions the Public Service Broadcasting. Such a broadcaster can either have a licence issued by the regulator with the distinction that it has the right to such a licence without a contest or it can be stated that it does not need to have a licence as it operates based on the law. As the regulatory agency is to have some control also over the public broadcaster it is good that it has a licence even if this will have to look different from those of private broadcasters.

The addition of the right to appeal is very important and in line with comments made.

The Code as well as the Regulation make reference to licence fees, but there is no clear stipulation in the Code on such fees. There should be such mention, with details of the fee structure in a regulation. There needs to be some legal basis for such a fee and it fits best in this law.

Article 24 – Broadcasting licence extension

Even if the intention is presumably to allow pluralism and the chance for change in the broadcasting market, which is good, it is rather strict to only allow two rather short periods of broadcast licensing after one-another, as this may act as a deterrence for investment in the broadcasting sector. If a broadcaster follows the rules, it should be allowed to operate also for a longer period. As the licence period is not very long, three periods may be permitted.

Article 25 – Broadcasting licence features

The additions made, referring e.g. to the Code of Conduct, are good. This is in line with general comments made. The Article is now well in line with European standards. The possibilities for amendments are fine provided they are not interpreted too widely by the regulator, as changes to licences issued should be exceptions.

Article 26 – Broadcasting licence transfer

There are no problems with this Article.

Article 27 – Broadcasting licence withdrawal

It is important that it is clear that withdrawal should not be possible too easily and the amendments made are good and to some extent in line with suggestions made. As for the technical licence withdrawal, see the specific

remarks elsewhere about how different technical and other aspects of the licence should be seen as one licence. It is good to add explicitly that withdrawal of a licence is the last resort and that this is done by the regulator.

Article 28 – Re-broadcasting authorisation

As was explained in the previous reports and above, in a functioning broadcast market, extensive re-broadcasting on terrestrial frequencies without any own programming should normally not be allowed. Re-broadcasting can make up part of a broadcaster's programme offering but it would in that case be evaluated together with other aspects of the proposed programming and be part of the evaluation background for a broadcast licence. There appears to be a special situation in Moldova with very extensive re-broadcasting and it is accepted that it may take time to alter this situation. This should however not be an excuse to cement such a situation for the future. It would be better not to handle re-broadcasting separately but to have the provisions included as conditions for a licence in the sense that a broadcaster may wish to do some re-broadcasting as well as produce own broadcasts. The regulatory agency will then consider each application on its merits, be they for only re-broadcasting or a mixture and there will be just one unified licence.

As for the addition to this Article as compared with the draft, that the agreement with the producer has to be shown, this is positive.

Article 29 – Programme services re-broadcasting conditions

If provisions on re-broadcasting are included, these specific conditions are acceptable. Paragraph 5 appears to include the must-carry obligation that is a European norm for e.g. cable operators. This is good but the relationship between re-broadcasting and cable broadcasters (that are not specifically regulated) is not clear in the Code.

Article 30 – Free Re-broadcasting

A broadcaster (apart from cable) would need to have a permission of some sort at least for frequency use. For cross-border spill-over of broadcasts from another country, the handling of this is part of management of the frequency spectrum. It is possible to make agreements on this but that would not be re-broadcasting in the sense this Article appears to infer. It is thus difficult to see what is free re-broadcasting in the way apparently intended in this Article. It may just refer to the rights under the Transfrontier Convention, in which case it is fine.

Article 31 – Technical licence granting

One of the main comments to the Code is that as it is easier for the user and less bureaucratic – and thus also less costly and complicated – it is preferable to have just one licence with different parts. The applicant then only has to go to one place to get the licence and the licence-giving body automatically sees to the coherence and coordination of the different parts of the licence. A licence should incorporate all different aspects. The applicant should only have to submit one application and the authorities themselves should between them elaborate the system for securing the different types of content. The provisions are somewhat improved in that the applications go to the broadcast regulator and it should be possible based on the Code and on the Regulation to set up good coordination, but even so, a unified licence would be better.

Article 32 – Supervision of technical parameters***Article 33 – Amending the technical licence******Article 34 – Technical licence withdrawal***

Similar considerations on cooperation between different bodies involved apply here. The time limits for licence withdrawal when broadcasting stops are different for broadcasting and technical licence.

Article 35 – Strategy for national territorial coverage with audiovisual program services and the National Plan for land radio-electric frequency distribution

Article 36 – National Plan for land radio-electric frequency distribution

It is important that there is planning to ensure that broadcasting (and especially public broadcasting) reaches the entire population. The coverage of population is what is essential, not that of territory. The cooperation between the broadcast regulator and the telecommunications regulator – as foreseen here – is essential. The amount of frequencies for different services has to be realistic related to the resources of the country: it is difficult for this expert to have views on whether what is proposed here is realistic. Generally, the content of the Articles is fine and their implementation has to be carefully observed.

Chapter V Oversight and sanctions

Article 37 – Supervision and oversight activity

A regulator shall perform its control tasks by monitoring programmes as well as reacting to complaints from the public. With time the process should be mainly complaints driven, whereas some more ex officio activities may be needed early on to ensure that the broadcasting standards are understood and implemented. Complaints should normally come from private subjects; public authorities should only in exceptional circumstances have to react to the content of broadcasts. The Article (or the translation) has been slightly amended to make it clearer, regarding periods for complaints review.

Article 38 – Sanctions

This Article has been amended and improved in line with comments made. It now identifies and lists offences and stipulates clearly how sanctions are to be applied gradually. (References in paragraph 2(f) may be partly wrong.) The statement of a possibility to forward cases to the Court is still in the Code.

It must be stressed that this is only in the rare cases where some criminal offence unrelated to this law has been committed that there would be a reason to send a case to court. Normally, the regulator deals with offences. The explicit provision on the regulator working with the broadcasters is very positive. The added provisions on appeals, in line with comments made, are also good.

Chapter VI Coordinating Council of the Audiovisual

Article 39 – The Status of the coordinating council of the audiovisual

The clear reference to the autonomy of the regulator is good, clearer in the new Code. Even so, stressing even more explicitly its independence, transparency and non-discrimination would be in line with what is common in European legislation.

Article 40 – Functions of the Coordinating Council of the Audiovisual

Clarifications made in line with the comments are partly due to change of the terminology used and/or translation – generally the Article reads better and is easier to understand.

One of the key objections to the previous draft was that the role of the Council in relation to the public broadcaster was much too big. Here important changes have been made. The regulator still has powers in relation to the public broadcaster, but to some extent this is only positive as it allows the regulator to have a good overview of the entire broadcasting sector. The provisions as they now stand should be acceptable, provided the interpretation made of them by the regulator is in line with European practice.

Other changes to the Article are also improvements made in line with the suggestions, linked to entry into force, publication and appeals. One important element is the mention of a Code of Conduct to be elaborated.

Article 41 – Responsibilities of the Coordinating Council of the Audiovisual

As suggested before, it would have been better to merge responsibilities and functions and/or place responsibilities before functions to make sure it is clear the functions implement the responsibilities. This is however more of a stylistic comment.

Article 42 – Membership of the Coordinating Council of the Audiovisual

The system for appointment of the Council has been amended in line with comments made based on best European practice. This requires that the members should be independent and not political appointees. In the system now selected there are attempts to safeguard this by allowing for proposals from different bodies, representing different interests. It is not very clear how the invitation for candidates will be made, but even so, the basic idea of the appointment process is now much more in line with best European practice. As for the provision on no criminal record, this could be limited to more serious crimes but this may be seen as being inherent in the expression as smaller offences may not be seen as leading to a criminal record.

Article 43 – The members of the coordinating council of the audiovisual

The system has been adjusted in line with comments made so that appointments are staggered and not all members are changed at the same time.

As for dismissal, it must be clearly understood that members can only be dismissed on grounds clearly set out in law and following a special procedure. Although improved, the grounds for dismissal are still not very strict and there is no provision about the procedure. Deprivation of citizenship cannot normally happen in democratic societies other than by the active actions of the person concerned and the need to have this as a

special ground for dismissal is thus not suitable. Both convictions by court and health reasons must be restricted to only serious cases, which has been inserted for the health ground but not for the conviction.

The status of civil servants of the members is something that varies between European countries, so even if it may be even better from the point of view of independence to not have this status, such status is not in itself against European practice. It is more common that

members of the Council are not full or part time employees, but rather perform the work as a board and that the staff, lead by a Chief Executive Officer, carry out daily work.

Article 44 – Incompatibilities with the position of member of the Coordinating Council of the Audiovisual

The political independence covers any affiliation with a political party – it may be sufficient that the person cannot hold any elected or appointed position in a party, but a wider ban is better than a too narrow one especially in a situation where there may be a risk of attempts of political interference. As for the ban on any financial benefits from the membership, it is not clear how this is to be read in regard to any pay for the work performed, but the Article can be interpreted to mean any financial benefit apart from such ordinary pay.

Article 45 – President of the Coordinating Council of the Audiovisual

The statement that this person should have a position similar to that of a Deputy Minister – although it is not totally clear what is meant – is an unfortunate stipulation, as it appears to show that the president holds an official government position. Otherwise the comments made have been taken into account, most significantly regarding the role of the regulator

vis-à-vis the public broadcaster but also a smaller comment on the time to establish a new Council. The duties of the President are similar to what often is carried out by a Chief Executive Officer with the Council president being more of a non-executive Chairman. It is however possible to have different models, provided basic demands for independence as well as efficient functioning of the body are met.

Article 46 – Remuneration of the members of the Coordinating Council of the Audiovisual

In line with comments made, this Code now stipulates about the remuneration although the provision is not clear as the salary of the Council President is not known. (This also means that the provision does not show if the positions are full-time or not.)

Article 47 – The fund of the Coordinating Council of the Audiovisual

Here there may be a translation issue, as the Article refers to funding and not a specific fund. Comments about how the funding mechanism should contribute to the independence of the agency so more independent funding from licence fees is better than relying on only the state budget have been taken into account – although as said elsewhere, the Code still lacks detail on licence fees. The addition of words about a need for sufficient funding is good.

Article 48 – Organisation and operation of the Coordinating Council of the Audiovisual

The Article has been improved and takes into account some of the comments made. Openness and transparency of the work of the Council is positive but as it will deal with individual cases where e.g. business secrets or personal matters come up it is not suitable that all its sessions in their

entirety are open to the public. There may be certain open sessions as well as a procedure for public rule-making but a possibility to close parts of the session. The details of this should be worked out by the Council. For the work on the frequency plan, presumably also the frequency authority would take part.

Article 49 – Supervision and control of the Activity of the Coordinating Council of the Audiovisual

The Code lacks any detail on what the report to Parliament should include. This must be worked out between the regulator and the Parliament so that it will be clear and most useful for both parties.

Chapter VII Public Broadcasters

Article 50 – Legal status of the national public audiovisual institution – the company “Teleradio Moldova”

It is still unclear in the Code how the transformation from the currently existing broadcaster should take place, if the new one is to be an entirely new entity or the successor of an existing one. Such provisions must exist somewhere, even if not necessarily in this law (although their inclusion in the transitional provisions would have been good). Otherwise this Article is now good including such matters as coverage of the entire population (as suggested).

Article 51 – The Company’s functions

According to comments made, the term “historical truth” has been deleted and the formulation is now better. Children’s programmes have been mentioned as well as other provisions on the kind of programming that the public broadcaster should have – in line with comments made. The possibility for regional public broadcasters is also mentioned as suggested.

The previous article on “Main requirements for programme services of the Company” has – as suggested – been deleted.

Article 52 – Editorial independence

This Article has been amended in line with proposals made and is improved. It stresses editorial independence and refers to adoption of more detail in regulations.

Article 53 – Advertising, teleshopping and sponsorship

It was suggested in previous comments that in order to ensure fair competition, the amount of advertising time on the public broadcaster could be more limited than on the private ones. This suggestion has not been adopted although teleshopping is prohibited, as suggested.

Article 54 – The activity of the National Public Broadcaster

The relationship between different Articles and why tasks and duties are set out in so many different Articles is still somewhat difficult to see even if the content has been made clearer in many places. What kind of advertising activities that the broadcaster could do is not fully clear and the reason for provisions on the foreign trade operations is difficult to see as limitations on such trade operations – as was common in the Soviet days – should generally now disappear and the operations be part of normal business activity.

The important improvement following suggestions made is that what amounted to subordination to the regulator has been deleted.

Article 55 – Company management***Article 56 – Membership of the Supervisory Board***

One of the key remarks to the draft law was that there was no independent board of the public broadcaster and the regulator had a much too large role. A public broadcaster must have a real board, consisting of independent people with knowledge in the area. This has now been included in the Code with the creation of the Supervisory Board.

The open and transparent contest for finding board members is good and attempts are made to ensure competence and diversity. The procedure for finding candidates is very good (and a similar procedure could be stipulated also for the regulator). Only details may be needed in addition, such as if members can be re-appointed and that the remuneration provisions should

be clearer. The section 9 on remuneration appears to contradict itself (the different percentages).

Article 57 – Requirements and incompatibilities

The Article is good, it is a new Article. Comments made above about seriousness of criminal record and extent of political involvement apply also here.

Article 58 – Supervisory Board Functions

This is a new Article that meets the requirements that were set out in the previous comments on what an organ of a public service broadcaster shall look like and do.

Article 59 – Vacancy of the position of member of the Supervisory Board

This is a new Article that is basically good, but the comments made above about loss of citizenship and court decision apply also here.

Article 60 – President of the company

Article 61 – Radio director and television director

These new Articles are good. The functions are adequate for the positions. More detailed provisions will be worked out as stated in the Article.

Article 62 – Work plan

This Article has been somewhat amended in line with proposals made and the terminology changed. The approval by the Supervisory Board is good.

Article 63 – The company's property

The relationship of the new entity to any pre-existing entity and questions of succession to property must be made clear. Apart from that, the Article is now improved as the role to approve actions is given to the Supervisory Board as suggested.

Article 64 – The budget of the company

The Article has been somewhat changed in line with suggestions made. The addition of words on guarantee of adequate funding is good. There is still no proposal for a subscription fee paid by users, which is a common funding mechanism. The Article does now mention advertising income. Other additions on development of the budget are also good.

Article 65 – Regional public broadcasters

This new Article is in line with suggestions made, both in that it allows for regional broadcasters and in that it explains Teleradio Gagauzia.

Chapter VIII Private broadcasters**Article 66 – Establishment and activity of public broadcasters**

It appears the heading is still wrong in that it states “public” but it is obvious from the content that what is meant is private. The content is improved and the limits on who can start broadcasters are good. How private broadcasters finance their activities is not relevant provided it is not against any concentration rules so Article 67(5) is unnecessary as pointed out. As stated elsewhere in this report, ownership restrictions to avoid concentration should be more explicit and clear.

Proposals especially by Article XIX that there should be provisions in the Code to encourage small community broadcasters have not been included.

Chapter IX Final and Transitional Provisions**Article 67****Article 68**

As said, it is not evident what the relationship with the existing public broadcaster(s) is. Other than this, what has been changed is some of the timelines and this is in line with suggestions made. Another improvement is the explicit mention of a Code of Conduct.

II. Regulation on the Procedure and Requirements for Granting Broadcasting Licences and Re-broadcasting Authorisations

This Regulation together with the Code provides detailed provisions on what is needed for a licence or other authorisation. This is in line with European

requirements of transparency and legal certainty. The amount of detail as well as the content of such detail are mainly in line with European requirements and the comments made here are mainly smaller issues and suggestions for future amendments or additions.

Article-by-article comments to the Regulation

Article 2 – Definitions

Most of the definitions are the same as those in the law, so comments made apply also here. This is also true of the general comment that any terms used should be defined. The abbreviations CCA and MMDS are for example not explained.

Article 3

The provision that the documents shall be accepted within the time limit determined by the CCA decision is a bit confusing. There are various time limits in the Code as well as the Regulation (e.g. Article 7 of the Regulation) so it is unclear what extra time limit CCA will decide. As for public sittings, comments on this are made in different places of this analysis.

Article 4

General comments on having separate re-broadcasting authorisations rather than re-broadcasting as a smaller part of a licence, have been made elsewhere.

Article 5

The reference to the authority presumably refers to the authority for frequencies and telecommunication. Comments made elsewhere on the need for close cooperation and coordination apply.

Article 6

Some terms are not entirely clear (like “decrease of apparent radiated power”) but mainly the criteria appear to be in line with normal requirements. It is a good and comprehensive list of what is required to determine licence applications. As for the state fee, it can be stressed again that the Code does not set out this fee. Such a fee should have legislative basis. Point 10 on participation or non-participation in other companies is confusing, but this may be due to translation.

The Regulation presumes all documents to be in hard copy, that also appears to be the case for anything issued by the regulator. In many countries, more and more use is made of electronic submission of documents. Even if this may not be possible yet in Moldova, the regulator should be open for this in a near future as that will almost certainly be the future model also in Moldova. (This is also relevant e.g. for Article 9.)

Generally, instead of repeating requirements from the Code it is better to refer to the Code without repeating (especially to avoid confusion if the Code changes).

Article 7

The explicit provision that the regulator will assist broadcasters is very good.

Article 8

This Article should be read and applied in conjunction with the previous one, as there should be a possibility to complete an incomplete application, etc. But this should be possible thanks to the assistance provided under Article 7.

Article 10

The Article appears to presume applicants being present in person and decisions made in open meetings. In most countries, licence applications are (at least in most cases) made based on the documents and only if special additional information is needed or similar will the applicants have to be present in person. This does not prevent that the regulator invites representatives if it is more suitable to have discussions in person, but this should not always be necessary.

Article 11

This Article sets out a list of worthy aims for broadcasting. What is lacking is a clear pronouncement on the need for plurality – that not all broadcasters provide the same or very similar programming. It is possible within the framework of the provision to take such considerations and it is alluded to in the first point but it is not explicit. Existing licensees that have met all requirements would normally have priority. One slightly confusing element of the Regulation – also when it is read together with the Code – is the question of existing broadcasters and prolongation of a licence: if this is normally done and how this differs from a new application. There are provisions in different places that refer to this issue in differing ways. This should be made more clear in the Regulation and perhaps also some other rule from the regulator.

Article 12

The contest for licences would normally be held when a frequency is available, so the rejection reason that there are no available resources is unclear. This is also the case for the provision on not gathering the required number of votes, as there is no mention of votes in the regulation.

Article 16

In case of renewal of an existing licence, it may not be necessary to re-submit all documents. See the general comment above on renewal.

Article 17

Licence holders who want to renew the licence should normally apply before the expiry of their licence. (Also in this context, see the general comment on renewal.)

Article 19

See above on the possibility for electronic application.

Article 20

Again, an explicit mention of consultations is very good. As for the provisions on the sitting, see above on this.

Article 21

Three working days for issuing the licence is short, which is good for the applicants but only if it is realistic.

Article 22

Again, the reliance on personal presence and hard copy documents is rather old-fashioned. What is important is acceptance of the licence but that should not necessarily involve personal presence to collect it.

Article 24

Suspension and renewal follow from the Code and provisions in the Regulation must reflect the Code. Suspension because of loss of ability to carry out the activity must just be in cases of longer inability.

Article 25

The Article refers to a change in the licence, the content is broadly in line with normal requirements although the terminology mentioning re-issuance is not so common and the Article is a bit difficult to read. What is important is that any amendments to a licence must be applied for and approved by the regulator. It depends on the nature of the amendment if a new licence must be issued or just an adjustment made. It is not clear what the ground would be to sanction a licence holder if he/she applies for an amendment, even if it cannot be given that is not a basis for a sanction. A sanction would apply only if the broadcaster has violated a rule. Further, also in this Article reference is made to a fee based on legislation in force, but it is unclear what this legislation is.

Article 26

See the comments above concerning the confusion on extension and related matters.

Article 27

It is not in contradiction with the Article but just worth highlighting that in case of a successful appeal, a withdrawn licence would be given back. It appears from the Code that the withdrawal would only take place after a final decision so the need to re-issue a withdrawn licence should not occur.

Article 28

Also here it is seen how the fact that there are two separate licences makes the situation more complex.

Article 33

General comments on re-broadcasting are made elsewhere. What is worth noting here is the provision on that re-broadcasting authorisations are given without a contest. If re-broadcasting uses frequencies, it will take up space in the frequency spectrum and why this should be done without contest, depriving others of the use of spectrum, is not clear. It is also not clear what would happen if there are several applicants for re-broadcasting. If re-broadcasting is only made using cable or other technical means not requiring spectrum, the situation would be

different, but there are no provisions in the Regulation or Code on technical means for re-broadcasting. The mention of cable in point (d) of paragraph 3 would appear to indicate that not just cable is expected to be used.

Article 39

Even if a unified licence would be preferable, this Article does provide for coordination between the bodies involved, which is important and mitigates possible problems with two licences.

III. The Statute of the Coordinating Council of the Audiovisual

The statute contains relatively detailed provisions on the structure and workings of the Council. The Statute is mainly well in line with European practice. It varies between countries how and in what form internal workings of regulatory agencies are set out, what is important is that there are clear and transparent rules and this Statute meets that requirement. Even for

European Union members, the principle of institutional autonomy means that the exact structure of institutions is for states themselves to determine, provided required functions can be performed. This is even more evident for non-EU members that have to adhere to best European practices rather than binding EU law. It is not clear from the law or the Statute if the status of membership is regarded as a full time position. The amount of work expected would suppose it is full time or almost. It is more common that the Council members are not employed on full or part-time basis, but do the work as Council members on the side of other activities, whereas the staff of the regulatory agency assures the daily work. For the Moldovan Council, the Chairman (as is the term used in the translation of the Statute, in the Code the term President is used) of the Council has the functions a Chief Executive Officer would have. Provided competence and independence of the Council is assured, different designs are acceptable.

The openness of meetings of the regulator is good to the extent that it promotes transparency. However, it must be recognised that there may be instances when a meeting should be closed to the general public. This is as it will be necessary for the regulator to have access to business secrets of the broadcasters and it must be possible to discuss these (like issues related to the financial situation of the broadcasters that may be relevant for the decision on licences) and for the broadcasters to feel secure in that they can provide any information to the regulator, also such information that should not be in the public eye. There may also be a need to discuss personnel issues or other sensitive matters, so the board of the regulator should be entitled to decide to close part of its sittings.

One element missing is mention of a code of ethics. This can and normally would be in a separate document, but as some related issues are touched upon in the Statute, a mention of such code would be good and it should also be one of the priorities of the Council to establish it. This will include a provision that a person shall never take part in a decision if he/she has any

form of conflict of interest, i.e. the staff member shall excuse him-/herself. There should also be provisions on gifts: larger gifts can never be accepted but there can be a limit for smaller gifts and normal hospitality, possibly with a provision that even such gifts shall be recorded. The staff must never divulge business secrets.

The structure of the Council would be easier to get an overview of in an organisational chart, which is mentioned that the Council will adopt. It appears that the main sections are directly

under the Council as such whereas supporting sections are under the Chairman. This is quite a common organisational solution. The Code mentions (Article 48) possibility for regional structures of which there is no mention in this Statute.

The Statute contains a lot of detail and may be a bit rigid in that it prescribes tasks exactly. It may be presumed that as work progresses, it may be necessary to change some detail or leave more up to the discretion of the staff. As an initial Statute, this document is however a good and serious attempt to set up functioning working practices.

Article-by-article comments to the Statute

Article 4

It is not good to use “etc.” in a normative document as it makes the content vague. It is also not necessary to list all activities in detail but broader categories can be used and/or words like “other related issues” or “other matters necessary for the performance of the mentioned activities”.

Article 5

Meetings of the Council twice a month is very frequent and at least after an initial period it should not be necessary with so frequent meetings. The daily work is carried out by the staff and the Council itself needs to meet for certain decisions, but these could normally be handled in less frequent meetings. There could also be a possibility to take certain urgent decisions by circulating documents and talking on the telephone and some forms of routine decisions may be delegated to staff. When work has started properly, the Council will be able to determine what is the necessary frequency of meetings as well as what delegation that would be useful.

The idea of public meetings is good from the point of view of maximum transparency but as pointed out above in the comments to the Code, there must also be a possibility for closed meetings.

