

■ Yearbook 8

2006

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.

© 2007 The Representative on Freedom of the Media
Organization for Security and Co-operation in Europe (OSCE)
Kärtnergasse 5-7, Top 14, 2. DG
A-1010 Vienna, Austria
tel +43-1-512 21 45-0
fax +43-1-512 21 45-9
e-mail pm-fom@osce.org
www.osce.org/fom

Design & Layout: Phoenix Design Aid, Denmark

ISBN 3-9501955-3-x

Contents

9 Contributions

- 9 Karel de Gucht: Preface
- 15 Miklós Haraszti: Foreword
- 21 Arnaud Amouroux:
OSCE Ambassadors Seek Solution For Hate Speech Dilemma
- 27 Adeline Hulin:
Media Self-Regulation: Fostering Media Ethics and Media Accountability
- 35 Slava Shayman:
Protection of Journalists and Access to Information: Topical Themes of 2006
- 43 Christian Möller: Internet Governance
- 49 Highlights from the 8th Central Asia Media Conference
- 55 Highlights from the 3rd South Caucasus Media Conference

61 Mandate

68 Reports and Statements to the OSCE Permanent Council and other OSCE Fora

- 71 Report to the Permanent Council by the OSCE Representative on Freedom of the Media (16.02.2006)
- 89 Report to the Permanent Council by the OSCE Representative on Freedom of the Media (13.07.2006)
- 115 Report to the Permanent Council by the OSCE Representative on Freedom of the Media (24.10.2006)

142 Special Reports, Declarations, Legal Reviews and Recommendations

- 145 Comments on the draft Audiovisual Code of the Republic of Moldova (07.04.2006) – Summary
- 151 Further comments on the draft Audiovisual Code of the Republic of Moldova (10.05.2006) – Introduction and Explanations
- 155 Comments on Legal Regulations on Access to Information and State Secrets in Albania

- 171 Joint Statement on World Press Freedom Day
by the Special Rapporteur of the Commission on Human Rights on the
promotion and protection of the right to freedom of opinion and expression,
the Special Rapporteur for freedom of expression of the Organization
of American States, the Representative on Freedom of the Media of the
Organization for Security and Co-operation in Europe, and the Special
Rapporteur on Freedom of Expression of the African Commission on Human
and People's Rights (02.05.2006)
- 175 The State of Media Freedom in Kosovo – Country Visit and Assessment
Report (03.07.2006)
- 197 The State of Media Freedom in Armenia – Country Visit and Assessment
Report (26.07.2006)
- 215 Legal review on Kazakhstan's Law on Mass Media (26.09.2006) – Excerpt
- 223 Memorandum on the Defamation Bill 2006 and the Privacy Bill 2006 of the
Republic of Ireland (29.09.2006) – Summary
- 229 Position Paper on 'non-linear audiovisual media services' as established in
the Proposal of the European Commission for an Audiovisual Media Services
Directive (AVMS) and the Draft Report of the Committee on Culture and
Education of the European Parliament (CULT) 4 October 2006
- 235 Analysis of the digital radio and television broadcasting implementation draft
plan of the Republic of Armenia (25.10.2006) – Executive Summary
- 241 Special report: accreditation of journalists in the OSCE area (25.10.2006)
- 253 Memorandum on the draft law of the Republic of Azerbaijan on defamation
(31.10.2006)
- 283 International Mechanisms for Promoting Freedom of Expression
JOINT DECLARATION
by 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 (20.12.2006)

288 Projects 2006

- 291 Internet Governance in the OSCE Region
- 295 Central Asia Media Conference
- 297 3rd Caucasus Media Conference
- 299 Legal Assistance in 2006
- 301 Baku conference paves the way for media self-regulation in new democracies
- 307 Media Access to Information Project
- 311 Criminal Defamation Laws: Current Practices in the OSCE Area

325 Visits and Interventions in 2006**339 Meetings and Conferences****345 Press Releases 2006**

- 345 OSCE media freedom representative asks Polish President to pardon imprisoned journalist
- 346 OSCE Media Freedom Representative asks Swiss to add a public right to know to secrecy laws
- 347 OSCE Media Freedom Representative defends papers' right to publish controversial cartoons, asks for mutual respect for traditions
- 348 OSCE-backed Skopje conference calls for decriminalizing libel
- 349 OSCE media freedom representative delivers report on cartoon controversy
- 350 OSCE media freedom representative asks prosecutors in Russia and Belarus to drop 'cartoon cases'
- 351 OSCE voices concern over course of investigation of murdered Azerbaijani journalist
- 352 OSCE media watchdog asks Azerbaijan President to initiate law reform as editor is jailed for libel
- 353 OSCE media watchdog calls on Romania to drop leak cases against journalists

- 354 OSCE media freedom representative concerned over treatment of journalists covering demonstrations in Belarus
- 355 OSCE media freedom representative, with OSCE Ambassadors, to focus on hate speech issues at Budapest conference
- 356 OSCE media freedom representative and ambassadors address hate speech issues at Budapest conference
- 358 OSCE media watchdog welcomes improved climate and work in Kosovo - 'press freedom in good shape'
- 359 To mark World Press Freedom Day, international organizations urge governments to combat violence against journalists
- 360 OSCE media freedom representative praises Skopje's abolishment of prison sentences for defamation
- 361 OSCE media watchdog to survey sanctions against press for publishing classified information or not revealing sources
- 362 OSCE media freedom representative to visit Armenia next week
- 363 OSCE Representative on Freedom of the Media asks Kazakhstan to withdraw media law amendments
- 364 OSCE media watchdog notes improvements in Armenian media legislation, calls for more pluralism
- 366 OSCE media watchdog praises Croatia's abolition of prison sentences for defamation
- 367 OSCE media watchdog gives good marks to Kosovo media, but says more improvements needed
- 369 Caricatures controversy and media freedom issues will be focus of OSCE international conference
- 369 OSCE media watchdog's office ends training seminar to improve reporting of governmental information in Azerbaijan
- 370 Armenian media situation improved, but more diversity needed, OSCE media watchdog says in new report
- 371 OSCE media representative's office ends Ukrainian series of seminars aiming to improve governmental reporting