The detail on the preparation of the meetings is good, as this kind of established procedure permits meetings to be efficient.

Article 6

The Council members – normally by decision of the Chairman – decide which members of staff take part in the meetings. Especially for the secret parts of meetings, only relevant staff members will be invited to take part.

If the Chairman does not take part in meetings where decisions are adopted, the person chairing that meeting shall sign the decision. (See also Article 17 and 22.)

Article 12

The idea of audiences mentioned is very good but they are to be very frequent according to the statute. With time, a suitable frequency may be found which for efficiency's sake may be less than that said here.

Article 14

Votes for persons are often by secret ballot, but this is not an absolute requirement.

Article 17

As also mentioned above, in case the Chairman is not present, decisions taken at such a meeting should be signed by the person who chaired the meeting. This may be inherent in what is stipulated in Article 22.

Article 19

Although the Chairman normally performs the representation of the Council, he/she may also delegate this to someone else, which may be spelled out here.

Article 23

Comments have been made above regarding the need to have a possibility for closed sessions.

Article 24

It is not clear how this Article will be applied. It is good that the Council can revisit issues if new facts have come to light. This would be possible also without an explicit provision, based on normal administrative practice. At the

same time, normally decisions taken should be seen as final. Broadcasters and others may act based upon what the Council has decided and should not have to presume this will be revisited. However, provided there is not too wide application of the possibility to re-examine, the Article is not against normal administrative practice.

Article 31

The description of tasks is very detailed, but as mentioned above, it is good to have quite a large amount of detail so that division of tasks, time lines, etc., are clearly known from the start of the work. As mentioned, later on when the work of the Council progresses, it may be necessary to change some detail or leave more up to the discretion of the staff.

Article 33

It is unclear what the centralisation of proposals refers to.

Article 35

It appears from the Code and the Statute (indirectly) that technical monitoring is done by the body responsible for frequencies and telecommunications matters. It is important that there is an ongoing and functioning cooperation between this body and especially the Expertise and Licensing Department and the Monitoring Department.

Article 37

The provision on keeping recordings for 60 days is a bit unclear. Recordings must be kept by broadcasters in accordance with the Code and normally the Council would ask for copies of such recordings when it wants to examine something. Own recordings will only be made exceptionally. Presumably the

60 day limit is for such recordings – the limit in the Code is 30 days or longer if there is an ongoing case.

[http://www.osce.org/documents/rfm/2007/03/23705_en.pdf]

Comments on the Draft Law “On Information, Informatization and Protection of Information” of the Republic of Belarus⁵⁰

1. Introduction

The draft law of the Republic of Belarus “On Information, Informatization and Protection of Information” was introduced by the Council of Ministers of Belarus on 1 March 2007.¹ If adopted, it will replace the law “On Informatization” of 6 September 1995.

The draft law divides all information into “fully accessible”, “restricted” (such as professional and state secrets) and information, the dissemination of which is “forbidden”; groups persons who handle information (such as “owners”, “users” and “operators”); and regulates relations in the sphere of information exchanges.

Since the draft law fails to make substantive improvements in the regulation of information exchanges to the law “On Informatization” which it would replace, its passage would be futile. Moreover, because of the breadth of its scope, the ambiguity of a number of its provisions and its effects on citizens’ information rights, the draft law introduces several elements of potential concern to the RFOM. These are outlined below.

Potential Areas of Concern

1. Comprehensive nature of the law: While Article 1 makes a disclaimer regarding the limited extent of this legislation (citing laws on the

⁵⁰ A copy of the draft law was received by the Office of the Representative on Freedom of the Media from the Permanent Delegation of the Republic of Belarus to the OSCE on 24 April 2007.

media, intellectual property and state secrets), the comprehensive, all-encompassing nature of the law may lead to a **spill-over of the effect of its implementation into the realm of media freedom**. The law claims to regulate:

- Realization of the right to seek, receive, store, modify, use, disseminate, provide information and information resources (i.e. documents);
- Creation and use of information technologies, systems and networks;
- Provision of information services;
- Organization and realization of protection of information.

2. Limited right to access information: The right of citizens and legal persons to request and obtain information is limited to:

- Information about themselves or information directly concerning their rights, legal interests and duties;
- Information about the activities of state bodies **within the limits provided by the current law and other legislative acts of the Republic of Belarus**.

Recommendation:

- *The scope of the draft law should be limited in order to avoid interference with relations regulated by legislation on mass media and state secrets*

2

3. Wide classification of information as “restricted”: Information defined as “restricted” includes:

- State, commercial and professional secrets;
- **Official information of limited dissemination;**
- Information held by courts and prosecuting authorities in criminal cases before the completion of the jurisprudence;

- **Information related to the organizational-technical work of government bodies and legal persons, including information on preliminary decisions and internal correspondence;**
- **Other information in accordance with the legislative acts of the Republic of Belarus.**

The category of information which may not be restricted is limited to:

- Information concerning the rights, freedoms, legal interests and duties of citizens and legal persons;
- Information ensuring public safety;
- Information concerning the legal status of state bodies;
- Information concerning the fight against crime;
- Information comprising public databases of libraries, archives and state information systems intended for provision of information services to citizens.

4. Wide classification of information as “forbidden”: Information which is forbidden to disseminate includes information which is:

- Directed at the violent revision of the constitutional order, propaganda of war, incitement to racial, national, religious hatred, insult of national honour and dignity;
- Information harming morals, honour, dignity and professional reputation of citizens and legal persons.

5. Denial of information requests: An information request can be denied

Recommendations:

- *The category of information classified as “restricted” should be narrowly and clearly defined*
- *The formulation “official information of limited dissemination” should be either clearly defined or removed entirely*

- *The category of information which may not be restricted should be expanded*

Recommendation:

- *The category of information classified as “forbidden” should be narrowly and clearly defined*

Recommendation:

- *Information rights of citizens should be expanded to allow for obtaining a wider array of information*

3

- *If the information sought is “restricted” or “forbidden”;*
- *If the information sought can “harm national security, state or public interests”.*

The appeals mechanism under the current draft law is generally formulated as an appeal to a higher state entity/official or a court of law in case of action or inaction of state bodies and officials leading to a violation of the right to information.

6. State registration of information systems: State and **publicly accessible** information systems must be registered with the state; registration of nongovernmental information systems is voluntary (“information systems” are defined as the “the combination of information held in databases and information technologies/programmatically-technical processing means”).

7. Mandatory identification of information systems users: The state may require the mandatory identification of users of information systems – the receiver of an “electronic message” in Belarus **may be required by law to**

identify the sender of the message (“electronic message” is defined as “text, graphic, audiovisual or other information intended for sending and receiving via information systems in electronic form”).

Recommendations

- *The scope of the draft law should be limited in order to avoid interference with relations regulated by legislation on mass media and state secrets;*
- *Information rights of citizens should be expanded to allow for obtaining a wider array of information;*
- *The category of information classified as “restricted” should be narrowly and clearly defined;*
- *The formulation “official information of limited dissemination” should be either clearly defined or removed entirely;*
- *The category of information which may not be restricted should be expanded;*

Recommendation:

- *Reasons for denials of information requests should be narrowed and denials should be subject to a precisely defined appeals mechanism*

Recommendation:

- *The requirement for mandatory state registration of publicly accessible information systems in conjunction with the provision that non-governmental information systems are registered on a voluntary basis is self-contradictory and should be removed*

Recommendation:

- *The mandatory identification of information systems users should be abolished*

4

- The category of information classified as “forbidden” should be narrowly and clearly defined;
- Reasons for denials of information requests should be narrowed and denials should be subject to a precisely defined appeals mechanism;
- The requirement for mandatory state registration of publicly accessible information systems in conjunction with the provision that nongovernmental information systems are registered on a voluntary basis is selfcontradictory and should be removed;
- The mandatory identification of information systems users should be abolished.

[http://www1.osce.org/documents/rfm/2007/06/25078_en.pdf]

Declarations and Speeches

Keynote speech by Miklos Haraszti to the IFJ World Congress,

The Representative on Freedom of the Media
Organization for Security and Co-operation in Europe
28 May 2007 Moscow, World Trade Centre

Ladies and gentlemen:

In a recent report to the 56 Ambassadors present in the Permanent Council in Vienna, I provided a list of the gravest dangers looming for media freedom in the OSCE area.

As danger number one, I named violence against journalists, and I added: "There is only one thing more intimidating for free speech than harassment, physical attacks, and murder of media workers; and that is when governments *tolerate* harassment, attacks, and murders."

Obviously, all loss of life and violence suffered by journalists at work is tragic and a setback for the profession. But worse is the aggression and murder as *punishment for exercising journalism*.

It is a special war – a peacetime war on journalism. I would like to devote my contribution to the wonderful journalists, the Gongadzes, Husseynovs, Politkovskayas, Dinks, who have been falling victim to this special war in growing numbers.

Violence against journalists: why the gravest danger?

I believe that peacetime, targeted killing of journalists, and especially killing of journalists in revenge for critical coverage, is more dangerous than the next

great sin against freedom of the press – unfortunately also quite common – which is a systemic lack of pluralism, undue governmental influence, and monopolisation of mass media. It is more dangerous for many reasons.

- First, when there is brutality as punishment for the journalists' work, then it is also a message; to the colleagues, editors, owners, and to all their families.
- Violence becomes censorship far beyond the context of the actual controversy; it will impede the press in performing its most important task in defence of democracy, because it is journalists covering *human rights abuses* and *corruption scandals* that are most punished with violence.
- The effect of the violence extends to the whole society by collapsing editors' willpower. Editors are the ones in any democracy that practically define which issues are to be reported and discussed.
- Finally, violence against journalists joins even the forces that commercialise the media. It adds the element of physical fear to the effects that today are pushing the media away from meaningful information, towards empty entertainment.

What can governments do about it?

As an intergovernmental watchdog, my duty is to ask governments if they have done everything in their power against this plague. Governments can do a lot because, knowingly or not, they always play a role in the commencement of violence, even if they were not among those who ordered the killings. I will name several major governmental sins; root causes in the genesis and evolution of violence against journalists.

Impunity for assaults against journalists

When violence against journalism can count on a practical impunity, it is no exaggeration to claim that this indifference by the authorities encourages and perpetuates the crime. Failure to find the perpetrators may happen even to

the best of detectives. But with apathy, law enforcement seems to share the motives of the perpetrators.

Idleness in stopping violence kills hope. Otherwise, there would be enormous reserves for putting things right. In every generation there are risk-taking, brave groups of journalists, especially young ones, who are enticed by the adventure of professionalism.

But that adventure can happen only if the risks remain professional, legal or political. Hope for change is still-born if quality and energy are self-defeating notions, because the system allows violence to seal quality's fate.

Of course, not all cases of targeted murders of journalists come in retaliation for professional work. In April 2007, the Permanent Mission of the Russian Federation to the OSCE informed me that out of the last eight cases which prompted inquiries from my office, in five the perpetrators were identified and in three of them sentences were handed down.

However, in the majority of the above cases the journalist's writing was not the likely motive. The two cases where the journalist's writing was likely to serve as the "cause" of death was that of Anna Politkovskaya of *Novaya Gazeta*, and of Ivan Safronov of *Kommersant*.

It is worth noting that these are the two cases with reportedly little progress thus far. In Safronov's case, the investigation was not opened for murder but for "incitement to suicide".

A further unpromising trend is that in most cases, success only means the identification of the actual killers. Those who paid the bill, the ZAKAZCHIKI, remain unknown. The clearly politically motivated cases as a rule presume impunity even for their perpetrators.

The cases of Vladislav Listiev, Paul Klebnikov and Anna Politkovskaya in the Russian Federation are some of the best known examples of many more with marginal or no progress.

Russia is no exception; “loud” cases elsewhere are also unlikely to yield satisfactory results, whether one speaks of Elmar Huseynov in Azerbaijan or Georgiy Gongadze in the Ukraine.

The investigation and trial of Hrant Dink in Turkey may be one notable exception.

Criminalisation of journalism

Impunity does not start with the actual failure to successfully investigate and prosecute murders of journalists.

It starts with criminalisation of journalist offences, which is, in fact, the criminalisation of the offence of journalism.

Violence against journalists and official deprivation of their freedom are intricately linked.

Before becoming plaintiffs in violence cases, journalists are defendants in criminal cases – for speech offenses!

State hostility and violence against journalists: street arrests, detention, criminal prosecution, and all for their reporting – are gateways to unofficial violence: threats, assault and murder.

This is more than clear from the most notable cases of journalists murdered in the last several years – those of Elmar Huseynov (2005), Anna

Politkovskaya (2006) and Hrant Dink (2007). All were preceded by numerous criminal proceedings against these journalists at some point in their careers.

Criminalisation of journalism works as declaration of open season on journalists.

Take the case of Eynulla Fatullayev, editor of *Realny Azerbaijan*. In September 2006, he received a suspended sentence for defaming the Interior Minister. Then he was sentenced to two years' imprisonment in May 2007 for "slandering a village" with his story about the Nagorno-Karabagh war. Since these procedures, Fatullayev and his family members have been subject to numerous threats and incidents of violence. And on the evening after his last trial this May, *Realny Azerbaijan* reporter Uzeyir Jafarov was almost beaten to death by people whom he saw booing in the Fatullayev trial audience.

In the same South Caucasus region, data shows that since 2004, violence against journalists virtually disappeared in Georgia and in Armenia. This is phenomenal because in 2004 Georgia decriminalized libel, and Armenia practically decriminalized it by abolishing prison sentences for it. Prior to these welcome reforms in state attitude towards speech offences, Georgia and Armenia had many cases of both prosecution of journalists and violence against them.

Sometimes incarceration of journalists is presented as a "buffer" which may protect journalists against arbitrary popular violence. The opposite is true. The criminalized journalists are practically exposed as VRAGI NARODA, the enemy of the people.

Governments cannot escape their responsibility for the attacks against them.

Discrimination against the independent press

As a rule, it is the opposition, independent and investigative journalists who are victims of detention, imprisonment, fines and administrative harassment on the one hand, and, are, on the other hand, liable to threats, assaults, kidnappings and murder.

We have to see that in most nations where violence against journalists is prevalent there still exists a strong state-owned media sector. That would be no problem if it was only a transitory phenomenon on the way from command economy to an open one.

But the very states that tolerate violence against journalists (and practically instigate it by criminalizing journalism), are often also using the power of the state to discriminate against the fragile independent press, in favor of the state media sector.

Discrimination against non-state journalism is detectable in the registration and licensing regime, in taxation, in printing and distribution possibilities, and in advertising revenue earned from government.

No wonder that as a rule, violence against journalists also hits the independents in the first place, just as does the failure to successfully prosecute the murders.

Most victims have worked for the independent papers. I tend to see the whole conundrum of violence against journalist in the new democracies as a by-product of the protracted transition of media ownership from state property to civil property.

Democratizing media means handing the press from government custody over to the people; the acknowledgment that media is a civil endeavor, and that the only job it leaves to government is self-restraint.

I am afraid impunity of violence against journalist is linked with the difficulties in quite a few governments to embrace this cause.

Intolerance vis-à-vis coverage of demonstrations

The right to demonstrate is not only consisting of free assembly, it is a speech right, too.

Violence against journalists is more likely to be met with impunity where unsanctioned demonstrations are met with violence, even if peaceful; where the media that wants to report on this are treated as part of the unsanctioned demonstration; and where the officers responsible for the abuses are not prosecuted.

We know of the mixture of criminal and extra-legal, often cruel actions that befell journalists, Uzbek or foreign, who attempted to report on the demonstrations in Andijan in 2005.

And we all heard of the news surrounding the so-called “Marches of the Discontented”, organized by an opposition alliance in Moscow, St. Petersburg and Nizhny Novgorod in the spring of 2007. None of the demonstrations were authorized as the authorities did not allow the demonstrators to march along the requested routes. Several foreign and Russian journalists were detained or beaten in each instance, some of them despite wearing a bright jacket identifying them as journalists.

Let’s add that similarly hostile treatment by police was reported by two Russian journalists from Estonia, suffered while covering the protest marches this spring against the transfer of a war memorial.

Tolerance towards well-known journalist-beating police can too easily be the very psychology that underlies the law-enforcement's lenience towards unknown journalistbeating perpetrators.

Intolerance in the name of tolerance – mob violence against journalists

Finally, speaking about governmental responsibilities, I have to mention a fairly new and most dangerous trend in granting impunity to threats to journalists.

Governments have a duty to defend journalists from threats and calls for violence even if they are issued in the name of tolerance.

As you are all aware, what had started in 2005 as an unprofessional intra-cultural tongue-in-cheek provocation by the Danish newspaper *Jyllands-Posten* on the subject of the Prophet Mohammed, has since early 2006 become an inter-cultural clash on a horrifying scale. This clash has claimed lives, and mobilized mass demonstrations against perceived collective Danish, or European, desire to humiliate the whole of Islam through the press.

A year after the cartoon crisis, while free media worldwide has striven to increase its own cultural sensitivity, we have seen many lawsuits against caricaturists or writers for incitement, allegedly committed by depictions of religious subjects. In the Arab and predominantly Muslim countries, these trials ended with convictions as a rule. There have been attempts to sever both legal rules and practice in the OSCE area as well, but with a more varied result. In Russia, the cases ended without convictions partly because the press outlets in question have themselves ceased to operate in the meantime. In Denmark and France, the caricaturists have been acquitted

either on the prosecutorial or the court level. But such cases are still ongoing in Belarus and Azerbaijan.

Again, we see criminalization conducive to violence. First, authorities in an educational vein prosecute editorial mistakes which are susceptible to hurt some people's religious feelings, or simply question accustomed wisdom. The handling of such statements belongs in self-regulatory discussions among the affected media workers.

But instead of cooling the flames, those criminal procedures only pour oil on them.

This is because those who loudly demand the prosecution or even execution of the erring journalists are not friends of freedom of speech (and consequently, cannot be friends of true freedom of religion either).

In Denmark, death threats were issued to two of the cartoonists involved, forcing them into hiding. *Jyllands-Posten* also received several bomb threats.

Simultaneously, religious and political authorities issued *fatwas* that offered prizes for murders of the *Jyllands-Posten* cartoonists.

In Pakistan, prayer leader Mohammed Yousaf Qureshi announced that his mosque and religious school would give 25,000 USD and a car, while a local jewellers' association would give another 1 million USD.

In India, a provincial minister called for the head of a cartoonist, offering 11.5 million USD and gold as a reward.

In Afghanistan, an award of 100 kilograms of gold was promised by the Taliban.

On 4 May, two Azerbaijani journalists from the monthly newspaper *Senet* were sentenced to three and four years' imprisonment respectively, for "incitement to national, racial and religious hatred" allegedly contained in an article published in November 2006. The philosophical essay discussed European and Islamic values.

I called on the authorities to protect the two journalists instead of prosecuting them, noting that an Iranian ayatollah had issued a *fatwa* calling for the two to be killed.

Domestic religious activists responded by starting an intimidation campaign against the journalists. Reportedly, they were allowed to shout death threats in the court room.

I had to warn again that criminalization of journalists could unleash violence against media professionals, and, by surrendering to opponents of freedom of discussion, encourage extremism.

While such publications may have offended the religious feelings of some readers, it is inadmissible to treat peaceful speech offences as criminal acts. Only actual incitement to violent ethnic or religious hatred should be criminalized.

And there should be a similar approach to actual incitement to violent hatred against journalists as well.

Fatwas calling for journalists to be killed should be made criminal acts. All nations should persecute them, and should ask for help from Interpol and other multilateral law enforcement agencies, if needed, to stop this potentially murderous 'fashion'.

Recommendations

Governments obviously must adhere to the recent UN Security Council Resolution No. 1738, "Condemning attacks against journalists".

I find also great value in Resolution 1535 of the Parliamentary Assembly of the Council of Europe, "Threats to the lives and freedom of expression of journalists".

Discussing this subject in the capital of the nation where most journalists are killed in peacetime, it is right and helpful for IFJ to ask all governments to do everything they can against the war on journalists.

This situation should be put visibly high on the national agenda.

An unequivocal acknowledgement of the gravity of the situation, and an unmistakable declaration of the aim to put it right, could do wonders.

The investigations should be given a journalist-friendly handling.

Setting up a centre that deals exclusively with them seems to be a must. It could operate a special website, listing the cases and demonstrating the progress made.

Governments must be aware of the linkage between governmental respect for media and the level of societal violence against the media.

Peaceful speech offences, such as defamation, libel, and insult must be decriminalised; their handling should be transferred into the civil-law domain.

Special provisions on insult of officials, presidents, state institutions, symbols of the state should be abolished.

Administrative discrimination against the independent, opposition, and investigative press should be stopped.

Governments will have done most of what is doable if they accept that the press is a civil society endeavour; and would be ready to walk the journey from state to civil media, from monopoly to pluralism.

Calls for violence against journalism, even if made as fatwas, under the guise of demanding tolerance towards religions, should be vigorously refuted and criminalised.

[http://www.osce.org/documents/rfm/2007/06/24811_en.pdf]

International Mechanisms for Promoting Freedom of Expression: Joint Declaration on Diversity in Broadcasting. The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information,

Having met with representatives of NGOs, academics and other experts in Amsterdam on 7-8 December 2007, under the auspices of *ARTICLE 19, Global Campaign for Free Expression*, assisted by the *Institute for Information Law (IvIR), University of Amsterdam*;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005 and 19 December 2006;

Stressing the fundamental importance of diversity in the media to the free flow of information and ideas in society, in terms both of giving voice to and satisfying the information needs and other interests of all, as protected by international guarantees of the right to freedom of expression;

Cognisant, in particular, of the importance of diversity to democracy, social cohesion and broad participation in decision-making;

Aware of the potential of new technologies both to serve as vehicles for promoting diversity but also to pose new threats to diversity, including as a result of the digital divide;

Emphasising the complex nature of diversity, which includes diversity of outlet (types of media) and source (ownership of the media), as well as diversity of content (media output);

Recognising the varied contributions that different types of broadcasters – commercial, public service and community – as well as broadcasters of different reach – local, national, regional and international – make to diversity;

Noting that undue concentration of media ownership, direct or indirect, as well as government control over the media, pose a threat to diversity of the media, as well as other risks, such as concentrating political power in the hands of owners or governing elites;

Stressing that independent public service broadcasters will continue to play an important role in promoting diversity in the new digital broadcasting environment, including through their unique role in providing reliable, high-quality and informative programming;

Mindful of the potential for abuse of regulatory systems for the media to the detriment, among other things, of diversity, particularly where oversight bodies are not sufficiently protected against political or other interference;

Concerned about the growth of a number of threats to the viability of public service broadcasting in different countries, which undermine its ability to fulfil its potential to contribute to media diversity, as well as the failure of many countries to recognise community broadcasting as a distinct type of broadcasting;

Adopt, on 12 December 2007, the following Declaration on Promoting Diversity in the Broadcast Media:

General Points

- Regulation of the media to promote diversity, including governance of public media, is legitimate only if it is undertaken by a body which is protected against political and other forms of unwarranted interference, in accordance with international human rights standards.
- Broad public education and other efforts should be undertaken to promote media literacy and to ensure that all members of society can understand and take advantage of new technologies with a view to bridging the digital divide.
- Transparency should be a hallmark of public policy efforts in the area of broadcasting. This should apply to regulation, ownership, public subsidy schemes and other policy initiatives.
- Low-cost technologies that are widely accessible should be promoted with a view to ensuring broad access to new communications platforms. Technological solutions to traditional problems of access – including in relation to hearing or visual disabilities – should be explored and promoted.
- Measures should be put in place to ensure that government advertising is not used as a vehicle for political interference in the media.

On Diversity of Outlet

- Sufficient ‘space’ should be allocated to broadcasting uses on different communications platforms to ensure that, as a whole, the public is able to receive a range of diverse broadcasting services. In terms of terrestrial dissemination, whether analogue or digital, this implies an appropriate allocation of frequencies for broadcasting uses.

- Different types of broadcasters – commercial, public service and community – should be able to operate on, and have equitable access to, all available distribution platforms. Specific measures to promote diversity may include reservation of adequate frequencies for different types of broadcasters, must-carry rules, a requirement that both distribution and reception technologies are complementary and/or interoperable, including across national frontiers, and non-discriminatory access to support services, such as electronic programme guides.
- Consideration of the impact on access to the media, and on different types of broadcasters, should be taken into account in planning for a transition from analogue to digital broadcasting. This requires a clear plan for switchover that promotes, rather than limits, public interest broadcasting. Measures should be taken to ensure that digital transition costs do not limit the ability of community broadcasters to operate. Where appropriate, consideration should be given to reserving part of the spectrum for analogue radio broadcasting for the medium-term. At least part of the spectrum released through the ‘digital dividend’ should be reserved for broadcasting uses.
- The least intrusive effective system for the administration of broadcasting to promote diversity should become used, taking into account reductions in the problem of scarcity. Licensing, justified by reference to the airwaves as a limited public resource, is not legitimate for Internet broadcasting.
- Special measures are needed to protect and preserve public service broadcasting in the new broadcasting environment. The mandate of public service broadcasters should be clearly set out in law and include, among other things, contributing to diversity, which should go beyond offering different types of programming and include giving voice to, and serving the information needs and interests of, all sectors of society. Innovative funding mechanisms for public service broadcasting should be explored which are sufficient to enable it to deliver its public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation.

- Community broadcasting should be explicitly recognised in law as a distinct form of broadcasting, should benefit from fair and simple licensing procedures, should not have to meet stringent technological or other licence criteria, should benefit from concessionary licence fees and should have access to advertising.

On Diversity of Source

- In recognition of the particular importance of media diversity to democracy, special measures, including anti-monopoly rules, should be put in place to prevent undue concentration of media or cross-media ownership, both horizontal and vertical. Such measures should involve stringent requirements of transparency of media ownership at all levels. They should also involve active monitoring, taking ownership concentration into account in the licensing process, where applicable, prior reporting of major proposed combinations, and powers to prevent such combinations from taking place.
- Consideration should be given to providing support, based on equitable, objective criteria applied in a non-discriminatory fashion, to those wishing to establish new media outlets.

On Diversity of Content

- Policy tools could be used, where this is consistent with international guarantees of freedom of expression, to promote content diversity among and within media outlets.
- Consideration should be given to providing support, based on equitable, objective criteria applied in a non-discriminatory fashion, for the production of content which makes an important contribution to diversity. This might include measures to promote independent content producers, including by requiring public service broadcasters to purchase a minimum quota of their programming from these producers.

- An appropriate balance should be struck between protection of copyright and neighbouring rights, and promoting the free flow of information and ideas in society, including through measures which result in a strengthening of the public domain.

Ambeyi Ligabo

UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszti

OSCE Representative on Freedom of the Media

Ignacio Alvarez

OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula

ACHPR Special Rapporteur on Freedom of Expression

[http://www.osce.org/documents/rfm/2007/12/28855_en.pdf]

4th South Caucasus Media Conference: Media self-regulation in the South Caucasus – Towards Independent and Responsible Media

Tbilisi, 11-12 October 2007

The South Caucasus Declaration on Media Self-regulation

The Fourth South Caucasus Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media in co-operation with the OSCE Mission to Georgia, was held this year in Tbilisi, Georgia.

Journalists, media professionals, and NGOs from Armenia, Azerbaijan and Georgia, as well as international and local experts, gathered to discuss the current media situation in their countries. The topic of this year's conference was media self-regulation.

The conference stated that self-regulation is an important contribution to media democratization. By fostering respect for journalistic ethical standards, it promotes media quality while maintaining editorial freedom. **Media self-regulation** also effectively helps minimize state intervention, and can serve as an antidote to judicial action against the media, for example in defamation charges.

The conference welcomed the fact that self-regulatory bodies have already been established in all three countries. The Azerbaijani Press Council was created in 2003, while the Georgian Media Council was established in 2005, and the Armenian Media Ethics Observatory was formed in 2007. At the same time, the conference also highlighted the main obstacles standing in the way of these bodies' effective functioning. Lack of independence, lack of

public awareness about the right to complain, and lack of professionalism on the side of the journalists remain major problems.

The Conference adopted a **Declaration** on media self-regulation with the following recommendations.

The South Caucasus Declaration on Media Self-regulation

- Media self-regulation is, in its essence, an endeavour pursued by media professionals for the benefit of quality journalism and the society.
- Public authorities could best support the work of self-regulatory mechanisms by creating a legal framework that guarantees freedom of expression and pluralism in the media, while refraining from regulating media content.
- It is only in a free media environment that media self-regulation can develop.
- Editorial independence is a pre-requisite of ethical journalism.

On self-regulatory bodies

Independence of the bodies:

- Governments should not obstruct efforts by media outlets to create self-regulatory bodies.
- Self-regulatory bodies and their members should be independent from government interests.
- The state should not necessarily be ruled out as a potential financial supporter of a self-regulatory body; however, it can only do so in a way that guarantees that there would be no governmental interference in the work of the body.

Effective functioning of the bodies:

- Self-regulatory bodies should be established via a fully consultative and inclusive process.
- Self-regulatory bodies should include as much as possible a tri-partite representation (journalists and editors, media owners, and members of the public).
- Members of a self-regulatory body should be selected following a democratic, transparent procedure, and the term of membership should be limited in duration.
- Self-regulation mechanisms aimed at upholding a code of ethics should only have the power to impose moral redress (such as a right of reply, the publication of a correction, or an apology). They should not be entitled by law or decree to ban media outlets or exclude individuals from the profession. Only in very exceptional circumstances should other sanctions be considered, and this decision should be made by the self-regulatory body.
- Good governance and transparency should be applied to the everyday functioning of a self-regulatory body. This means the regular publication of activities and decisions, as well as the full disclosure of the operational budget.
- All media outlets that are members of the body should regularly take part in publicising the work of the self-regulatory body.
- Awareness-raising campaigns should be carried out in order to educate the public on the importance of ethical media and the public's right to complain.

On Codes of ethics

- Journalists' organizations should promote mechanisms to raise awareness of the need for journalists to abide by ethical standards.

- The existing national codes of ethics should be promoted and publicized by every member news outlet that has signed them. For instance, news outlets should regularly print their code of ethics in their paper.
- Codes of ethics should be considered as working documents, subject to possible future changes and interpretation, and not as a set of rigid rules.

On Ombudspersons

- The creation of ombudsperson positions within media outlets should be promoted, especially where the high amount of state-owned outlets or other circumstances block the possibility for the national self-regulation body to work without governmental interference. This does not contradict the existence of press councils; it could be also seen as an additional co-operative self-regulation mechanism. Independent media ombudspersons are encouraged to gather regularly and share their experiences and recommendations.

Tbilisi, 12 October 2007

[http://www.osce.org/documents/rfm/2007/10/27325_en.pdf]

9th Central Asia Media Conference: Media self-regulation in Central Asia – Towards Independent and Responsible Media

Dushanbe, 1-2 November 2007

DECLARATION

The Ninth Central Asia Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media in co-operation with the OSCE Centre in Dushanbe, was held this year in Dushanbe, Tajikistan.

Journalists, media professionals, and NGOs from Kazakhstan, Kyrgyzstan and Tajikistan, as well as international and regional experts, gathered to discuss the current media situation in their countries. The topic of this year's conference was **media self-regulation**.

The conference stated that self-regulation in democratic countries is an important contribution to media development. By fostering respect for journalistic ethical standards, it promotes media quality while maintaining editorial freedom. Media self-regulation also effectively helps minimize state intervention, and can serve as an antidote to judicial action against the media, for example in defamation charges.

The conference calls on governments in Central Asia to abolish all laws which criminalize journalistic activities. Handling of journalism-related issues should be transferred from the criminal into the civil-law domain.

The conference welcomed the fact that the role of media self-regulation was recognized as essential for the improvement of media freedom in Central Asia.

Some participants noted that the specifics of development in some countries make it difficult to establish journalistic organizations and complicate the formation of fully functional self-regulation mechanisms.

The Conference adopted a **Declaration** on media self-regulation with the following recommendations:

The Dushanbe Declaration on media self-regulation

- Media self-regulation aims at promoting independent and responsible media.
- Editorial independence is a pre-requisite of ethical journalism and media quality.
- Media self-regulation is, in its essence, a civil-society endeavor developed by media professionals for the public.
- Public authorities could best support the development of media self-regulation by creating a legal framework that guarantees freedom of expression and pluralism in the media, while refraining from regulating media content.

On Codes of ethics

- Where a common code of conduct has not yet been established, journalist organizations should organize meetings or committees aimed to agree on a joint code.
- Codes of ethics should be developed by media professional themselves.
- Journalist organizations should promote mechanisms to raise awareness of the need for journalists to abide by ethical standards. Ethical issues should for instance be included in journalism education.
- The existing codes of ethics should be promoted and publicized by every news outlet that has signed them. For instance, news outlets should regularly print their code of ethics in their paper.

- Codes of ethics should be considered as working documents, subject to possible future changes and interpretation, and not as a set of rigid rules.

On self-regulatory mechanisms

- Governments should not obstruct efforts by media outlets to create self-regulatory mechanisms, for instance press councils or ombudspersons.
- Governments should not participate in the creation of self-regulatory mechanisms.
Self-regulation principles and ethics codes should not be adopted via legislative instruments.
- Self-regulatory mechanisms should be independent from government interests.
- Self-regulatory mechanisms should be established via a fully consultative and inclusive process.
- Self-regulatory mechanisms should address only questions of journalistic ethics. They should not be entitled by law or decree to ban media outlets or exclude individuals from the profession.
- Awareness raising campaigns should be carried out in order to educate the public on the importance of ethical media and the public's right to complain.

Dushanbe, 2 November 2007

[http://www.osce.org/documents/rfm/2007/11/27937_en.pdf]

Helsinki Commission Media Freedom Hearing, Washington D.C.

Thursday, December 13, 2007 at 10:00 a.m.

-Check against delivery-

Mr. Chairman, Ladies and Gentlemen,

I would like to thank you for this opportunity to speak before the United States Helsinki Commission. This invitation is indicative of the importance you attach to media freedom issues in the OSCE region.

On a personal note, and as dictated by my background, I also would like to thank the Helsinki Commission for their work leading up to the democratization wave in Central Europe around 1989. The persecuted pioneers of freedom of speech, the makers of the free press that had no choice but to operate clandestinely in Poland, Czechoslovakia and Hungary, as well as in the Soviet Union, could always count on your vigilant support. I have since become a mandated operative of the still ongoing Helsinki process representing an OSCE institution devoted to free speech, but it is as a former Samizdat activist that I continue to be very much inspired by the work done by your Commission, work that began to bear fruit even before OSCE was created.

Ladies and Gentlemen,

First, allow me to provide you with a list of some of the gravest dangers looming for media freedom in the OSCE area.

- As danger number one, I would name violence against journalists. There is only one thing more intimidating for free speech than harassment, physical attacks and murder of media workers; this is when governments

tolerate harassment, attacks and murders. I would like to pay tribute to the wonderful journalists, the best of their generation, the Huseynovs, Politkovskayas, Dinks, who have been falling victim to a war on journalism in peacetime. I do not claim that governments, those of Azerbaijan, Russia or Turkey for instance, were involved in these killings. But I do submit that governmental sins against the free media are encapsulated in the problem of violence against journalists as the root causes in its genesis and evolution. Some of these sins are: impunity for assaults against journalists, criminal handling of journalism, and discrimination against the independent press. But this list is by no means exhaustive.

- In several participating States media pluralism is considerably, and in some cases increasingly, restricted by undue governmental influence over broadcasting; by favouritism towards the still existing state-owned press and by administrative discrimination against the non-governmental media.
- Many participating States still criminalize professional mistakes committed by journalists, such as defamation, libel, or insult. Criminalization of journalists' errors is nothing but criminalization of journalism itself. In 21st century democracies, these offences should be handled in the civil law domain for the sake of an uninhibited discussion of public issues. Criminalization of libel and insult is the most common ground for imprisonment of journalists in the OSCE area. Equally oppressive is the ongoing habit of lending elevated protection from verbal criticism to heads of state and public officials.
- Several governments punish journalists for unearthing governmental data, citing security concerns. In many new democracies, journalists are punished for 'breach of secrecy', while in many Western democracies journalists are forced to reveal their sources to law enforcement agencies. Both approaches endanger investigative journalism – one of the media's most precious services to society.

- In a world of dissolving boundaries, the otherwise legitimate expectation that the media should be culturally sensitive has resulted in increased attempts to label offending or critical views as criminally punishable ‘extremism’ or ‘hate speech’.
- While the Internet is becoming the most important source for diverse information (indeed the only remaining source in several countries), it is under attack both legislatively and operationally, endangering not only the present but also the future of media freedom.
- A proliferation of arbitrary speech bans in connection with historical events weakens international standards on free debate, and creates new tensions between nationalities and countries.

During my four years in office, I have witnessed quite a serious drawback for media freedoms in several countries. Roughly since the so-called coloured revolutions, a veritable ‘counter-revolution’ is unfolding against the independent media.

This backlash against liberalization takes a particularly harsh form when outspoken print outlets, web platforms, or individual journalists decide to cover sensitive issues or criticize the lack of progress attained in democratic development. Its instruments are bureaucratic harassment, administrative discrimination, overt criminalization and occasionally even violence. The new wave of repression sends intimidating messages to those who attempt to stray off the path of guided coverage.

Suppression of diversity is less overt but not less devastating in the case of the broadcast news media – the source of information on public affairs for most people. In the case of broadcasting, the preclusion of pluralism is already taking place at the legal and institutional levels: for example, by not allowing for the transformation into public-service media, independent from government; by not licensing out frequencies; or by guiding the licensing

process so that the licenses land with family members, cronies, or business people sufficiently intimidated to go with the tide.

I acknowledge, of course, the necessity for a longer period of maturation in the delicate business of free speech. After all, many governments and societies in the OSCE area have emerged from dictatorships, and notably from the communicational dictatorships of the one-party states centred on ideology. It may take generations and several peaceful changes of government at the will of the electorate until self-restraint vis-à-vis the press becomes part and parcel of a nation's political culture. An equally long period is needed until the media learns to appreciate the enormous power of professionalism in gaining societal support for press freedom.

However, notwithstanding the belief in the educational force of time, the way forward in the OSCE region is clearly charted in the commitments that the participating States have agreed upon. The OSCE media freedom institution does not insist on overnight completion of generations' work. But we certainly reserve the right to protest when participating States abandon or violate their own commitments.

To give an example, it is clear that in a democracy there is no place for any government-owned news media, certainly not in the print press. And yet there are many such state-owned outlets in the new democracies, which is understandable given that hardly more than a decade ago their governments inherited a media sector that was 100 percent state-owned. We cannot insist on their immediate privatization. But we certainly expect the governments to support privatization, at least step by step, and to assist the start-up of media businesses both by virtue of sensible laws and an encouraging governmental behaviour. And we do 'take arms against a sea of troubles' faced by the independent press 'by the law's delay, the insolence of office', i.e. by the unfortunately growing rather than diminishing inventory of bad laws and arbitrary abuse.

Below is a list of problematic trends by country, 2006 – 2007 (see Annex for a complete list of interventions 2004-2007 by country). Only countries where the RFOM intervened at least three times during the last two years are included:

- Azerbaijan (6) – Imprisonment of journalists for criminal defamation
- Belarus (4) – Administrative harassment
- Bulgaria (3) – violence against journalists
- France (3) – protection of sources, hate speech
- Kazakhstan (5) – closure of independent media outlets, restrictive media legislation
- Moldova (3) – independence of public service broadcasting
- Russian Federation (13) – Violence against journalists, administrative harassment
- Serbia/Montenegro (4) – violence against journalists
- Turkey (3) – criminal laws against hate speech, in particular Article 301 of the Penal Code
- Turkmenistan (3) – detained journalists, death in prison of journalist
- United States of America (3) – access to information, protection of sources
- Uzbekistan (4) – Systematic censorship, lack of independent media, esp. post-Andijan, no access to information

Let me add to the above listing the terrifying fact that one out five interventions had to be issued in cases of physical violence against journalists.

My office responded to these challenges not only with interventions, but also by embarking on relevant project activities.

We continued reaching out to journalists and to media NGOs. Our annual Central Asia and South Caucasus Media Conferences – important venues of

assembly and debate for the journalists in both regions – are in their 9th and 4th years, respectively. Let me express our gratitude for the continued U.S. financial contributions for these important events.

In order to assist governments to comply with their commitments, we served them with legal reviews. The reviews are compiled by cutting-edge media reform experts.

We undertook assessment visits, which were followed up with comprehensive reports on the media freedom situation in the countries visited. Among these were Ukraine, Moldova (including a special feature on Transdnistria), Italy, Bosnia and Herzegovina, Kosovo, Armenia, Belarus and the FYR Macedonia. We hope to continue this indispensable form of co-operation with governments whose invitation we still expect to arrive.

We produced special reports on quite a few typical danger areas, especially on administrative handling of the media, including: registration of the print press, handling of media during demonstrations and accreditation of journalists. Our office is about to prepare new special reports, notably on the governmental response to violence against journalists and on the proliferating extremism laws throughout the OSCE area.

We compiled reports focused on extraordinary events of media performance and handling of media in times of crisis. Such reports included the events of the Kosovo riots March 2004, the Beslan hostage taking tragedy in Russia 2004 and the events in the town of Andijan in Uzbekistan 2005.

My Office also did topical surveys, compiling existing legislation as well as administrative and court practice amongst the 56 participating States on libel and defamation, access to information, and self-regulation.

We always complement our reports with recommendations, offering down-to-earth, practical steps which are clearly relating to the relevant OSCE commitments and are not influenced by the politics of the day in those countries.

In addition, we continue to offer joint training programs for governmental spokespersons and media professionals in order to improve their interaction and to provide them with an understanding of modern, democratic standards of access to information.

My office also engaged in helping journalists to unite in their efforts to raise professional standards. We don't do this because we believe that journalistic quality is a pre-requisite for freedom of journalism. Quite to the contrary, we continue to point out that responsible journalism is only possible in conjunction with full freedom. But we also believe that professionalism strengthens the social standing of journalism. Such co-operation amongst journalists in the field of ethics is also a great training ground for their co-operation in demanding their legitimate rights from governments.

We continue to produce a variety of publications on media policy and advocacy. This year's production included 'Freedom and Responsibility', 'The Business of Media' and 'Governing the Internet'. A practical guide for journalists on media self-regulation is forthcoming.

Ladies and Gentlemen,

It will come as no surprise to you that I find shortcomings with media freedom also in your country. After the unimaginable happened, and several journalists in the United States were imprisoned (for 'contempt of court'; in fact for refusing to disclose the confidential sources of their reporting), I have called several times on the Congress to pass a federal shield law, similar to one which exists in Belgium, to name but one good example.

It is precisely because of this deficiency on the federal level that I greeted the introduction into Congress of the Free Flow of Information Act by the House, and of a similar bill by the Judiciary Committee of the Senate on a bipartisan basis.

This Act would be an important building block in the legal framework that protects freedom of the media, and I encourage you to adopt this piece of legislation as soon as possible.

However, should the drafts undergo amendments, I hope two important principles will be considered:

1. Criminal proceedings in which journalists can be forced to disclose their sources as a matter of exception must be clearly limited to severe crimes.

2. The category of journalists who enjoy the right to protect their sources should be broad. We see more and more citizen-journalists at work as user-generated media content becomes a driving business force. As the traditional boundaries fall, citizen-journalists should also deserve the First Amendment protection, as they also supply society with public-interest information.

In my line of work, it is difficult to over-estimate the importance of adopting a U.S. federal shield law. As a staunch ally of free journalism, the United States cannot afford to be finger-pointed by governments who are not so keen on it. But beyond the image of a country defined by the First Amendment, the prosecutorial practice of the Justice Department during the tenures of the two last Attorney Generals has served as a negative inspiration to prosecutors in other countries.

In our work, we had to witness several 'bad fashions' spread from country to country; international trends, if you wish, in the mishandling of journalism.

One such trend is the contracted killing of journalists, to which I would add the seemingly religious but, from a moral standpoint, equally detestable *fatwas* which offer rewards for killing journalists. A similar international wave of repression is the repressive registration and re-registration practice which makes the lives of independent editors unbearable in several countries. Another example is the so-called extremism legislation – a loose collection of arbitrary speech bans that punish coverage of sensitive topics under the pretext of fighting terrorism or hate speech. Unfortunately, the list would be incomplete without the harmful prosecutorial habit of pursuing journalists in order to plug the leaking of governmental data. And this is a ‘fashion’ to the proliferation of which, unfortunately, U.S. prosecutors and courts have substantially contributed.

I am sure in your questions you would be interested in individual trends in participating States. I look forward to the discussion.

Annex

Participating States	Total 2004-2007
Slovenia	1
Albania	3
Germany	2
USA	7
Armenia	3
Azerbaijan	11
Belarus	13
Belgium	3
Bulgaria	4
Croatia	6
Spain	1
France	5
Georgia	3
Greece	3
Hungary	3
Italy	3
Kazakhstan	9
Kyrgyzstan	1
the former Yugoslav Republic of Macedonia	1
Lithuania	1
Moldova	4
Uzbekistan	10
Netherlands	2
Poland	6
Romania	2
Russian Federation	24
Serbia and Montenegro (Federal Republic of Yugoslavia- 2002)	8

Participating States	Total 2004-2007
Slovakia	2
Switzerland	3
Tajikistan	8
Czech Republic	2
Turkmenistan	6
Turkey	10
Ukraine	3
Canada	1
Denmark	1
TOTAL:	175

Projects 2007

Internet Filtering in the OSCE Region

(April 2007 – September 2008)

This project will assess the situation of filtering and blocking of Internet content in the OSCE region, evaluate it and give recommendations to improve the situation in order to assist participating States to better fulfil the OSCE commitments regarding the free flow of information and freedom of the media.

The more widespread the Internet gets the more attempts to regulate it are made and the more legislation aiming particularly at the Internet is adopted by governments. The legitimate aim of these regulations could be to counter hate speech, prevent the use of the Internet for terrorist purposes or the prosecution of illegal content. However, this should be done without curtailing freedom of the media principles.

In 2002 the Representative on Freedom of the Media started to actively pursue the promotion of Media Freedom on the Internet. Since then -amongst many other events and publications- there have been three consecutive yearly Internet Conferences in Amsterdam and the 'Media Freedom Internet Cookbook' has been published.

A first set of best practices and 'recipes' has been provided in this publication. As a best practise it was recommended that filtering and blocking of Internet content always is the least favourable solution to counter illegal and unwanted content.

However, there are instances of filtering and blocking of online content throughout the OSCE region. The 'Open Net Initiative' has conducted a first research in this field and concluded that especially in times of elections

websites of opposition or other political nature are blocked. This violates the right to freedom of expression and the media and there is the need to more systematically examine the nature and origin of the filtering.

As part of RFOM's long-term strategy in the field of media freedom on the Internet, there is a need to assess the state of Internet blocking and filtering in the OSCE region in order to develop strategies and recommendations that assist participating States to better fulfil the OSCE commitments regarding the free flow of information and freedom of the media.

The project will show if, how and which filtering practices are used in the OSCE region and how this affects freedom of the media on the Internet. This will be done in co-operation with the 'Open Net Initiative', a collaborative partnership of four leading academic institutions at the University of Toronto, Harvard Law School, the University of Cambridge, and Oxford University.

Under the umbrella of the 'Dynamic Coalition on Freedom of Expression and Freedom of the Media on the Internet', an outcome of the first IGF in Athens in 2006, first results of the assessment have been presented during a workshop at the 2007 UN Internet Governance Forum (IGF).

A detailed report of the assessment and recommendations to improve the situation will be published as a printed version and will be made available online in summer 2008.

This project forms a direct continuation of the ongoing project "Internet Regulation in the OSCE Region". Research will be co-ordinated at the Office of RFOM.

Access to information by the media in the OSCE region: Country Reports

21 June 2007

Background

Access to official information and the ability to protect the identity of sources are key factors that shape conditions for investigative journalism, which is vital for any democracy. The Office of the Representative on Freedom of the Media surveyed the Organization's 56-country region to evaluate these factors.

The survey, completed in May 2007 and supported by the 2006 Belgian OSCE Chairmanship, found that societies of the OSCE participating States permit more access to information than in the past. But weak laws and prosecution against the media still harm investigative journalism.

Based on some 60 reports by governments of the participating States, OSCE field missions, national NGOs and experts collected over a year, the survey highlights a number of best and not-so-good practices in key areas: access to information, sanctions for handling classified information and the protection of sources.

The OSCE Representative uses the findings to promote legislative change aimed at improving conditions for investigative journalism. Readers can find the survey's summary or the country reports on the Representative's website.

Freedom of information: better implementation needed

In the past ten years, most OSCE nations have passed good laws to balance the public's right to be informed with government classification needs. The

survey revealed that in most countries this balance is still upset when it comes to journalists' daily struggle with secrecy.

A sounder mechanism of protection is also required for anonymous sources who provide information to journalists. This is a precondition for healthy journalism, which is able to reveal and successfully combat corruption and maladministration, thereby exercising effective public control over governments.

Forty-five OSCE participating States have freedom of information laws that enable citizens, including journalists, to demand data from all levels of their governments.

In a number of states, however, the survey showed that freedom of information policies remain no more than paper. Even some established democracies tend to backtrack on openness due to increased security concerns, the survey found.

Sanctions for breach of secrecy

The survey revealed that in most “new democracies” – for example in Hungary, Latvia, Lithuania, Romania, Russia and some other states – the criminalization of “breach of secrecy” is still not limited to officials in charge of protecting secrets. Any citizen who plays a role in passing on or publishing classified data may be punished for disclosure of secrets.

The OSCE Representative has registered dozens of such cases involving journalists.

“It is unacceptable that in fighting leaks the prosecutors punish journalists for receiving them. OSCE participating States must limit prosecutions to officials, introduce a mandatory public-interest test and oblige the courts to consider

the public interest value when it comes to the publication of secrets,” says Haraszti.

Protection of sources

Almost all OSCE States recognize in law the importance of protecting journalists’ confidential sources. But in practice less than half offer adequate protection from court orders to disclose sources.

Over the last few years attempts by prosecutors in some “old democracies” to make journalists identify their anonymous informants have provoked a huge outcry in the media community and international organizations. This is part of the reason why national courts have largely allowed journalists to keep their sources secret despite recurring attempts by prosecutors to uncover them.

In Belgium, a separate “shield” law was adopted in 2005 to establish proper protection of sources. In Germany, this important media right was confirmed in the recent “Cicero” ruling of the Constitutional Court.

In the United States, although most of the individual states have some form of protection, there is no “shield” law at the federal level. Journalists have been prosecuted as a result of this legislative gap.

The survey is meant to encourage changes across the OSCE region that can help give rise to more effective investigative journalism in the service of democracy.

More information:

Access to information by the media in the OSCE region: trends and recommendations <http://www.osce.org/item/24250.html>

Access to information by the media in the OSCE region: Country Reports

<http://www.osce.org/item/24251.html>

[<http://www.osce.org/item/24251.html>]

Interventions 2007

This is a selection of public interventions as reported to the OSCE Permanent Council.

Albania

Interventions

- 21 June, PC report: In close co-operation with RFOM, the OSCE Presence in Albania reminded the National Council on Radio and Television (NCRT) that the implementation of a frequency plan for broadcasting should be handled in the least intrusive fashion, in order not to jeopardize media pluralism. NCRT had earlier shut down some transmitters, which were using illegally occupied frequencies, but without presenting a blueprint for the re-allocation of frequencies.

Armenia

Interventions

- 8 March 2007 Letter to the Chairman of the National Assembly, the Minister of Foreign Affairs, and the Minister of Justice of Armenia about the recently adopted amendments to the *Law on Television and Radio* and the *Law on Regulations of the National Commission on Television and Radio* (NCTR). RFOM noted with satisfaction that the amendments were adopted prior to the Parliamentary Elections of 2007; this was one of the key recommendations in the July 2006 report on the state of media freedom in Armenia. However, the amendments are not sufficiently robust to achieve the aim of an independent NCTR: thus further amendments will need to follow.

- 28 June 2007, letter to the Chairman of the National Assembly, the Minister of Foreign Affairs and the Minister of Justice: sharing concerns about the draft laws “On Introducing Amendments to the Republic of Armenia Law on Television and Radio”, and “On Making Amendments to the Republic of Armenia Law on State Duties”. These proposals could potentially ban re-broadcasting of foreign public-service programmes’ in Armenia, including Radio Liberty.

Press Releases

- 28 June 2007, OSCE media representative urges Armenian Parliament to drop amendments practically abolishing Radio Liberty’s re-broadcasts
- 21 December 2007, OSCE media freedom watchdog concerned about increased tension in Armenia’s media freedom environment

Azerbaijan

Interventions

- 29 March 2007: Report to the PC, RFOM is alarmed by the dramatic increase in the number of criminal defamation charges brought against journalists by public officials. The most recent cases involve the weekly independent newspaper *Nota Bene*: its reporter Faramaz Novruzoqlu and chief editor Sardar Alibeyli were sentenced on 30 January 2007 to two years in prison and 18 months of corrective labour respectively for defamation and libel under Articles 147 and 148 of the Criminal Code.
- 21 June, PC report: RFOM alarmed about the continuous harassment of independent media and journalists by the authorities in Azerbaijan. In recent months, a wave of imprisonments and violence against journalists has reached a critical point. Over twenty independent journalists recently turned to foreign embassies in Baku asking for political asylum, some

of whom went on a hunger-strike to protest against the situation. Currently, there are seven media professionals in prison for ‘defamation’ or ‘incitement’, all of them from non-government outlets. Their only “wrongdoing” was criticism of officials or questioning of conventional wisdom. Most of them are held on charges filed by public officials.

- 27 April 2007: RFOM greeted the long-awaited re-licensing of ANS Television Company as a positive development.
- 15 November 2007, PC report: remaining concerned with the grave situation of the independent media in Azerbaijan. Two more media workers were arrested last week, thus increasing the number of Azerbaijani journalists who are currently in prison to nine.

Visit

- April 2007: Meeting with President Aliyev

Press Releases

- 31 January 2007, OSCE voices concern over imprisonment of journalists in Azerbaijan
- 23 April 2007, OSCE media freedom representative condemns sentencing of journalist, says Azerbaijan media under serious threat
- 27 April 2007, OSCE Representative asks Azerbaijani President to halt persecution of journalists, greets renewed license for embattled broadcaster
- 07 May 2007, OSCE press freedom watchdog condemns prison sentences handed down to journalists in Azerbaijan for essay on religion

- 17 May 2007, OSCE media freedom representative expresses shock after more Azerbaijani journalists jailed, calls on authorities to stop prosecutions for libel
- 22 May 2007, Continuous harassment threatens existence of independent media in Azerbaijan, says OSCE Representative
- 01 November 2007, Severe prison sentence for journalist violates Azerbaijan's commitment to free press, says OSCE media watchdog

Belarus

Interventions

- 22 August 2007, letter to the Head of the Permanent Delegation of Belarus: welcoming that some of the Office's recommendations on the draft "Law On Information, Informatization and Protection of Information" were taken into account by the drafters. The law would define rules of classification of – and journalists' access to – governmental information, and it may ensure compliance with relevant commitments regarding the working conditions of independent journalism in the country.
- 28 September 2007, letter to Yuri Kulakovsky, head of the parliamentary committee responsible for media issues: offering assistance in the planned drafting of Internet regulation. A response was received on 24 October, assuring that the draft law will be forwarded to my Office for review.

Press Releases

- 04 June 2007, OSCE Representative opens seminar in Minsk, voices concern over State control over media

Belgium

Interventions

- 15 November 2007, PC report: welcoming the 18 June court decision in the case of journalist Ms. De Graaf of De Morgen newspaper, which reaffirmed the right of journalists to protect their confidential sources. The rejection of the prosecutor's claim shows that Belgium's 'shield law' of 2005 on the protection of journalists' sources works as planned.

Bosnia and Herzegovina

Press Releases

- *29 March 2007, Boycott of Bosnia-Herzegovina public broadcaster breaches media freedom principles, says OSCE report*

Bulgaria

Interventions

- 22 March 2007: Letter to the Bulgarian authorities expressing concerns about the assault on journalists of *24 Hours* and *168 Hours* in their editorial office, committed by leaders and parliamentarians of Ataka party on 23 February 2007. For the sake of an unequivocal message about safety of the media, I urged the authorities to prosecute the attackers without delay, regardless of their public functions. In the same letter RFOM warned against the adoption of restrictive amendments tabled by individual parliamentarians to the country's already advanced *Freedom of Information Law*.
- 22 March 2007: RFOM advised Parliament against introducing amendments to the Access to Public Information Act, which would make access to information both more difficult and more expensive. The initially proposed amendments were considerably changed in a positive way.

- 1 June 2007, letter to the Foreign Minister: asking for more information about the results of the investigation into the case of photojournalist Emil Ivanov, who complained of being assaulted by police officers in the course of his work.

Press Releases

- 23 March 2007, OSCE Representative urges Bulgaria to prosecute attackers of journalists, warns against changes to law on information

Canada

Interventions

- 29 March 2007: PC report, welcoming the Ontario Superior Court decision that ruled on 19 October 2006 that it was contrary to the provisions of the Canadian Charter of Rights and Freedoms that the authorities had used the *Security of Information Act 2001* against Juliet O'Neill, a reporter with the *Ottawa Citizen*. The judge found the provisions vague, overly broad and open to abuse by government authorities.

Croatia

Interventions

- 2 March 2007: letter Minister of Foreign Affairs of Croatia regarding the attack on Z1 television journalist Zeljko Malnar in a cafe in Zagreb on 27 February 2007. RFOM raised his concern about instances of assaults and threats against journalists reported in recent months, and expressed confidence that the Croatian Government would do everything possible to secure a free and safe working environment for media professionals.
- 25 October 2007, letter to the Minister of Foreign Affairs: raising concern about the case of journalist Zeljko Peratovic. He was detained on 17

October for one day, in connection with his alleged revealing of state secrets.

Press Releases

- 13 April 2007, Croatian draft secrecy law needlessly restrictive, says OSCE media freedom representative

Czech Republic

Interventions

- 26 July 2007, letter to the Minister of Justice about the new draft Criminal Code, regretting that the proposed changes failed to decriminalise defamation. The draft even maintains imprisonment as a form of punishment for defamation, in spite of the clear jurisprudence of the European Court of Human Rights.

Denmark

Interventions

- 20 November 2006: letter to the Director of Public Prosecutions of Denmark of, voicing concern about the trial of three Danish journalists charged with publishing classified information in the Danish daily *Berlingske Tidende*. Two journalists, Michael Bjerre and Jesper Larsen, as well as the editor Niels Lunde were charged with printing confidential government information under Article 152 of the Criminal Code. Based on leaked classified information, the newspaper published articles about the level of information known to the Danish government about weapons of mass destruction in Iraq in 2003. RFOM very much welcomed the decision of the court to acquit the journalists finding that by publishing the information they had acted in the public interest.

France

Interventions

- 29 March 2007: PC report, welcoming the decision by a Paris court 22 March 2007 to acquit the editor-in-chief of the satirical magazine *Charlie-Hebdo*, but recommended that Article 33 of the *Press Law of 1881*, foreseeing prison sentences for press offences, should be modified. Islamic institutions had filed charges against the paper for reprinting some of the so-called “Mohammed cartoons”, originally published by *Jyllands-Posten* in Denmark. The court held that reprinting these cartoons did not constitute an “insult of people based on their religion”.
- 12 June 2007, letter to the Minister of Justice: recalling the commitment of her predecessor to include the protection of journalists’ confidential sources in the Press Law of 1881, which was also a promise made by Mr. Sarkozy during the recent presidential campaign.

Press Releases

- 22 March 2007, OSCE Media Freedom Representative welcomes French acquittal in cartoons row
- 12 December 2007, OSCE media watchdog calls for protection of sources law in France after journalist charged over intelligence leaks

Germany

Interventions

- 29 March 2007: PC report, welcoming the decision of the Constitutional Court that ruled that the raid was an unjustified intrusion into press freedom. The Court decided that the mere publication of classified information is not sufficient to justify a police search, reaffirming the

independence of the media and the need for prosecutorial restraint in such cases.

- 9 August 2007, letter to Federal Minister of Justice Brigitte Zypries, asking Germany to cease criminal proceedings against 17 journalists of the country's most prestigious newspapers. The journalists published allegedly classified information on German intelligence activities, and on the Parliamentary Committee examining them.
- 11 October 2007, letter to Minister Zypries, asking to ensure that the journalists' privilege falls into the strongest protection category. Unfortunately, when the law was adopted on 9 November, a general provision offering a more robust protection to media professionals was not included.

Press Releases

- 09 August 2007, Proceedings against journalists in Germany must stop, says OSCE Media Freedom Representative

Georgia

Interventions

- 8 November 2007, expressing concern about the suspension of the work of Imedi TV, Georgia's most watched independent broadcaster, and Kavkasia TV, which transmits in Tbilisi. The closure took effect late on 7 November, before a presidential decree announcing a state of emergency entered into force.

Press Releases

- 08 November 2007, OSCE media freedom representative concerned about suspension of television stations in Georgia
- 22 November 2007, OSCE media freedom representative in Georgia to discuss TV station closure
- 23 November 2007, OSCE media freedom representative says optimistic about re-opening of suspended Imedi TV after visit to Georgia
- 07 December 2007, OSCE media freedom watchdog welcomes reopening of Imedi TV in Georgia

Greece

Interventions

- 11 July 2007, letter to President Karolos Papoulias, expressing concerns about his promulgation of a new law on 'Concentration and Licensing of Media Enterprises and other Provisions' in Greece.

Press Releases

- 27 July 2007, New radio licensing law in Greece restricts minority media, says OSCE media freedom watchdog

Hungary

Interventions

- 22 June 2007, urging authorities after the brutal attack against a Hungarian journalist investigating the so-called "oil deals" of the 1990s to take resolute action to prevent similar assaults in the future.

Press Releases

- 26 June 2007, OSCE media freedom watchdog condemns attack against Hungarian journalist
- 19 December 2007, OSCE media freedom watchdog welcomes acquittal of Hungarian journalist in secrecy case, urges legislative reforms

Ireland**Interventions**

- 29 March 2007: welcoming that, the Irish Supreme Court approved a High Court decision allowing the *Sunday Business Post* and other media to publish material circulated by the Mahon Tribunal prior to a public hearing, but marked as confidential. The Supreme Court dismissed the tribunal's request to prevent the publication.

Visit

- 9-10 November 2007, Congress of the Association of European Journalists, Dublin

Kazakhstan**Interventions**

- 24 January 2007: RFOM raised the case of Mr Kazis Toguzbaev, an independent Kazakh journalist, who was handed a two-year suspended sentence by an Almaty district court, for violating Article 318(2) of the Criminal Code Infringement on the honour and dignity of the President, for content published in two articles in April and May 2006 on a website.

- 24 May 2007, the TV channel KTK and the weekly newspaper Karavan were suspended, each for three months, following a court ruling in Almaty which cited Article 159 of the Civil Procedural Code. However, an earlier intervention by the Almaty Prosecutor's Office on 22 May demanded that Karavan and KTK TV, refrain from showing 'unauthorised coverage' of an ongoing criminal investigation at Nurbank.
- 8 October 2007, letter to the Ministry of Internal Affairs, expressing concerns regarding its amendments to the defamation provisions of the Criminal and Civil Codes.

Press Releases

- 26 January 2007, OSCE media freedom representative calls for abolishment of insult laws in Kazakhstan
- 21 April 2007, OSCE Media Freedom Representative welcomes plans for press freedom improvements in Kazakhstan
- 09 October 2007, OSCE media freedom representative asks Kazakhstan to withdraw Interior Ministry defamation proposals

Kosovo

Interventions

- 29 March 2007, PC report: the Special Representative of the UN Secretary General in Kosovo promulgated on 28 February 2007 the civil Law against Defamation and Insult. This is in line with RFOM recommendations to the OSCE participating States to adopt adequate civil defamation provisions. However, under the existing UNMIK penal code, defamation remains a criminal offence, with media exempted from insult charges.

Kyrgyzstan

Interventions

- 29 March 2007: PC report, pleased to report on two very positive developments in Kyrgyzstan. On 25 March, President Bakiyev withdrew his former objection to the draft law “On setting up public television” and on 27 April, the Kyrgyz parliament voted to abolish criminal libel and insult laws.
- 20 April 2007, letter to the Foreign Minister: raising concern over the decision by the Prosecutor General to issue a confiscation warrant against four independent newspapers following political demonstrations in Bishkek. In addition to the print run, the authorities confiscated printing plates and electronic files.

Press Releases

- 27 March 2007, OSCE press freedom watchdog hails Kyrgyzstan for decriminalizing libel and allowing public broadcasting
- 25 October 2007, OSCE media freedom representative condemns murder of independent journalist in Kyrgyzstan

FYR Macedonia

Interventions

- 6 June 2007, letter to the Foreign Minister: asking for additional information on a reported abduction on 2 June of the Deputy Director of the Macedonian Radio Television (MRT), Nazif Bushi, who was held for several hours by unknown gunmen without explanation, along with two other journalists and their driver.

Moldova***Interventions***

- 19 October 2007, letter to the Deputy Prime Minister and Minister of Foreign Affairs Andrei Stratan, and to the Chairman of the Audiovisual Coordination Council, asking for information about the sudden revocation of the re-broadcasting licence for the Romanian public television channel TVR 1.

Montenegro***Interventions***

- 4 September 2007, letter to the Minister of Foreign Affairs of Montenegro, sharing concerns about the brutal attack on Zeljko Ivanovic, the director of the daily newspaper Vijesti. The attack by three men took place on 1 September, and As a result, Ivanovic suffered a fracture.
- 15 November 2007, PC report, another attack on a journalist, Tufic Softic, a journalist working for Radio Berane and the daily newspaper Republika was attacked and severely beaten by two masked assailants on 1 November, in front of his home in Berane.

Poland***Interventions***

- 2 August 2007, letter to the Minister of Justice of Poland, expressing concerns about the sentencing of Jacek Brzuszkiewicz, a journalist of Gazeta Wyborcza. He was sentenced to a suspended six-month prison term and a hefty fine for criminal defamation against a judge in a series of articles. In these pieces he argued that the judge and a defender, who won a case in that judge's court, were acquaintances.

- 15 November 2007, PC report, regretting to have to report about a new case of media criminalisation. On 30 October, a Warsaw court ordered two journalists of the weekly *Gazeta Polska* to be arrested prior to their upcoming libel trial in December.

Press Releases

- 06 August 2007, Poland's continuing prosecution of journalists violates international standards, says OSCE media freedom watchdog

Romania

Interventions

- 29 March 2007: PC report, RFOM concerned by the decision of the Constitutional Court of Romania of 18 January 2007, which annulled the decriminalization of defamation, an amendment which was passed by Parliament in 2006. The Court found that the repeal of libel and insult articles from the Criminal Code produced a legal situation inconsistent with the Constitution.

Russian Federation

Interventions

- 5 March 2007: letter to the Russian authorities regarding the death of Ivan Safronov, a military analyst for the Russian weekly *Kommersant*. Mr Safronov died on 3 March following a fall from a window in his Moscow apartment block. Given the worrying details and the ensuing questions in the Russian and international media regarding the cause of his death, RFOM requested timely information from the authorities regarding the progress of the investigation.
- 17 April 2007, letter to the Russian authorities: raising concern over the treatment of journalists at recent demonstrations in Nizhny Novgorod, St

Petersburg and Moscow. Media workers have reported being beaten and detained alongside political demonstrators.

- 19 June 2007, letter to the Russian authorities: signalling concern about a civil libel case brought by President Ramzan Kadirov of Chechnya against the Russian newspaper *Kommersant* in June 2006 because of an opinion piece written by a North Ossetian parliamentarian and published by *Kommersant* and expressing regret that attacks on Russian journalists continue, referring to three recent incidents where media professionals have been subjected to violence, reportedly in connection with their work.
- 19 June 2007, letter to the Head of the Permanent Mission of the Russian Federation to the OSCE, raising the libel case initiated by the Chechen President Ramzan Kadyrov against the *Kommersant* newspaper, citing the standard that, for the sake of freedom of debate in society, public officials need to exercise self-restraint in suing for personal damages and addressing the violent attacks against journalists Andrei Kalitin, Vadim Guzinin and Mikhail Afanasyev.
- 26 July 2007, letter to Minister of Foreign Affairs Sergey Lavrov, expressing concern regarding a series of amendments to the 'extremism' laws, signed by President Vladimir Putin on 26 July and asking the Russian authorities to re-examine the legal framework on 'extremism', especially the parts that touch upon the media's right to report on controversial issues.
- 22 August 2007, letter to Boris Boyarskov, Director of the newly established federal service supervising media and communication ('Rossviazokhrankultura'), expressing concerns regarding the suspension of the re-broadcasting of BBC on the Moscow FM Radio Station Bol'shoeye Radio in August 2007. Bol'shoeye Radio was BBC's last FM

distribution partner station, asking “Rossviazokhrankultura” to review this decision that damages information pluralism in the country.

- 10 September 2007, commending the recently announced partial progress in the cases of murdered journalists Anna Politkovskaya and Igor Domnikov, but warning that violence against journalists can end only if those ultimately responsible are identified and prosecuted without political interference.

Press Releases

- 27 July 2007, OSCE media freedom representative asks Russian authorities to review extremism laws restricting free reporting
- 10 September 2007, Politkovskaya case requires a vigorous and independent investigation, says OSCE media freedom representative
- 04 December 2007, Press freedom commitments not met during Russian electoral campaign, says OSCE media freedom watchdog

Serbia

Interventions

- 16 April 2007, public statement: joining the OSCE Mission to Serbia in condemning the 14 April attack against the prominent Serbian journalist Dejan Anastasijevic. A hand grenade exploded outside his Belgrade apartment, shattering the windows but leaving the journalist and his wife unharmed.

Press Releases

- 16 April 2007, OSCE condemns bomb attack on Serbian journalist

Slovenia

Interventions

- 12 October 2007, asking the Slovenian Ambassador to the OSCE to present the Slovenian Government's view on a 'Petition against Censorship and Political Pressure on Journalists in Slovenia', signed by more than 400 journalists.

Spain

Interventions

- 24 July 2007, letter to the Head of the Permanent Mission of Spain, raising the case of the *El Jueves* magazine. A High Court judge ordered the seizure of copies of the weekly because it had published a cartoon of the royal couple, which was considered by the judge as violating their honour and dignity. The two cartoonists were fined 3000 euros each on 13 November.

Switzerland

Interventions

- 16 March 2007: letter informing the Swiss authorities, that the first instance verdict of 9 March 2007 against the Turkish politician, Dogu Perincek, for denying that the killings of Armenians in 1915 amounted to genocide was inconsistent with the relevant jurisprudence of the European Court of Human Rights. The ECHR holds that only denials of genocide recognized by an international court since 1945 or by other relevant international legal instruments may be exempt from protection under free speech.
- 4 July 2007, letter to the Head of the Swiss Delegation to the OSCE about an appeal court conviction of a Turkish politician for refusing to call the killings of Armenians in the Ottoman Empire in 1915 a genocide.

According to the case-law of the European Court of Human Rights, only denial or belittling of genocides recognized by international courts or by relevant international legal instruments should be exempt from legal protection as free speech. Other historic events should be open to debate.

Tajikistan

Interventions

- 21 September 2007, calling on Tajikistan to revoke the amendments to Articles 135 and 136 of the Criminal Code that were recently signed into law by President Emomali Rahmon. Under this provision any factual mistake or strong opinion published, re-published, reported or discussed on the Internet can be penalized.

Visit

- November 2007 Meet with Deputy Foreign Minister Erkin Kasimov during the Central Asia Media Conference in Dushanbe.

Press Releases

- 21 September 2007, OSCE media freedom representative calls on Tajikistan to protect free flow of information on Internet

Turkey

Interventions

- 11 June 2007, letter to the Turkish authorities: reiterating the need to abolish Article 301 and other criminal provisions that hinder open public debates. RFOM will also be monitoring the implications of Law No. 5651 “On the preparation of Internet publications and crimes connected with

these publications”, ratified by the President on 22 May. Under the new law, it will be a punishable offence to provide web space to internet publications “insulting the memory of Atatürk”, the founder of the Turkish Republic.

- 21 June 2007, PC report: On 13 April police forces raided the premises of Turkish magazine *Nokta*, following an article published on 29 March which revealed an alleged plan for a coup d’état by senior military officers in 2004. Police officers remained in the magazine’s offices until 16 April. Shortly after, the owner of the magazine decided to stop its publication. Criminal cases were opened against the magazine’s chief editor based on libel and insult provisions. Two journalists who covered the case were also indicted under Article 301, for ‘publicly denigrating the military.’ All are facing multi-year prison sentences.
- 18 September 2007, letter, on 11 October, a suspended one-year jail sentence was handed down on Arat Dink and Serkis Seropyan, the editor and the owner of the Armenian and Turkish language weekly *Agos*. The two were convicted for reprinting remarks of murdered journalist Hrant Dink, the father of Arat Dink, in which he called the 1915 killings of Armenians a genocide.
- 17 October 2007, letter, referring to the fate of Hrant Dink, emphasizing that the failure to abolish Article 301 continues to expose persons with dissenting views to prosecution and may single them out for violence.

Press Releases

- 19 January 2007, OSCE Representative appalled by murder of Turkish journalist Hrant Dink

- 18 October 2007, Conviction of assassinated journalist's son for "insulting Turkish identity" more proof Article 301 must be abolished, says OSCE media watchdog

United Kingdom

Interventions

- 29 March 2007: PC report, welcoming the decision of the Court of Appeal in the United Kingdom, which ruled on 21 February 2007, following seven years of litigation, that journalist Robin Ackroyd did not have to reveal his confidential source. Ackroyd was behind a Daily Mirror story, published in December 1999, which revealed the type of treatment being meted out to a criminal during a hunger strike. Ever since, the hospital has sought to discover how he obtained the medical records on which the story was based.

The United States of America

Interventions

- 29 March 2007: PC report, welcoming the passing by the House of Representatives in the United States of a package of open-government bills on 14 March 2007. These bills would streamline access to government documents and expand safeguards for government whistleblowers.
- 29 March 2007: PC report, regretting that, Joshua Wolf, a freelance videographer who refused to co-operate with a grand jury investigation, is still in prison. He has become the longest incarcerated journalist in modern U.S. history. Mr Wolf has been in prison since August 2006 after refusing to submit his unedited videos of a street protest in which a police officer was injured and a police car damaged. This is a federal procedure; under the Californian state law, Mr Wolf would not have been obliged to reveal his sources and could lawfully have retained his materials.

- 21 June 2007, PC report: welcoming the release of Joshua Wolf from jail on 3 April. Wolf, a blogger from California, was jailed by a Federal district court on 1 August 2006 for refusing to turn over a collection of videotapes he recorded during a July 2005 demonstration in San Francisco. He posted the unpublished footage on his blog on 3 April after being assured that he would not have to testify about the footage.
- 16 October 2007, welcoming that the House of Representatives approved their version of a “Free Flow of Information Act” on 16 October.
- 6 August 2007, letter to the Chief of the United States Mission to the OSCE, requesting additional information regarding the murder of Chauncey Bailey. The editor of the Oakland Post was killed on 2 August.

Visit

- 10-15 December, Visit to Washington D.C., Hearing at the U.S. Helsinki Commission (see page XXX)

Ukraine

Interventions

- 28 March 2007 letter to the Foreign Minister: asking for additional information about the closure of the political talk-show Toloka by the President of the First National Channel *UT-1*.

Uzbekistan

Interventions

- 13 March 2007, letter to the Uzbek Foreign Minister regarding the charges brought against the Uzbek journalist and human rights activist, Ms. Umida Niyazova. Ms Niyazova was detained by police in Andijan

on 22 January 2007 and charges have since been brought against her under the criminal code “Illegal Border Crossing” (Article 223) and “Collecting and distributing material that threatens public security” (Article 246). The maximum penalty for the charges is ten years imprisonment. The letter stressed that journalists, including those investigating disturbances or conflict, should and must be allowed to collect and store information for publication. By penalising journalists for so doing, the authorities prevent the debate of matters of public interest.

- 28 March 2007, letter asking for more information about the criminal charges brought against Natalya Busheyeva, an Uzbek citizen and reporter for *Deutsche Welle*, which was denied accreditation in 2006. The charges reportedly relate to concealment of income and non-payment of taxes in connection with her work for a non-accredited foreign news agency.
- 28 March 2007, letter to the authorities of Uzbekistan: requesting further information about the charges brought against Natalya Bushuyeva on 23 March under article 184 of the Criminal Code ‘Concealment of Income and Non-Payment of Taxes’. Ms Bushuyeva had been working as a stringer for *Deutsche Welle*, which lost its accreditation in 2006 following the adoption of a set of provisions regulating the professional activities of foreign correspondents.
- 2 May 2007, public statement: expressing regret at the seven years sentence passed on Uzbek journalist Umida Niyazova.
- 18 May 2007, letter to the authorities: asking to resolve the matter of a shipment of OSCE/RFoM books sent to the Project Co-ordinator’s Office in May 2006 remains held up in customs in Tashkent. Customs officials informed the OSCE that the content of the publication – the concluding publication from the 2005 Central Asia Media Conference – violated

Uzbek regulation of content and requested that payment be made to return the shipment to Vienna.

Press Releases

- 13 March 2007, OSCE Representative calls for release of Uzbek journalist
- 02 May 2007, Harsh sentence of Uzbek journalist violates commitments, says OSCE media freedom representative

Meetings and Conferences 2007

The Representative on Freedom of the Media or his staff participated in the following meetings and conferences in 2007:

- 30 January 2007: Internews meeting in Moscow for Russian regional journalists and self-regulation bodies.
- 15-16 February 2007: UNESCO conference “New Media: The Press Freedom Dimension, Challenges and Opportunities of New Media for Press Freedom” at the UNESCO Headquarters in Paris.
- 22 February 2007 address to the Winter Session of the OSCE Parliamentary Assembly’s General Committee on Democracy, Human Rights and Humanitarian Questions
- 28 February 2007 seminar at the European Parliament (EP) in Brussels, entitled ‘Freedom of Speech and the Audiovisual Media Services Directive: Conflicts and Solutions.
- 15-16 March 2007: seminar on media ethics in Armenia, organized by the Yerevan Press Club and the OSCE Office in Yerevan.
- 20 March 2007: seminar on media self-regulation in Astana.
- 21 March 2007 30th anniversary of Charter '77 Prague
- 19-22 April 2007 Eurasia Media Forum in Almaty, Kazakhstan, a
- 2 May 2007 Computers, Freedom and Privacy Conference in Montréal, Canada
- 2 May 2007: European representations of the newspaper publishers (ENPA) and magazine publishers (FAEP) Media Lounge Event, EU Parliament, Brussels
- 3 May 2007 Presentation of access to information report in Brussels.
- 23 May 2007 open consultations within the UN-led preparation of the 2007 Internet Governance Forum (IGF) in Geneva, Switzerland; position paper by the ‘Dynamic Coalition on Freedom of the Media and Freedom of Expression Online’.

- 26-28 April 2007 international conference organised by the Organization of Islamic Conference in Baku, Azerbaijan, on the 'Role of the Media in the Development of Tolerance and Mutual Understanding'.
- 26-27 April 2007 conference dedicated to the role of media in conflict prevention, hosted by Deutsche Welle in Bonn, Germany.
- 2 May 2007 event on the new EU Audiovisual Media Services Directive and the situation of press freedom in the EU and the OSCE region at the European Parliament, Brussels, organized by the European Federation of Magazine Publishers
- 3 May 2007 debate organized by UNESCO-UK, on the topic of the state of world media freedom, London
- 12-15 May 2007 56th General Assembly of the International Press Institute in Istanbul, Turkey.
- 27-30 May 2007 keynote speech at the Congress of the International Federation of Journalists in Moscow, Russia.
- 7-8 June 2007 OSCE Conference on Combating Discrimination and Promoting Mutual Respect and Understanding in Bucharest, Romania.
- 8-9 June 2007 international workshop, organized by the Budapest Centre for Independent Journalism in Hungary, on the topic of patterns and models of media self-regulation in Europe.
- 13-14 June 2007 125th anniversary of the Hambacher Fest in Germany.
- 14 June 2007 roundtable of Samizdat 'Forschungstelle Osteuropa' at the University of Bremen.
- 29-30 June conference "On Media Monitoring – The Media and their Contribution to Democracy" at the Swiss Centre for Studies on the Global Information Society in Zurich.
- 22 August 2007 public discussions held at the Prime Minister's Office in Budapest, concerning the on-going reform of the Hungarian secrecy law
- 3 September 2007 Internet Governance Forum Open Consultations in Geneva for the upcoming IGF

- 13-14 September 2007 conference on “Ethics and human rights in information society”, jointly organised by Council of Europe and UNESCO in Strasbourg
- 13-14 September 2007 “European Journalists Association-The Communication Network” annual conference in Bucharest.
- 14-15 September 2007 opening conference to launch an international journalism school in Yaremche in West Ukraine.
- 20-21 September 2007 Annual Meeting of the Alliance of International Press Councils in Europe, held in Edinburgh.
- 24 September opening speech at the Human Dimension Implementation Meeting (HDIM) in Warsaw.
- 1-2 October 2007 regional conference jointly organised by the Council of Europe and the OSCE Spillover Monitor Mission to Skopje entitled “Converging Media-Convergent Regulators?” in Skopje
- 9-10 October 2007 Cordoba OSCE Chairmanship Conference on Intolerance and discrimination against Muslims.
- 11-12 October 2007 The Fourth South Caucasus Media Conference in Tbilisi, Georgia
- 1-2 November 2007 The Ninth Central Asia Media Conference in Dushanbe, Kyrgyzstan
- 7-9 November 2007 Munich Media Days 2007, focusing on regulatory issues of the Internet.
- 9 November 2007 speech at the roundtable discussion on freedom of expression and racism in Dublin, organized by Ms. Anastasia Crickley, Chairperson of the European Union Fundamental Rights Agency, and Personal Representative of the Chairman-in-Office
- 10 November 2007 Congress of the Association of European Journalists in Dublin
- 12-15 November 2007 2nd UN Internet Governance Forum (IGF) in Rio de Janeiro
- 14 November 2007, international conference on ‘Access to Information, Government and Media relations’ in Baku.

- 17 November 2007, Liberal Thinkers' Conference on 'The Future of Freedom' organized by the Friedrich-Naumann-Foundation in Hamburg.
- 22-23 November 2007, annual 'Mediendisput' in Mainz.
- 28-29 November 2007, Frankfurt Days of Media Law in Frankfurt/Oder.
- 29-30 November 2007, OSCE Ministerial Council in Madrid.
- 3-4 December 2007, 'Regional Conference on media self-regulation for South-East Europe, organized in Skopje by the OSCE Mission in Kosovo.
- 18-19 December 2007, OSCE 2007 Mediterranean Seminar on Combating intolerance and discrimination and promoting mutual respect and understanding in Tel Aviv, Israel. A related NGO roundtable on December 17 was also covered.
- 19 December 2007, roundtable discussion on the 'Challenges of the implementation of the Law on Free Access to Public Information and the need to improve the Law' in Skopje.

Press Releases

OSCE media watchdog hails UN resolution on journalists' protection

VIENNA, 4 January 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, welcomed today the recent adoption of United Nations Resolution 1738 condemning attacks against journalists in conflict areas. The measure, unanimously adopted by the UN Security Council, comes amid numerous deadly attacks on media professionals, also in the OSCE area.

“At a time when journalists are facing increasing risks, this resolution is a necessary reminder to all governments of their obligations under international law to let media work freely. It is also a call to governments to fight against impunity too often enjoyed by those committing crimes against media professionals,” Haraszti said.

“The UN resolution reasserts the fundamental principles of press freedom and the necessity of preventing violence against journalists and bringing to justice those responsible for these crimes. These are the precise principles that all OSCE participating States have committed themselves to follow since the 1975 Helsinki Final Act. It is a milestone that they are reinvigorated on a global scale by the UN Security Council.”

But media can also be used to further inflame a volatile situation, and Resolution 1738 reaffirmed condemnation of all incitements to violence and the need to bring to justice those responsible for it.

UN Resolution 1738, introduced by France and Greece and adopted on 23 December 2006, condemns “deliberate attacks” against journalists and calls upon “all parties to put an end to such practices”. It also recalls the Council’s

demand that “journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflicts shall be considered civilians, to be respected and protected as such.”

<http://www.osce.org/item/22858.html>

OSCE Representative appalled by murder of Turkish journalist Hrant Dink

VIENNA, 19 January 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, expressed profound shock today over the murder of the well-known Turkish journalist Hrant Dink.

“I condemn the murder of Hrant Dink, one of Turkey’s outstanding commentators on Armenian-community related affairs,” said Haraszti. “This is a cowardly act resulting in tragic loss.”

According to reports, Hrant Dink, editor of the Armenian-Turkish language weekly Agos Magazine, was shot dead in front of the Istanbul offices of his newspaper.

In October 2005, Dink received a six-month suspended sentence on charges of “insult to the Turkish identity”, according to article 301 of the Penal Code.

“Those who commit violence against journalists cannot be allowed to do so with impunity. Therefore, I call upon the Turkish authorities to track down those responsible as quickly as possible. It is a basic OSCE principle that acts of violence and intimidation must be thoroughly investigated based on the rule of law. This is also a vital element contributing to a climate genuinely allowing for freedom of expression and discussion within a society,” said Miklos Haraszti.

The OSCE Representative has asked the Turkish authorities to remove all criminal provisions, allowing the prosecution of anyone who expresses opinions that differ from that of state institutions.

<http://www.osce.org/item/23011.html>

OSCE media freedom representative calls for abolishment of insult laws in Kazakhstan

VIENNA, 26 January 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has called for the removal of special insult laws in Kazakhstan which give elevated protection to State officials from verbal offence.

The plea follows a two-year suspended prison sentence handed down to Kazakh journalist Kazis Toguzbaev by an Almaty district court on January 22 for “Infringement on the honour and dignity of the President” under article 318 of the Criminal Code. The court judgement ruled that Toguzbaev, who published his articles on the website www.kub.kz, deliberately intended to insult the honour and dignity of the country’s President.

“For the sake of free public discussion, public officials, especially Heads of State, should exercise a greater degree of tolerance towards criticism, even if that criticism is expressed in a negative or harsh manner,” Haraszti said.

In a letter sent to Kazakh Foreign Minister Marat Tazhin, Haraszti stressed that special insult laws, which give elevated protection to public officials from verbal offence, are contrary to modern democratic practice.

The OSCE Representative expressed regret that defamation laws in Kazakhstan could be further strengthened by new amendments under consideration by the Parliament.

“A reform that adheres to international standards, including those of the Council of Europe, would mean moving the handling of defamation offences from the criminal into the civil law domain,” he said.

Toguzbaev’s case bears a close resemblance to the July 2006 case of another Kazakh journalist, Zhasaral Kuanyshalin, who received a similar sentence for the same offence.

<http://www.osce.org/item/23098.html>

OSCE press freedom representative calls on Albanian parliamentarians to prepare for digital era

VIENNA, 30 January 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, urged Albanian parliamentarians today to ensure that media regulation takes into account the abundance of channels that digital television transmission enables as they prepare licencing regulations.

“Albania has made progress in the field of media freedom but some challenges remain,” Haraszti told members of the Parliamentary Committee on Education and Media of the Assembly of Albania during a study visit to Vienna.

“Albania has shown a strong political will to shape media laws in accordance with international standards. Where regulation is necessary, I call on you to do it in the least intrusive manner. The results will not only benefit the press, but also the voters and politicians.”

Today was the last day of the two-day study visit, organized by Haraszti’s office and the OSCE Presence in Albania. The visit included discussions on media freedom, defamation, libel, access to information, media self-

regulation and the need to ensure sufficient separation between media and authorities.

Haraszti also called on the Albanian Assembly to consider proposed changes to anti-defamation provisions and amendments to the electronic media law as outlined in legal reviews commissioned by his office.

The OSCE, both through the Office of the Representative and the Presence in Albania, is ready to assist Albanian parliamentarians in developing media legislation.

<http://www.osce.org/item/23121.html>

OSCE voices concern over imprisonment of journalists in Azerbaijan

BAKU/VIENNA, 31 January 2007 -The OSCE Office in Baku and the Organization's Representative on Freedom of the Media expressed profound concern today over new instances of imprisonment of journalists in Azerbaijan.

On 30 January, the Narimanov District Court sentenced journalist Faramaz Novruzoqlu and Sardar Alibeyli, editor-in-chief of the *Nota Bene* newspaper, to two and one and a half years respectively, for libelling the Minister of Internal Affairs and the Chairman of the State Committee on Diaspora issues.

"I am astonished that a custodial sentence of two years has been imposed in this case and deeply concerned that the welcome appeal by the President to limit the use of the libel law against journalists has apparently gone unheeded," said Robin Seaward, Acting Head of the OSCE Office in Baku.

"Such a severe response will do nothing to enhance the professionalism of journalists, but will surely serve to promote the canker of self-censorship."

Miklos Haraszti, the OSCE Representative on Freedom of the Media, added:

“I am sad to hear the news of the continuing criminalization of journalists’ work in Azerbaijan. Never has criminal disciplining of journalists resulted in higher professionalism, but it always stifles the freedom of debate in society. Besides, this practice is also against international standards.”

The OSCE Office in Baku also urged authorities to quickly address legislative reform and to use as a basis Azerbaijan’s first defamation law, prepared in association with the Baku Office by the local media NGO Yeni Nesil (New Generation).

“Unless there are substantial legislative changes that transfer libel and insult into the civil law domain, journalists will continue to be threatened with prison sentences. This will prevent them from reporting critically on matters of public concern,” said Robin Seaward.

The OSCE supported legal initiative suggests transferring the issue of defamation into the civil law and establishing compensations which are proportional to the offence and relate properly to the financial status of citizens and media.

<http://www.osce.org/item/23140.html>

OSCE Representative on Freedom of the Media to review media situation in Bosnia

SARAJEVO, 5 February 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, agreed to provide an independent assessment of the media situation in the country at a meeting with Christian Schwarz-Schilling, the High Representative and EU Special Representative, today.

Mr. Haraszti is on a three-day visit to Bosnia and Herzegovina between 5 and 7 February 2007.

The HR-EUSR and OSCE Representative on Freedom of the Media expressed their satisfaction over the fact that the Government of Republika Srpska appeared to have reversed its earlier decision to boycott BHTV1, the state-level public broadcaster.

“Authorities in a democracy should never ignore the rights of the media and prevent them from attending press conferences,” Mr. Haraszti said.

“Freedom of the media is critical to the development of a sustainable democracy,” said Mr. Schwarz-Schilling. “The production of an assessment report focusing on TV, will help improve the climate in which this country’s media operates at a critical juncture when the international community is preparing to change the nature of its engagement.”

Since 1998 the OHR and the OSCE have worked together on media reform; on freedom of access to information; decriminalisation of the country libel legislation; and on regulation of the media through the Communications Regulatory Agency and the Press Council.

<http://www.osce.org/item/23191.html>

Respect for media autonomy vital to any democratic society, says OSCE Representative during visit to Sarajevo

SARAJEVO, 7 February 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that Bosnia and Herzegovina (BiH) had an advanced legal regime governing freedom of the media, but a strict governmental adherence to media autonomy was needed to make the system work.

“The current Public Broadcasting System law in Bosnia and Herzegovina provides a mechanism to correct possible professional mistakes of a public broadcaster,” said Haraszti at the end of a three-day visit to the country, during which he assessed the media situation in connection with the recent Republic of Srpska (RS) Government boycott of the public broadcaster BHT-1.

“But Government officials also need to use the legal complaints mechanism – which also helps to promote journalistic standards – to settle their grievances, and not send a message of arbitrary tampering with individual parts of the media system.”

The OSCE Representative visited Sarajevo and Banja Luka, and met with Christian Schwarz-Schilling, the High Representative and EU Special Representative in BiH, Nikola Spiric, Chairman of the BiH Council of Ministers, Milorad Dodik, RS Prime Minister, Igor Radojicic, President of RS National Assembly, members of the Communications Regulatory Agency, the Press Council, the Association of Electronic Media, the Association of BiH Journalists and the Association of Young Journalists in RS, as well as Mehmed Agovic, the new BHRT Director General, and Zeljko Kopanja, Editor-in-Chief of *Nezavisne Novine*.

“I am glad that all the senior government officials we met with were convinced that what happened was an isolated incident, one that would not crystallize into a governmental form of behavior in the future,” said Haraszti.

He added that denying access to a public broadcaster, even for a moment, comprised the first step towards censorship. It represented a very precarious moment in the edifice of media freedom.

“A public broadcaster should not be exposed to any sort of political pressure and limitation to media freedom,” added Haraszti. “It has to fulfill its role,

vital in a democratic society, to inform all citizens regardless of their social, political or other affiliations, in a timely and impartial manner.”

The visit was made at the invitation of Dr. Schwarz-Schilling and Ambassador Douglas Davidson, the Head of the OSCE Mission, and followed a dispute which culminated when BHT-1 journalists were denied access to a press conference by RS President Milan Jelic on 17 January.

<http://www.osce.org/item/23211.html>

OSCE Centre promotes public discussion on freedom of expression

ASTANA, 5 March 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, encouraged Kazakh authorities today to abandon plans to require licenses for all printing presses.

Existing and draft laws concerning freedom of expression and the publishing business in Kazakhstan were discussed today at a meeting organized by the OSCE Centre in Almaty and Kazakhstan’s Association of Newspaper Publishers.

The international media organization, “Article 19”, presented a legal review of the draft Law on Publishing, expressing concern that the proposed licensing scheme for all printing presses could limit freedom of expression.

“License-free printing presses are the prerequisite for a free media landscape. Imposing licences on printing houses is contrary to international standards and is the same as imposing a licence on the use of ink and paper,” said Haraszti, addressing the participants of the meeting from Vienna.

“I hope that today’s discussions will help clarify the role of State regulation of the media and that, in light of these discussions, the responsible authorities will decide to abandon these draft provisions.”

Publishers that participated in the discussion pointed to problems with newspapers distribution in the regions, and expressed hope for wider State support of the publishing business, including more favourable tax treatment and less regulations.

The meeting was part of the Centre’s work to help Kazakhstan develop legislation in line with international standards.

<http://www.osce.org/item/23501.html>

Miklos Haraszti appointed OSCE Representative on Freedom of the Media for second term

VIENNA, 8 March 2007 – Miklos Haraszti was appointed OSCE Representative on Freedom of the Media for a second three-year term today.

Haraszti, a Hungarian writer and former dissident, was born in 1945. He studied at Budapest University. In 1976 he was one of the founders of the Hungarian Democratic Opposition Movement, and in the 1980s edited the underground periodical *Beszelo*. In the early 1990s he became a member of the Hungarian Parliament. He is the author of several books.

The task of the Representative on Freedom of the Media is to observe relevant media developments in the 56 OSCE participating States, advocate and promote full compliance with OSCE principles and commitments in respect of freedom of expression and free media. He routinely consults with the Chairman-in-Office and reports on a regular basis to the Permanent Council, recommending further action where appropriate.

The Representative on Freedom of the Media is appointed in accordance with OSCE procedures by the Ministerial Council upon the recommendation of the Chairman-in-Office after consultation with the participating States.

The first OSCE Representative on Freedom of the Media, Freimut Duve of Germany, held the position from January 1998 until December 2003.

<http://www.osce.org/item/23545.html>

OSCE Representative calls for release of Uzbek journalist

VIENNA, 13 March 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has called for the release of the detained Uzbek journalist and human rights activist, Umida Niyazova.

“All journalists, including those investigating disturbances or conflict, should be free to collect and store information for publication,” wrote Miklos Haraszti in a letter to Uzbek Foreign Minister Vladimir Norov.

He added that by interfering in the work of the journalists, authorities prevent a debate on matters of public interest.

Ms Niyazova, 31, was detained by police in Andijan on 22 January. Criminal charges have been brought against her for crossing the border between Kyrgyzstan and Uzbekistan and for “collecting and distributing information that threatens public security”. The maximum penalty for these charges is ten years imprisonment.

The OSCE Representative has asked the Uzbek authorities to discontinue the criminal case against Ms Umida Niyazova, the mother of a two-year old child, and to facilitate her timely release from pre-trial detention.

<http://www.osce.org/item/23619.html>

OSCE promotes media self-regulation in Kazakhstan

ASTANA, 20 March 2007 – Raising awareness in Kazakhstan on the benefits of media self-regulation was the aim of an OSCE-organized roundtable discussion in Astana today.

It brought together local journalists, media experts and government representatives. They underlined the need for journalists to abide by professional ethical guidelines. Media experts from Russia and Bulgaria spoke about the challenges of developing self-regulatory bodies in the new democracies, focusing on the examples of their countries.

In a letter to participants, Miklos Haraszti, the OSCE Representative on Freedom of the Media, wrote: “Developing media self-regulation will largely contribute to the improvement of the media situation in Kazakhstan. The acknowledgement by media professionals of their public responsibilities will help maintain editorial freedom and stimulate the trust in the media. Instruments of media self-regulation are very well suited to increase media professionalism and could substitute State interference with the work of the media including in cases of defamation.”

Ermukhamet Yertysbaev, the Minister of Culture and Information of Kazakhstan, said: “During the years of independence of Kazakhstan, the number of media outlets and non-governmental organizations working in the sphere of information has constantly increased. This could be a basis for development of the self-regulation. Today's Kazakhstan aims to develop a media community and we stand ready to be partners in this process.”

As a result of the discussion, participants offered recommendations on ways to develop media self-regulation in Kazakhstan.

The event was organized by the OSCE Centre in Almaty, the Office of the Representative on Freedom of the Media and the Ministry of Culture and Information of Kazakhstan. It was part of broader campaign by the OSCE Representative to promote of the mechanisms of media self-regulation in the OSCE Participating States.

<http://www.osce.org/item/23656.html>

OSCE Media Freedom Representative welcomes French acquittal in cartoons row

VIENNA, 22 March 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said he welcomes today's acquittal of the French satirical weekly *Charlie Hebdo* in a trial initiated in 2006 by Muslim institutions for publishing three cartoons depicting the Prophet Mohammed.

"I am glad both that the plaintiffs used the legal system when seeking remedy for their hurt sentiments, and that the court decision solidified France's freedom of speech," Haraszti said.

The court found that the cartoons published by *Charlie Hebdo* were covered by freedom of expression laws and did not constitute an attack on Islam.

The French Freedom of the Press Law, created in 1881, foresees sentences of up to six months in jail and a fine of 22,500 euros for "offending a group of persons on the basis of their religion".

Haraszti said the trial showed that cases like this belong in civil courts.

"I do not see any justification for treating offences to religious sentiments as criminal acts, but advocate dealing with them in the civil-law domain," he

said. “Only actual incitement to violent ethnic or religious hatred should be criminalized.”

This was the second time that the cartoons initially published in the Danish newspaper *Jyllands-Posten* made it to courts in Europe. The Danish state prosecutor last year dismissed a similar claim against the editors of *Jyllands-Posten*.

“In a world of dissolving boundaries, it is legitimate to expect that the media be culturally sensitive. Self-regulation by the media is the right way to foster professionalism and global responsibility,” Haraszti added.

<http://www.osce.org/item/23763.html>

OSCE Representative urges Bulgaria to prosecute attackers of journalists, warns against changes to law on information

VIENNA, 23 March 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, voiced concern today over the assault on journalists of *24 Hours* and *168 Hours* newspapers by parliamentarians of the Ataka political party.

He also warned the authorities against restrictive draft amendments to the country’s progressive information legislation.

“The OSCE commitment to provide safe working environment for journalists requires that those who intimidate and insult media workers are brought to justice regardless of their public functions,” wrote Haraszti in a letter addressed, among other officials, to the Speaker of the Bulgarian Parliament and the Prosecutor General.

“I find it worrisome that the leaders of the Ataka party who entered the premises of the two newspapers and intimidated journalists are treated as mere witnesses and not as the accused.”

The OSCE Representative also criticized the restrictive draft amendments to the Access to Public Information Act introduced by members of three different parliamentary groups on 28 February.

“The proposed amendments would restrict society’s right to access information, endangering ten years of efforts by the civil society and the Government, aimed to strengthen freedom of information in Bulgaria,” said Haraszti.

The motion would oblige requesters to prove their legal interest in the information, increase the allowed time frame of response, and also raise the fees for such requests.

Haraszti said he was confident that the well-established media community and the Parliament of Bulgaria would reject the draft.

<http://www.osce.org/item/23778.html>

OSCE press freedom watchdog hails Kyrgyzstan for decriminalizing libel and allowing public broadcasting

VIENNA, 27 March 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today commended the Kyrgyz Parliament’s decision to abolish criminal libel and insult laws as well as President Kurmanbek Bakiyev’s “green light” for public service broadcasting.

“I view the decriminalisation of defamation in Kyrgyzstan as a sign of the country’s commitment to freedom of the media. It will allow journalists to

report on issues of public interest and criticize public officials without fear of prosecution and imprisonment for expressing an opinion,” Haraszti said.

The Kyrgyz Parliament approved the removal of Articles on libel and insult as part of amendments to the Criminal Code. After all the amendments have been discussed and adopted, they will be forwarded to the President for his approval.

In another positive move, President Bakiyev on 25 March withdrew an objection to the draft law “On setting up public television”. Last year, he had rejected a similar proposal that would transform the National Television and Radio Corporation into a public service broadcaster.

“The new draft law opens up the possibility for truly independent broadcasting,” Haraszti said. “Both decriminalisation of libel and the establishment of public broadcasting will be first of a kind in Central Asia. I hope there will be no delay in passing these laws.”

Both reforms have long been recommended by the OSCE Representative on Freedom of the Media.

<http://www.osce.org/item/23819.html>

Boycott of Bosnia-Herzegovina public broadcaster breaches media freedom principles, says OSCE report

VIENNA, 29 March 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, presented a report today on the state of public broadcasting in Bosnia and Herzegovina (BiH).

The report was prepared as a result of Haraszti’s visit to Sarajevo and Banja Luka from 5 to 7 February. The visit was in connection with the decision

of the Republika Srpska Government to boycott the state public television network, BHT1, by forbidding its officials from giving any statements to journalists and subsequently denying them access to a governmental press conference.

“Because of these specific incidents, and because of the role played by state-owned broadcasters in the 1990’s in fuelling the rush to war in the region, I have made the public broadcasting system in BiH the focus of the report, together with the responsibilities of the authorities with regard to public broadcasting,” said Miklos Haraszti, addressing the OSCE Permanent Council, the Organization’s decision-making body.

Although the report rates the overall situation of media freedom in the country as “commendable”, it calls upon the authorities to complete the public broadcasting system reform in order to reunify the three public broadcasters in BiH.

“Under no circumstances should a public broadcaster whose mission is to inform all citizens regardless of their social, political or other affiliations be the object of a boycott by a governmental body,” added Haraszti.

The report offers practical recommendations on how to improve freedom of the media in Bosnia and Herzegovina in general and public service broadcasting in particular.

The full report is available on this page under “Documents”.

<http://www.osce.org/item/23824.html>

OSCE media watchdog presents report on problems of media registration in OSCE area

VIENNA, 30 March 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, has presented a special report on media registration.

The report, *Registration of the Print Media in the OSCE area: Observations and Recommendations*, was delivered to the Permanent Council, the OSCE's main decision-making body, on Thursday.

“The registration of the print media should be a simple notification procedure, whereby a private media outlet informs the authorities of its existence,” said Haraszi. “Any procedure that grants the authorities discretionary powers over media start-ups, such as a permissive registration procedure, should be abolished.”

The report provides examples of best practices from across the OSCE region. It also shows how registration systems are used in some countries as a mechanism of control over the independent media.

The full report is available in English and Russian at:

https://www.osce.org/documents/rfm/2007/03/23735_en.pdf

https://www.osce.org/documents/rfm/2007/03/23735_ru.pdf

<http://www.osce.org/item/23855.html>

Croatian draft secrecy law needlessly restrictive, says OSCE media freedom representative

VIENNA, 13 April 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, said today that the government-proposed draft law on Data Secrecy in Croatia unnecessarily restricts access to information.

Haraszti presented his comments to the Croatian authorities in a review of the draft law commissioned by his Office.

“The law would open the way to excessive secrecy rather than protect legitimately classified information,” said Haraszti. “But it could be revised to guarantee a modern balance of protection and access.”

The review established that the current draft provides for overly broad protection for information, allows for a too long period of classification, does not recognise overriding public interest, and offers little oversight.

“I am hopeful that the stakeholders in Croatia will consider the review’s comments. This way the law could be part of the trend of improvement in governing secrecy in the OSCE area,” added Haraszti.

The Parliament in Zagreb will consider the draft law in the coming weeks.

<http://www.osce.org/item/24025.html>

OSCE condemns bomb attack on Serbian journalist

BELGRADE, 16 April 2007 – The Head of the OSCE Mission to Serbia, Ambassador Hans Ola Urstad, today condemned this weekend’s bomb attack on the Serbian journalist Dejan Anastasijevic, and called for quick action in bringing the perpetrator(s) to justice.

“The OSCE Mission to Serbia denounces this attack on Mr. Anastasijevic and on freedom of expression in Serbia,” said Ambassador Urstad. “Such an act hurts all Serbians. We support President Tadic, Prime Minister Kostunica and many others in urging the responsible authorities to identify and bring to justice the perpetrator(s).”

“I hope that those responsible for the threats against journalists will be brought to justice,” said the OSCE Representative on Freedom of the Media Miklos Haraszti. “It is key for any democracy that the police and the judiciary remain responsive to such manifestations of aggression against journalists and other media workers.”

“A free and independent media is a fundamental feature of democracy,” Ambassador Urstad added. “Threatening the media with assassination attempts is a despicable attack on democracy in Serbia. Society must guarantee that journalists can conduct their business of providing information and opinions to the public,” the Head of the OSCE Mission stressed.

In a phone call to Mr. Anastasijevic, Ambassador Urstad expressed his concern and emphasized his hope that Serbian society would show zero tolerance to such criminal behaviour.

According to the police report, an unknown perpetrator(s) placed two hand grenades by the bedroom window of Mr. Anastasijevic’s apartment, one of which exploded around 2.45 a.m. on 14 April. The journalist and his wife were sleeping in the bedroom. No one was injured. Mr. Anastasijevic is a leading Serbian journalist, who specializes in covering organized crime and war crimes.

“We recall that the murderers of journalists Slavko Curuvija and Milan Pantic, killed in 1999 and 2001 respectively, have not been found yet, and we place great importance on solving these cases without further delay,” said Ambassador Urstad.

<http://www.osce.org/item/24044.html>

OSCE Media Freedom Representative welcomes plans for press freedom improvements in Kazakhstan

ALMATY, 21 April 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today welcomed Kazakhstan's Parliament's recent decision to add to its agenda a new draft media law written by four journalists' organizations.

"The initiative is an important step in the right direction, which provides hope for a more liberalized media scene in Kazakhstan," Haraszti said.

Speaking at the Eurasia Media Forum, a yearly gathering of opinion makers from around the world, he called for de-monopolization of broadcasting and decriminalization of the handling of journalistic offences.

"The new Kazakh draft law would be the second in Central Asia, after Kyrgyzstan's recent initiative, to leave the handling of journalists' mistakes entirely for the civil courts," he said. "It would also simplify the current registration system for the print press, even if not fully acknowledging the outlets as civil businesses in no need of a governmental approval."

Haraszti also welcomed a move by Kazakhstan's administration to revoke a recent draft law that proposed licensing for printers.

"This move by Kazakhstan's administration, and the eventual passing of the new media law by Parliament, would put right most of the damage that last year's restrictive amendments did to media regulation," he said.

But the job is not yet done, he added.

"I urge the authorities to continue on the path of these initiatives and vigorously pursue democratization of Kazakhstan's media rules," he said.

<http://www.osce.org/item/24094.html>

OSCE media freedom representative condemns sentencing of journalist, says Azerbaijan media under serious threat

VIENNA, 23 April 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, voiced dismay today over the prison sentence of Eynulla Fatullayev, the editor of the independent Russian-language weekly *Realny Azerbaijan* and the Azeri-language daily *Gundalik Azarbaycan*.

“Media freedom in Azerbaijan is under growing pressure from the authorities. With Fatullayev, the number of journalists in prison in the country rises to five. Unfortunately, all cases have been based on arbitrary, politically motivated charges, and handled in disregard of the principles of free speech,” said the Representative.

The Yasamal District Court sentenced Fatullayev to two and a half years’ imprisonment for “libeling and damaging the reputation of inhabitants of the village of Khojali and of the Army of Azerbaijan” in a web forum comment two years ago. During the court hearings, Fatullayev insisted his name had been misused by an unknown author of the comment.

On 6 April, in a civil procedure, Fatullayev was ordered to pay a high fine for the same alleged offence. Additionally, one of his newspapers was also fined for this, although it never published the remarks.

The Representative’s Office continues to follow the fate of the other imprisoned journalists, Faramaz Novruzoglu, Sakit Zahidov, Rafiq Tagi and Samir Sedagetoglu, who were convicted for similarly long prison terms, or have been kept indefinitely in pre-trial detention.

“In all these trials, criminal provisions were used in order to suppress discussion of political, historical or religious issues in the press.” Haraszti said.

In what Haraszti described as an alarming development, Uzeyir Jafarov, a co-worker at Realny Azerbaijan, was brutally attacked on 20 April, shortly after the imprisonment of Fatullayev. Jafarov is currently in hospital and remains in serious condition.

Haraszti will be visiting Azerbaijan this week to take part in an event of the Organization of the Islamic Conference Convention on the role of media in developing tolerance and mutual understanding.

The OSCE representative added that he hoped to be able to discuss media freedom issues with Azerbaijani officials.

<http://www.osce.org/item/24113.html>

OSCE holds seminar on libel and defamation for Moldovan judges

CHISINAU, 23 April 2007 – Twenty Moldovan judges are taking part in an OSCE-organized seminar on libel and defamation cases that began in Chisinau today.

The two-day event brought together judges from the Chisinau district courts and courts of appeal which handle most of the cases on defamation. It was organized by the OSCE Mission to Moldova, the Office of the OSCE Representative on Freedom of the Media in co-operation with the Superior Council of Magistracy and the National Institute of Justice.

“Moldova is among the countries which have decriminalized libel, defamation and insult, in line with European standards,” said Miklos Haraszti, the OSCE Representative on Freedom of the Media, in a message sent to participants.

“This seminar could help civil courts find the right balance between protecting free speech and human dignity.”

Ambassador Louis O’Neill, the Head of the OSCE Mission, who spoke at the opening, added: “The goal of the seminar is to offer judges a better understanding of how to interpret the libel stipulations of the Moldovan Civil Code in concordance with the provisions of the European Convention on Human Rights.”

International and local experts will share their experience from defamation and freedom of expression cases brought to the European Court for Human Rights.

Moldova decriminalized libel in 2005. It amended Article 16 of the country’s Civil Code on defamation and introduced a series of criteria to be taken into account when establishing the amount of financial compensation for moral damages. The responsibility for granting financial compensation for moral damages and of establishing the appropriate amount remains with the judges.

<http://www.osce.org/item/24098.html>

OSCE Representative to present 56-nation survey in Brussels on journalists’ access to information and protection of sources

VIENNA, 26 April 2007 – On the occasion of the World Press Freedom Day, the OSCE Representative on Freedom of the Media, Miklos Haraszti, will present the results of a survey on media access to information.

The survey of the 56 OSCE participating States, a first of its kind, reviews the legal structures which affect the ability of the media to seek and receive information on the activities of the governments in three domains: public access to information, state secrets and protection of journalists' sources.

Journalists are invited to attend the presentation by Miklos Haraszti and Ambassador Bertrand de Crombrughe, the Head of the Permanent Mission of Belgium to the OSCE, at 10.00, on Wednesday, 2 May, at the International Press Centre, Residence Palace (Passage Room), Wetstraat 155, Brussels.

<http://www.osce.org/item/24157.html>

OSCE Representative asks Azerbaijani President to halt persecution of journalists, greets renewed license for embattled broadcaster

BAKU, 27 April 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, asked President Ilham Aliyev today to issue a moratorium on criminal prosecution of journalists and follow up with a decriminalization reform.

“I recalled in detail the growing persecution of journalists, with five imprisoned now and a dozen new cases still pending,” said Miklos Haraszti after a meeting with President Aliyev in Baku.

“I thanked the President for his 2005 temporary moratorium call and his last year’s pardoning of two convicted journalists. But I also pointed out that Azerbaijan today is the country in the OSCE region with the highest number of journalists in prison, among them Eynulla Fatullayev, the editor of the most read newspaper.”

The OSCE Representative suggested that in order for Azerbaijan to comply with OSCE commitments and Council of Europe standards it needs to

introduce a legal moratorium as soon as possible and prepare a de-criminalization reform.

Ambassador Jose-Luis Herrero, the Head of the OSCE Office in Baku, also took part in the meeting with the President.

Haraszi also greeted today's decision by the National TV and Radio Council to grant a licence for six more years to the country's most popular private broadcaster ANS TV and Radio. The decision follows the Representative's meeting on 25 April with the Chairman of the Council, Nushiravan Mahharamli.

"Along with the OSCE Office in Baku, which has also expressed its concern on several occasions over the fate of ANS, I see this decision as providing more choice for the audience and therefore benefiting pluralism in the media," said Haraszi.

Miklos Haraszi also took part in a conference in Baku on the role of the media in developing tolerance and mutual understanding, hosted by the Organization of the Islamic Conference.

<http://www.osce.org/item/24221.html>

Landmark OSCE survey examines barriers to journalists' investigative rights

BRUSSELS, 2 May 2007 – Societies have more access to information than ever before, but weak laws and prosecution against the media diminish journalists' investigative abilities, said the OSCE Representative on Freedom of the Media Miklos Haraszi, presenting the results of a survey on media access to information in the 56 OSCE participating States in Brussels today.

The event was held to mark World Press Freedom Day, which is commemorated on 3 May.

“In the past ten years, most OSCE nations have passed good basic laws to balance the rights of the public to know with government classification needs. However, in most countries this balance is upset when it comes to journalists’ daily struggle with secrecy,” said Haraszti.

He noted that freedom of information laws were in vigour in 80 per cent of the OSCE participating States, including ‘old democracies’ such as the UK, Switzerland, and Germany, and ‘new democracies’ such as Armenia, Kyrgyzstan and Azerbaijan.

“I see this as a contribution to the Helsinki principle of the free flow of information. But equally important for free press is what is classified as a secret. The survey reveals that most governments define State secrets too broadly and thereby hide too much information that is important for society,” Haraszti added.

Speaking about criminal codes, he said that in at least 29 OSCE participating States the criminalisation of “breach of secrecy” is not limited to those who have a duty to protect the secrets but mechanically extends to each and every citizen who played a role in passing on or publishing classified data. The survey lists dozens of cases when journalists have been prosecuted for handling confidential data.

“It is unacceptable that in fighting leaks the prosecutors punish journalists for receiving leaks. OSCE participating States must limit prosecutions only to officials and introduce a mandatory “public interest test” and oblige the courts to consider the public-interest value when it comes to publications of secrets,” said Haraszti.

Almost all OSCE nations recognize in law the importance of the protection of journalists' confidential sources but only less than a half offer adequate protection from coercion by the judiciary to disclose sources. Prosecutorial methods include "contempt of court" charges in the United States, which result in imprisonment, and raids on editorial premises and wiretapping journalists' communications in Europe.

Ambassador Bertrand de Crombrughe, who represents Belgium at the OSCE, added: "The 2006 Belgian OSCE Chairmanship supported this key project to help media workers obtain official information without impediment or fear of prosecution. Belgium made media a priority of its chairmanship in order to raise awareness of the role free media play in a democratic society. "

The survey is based on information provided by governments of the OSCE participating States, and by responses from OSCE field operations and media NGOs.

The survey results were analyzed by Privacy International director David Banisar, and the published summary reflects on these findings.

The summary of preliminary results of the survey can be found at:

http://www.osce.org/documents/rfm/2007/05/24250_en.pdf

The survey in full, with all country reports, is available at:

http://www.osce.org/documents/rfm/2007/05/24251_en.pdf

<http://www.osce.org/item/24260.html>

Harsh sentence of Uzbek journalist violates commitments, says OSCE media freedom representative

VIENNA, 2 May 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media condemned today the 7-year prison sentence

handed down to Umida Niyazova, an Uzbek investigative journalist collecting materials about the Andijan tragedy in 2005, as cruel and violating OSCE commitments.

“It is especially unfortunate that a journalist was punished for just doing her job on the eve of UNESCO’s World Press Freedom Day,” said Haraszti.

On 1 May, the Sergeli District Court in Tashkent sentenced Umida Niyazova to seven years in prison for “illegal border crossing, carrying contraband, and fostering unrest by spreading material threatening to society” (articles 223, 246 and 244 of the Uzbek criminal code).

Niyazova was on a trip collecting materials about the violence that erupted in the Uzbek city of Andijan, when the police clashed with demonstrators, leaving 180 dead according to official sources and hundreds according to non-governmental observers. She was arrested when entering Uzbekistan from Kyrgyzstan.

“Niyazova is a young mother of a two-year old son, and this makes the sentence especially cruel for someone who did nothing but exercised her right to inform society,” Haraszti said. “All the OSCE participating States have committed themselves to grant and to sustain that right. It is not journalists who should be restricted if the news is bad,” said the Representative.

“I hope the case can be dismissed in appeal, and freedom of reporting even on controversial issues restored,” Haraszti added.

<http://www.osce.org/item/24276.html>

OSCE press freedom watchdog condemns prison sentences handed down to journalists in Azerbaijan for essay on religion

VIENNA, 7 May 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today he was deeply concerned about the harsh prison sentences handed down to two Azerbaijani journalists from the monthly newspaper *Senet*.

On 4 May, Rafiq Tagi, a *Senet* journalist, and Samir Sadagatoglu, the newspaper's editor, were sentenced to three and four years' imprisonment respectively, for "incitement to national, racial and religious hatred" allegedly contained in an article published in November 2006. The philosophical essay discussed European and Islamic values.

"This is a serious violation of Azerbaijan's OSCE commitments obliging it to guarantee a free flow of information and freedom of expression," said Haraszti. "I call on the authorities to free Sadagatoglu and Tagi."

Haraszti also called on the authorities to protect the two, noting that an Iranian ayatollah had issued a fatwa calling for the two to be killed. Domestic religious activists responded by starting an intimidation campaign against the journalists. Reportedly, they were allowed to shout death threats in the court room.

"The ruling goes against the way a democratic society should handle non-conformist but peaceful opinions, even if they may offend, shock or disturb," Haraszti said.

"The trial perverts the truth by treating peaceful philosophers as extremists. In fact, it is their imprisonment that encourages extremism by surrendering to opponents of freedom of discussion."

Haraszti warned that criminalization of journalists could unleash violence against media professionals.

“The Government may think it can preclude violence by heeding to demands to punish journalists. But this logic is misleading. We saw this in 2005, when journalist Elmar Husseyinov was killed after numerous indictments against him. The latest example was the brutal attack on reporter Uzeyir Jafarov, shortly after his editor, Eynulla Fatullayev, was sentenced to prison in April this year,” he said.

“While Tagi’s publication may have offended the religious feelings of some readers, it is inadmissible to treat such offences as criminal acts. Only actual incitement to violent ethnic or religious hatred should be criminalized. Cases like this should be dealt with in the civil law domain, if damage to actual persons occurred, or by self-regulatory media bodies, if professional ethics was violated.”

<http://www.osce.org/item/24336.html>

OSCE media freedom representative expresses shock after more Azerbaijani journalists jailed, calls on authorities to stop prosecutions for libel

VIENNA, 17 May 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today he was shocked to hear the news about the imprisonment of two more Azerbaijani journalists for libel.

The report came just days after another harsh sentence was handed down to Azerbaijani media professionals. On 16 May, the Yasamal District Court sentenced Rovshan Kebirli, the Editor-in-Chief of the opposition newspaper *Muxalifet* and correspondent Yashar Agazadeh to two and a half years

imprisonment each for libel and insult against Jalal Aliyev, the uncle of President Aliyev, and a Member of Parliament for the ruling party.

“Azerbaijan’s relentless persecution of journalists annihilates the security of journalism, a major OSCE commitment,” said Miklos Haraszti.

“In recent weeks, my office registered the cases of five journalists jailed for “defamation” or “incitement”. Their only “wrongdoing” was criticism of officials or questioning conventional wisdoms. This brings the total number of journalists imprisoned in Azerbaijan to seven. Several of them have been arrested in the courtroom right after the announcement of the first-instance verdict.”

The OSCE Representative pointed to the fact that Azerbaijan has become one of the most dangerous places for journalists in the OSCE region.

“As I indicated to President Aliyev during our recent meeting in Baku, the claim by his advisers that such “repressions” would help discipline journalists and result in a more ethical journalism is a tragic mistake. Only a combination of freedom of expression and media self-regulation may strengthen professionalism of the media,” added Haraszti.

“I regret to see that Azerbaijan has failed to move towards international standards, even despite the 2005 Presidential call to politicians for self-restraint. It seems that call was in vigour for only one year. I hope authorities will realise that the only way forward is to ban criminal defamation provisions.”

<http://www.osce.org/item/24503.html>

OSCE media freedom representative presents publications on ‘The Business of Media’

VIENNA, 22 May 2007 – The Office of Miklos Haraszti, the OSCE Representative on Freedom of the Media, presented two new publications today dedicated to “The Business of Media”.

The books cover the challenges of privatisation, starting-up, and commercial operation of media in the OSCE area. Topics include financial transparency and the competitive management of public television.

The books are available in Russian and English, and can be downloaded from:

<http://www.osce.org/fom/publications.html>

For hardcopies of the books, please contact the Office of the Representative.

‘The Business of Media. Central Asia Media Conference Bishkek 19 October 2006.’ Vienna: OSCE. ISBN 3-9501955-1-3.

‘The Business of Media. Third Caucasus Media Conference, Tbilisi 2 November 2006.’ Vienna: OSCE. ISBN 3-9501955-2-1.

<http://www.osce.org/item/24605.html>

Continuous harassment threatens existence of independent media in Azerbaijan, says OSCE Representative

VIENNA, 22 May 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, expressed concern today over the eviction of the country’s two main independent newspapers from their premises, and new procedures against their imprisoned editor, Eynulla Fatullayev.

On 20 May, the Ministry for Emergency Situations forcibly evacuated the staff of *Realniy Azerbaijan* and *Gundalik Azarbaycan* from their offices. The newspapers have not been printed since the eviction and it is unclear when their publication will resume.

“The eviction paralyses Azerbaijan’s largest and most popular newspapers, in a clear attempt to fully silence them. This is part of an ongoing campaign to do away with independent journalism,” said Haraszti.

He noted the evacuating authorities cited alleged danger from “structural deficiencies” in the 13-storey building, but had evicted no other tenants.

“I have also received worrying news that since the eviction the newspapers’ servers and archives are being searched by national security personnel. All this represents an openly oppressive stance, going beyond the previously seen discriminatory treatment of independent media,” Haraszti added.

Reportedly, the search warrants were based on a new criminal case against the papers’ founder and editor, Eynulla Fatullayev, already convicted last month for ‘defamation of a village and of the army’.

“I call on the authorities to stop persecuting the remaining free press in Azerbaijan and ensure that *Realniy Azerbaijan* and *Gundalik Azarbaycan* can resume their work,” said Haraszti.

Over the last months, the OSCE Representative has several times expressed his concern over the deteriorating state of freedom of the media in Azerbaijan, including during a visit to Baku where he met President Ilham Aliyev.

Seven Azerbaijani journalists are presently in jail, most of them after criminal procedures for libel.

<http://www.osce.org/item/24636.html>

OSCE Representative opens seminar in Minsk, voices concern over State control over media

MINSK, 4 June 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, opened a seminar for some 30 journalists and government press secretaries in Minsk today.

The two-day event, organized with the support of the OSCE Office in Minsk, aims to develop better relations between the State and media to increase the access of the Belarusian society to information held by government bodies.

“I hope this seminar is a sign that authorities are ready to start co-operation with the OSCE on media freedom issues,” said Haraszti.

During his stay in Minsk, Haraszti met government officials, including Deputy Foreign Minister, Valery Voronetsky, and Deputy Minister of Information, Alexander Slobodchuk. He also met editors of non-State newspapers and leaders of the Belarusian Association of Journalists.

During a meeting with the Chairman of Parliamentary Committee on Human Rights, Ethnic Relations and the Media, Yuri Kulakovski, Miklos Haraszti provided him with a review on the draft law on protecting information.

The Representative welcomed the invitation by authorities to the Belarusian Association of Journalists to comment on the draft law, and the fact that independent journalists were recently invited to a press conference by President Aleksandr Lukashenko.

“However, the actual situation of the independent media has not improved since my last visit in 2005. Rather, new restrictive media rules have been adopted,” Haraszti said.

“Independent media continues to work against hardships of administrative warnings, arbitrary registration regime, discriminatory distribution and subscription services, and politically guided printing and advertisement markets.”

Haraszti said he hoped his discussions with government officials would lead to legal improvements for the media.

<http://www.osce.org/item/24832.html>

OSCE media freedom watchdog presents report on journalists’ rights during political demonstrations

VIENNA, 21 June 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, issued a special report today on the problems faced by journalists when covering political demonstrations.

The paper, *Handling of the media during political demonstrations: Observations and Recommendations*, was presented during Haraszti’s regular report to the OSCE Permanent Council, the Organization’s regular decision-making body.

“Law-enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations,” said Miklos Haraszti.

“And journalists have a right to expect fair and restrained treatment by the police.”

The report and its recommendations were developed following an increase in the severity of the treatment of journalists by law-enforcers in some of the 56 OSCE participating States in recent months.

The Report is available in English and Russian on the OSCE website at:
http://www.osce.org/documents/rfm/2007/06/25176_en.pdf (English)

http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf (Russian)

<http://www.osce.org/item/25227.html>

OSCE media freedom watchdog condemns attack against Hungarian journalist

VIENNA, 26 June 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, denounced today an attack against Hungarian investigative journalist Iren Karman, and urged the Hungarian authorities to take prompt measures to prevent similar assaults against journalists.

On June 22, Karman was severely beaten by unknown assailants, and was taken to hospital with life-threatening injuries. She had reported on Hungarian oil deals that took place in the 1990's.

"I am pleased to see the high level of openness and courage that the Hungarian society has shown in response to the attack," said Haraszti. "By not allowing attacks against journalists to go unnoticed and unpunished, one of the major preconditions to prevent the intimidation of the media seems to be on the right track in Hungary."

He warned against treating terrorization of journalists as regular crime committed against individuals and called for steps to be taken as soon as threats emerge.

“By resolutely safeguarding the media from censorship by violence, in a world where anti-journalist crime is sadly prevalent, Hungary could defend the public’s right to an open debate in an exemplary way,” he said.

Haraszi also noted that Hungarian journalists were demanding that documents related to the oil deals be declassified and that Albert Takacs, Minister for Justice and Law Enforcement, had promised to review whether the documents should be released. Authorities had classified them for 85 years.

<http://www.osce.org/item/25308.html>

OSCE media representative urges Armenian Parliament to drop amendments practically abolishing Radio Liberty’s re-broadcasts

VIENNA, 28 June 2007 – Miklos Haraszi, the OSCE Representative on Freedom of the Media, criticized legal amendments that would ban Armenian-language foreign media programmes on public-service broadcast channels, and introduce heavy fees for those programmes on private channels.

“As Radio Free Europe/Radio Liberty is currently the only foreign media outlet using the Armenian Public Radio frequency, the adoption of the amendments would amount to a ban on their programmes in Armenia,” wrote Haraszi in his letter to the Chairman of the National Assembly Tigran Torosyan.

The Representative pointed out that Radio Free Europe/Radio Liberty is an alternative source of information in Armenia, providing a diversity of opinion that is especially needed during election periods.

Haraszi called upon the National Assembly not to adopt the restrictive amendments.

“The proposed changes to the Laws “On Television and Radio” and “On State Duties” are incompatible with OSCE commitments to safeguard pluralism and the free flow of information in the media,” Haraszti concluded.

<http://www.osce.org/item/25360.html>

Media freedom representative publishes report on Internet governance in OSCE region

VIENNA, 26 July 2007 – Implications of Internet regulation on media freedom in the OSCE region are the focus of a report presented by Miklós Haraszti, the Organization’s Representative on Freedom of the Media, in Vienna today.

The publication offers case studies from different parts of the OSCE region on how governments, civil society and the telecommunications industry can co-operate in their approaches to Internet governance.

“The Internet is an additional – and in some regions the only – source for media pluralism,” said Haraszti. “Internet governance is not only about technical standards or the Domain Name System. It also has commercial, cultural and social implications, concerning issues like the free flow of information, the fight against intolerance, and freedom of the online media.”

“Involving all of society’s actors is a difficult task and there is no ready-made approach suiting all OSCE countries. These case studies highlight good practices, but also show where there is room for improvement,” he added.

The United Nations has addressed the issue of Internet governance at World Summits on the Information Society (WSIS) in Geneva and Tunis, and has established a new Internet Governance Forum (IGF) in which the Office of the OSCE Representative on Freedom of the Media participates.

The publication, entitled 'Governing the Internet – Freedom and Regulation in the OSCE Region', is available from the Office of the OSCE Representative on Freedom of the Media and online at: www.osce.org/fom/publications.html

The publication has been financed by the Governments of France and Germany.

Bibliographical note:

Christian Moeller/Arnaud Amouroux (eds.) Governing the Internet – Freedom and Regulation in the OSCE Region. 2007. Vienna: OSCE Representative on Freedom of the Media. ISBN 3-9501955-4-8.

<http://www.osce.org/item/25756.html>

New radio licensing law in Greece restricts minority media, says OSCE media freedom watchdog

VIENNA, 27 July 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, expressed his concern today about a new Greek radio licensing law that endangers pluralism by putting a high threshold for minority, community or low-cost broadcasters.

“The law on ‘Concentration and Licensing of Media Enterprises and other Provisions’, passed by the Greek Parliament on 5 July and then signed into force by Greek President Karolos Papoulias, sets a number of unnecessarily rigid requirements for obtaining a radio broadcasting licence,” said Haraszti.

For music radio stations, the conditions to obtain a license include a minimum of 3 to 5 full-time staff members; for news channels with a bigger outreach the number of staff rises to 20, and a minimum deposit of between 30,000 and 100,000 euros are required respectively. Additionally, a licence

will only be granted to 24-hour broadcasters, and the main transmission language must be Greek.

“OSCE commitments regarding pluralism of views require that all communities have access to the flow information and can contribute to it. Every government has a responsibility to facilitate respect and inclusiveness,” said Haraszti.

<http://www.osce.org/item/25793.html>

OSCE media freedom representative asks Russian authorities to review extremism laws restricting free reporting

VIENNA, 27 July 2007 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, asked the Russian authorities today to re-examine the legal framework on extremism, especially the parts that touch upon the media’s right to report on controversial issues.

In a letter to Foreign Minister Sergei Lavrov, the OSCE Representative expressed concern regarding a series of amendments to the laws dealing with extremism, signed by President Vladimir Putin on 26 July.

The Representative criticised the lack of a clear definition of ‘extremism’. He pointed to the heterogeneous, wide array of offences that are termed as extremist, such as ‘public justification of terrorism’, ‘mass distribution of knowingly extremist materials’, ‘libellous accusations of extremism against public officials’, ‘provision of information services to extremists’, and ‘hooliganism’ with the motivation of hatred.

“Violent ‘hate crimes’ and actual incitement should be fought with full vigour of the law, but controversial words should be fought with more speech,” said Miklos Haraszti.

“The amendments open the way to an arbitrary curtailment of legitimate political debate and the free flow of information. They may result in convictions of journalists for committing professional mistakes or, what is worse, for reporting on issues of public importance in good faith.”

“While engaging in the necessary fight against terrorism, special care should be taken to preserve a free, pluralist and independent media. In the whole OSCE area, renewed efforts are needed to preserve citizens’ rights to free expression, the restriction of which is weakening the very values that extremists are targeting,” he added.

Haraszi also asked the Russian Government to do everything in its power to apply these laws in a way respectful of free speech, and to subject any legislation that restricts the information flow to a regular review process.

<http://www.osce.org/item/25791.html>

Poland’s continuing prosecution of journalists violates international standards, says OSCE media freedom watchdog

VIENNA, 6 August 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, has condemned the sentencing of *Gazeta Wyborcza* journalist Jacek Brzuszkiewicz, and urged Poland to decriminalize press offences.

“After this new prison sentence, Polish editors will have to think twice before publishing critical stories about officials,” wrote Haraszi in a letter to Polish Justice Minister Zbigniew Ziobro. He noted that this was not the first case of a journalist receiving a sentence based on defamation provisions.

“The reason is a continuing governmental lack of action to change the underlying inadequate libel and insult provisions of the Polish law.”

Brzuszkiewicz was convicted of criminal defamation against a judge, according to Article 212 (2) of the Polish Criminal Code, and sentenced to six months, the term suspended for three years, and to a heavy fine. The conviction was based on a series of articles that Brzuszkiewicz wrote years ago. Brzuszkiewicz is appealing against the verdict.

“The European Court of Human Rights has consistently rejected even suspended imprisonment for defamation as damaging the free discussion of public issues,” said the OSCE Representative. “Had any of these convictions already reached the Strasbourg court, Poland almost certainly would have been found at fault.”

Haraszi urged Poland to join those countries that already follow the jurisdiction of the European Court of Human Rights, saying: “It is high time for Poland to decriminalize speech offences to avoid embarrassing convictions of journalists for libel and insult in the future.”

<http://www.osce.org/item/25867.html>

Proceedings against journalists in Germany must stop, says OSCE Media Freedom Representative

VIENNA, 9 August 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, called on Germany to cease criminal proceedings against the 17 journalists who published allegedly classified information.

The documents are related to the work of the German parliamentary committee examining certain activities of the German intelligence services, and were published in leading national media outlets such as *Der Spiegel*, *Suddeutsche Zeitung*, *Die Zeit*, *Die Welt*, and *Stern*.

“The anti-media direction of the leak investigation is especially regrettable in light of the German Federal Constitutional Court’s recent decision in the so-called Cicero case,” wrote Haraszti in a letter to Brigitte Zypries, Germany’s Minister of Justice.

“The groundbreaking decision of the Court in this case created a federal shield for journalists when publishing classified information, which the current investigation neglects and even goes against.”

The OSCE Representative stressed that journalists cannot be prosecuted for publishing information of public interest. Furthermore, they should not be prosecuted for publishing classified information, unless the prosecution has a reasonable suspicion, supported by facts, that the journalists committed a crime in obtaining it.

“Initiating proceedings against the media merely in retaliation for their publishing, with the aim of deterring them from similar editorial decisions, is inadmissible in a society proud of its press freedoms,” added Haraszti.

“I call on the German authorities to stop prosecuting the journalists and ensure that media professionals can continue informing the public of important matters without intimidation,” he said.

<http://www.osce.org/item/25893.html>

Politkovskaya case requires a vigorous and independent investigation, says OSCE media freedom representative

VIENNA, 10 September 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, commended recent reports of progress in the cases of murdered journalists Anna Politkovskaya and Igor Domnikov, but

warned that violence against journalists can end only if those ultimately responsible are identified and prosecuted without political interference.

“The welcome announcement in the Politkovskaya case was unfortunately accompanied by unsubstantiated political allusions, and followed by news of procedural mistakes,” said Haraszti. “The ensuing uncertainty underlines the need for a more vigorous and more independent investigation.”

The Representative was referring to Chief Prosecutor Yuri Chayka’s statement on 27 August about ten arrests in the assassination of Anna Politkovskaya, the internationally recognized reporter for the Moscow newspaper *Novaya Gazeta* whose murder in October 2006 shook the Russian and international communities.

Haraszti also praised the 20 August verdict of a court in Kazan, convicting five members of a criminal gang for the murder in 2000 of Igor Domnikov, a journalist who also worked for *Novaya Gazeta*. The head of the criminal group and one member received life sentences, while the remaining three were sentenced to prison terms of up to 25 years.

“This encouraging conviction was the first since 2000 for the contracted murder of a journalist over his or her writing, but the prosecution failed to present the persons who ordered the killing,” he said.

Haraszti added: “After many cases involving the murders of journalists, partial progress in the investigations can not calm society’s worries for freedom of speech. Free scrutiny of public issues and uninhibited investigative journalism can only be secured by politically independent and professionally vigorous prosecutorial work.”

<http://www.osce.org/item/26149.html>

OSCE trains state officials and journalists to improve public access to information in Armenia

YEREVAN, 19 September 2007 – Increasing public access to information held by the state through promoting ties between regional state administration bodies and journalists is the aim of a two-day OSCE training seminar that started today in Yerevan.

Press and public information officers from governors' offices in Armenia's ten regions and journalists participating in the course will learn about the legal and ethical principles of co-operation between state officials and journalists and global standards related to access to information. The course also includes discussions on obstacles to communication between state officials and journalists.

"We hope that this event will promote effective co-operation between state authorities and journalists as well as media coverage that will enable public participation in decision-making processes," said Marc Bojanic, Acting Head of the OSCE Office in Yerevan.

The OSCE Office in Yerevan and the Office of the OSCE Representative on Freedom of the Media are co-organizing the event.

"Stronger and more principled links between state bodies and journalists will help improve media coverage of government affairs and increase public trust in both the authorities and the media," said Alexander Boldyrev, Senior Advisor to the OSCE Representative on Freedom of the Media.

The event is part of a series of training programmes launched by the Office of the OSCE Representative on Freedom of the Media in 2005 to improve relations between state press officers and media.

<http://www.osce.org/item/26331.html>

OSCE media freedom representative calls on Tajikistan to protect free flow of information on Internet

VIENNA, 21 September 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, today called on Tajikistan to bring its legislation in line with its OSCE commitments by revoking recent criminal code amendments that restrict the freedom of speech.

The amendments to articles 135 and 136, recently signed into law by President Emomali Rakhmon, call for prosecution of the “intentional distribution via the Internet of knowingly false, libellous and insulting information, as well as expletive words and phrases which denigrate the dignity of human personality”.

“Under this law, any factual mistake or strong opinion published, re-published, reported or discussed on the Internet, can be penalized,” said Haraszti.

He added that the new legislation used words including “Internet”, “information” and “distribution” so vaguely that it could be broadly interpreted and arbitrarily implemented to criminalize public discussions.

“Distribution could mean sharing, debating, or just obtaining information through any Internet-based media, from e-mails to personal websites, from online diaries to news portals,” Haraszti said.

“Tajikistan missed an opportunity to transfer all press offences from the criminal to the civil-law court, as expected by international standards of facilitating free discussion of public issues,” he said.

“I ask the Majlisi Oli, Tajikistan’s Parliament, to bring the legislation in line with the country’s OSCE commitments to protect the free flow of information. Whether published on the Internet or in any other media, only explicit

incitement to violence or discrimination should be criminalised; the rest of the verbal offences should belong to civil courts.”

<http://www.osce.org/item/26360.html>

OSCE media freedom representative asks Kazakhstan to withdraw Interior Ministry defamation proposals

VIENNA, 9 October 2007 – The OSCE Representative on Freedom of the Media (RFOM), Miklós Haraszti, has asked the Kazakh Interior Minister to withdraw recent draft amendments to the country’s defamation law.

“The proposed amendments seem to contravene Kazakhstan’s OSCE commitments on freedom of the media on several counts,” the Representative wrote in a letter to Minister Baurzhan Mukhamedzhanov.

In his letter, Haraszti reminded the Minister that the RFOM office is currently reviewing a draft Media Law from April, which carried different defamation proposals than the Ministry’s new draft amendments.

“The Interior Ministry amendments, issued in late September, offer substantially less decriminalization than the Media Law draft from April this year, while the Civil Code proposals would only worsen the situation because they would make it possible to sue for damages even in cases involving truthful information,” Haraszti said.

Specifying the shortcomings of the new defamation proposals, Haraszti added: “Although the Interior Ministry amendments eliminate the words “mass media” from the libel and insult provisions of the Criminal Code, journalists could still be prosecuted for professional mistakes. The amendments maintain special protection for the President. Criticism of some categories of public officials could still be punished with prison sentences.”

He also underscored some of his earlier recommendations: “Safeguarding of free speech requires transfer of speech offences from the criminal into the civil-law domain, and the abolishment of special protections for officials.”

Haraszi’s office will soon submit a review of the April draft Media Law to the Kazakh authorities, and has emphasized that the office stands ready to co-operate with the Government in order to help ensure the compatibility of any new media-related legislation with OSCE commitments.

<http://www.osce.org/item/27194.html>

South Caucasus journalists discuss media ethics and self-regulation at OSCE conference

TBILISI, 12 October 2007 – The challenges and prospects of media self-regulation were the focus of the Fourth South Caucasus Media Conference that ended in Tbilisi today.

“It is only in a free media environment that media self-regulation can develop and benefit both society and quality journalism” said Miklos Haraszi, the OSCE Representative on Freedom of Media, in a message to the participants of the conference.

“Public authorities could best support the work of self-regulatory mechanisms by creating legal frameworks that guarantee freedom of expression and pluralism in the media.”

The event, provided an annual forum to discuss media freedom issues in the South Caucasus, and brought together more than sixty journalists from Armenia, Azerbaijan and Georgia, as well as local and international experts.

Participants shared experiences and best practices of media self-regulation, and discussed ways it can increase ethical standards while protecting editorial freedom.

The conference concluded with the adoption of the South Caucasus Declaration on Media Self-regulation.

The event was organized by the Office of the Representative on Freedom of the Media and the OSCE Mission to Georgia, in co-operation with the OSCE Offices in Baku and Yerevan.

The Declaration, both in English and Russian, is available on the website of the RFoM, at www.osce.org/fom

<http://www.osce.org/item/27324.html>

Conviction of assassinated journalist's son for “insulting Turkish identity” more proof Article 301 must be abolished, says OSCE media watchdog

VIENNA, 18 October 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has called on Turkish Prime Minister Recep Tayyip Erdogan to urgently repeal Article 301 of Turkey's Penal Code, which makes it an offence to “insult Turkish identity” and which continues to target journalists with dissenting views on history.

Haraszti's wrote to the Prime Minister following the suspended one-year jail sentence on 11 October of Arat Dink and Serkis Seropyan, the editor-in-chief and owner of the Armenian-Turkish language weekly *Agos*. The two were convicted for reprinting remarks made by murdered journalist Hrant Dink, the father of Arat, in which he referred to the 1915 killings of Armenians as “genocide”, a term contested by the Turkish authorities.

“This case proves that Article 301 is still being used to prosecute journalists for discussing issues of obvious public interest,” said Haraszti in the letter. “The failure to abolish this provision potentially exposes dissenters to prosecution and violence.”

Hrant Dink, a prominent Armenian-Turkish journalist, was shot outside his Istanbul office in January 2007. He was appealing against a prior conviction under Article 301 at the time, and was co-defendant in the now adjudicated case.

“I have commended the swift action Turkish law enforcement authorities took after the murder of Hrant Dink. Another important contribution to avoiding similar crimes would be to repeal Article 301, which depicts unconventional thinkers as enemies of ‘Turkishness’, and turns them into an object of hatred in the eyes of fanatics and extremists,” said Haraszti.

<http://www.osce.org/item/27419.html>

OSCE media freedom representative condemns murder of independent journalist in Kyrgyzstan

VIENNA, 25 October 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today condemned the murder of Alisher Saipov, editor of the Uzbek language newspaper Siyosat (“Politics”).

Saipov was killed on 24 October in Osh, Kyrgyzstan. According to reports, he was shot three times at close range.

“I am shocked and saddened by the brutal assassination of Alisher Saipov – one of the most promising young journalists from Kyrgyzstan, well known in his country and abroad,” said Haraszti.

“I welcome the fact that the President of Kyrgyzstan, Kurmanbek Bakiev, took the investigation under his auspices. I trust the Kyrgyz authorities will pursue the investigation in a vigorous and transparent manner, so that the perpetrators can be brought to justice.”

“This loss comes at a time when the murders of Georgiy Gongadze, Elmar Huseynov, Anna Politkovskaya and Hrant Dink are still fresh in our minds,” Haraszti added. “Resolute action is needed to lend journalism the safe working conditions the OSCE is committed to.”

Alisher Saipov, 26, an ethnic Uzbek, was a frequent contributor to the regional media outlet Ferghana and to Radio Free Europe/Radio Liberty and Voice of America. Saipov founded the Uzbek language newspaper Siyosat (“Politics”), which focuses on Kyrgyz and Uzbek current affairs.

Haraszti offered his condolences to the family of Alisher Saipov.

<http://www.osce.org/item/27572.html>

Severe prison sentence for journalist violates Azerbaijan’s commitment to free press, says OSCE media watchdog

VIENNA, 1 November, 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, criticized today the eight-and-a-half year combined prison sentence handed down to an Azerbaijani journalist and newspaper publisher.

Azerbaijan’s Court for Grave Crimes convicted Eynulla Fatullayev for libel, insult, incitement to ethnic hatred, threat of terrorism and tax evasion on 30 October. Fatullayev, a well-known journalist, is the founder of the newspapers *Realny Azerbaijan* and *Gundelik Azerbaijan*.

“Fatullayev’s combined long-term conviction on four different counts is a textbook example of arbitrary use of repressive laws with the aim of criminalizing journalism and silencing critical voices. This practice is a gross violation of OSCE commitments on press freedoms,” said Haraszti.

“The trial is the culmination of a campaign to silence Fatullayev and to eliminate the country’s two largest circulation newspapers.”

Fatullayev was handed an eight-and-a-half year prison sentence, a fine of 200,000 manats (approximately 164,000 euros), and his newspapers’ 23 computers are being confiscated. In May 2007, shortly after Fatullayev’s arrest, the staff of Realny Azerbaijan and Gundelik Azerbaijan was made to leave their premises and the two papers were forced to stop printing.

“Journalists must be given the freedom to have their work be judged by their peers and the public, also if it is judgemental, provocative, or even irresponsible,” stressed Haraszti. “It is vital for democracy that the authorities exercise self-restraint, as the participating States of the OSCE have committed themselves.”

Fatullayev, detained since April 2007, is one of seven journalists currently imprisoned in Azerbaijan on defamation and other charges.

Haraszti has repeatedly urged the Azerbaijani authorities to release all currently imprisoned journalists, and to decriminalize speech offences. “It is of essential importance that the authorities stop persecuting the remaining free press in Azerbaijan,” he said.

<http://www.osce.org/item/27685.html>

Media self-regulation in Central Asia focus of OSCE Conference

DUSHANBE, 2 November 2007 – Media self-regulation and its benefits for media freedom was the focus of the Ninth Central Asia Media Conference that ended today in Dushanbe.

The conference, organized jointly by the Office of the OSCE Representative on Freedom of the Media and the OSCE Centre in Dushanbe, brought together more than 100 journalists, media professionals and government officials, as well as international and local experts, to discuss media self-regulation and promote its development in Central Asia.

Opening the event, Ambassador Vladimir Pryakhin, Head of the OSCE Centre in Dushanbe said: “In the contemporary world, freedom of the media is an essential criterion for democratization. This freedom corresponds to a responsibility on the part of journalists. With this conference, we are pleased to contribute to a free and independent, but also responsible, media in Central Asia.”

Miklos Haraszti, the OSCE Representative on Freedom of the Media, added:

“Media self-regulation is not self-censorship. On the contrary, it is the journalists’ strongest weapon for their independence. Only the professionally mature, self-conscious media can defend their freedom.”

Media self-regulation experts Ognian Zlatev, Taras Shevchenko and Eugene Abov, shared Bulgaria’s, Ukraine’s and Russia’s experiences of media accountability systems. Tamara Kaleeva, Nuriddin Karshibaev and Shamara Maychiev presented the challenges and the first steps towards media self-regulation in Kazakhstan, Tajikistan and Kyrgyzstan.

A conference declaration on media self-regulation, as well as the presentations of the experts, will be soon available at www.osce.org/fom

<http://www.osce.org/item/27692.html>

OSCE media freedom representative concerned about suspension of television stations in Georgia

VIENNA, 8 November 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, expressed concern today about the suspension of the work of Imedi TV, Georgia's most watched independent broadcaster and Kavkasia TV, which transmits in Tbilisi.

The closures took effect late Wednesday, before a presidential decree that sanctions a partial suspension of rights to information, speech, association and strike, entered into force.

“While introducing a state of emergency may be in accordance with the country's Constitution, the media also must be able to fulfil their constitutional vocation of informing society about events in the country,” Haraszti said.

“Pluralism of broadcasting is essential for a democracy. I urge Georgia's authorities to allow the resumption of Imedi and Kavkasia television stations.”

Haraszti also said he was concerned about violence against journalists during a rally in Tbilisi.

“The disturbing reports of journalists falling victim to violence during a political rally on 7 November are worrying. I urge the authorities to show restraint in dealing with journalists during political demonstrations and avoiding interference with coverage of public events in the media,” he added.

Haraszi also said that a report published by his office earlier this year on the handling of journalists during political demonstrations could be a useful guide in Georgia and in other locations where demonstrations occur.

“Deliberate attempts to confiscate, damage or break journalists’ equipment in order to silence reporting are criminal offences and those responsible should be held accountable under the law,” said Haraszi.

The Special Report on Handling of the media during political demonstrations is available at:

http://www.osce.org/documents/rfm/2007/06/25176_en.pdf (English)

http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf (Russian)

<http://www.osce.org/item/27827.html>

Spain’s King and Austrian President inaugurate new OSCE building

VIENNA, 21 November 2007 – King Juan Carlos I of Spain and Austrian President Heinz Fischer inaugurated the new headquarters for the OSCE Secretariat and the OSCE’s Representative on Freedom of the Media in Vienna today.

“These new premises will open a new space for commitment and responsibility, designed to meet the increasing demands of the Organization and the renewed importance of its missions,” the King, whose country holds the 2007 OSCE Chairmanship, said at the inauguration of the renovated Palais Palfy-Erdody building.

“The essence of the OSCE is symbolized by this Palace: a joint programme for security and co-operation, working for peace, prosperity and democracy all over our continent.”

The King thanked the Republic of Austria and its President for their support of the Organization. The Austrian President also made a speech.

The OSCE Secretariat and the Office of the OSCE Representative on Freedom of the Media will move to the new building, located at Wallnerstrasse 6 in central Vienna, in mid-December. The renovation, paid for by the Austrian Federal Ministry of Economics and Labour, the OSCE and the City of Vienna, cost 26.1 million euros.

OSCE Secretary General Marc Perrin de Brichambaut said: “Today, thanks to the generosity and far-sightedness of the people of Austria, this project has a home and it has a face in the heart of greater Europe.”

Earlier today, the King hosted a lunch for OSCE diplomats, at which he said the OSCE was just as important now as when it was born in 1975.

“Spain, whose recent history has been closely linked to the Organization, has always underlined the OSCE’s special value. Indeed, our transition towards a fully democratic society took place in parallel with the birth and development of the OSCE,” the King said.

Video footage of the inauguration speeches and the lunch speech will be available on www.osce.org

<http://www.osce.org/item/28185.html>

OSCE media freedom representative in Georgia to discuss TV station closure

VIENNA, 22 November 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, is in the Georgian capital Tbilisi today to discuss the media situation, in particular the recent closure of television station *Imedi*. It is a joint visit with Peter Semneby, the EU Special Representative for the South Caucasus.

“*Imedi* is an alternative source of information, the presence of which is part of Georgia’s pluralistic media landscape. Access to a diverse spectrum of news is especially important in view of the upcoming presidential elections,” said Haraszti.

The Representative met yesterday in Vienna with Nino Burjanadze, the Speaker of the Parliament of Georgia, who will temporarily assume the presidency during the run-up to the presidential elections scheduled for 5 January.

Haraszti expects to meet with government representatives, politicians, lawyers, and media professionals in Tbilisi, including *Imedi* management and staff.

The broadcasting license of *Imedi* TV was suspended by the National Communications Commission for three months following a court decision taken on 8 November. *Imedi* was accused of anti-governmental activities after a police raid on the station’s premises on 7 November.

Haraszti will hold a press conference in Tbilisi at the end of his visit on Friday, 23 November. Journalists interested in attending are requested to contact the OSCE Mission to Georgia for details.

<http://www.osce.org/item/28222.html>

OSCE media freedom representative says optimistic about re-opening of suspended Imedi TV after visit to Georgia

TBILISI, 23 November, 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today he gained assurances from Georgian President Saakashvili that media pluralism in the country will be restored by early December, the start of the presidential election campaign.

“The fairness of elections would be severely damaged if one of the major news outlets remained closed,” said Haraszti, who is in Tbilisi on a two-day visit together with the EU Special Representative for South Caucasus, Peter Semneby.

“Restriction of pluralism would be unjustifiable in the eyes of the international community. I feel I was able to convey this message. Georgia has enjoyed media pluralism in the last decade. To my satisfaction, our request for the restoration of media diversity, which is also a major OSCE commitment, was met with willingness on the Government side,” added Haraszti.

Haraszti, Semneby and the Head of the OSCE Mission to Georgia, Ambassador Terhi Hakala, were received by President Mikheil Saakashvili. They also met Speaker of Parliament Nino Burjanadze, Foreign Minister Gela Bezhuashvili, Interior Minister Vano Merabishvili, parliamentarians Giga Bokeria, Koba Davitashvili and Kakha Kukava and other politicians.

Meetings were also held with the managers and editors of the suspended Imedi TV and other news outlets, as well as the Head of the Communications Commission, Giorgi Arveladze.

“One lesson of the November events is that understanding of the role media plays in times of crisis must not be the sole responsibility of the government,” said Haraszti. “Full freedom of opinion can and must go together with professional responsibility. Stressing democracy’s shared values at all times

is the job for both the politicians and the media. Here I mean all the media in Georgia and not just Imedi.”

<http://www.osce.org/item/28282.html>

At demonstrations, full freedom to report is as important as reporters’ visibility, says OSCE media freedom watchdog

VIENNA, 27 November 2007 – The OSCE Media Freedom Representative, Miklos Haraszti, said today he welcomed negotiations by police and the journalistic community in Hungary to establish a joint policy on the handling of the press during street protests.

“I have closely followed the debate on the rights and responsibilities of police and journalists, which was prompted by the incidents of 17 November,” said Haraszti, referring to the arrest of two journalists at an unauthorized demonstration in Budapest. “This new effort at a dialogue represents an important step.”

He said he appreciated that Freedom House Europe, a non-profit organization promoting democracy, had proposed that police use recommendations developed by his office on the handling of the media during demonstrations.

“However, the OSCE recommendations, issued by my office in June 2007, stress that the media also have special responsibilities at these events,” Haraszti said.

“We call on police to guarantee the right of journalists to cover any public event, regardless whether it was authorized. We also call on journalists to visibly identify themselves as media professionals, to make sure that their

reporting does not inflame the situation, and to refrain from participating in the demonstration.”

“We found visibility vests, backed by proper press cards and honoured by police, to be the best-functioning practice in reporters’ protection.”

He added that the planned joint policy should safeguard the freedom of the media to report on all public events, while also supporting legitimate law-enforcement activities.

The recommendations can be found at http://www.osce.org/documents/rfm/2007/06/25176_en.pdf

<http://www.osce.org/item/28337.html>

OSCE holds regional conference on media self-regulation

PRISTINA, 30 November 2007 – Voluntary media self-regulation as the only viable and credible mechanism to uphold journalistic ethics and guarantee editorial professionalism is the focus of a two-day OSCE conference beginning Monday in Skopje.

The conference, which focuses on print media, aims to promote media self-regulation and help develop public trust in the media. It also strives to foster further regional co-operation among print media self-regulatory bodies.

Participants will compare self-regulatory systems of the region and share experiences and challenges. Press councils in South-Eastern Europe are relatively new and face similar problems when it comes to de-politicizing the print media market, promoting journalistic ethics and safeguarding financial independence of self-regulators.

More than 30 representatives from South-Eastern European print media self-regulatory bodies, including ten members of the Press Council of Kosovo, will participate. Representatives from Swiss and Belgian press councils will share trends and developments of the self-regulatory systems in Western Europe, and an expert from the OSCE Representative on Freedom of the Media office also will speak.

The OSCE Mission in Kosovo is organizing the meeting in close co-operation with the Press Council of Kosovo, regional press councils and the OSCE Spillover Monitor Mission to Skopje.

Journalists are invited to attend the beginning of the event, on Monday 3 December, at the Hotel Holiday Inn, Vasil Agilarski 2, Skopje, starting at 09:00.

<http://www.osce.org/item/28581.html>

Press freedom commitments not met during Russian electoral campaign, says OSCE media freedom watchdog

VIENNA, 4 December 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that harassment of media outlets, legislative limitations, and arbitrary application of rules prevented equal media access by the political forces during the 2 December Duma elections in Russia.

Submitting a detailed report to Foreign Minister Sergey Lavrov on the handling of the media by the authorities during the election campaign, Haraszti said that his aim was to remind the Russian Federation of its commitment to guarantee a free and fair media coverage during elections.

“These findings are an early warning in view of the March 2008 presidential election. I ask the new State Duma to ensure the right of the media to provide balanced and objective information,” said Haraszti, referring to the list of cases of media freedom violations he sent to Minister Lavrov.

“Unfortunately, the OSCE commitment to sustain a diversity of news sources was violated during the campaign for the State Duma. Television coverage was monopolized by the ruling party.”

“Several cases of harassment and violence against the independent media have contributed to the intimidating atmosphere,” said the OSCE Representative.

He noted the particularly grave incident of the kidnapping and brutal beating of *REN TV* journalists and human rights expert Oleg Orlov, in Nazran, Ingushetia, when they came to cover a demonstration against security forces.

“The monitoring by the Central Electoral Commission and the NGO Russian Union of Journalists showed a clear bias in favour of the ruling party candidates on the main television channels. Combined coverage of the President, Government and the ruling party approximated 80% of the total political time on the nation-wide channels.”

“The President’s party chose to ignore the TV debates, and was instead given extra time. While this was done in conformity with the electoral law, the TV debates for the rest of the political parties were downgraded and broadcast in the early morning and late night. This was a breach of the electoral law,” said Haraszti.

He pointed out that negative campaigning was punished on the opposition side, but went unnoticed on the ruling party side.

The report with cases of media freedom violations during the 2007 Duma electoral campaign can be found at: https://www.osce.org/documents/rfm/2007/12/28666_en.pdf

<http://www.osce.org/item/28670.html>

OSCE media freedom watchdog welcomes reopening of Imedi TV in Georgia

VIENNA, 7 December 2007 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today expressed satisfaction with the Georgian authorities' willingness to enable television station *Imedi* to resume broadcasting.

He cited the 4 December decision of the Georgian National Communications Commission (GNCC) to return *Imedi's* TV broadcast license, as well as the 6 December court decision allowing staff back into their building to work.

"I am encouraged by this demonstration of political will on the part of the country's leadership to restore media diversity and contribute to a fair campaign for the presidential elections that will take place on 5 January," said Haraszti.

Imedi TV's license was suspended for three months on 8 November in connection with accusations of anti-state activities.

"I am pleased that the Georgian authorities have acted on the solution that we had worked out together during our discussions," Haraszti said.

Haraszti had travelled to the Georgian capital Tbilisi on 21-22 November, together with Peter Semneby, the EU Special Representative for the South Caucasus, to help find a solution to the crisis.

During the visit he met with President Mikheil Saakashvili, the Speaker of the Parliament Nino Burjanadze, Foreign Minister Gela Bezhuashvili, the GNCC, the State Prosecutor and *Imedi's* management. Harashti met a second time with Foreign Minister Bezhuashvili during the OSCE Ministerial Council in Madrid on 29-30 November.

The Government of Georgia also indicated in meetings that they planned to compensate *Imedi* for repair costs for broadcasting equipment and premises stemming from the 7 November police raid on its offices, said Harashti.

"I hope that no further restrictions will follow in the future, and that *Imedi* TV will be able to maintain its independent editorial line," he added.

<http://www.osce.org/item/28756.html>

OSCE promotes access to information in Tajikistan with training course for press officials and journalists

DUSHANBE, 12 December 2007 – Increasing public access to official information as well as fostering effective interaction between state administration bodies and journalists are the aims of a training seminar that is held today in Dushanbe.

"Authorities' political will to promote access to information, combined with a professional and responsible press, stimulates the development of society," said Vladimir Pryakhin, Head of the OSCE Centre in Dushanbe.

The two-day seminar is organized jointly by the Office of the OSCE Representative on Freedom of the Media and the Presidential Administration with support from the OSCE Centre in Dushanbe.

“The State guarantees all citizens equal rights of access and dissemination of information. This is enshrined into the country’s legislation,” noted the State Adviser to the President on social development and public relations, Saidmurod Fattoyev.

More than 30 participants, including journalists and governmental press and public information officials, are taking part in the seminar. International and local experts will conduct sessions on the legal and ethical principles of interaction between state officials and journalists, as well as global standards related to access to information. The seminar also involves discussions on the main challenges encountered in communication between two groups.

“We hope that this event, designed to encourage professional dialogue between state authorities and journalists, will help achieve good co-operation between them. Such co-operation will enable the media to convey information on matters of public interest, enhancing public participation in the decision-making processes,” said Alexander Boldyrev, the Senior Adviser of the OSCE Representative on Freedom of the Media.

The event was part of a series of training programmes launched by the Office of the OSCE Representative on Freedom of the Media in 2005 to consolidate relations between state press officers and media.

<http://www.osce.org/item/28805.html>

OSCE media watchdog calls for protection of sources law in France after journalist charged over intelligence leaks

VIENNA, 12 December 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, today called upon the French government to introduce, as pledged, measures to ensure the protection of journalistic sources.

Earlier this month French counter-espionage police raided the home of independent investigative reporter Guillaume Dasquié in search of classified information that had been leaked to the journalist.

“This case, as did previous attempts to force journalists to reveal their confidential sources in France, highlights the urgency to introduce a shield law,” said Haraszti, in a letter to the French authorities. “The right of media professionals not to reveal their sources is a major precondition for investigative journalism, which has proven most successful in combating corruption and maladministration, and exercising effective public control over governments.”

Haraszti recalled that in April 2007 President Nicolas Sarkozy, then running for office, wrote a letter to the French media advocacy group Reporters sans frontières backing the call for a provision to media legislation that would allow journalists to protect their confidential sources. Pascal Clément, Minister of Justice under the previous French government, had in 2006 also expressed his support.

“The very fact that the French government recognizes the benefits of such a provision for modern journalism is positive. What is needed now is legislative action,” said Haraszti.

The investigation against Dasquié began after he published an article in *Le Monde* on 17 April that revealed classified documents of the French intelligence services related to terrorism and particularly to the 11 September 2001 attacks in New York. If convicted, Dasquié faces up to five years in prison or a fine of up to 75,000 euros under Article 413-11 of the French Penal Code for “possessing secret defence documents” and “divulging secret defence documents or intelligence”.

<http://www.osce.org/item/28817.html>

Global media freedom rapporteurs call for less regulation in the digital era, but more care for public service and community broadcasting

GENEVA/PRETORIA/VIENNA/WASHINGTON, 14 December 2007 – The media freedom rapporteurs of the United Nations, the OSCE, the Organization of American States (OAS) and the African Commission on Human and Peoples' Rights (ACHPR) issued joint guidelines on the new role and scope of government involvement in safeguarding diversity in the era of digital broadcast.

In a joint statement, which follows their 8 December meeting and which was developed under the auspices of *ARTICLE 19, Global Campaign for Free Expression, and the Institute for Information Law (IViR)*, entitled “Diversity in Broadcast”, they pointed out the natural potential for more diversity caused by the multiplication of channels available.

At the same time, they warned that some broadcasting types essential for democracy, such as public service and community media, may be endangered.

The four rapporteurs called for less regulation, in particular for less licensing, and thereby less governmental involvement. That reduction of intervention is made possible by the abundance of channels on different distribution networks which is in itself a guarantee for diversity.

On the other hand, they called for safeguarding pluralism, especially in news broadcast, and securing enough frequencies for economically weaker programmes, such as community or minority language broadcast.

As public service broadcasting will gain in importance as a reliable source for pluralistic information in the digital era, special attention must be given to its financing and independence.

At the same time pluralism can still be endangered by monopolies, they found. The signatories reiterated the ongoing duty of governments to apply vigorous anti-trust regulation and transparency of ownership in media.

The joint declaration is available at: https://www.osce.org/documents/rfm/2007/12/28855_en.pdf

The four representatives annually issue a joint declaration which serves as a reference for their member states.

The signatories are:

- *The UN Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo*
- *The OSCE Representative on Freedom of the Media, Miklos Haraszti*
- *The OAS Special Rapporteur on Freedom of Expression, Ignacio J. Alvarez*
- *The ACHPR Special Rapporteur on Freedom of Expression, Faith Pansy Tlakula.*

<http://www.osce.org/item/28854.html>

OSCE media freedom watchdog welcomes acquittal of Hungarian journalist in secrecy case, urges legislative reforms

BUDAPEST, 19 December 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, greeted today's acquittal of journalist Antonia Radi, and called on the Hungarian authorities to reform legislation on disclosing state secrets.

“It is regretful that Hungary still belongs to those countries that punish civilians, among them journalists, for the publication of classified information,”

said Haraszti. “This is an obsolete practice. In a democracy, only the official guardians of state secrets should be held responsible for any leaks.”

Antonia Radi, a leading investigative reporter, has been on trial since 2003 on breach of secrecy charges, based on her reporting in the weekly *HVG* about a criminal case.

Haraszti noted her acquittal after four years with approval, but expressed concern that it was due to a technicality and not to the needed changes in legislation.

“The current law allows for the acquittal of journalists who report on state secrets only if the classification was not carried out properly, or the officials compromised the classification procedure in other ways. No lawsuit was even initiated against the official who leaked the information. This practice threatens even the most dedicated journalists, and it weakens investigative journalism,” said Haraszti.

The OSCE media freedom representative urged Hungarian authorities to narrow the scope of the existing criminal law to make leaks the responsibility of officials, and to introduce a court practice that would always take into account the public’s right to information.

<http://www.osce.org/item/28999.html>

OSCE media freedom watchdog concerned about increased tension in Armenia’s media freedom environment

VIENNA, 21 December 2007 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today he was concerned that the Armenian regional broadcaster *Gala TV* may cease broadcasting as a result of pressure

by the authorities, and over an explosion in front of the office of *Chorrord Ishkhanutyun*, an opposition newspaper based in Yerevan.

“The recent cases of harassment and violence against independent and opposition media have contributed to an atmosphere of intimidation and fear in the journalistic community in Armenia,” said Haraszti in a letter to Armenian Foreign Minister Vartan Oskanian

Gala TV, based in Gyumri, is facing two lawsuits as a result of which the company could be obliged to pay approximately 58 000 Euro into the state budget, and may lose the right to use its broadcasting tower.

“I trust that the local authorities will not make arbitrary decisions and demonstrate goodwill for a compromise settlement, so that *Gala TV* can continue broadcasting,” said Haraszti.

Referring to the 13 December explosion at the entrance of *Chorrord Ishkhanutyun*, the OSCE Representative said: “I urge Armenia’s law enforcement bodies to punish the perpetrators not just for the sake of justice but also to give support to freedom of expression in the country.”

Haraszti also said he hoped the Government of Armenia will fulfil its OSCE commitments to ensure safe and favourable working conditions for the media, so that the media can contribute to a fair election campaign.

<http://www.osce.org/item/29104.html>

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