- 372 OSCE media freedom representative concerned over jailing of Turkmenistan journalists
- 373 OSCE media freedom representative asks Azerbaijan's president to help stop new wave of prosecution of journalists, urges legal reform
- 375 OSCE media freedom representative calls for transparency in handling of imprisoned Turkmenistan journalist's death
- 376 OSCE media freedom representative condemns attacks on Hungarian Public Television building
- 376 Amended Kazakh media law needs further improvements, OSCE media freedom representative says
- 377 OSCE welcomes establishment of media ethics council in Albania
- 379 Irish draft bill on defamation major improvement, but job unfinished, says OSCE media freedom representative
- 380 OSCE Chairman shocked by murder of Russian journalist Anna Politkovskaya
- 381 OSCE media freedom representative calls on Azerbaijan's president to decriminalize defamation
- 382 OSCE media freedom representative welcomes highest UK court's decision backing investigative journalism
- 384 OSCE Representative urges French Senate to reject criminalization of Armenian genocide denial
- 385 OSCE media freedom representative promotes media development in Central Asia
- 386 OSCE organizes media training programme in Brussels
- 387 OSCE Office in Baku welcomes Azerbaijani president's pardon of two newspaper editors
- 388 OSCE media watchdog presents report on anomalies in accrediting journalists
- 390 OSCE conference discusses media freedom in South Caucasus
- 391 OSCE Mission to Skopje supports efforts to improve access to information in south-eastern Europe

- 392 OSCE media representative concerned about trial of Danish journalists for publishing leaked information
- 393 OSCE presents expert recommendations on the digital broadcasting draft plan of Armenia
- 394 OSCE promotes public access to government information in Kazakhstan
- 395 OSCE Representative concerned about deteriorating media situation in Azerbaijan
- 397 OSCE media freedom representative concerned over detention of Dutch journalists for refusing to name source
- 398 OSCE media freedom representative marks 240th anniversary of first access to information law
- 399 OSCE satisfied that private broadcaster in Azerbaijan resumes transmission
- 400 OSCE media freedom watchdog urges Moldovan authorities to help resume Antena-C transmission, ensure transparent privatization of broadcast media
- 401 Global freedom of expression rapporteurs condemn violence against journalists, urge self-regulation

Contributions

Karel De Gucht

Preface

Dear Readers,

I have a double pleasure in addressing this preface. First, it brings back to mind the outstanding cooperation that the 2006 Belgian Chairmanship enjoyed with the Representative on Freedom of the Media and his Office. Second, it is an opportunity to link up again with one of the main priorities of ours at the time : underline the importance of genuinely independent and free media.

You will discover in this yearbook the details of the actions undertaken over the period. Yet, in addition, you should know that the Belgian Chairmanship made it a point to lend strong support to the institution headed by Miklós Haraszti and run by his very able team. Among other things, it decided that the Freedom of the Media Representative would brief the participating States in the OSCE Permanent Council three times in the year instead of just once. The objective was to increase the political visibility of the very important work he accomplishes.

The Chairmanship further decided to dedicate one of the year's three Supplementary Human Dimension Meetings to the theme of free media and, in consultation with the Representative, settled on the exact subjects of "Protection of Journalists" and "Access to Information". There were good reasons for this. One was that in recent years, record numbers of journalists fell victim to repression, imprisonment, harassment, kidnapping and at times, outright murder. Another was that the Representative identified denial of

information as one of the key methods used in the OSCE area to prevent journalists from relaying issues of public interest to the wider audience.

As it turned out, Belgium subsequently provided financing for setting up a matrix of laws and practices concerning access of media to information in OSCE participating States. The comprehensive review is being compiled by the Office of the Representative and should become available in the course of 2007.

A further initiative was the media-twinning event organized in the week of October 23, 2006, in Brussels. Fourteen journalists from across the OSCE were invited for peer-to-peer exchanges with international media organizations established in Brussels. The discussions highlighted the potential of sector-driven study visits, training seminars and professional-to-professional relationships. At the end of the year, the Permanent Council decided to encourage further ideas of this kind, under the able coordination of the Representative.

In January-February 2006, the publication of controversial cartoons on Prophet Mohammed in western media caused major violence around the OSCE area. It also plunged the OSCE into an intense debate. Immediate action was required to avoid further misrepresentation of positions. Urgent dialogue was required. On February 16, the Chairmanship chose to bring around one table all OSCE participating States, Partner States, Representatives and Institutions with a view to restore the common ground that had endured until then. It is no exaggeration to say that Representative on the Freedom of the Media Miklós Haraszti at that very moment provided crucial assistance in correctly assessing the normative background and in dealing with the principles and issues at hand in a balanced manner.

Time was made for more dialogue and reflection. The Co-Chairs of the Alliance for Civilization initiative visited the Permanent Council, the Almaty

(Kazakhstan) meeting on inter-cultural, inter-religious and inter-ethnic dialogue was held at a high level, and a session was set aside in the Supplementary Human Dimension Meeting relating to media mentioned above.

The challenge was to come to agreed Ministerial language on the issue. It happened at the Ministerial in Brussels within Decision 13 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding. The Ministers deplored racist, xenophobic and discriminatory public discourse and stressed the positive role that political representatives can play. As regards the media, they recognized the essential role that the free and independent media can play in democratic societies and the strong influence they can have in countering or exacerbating misperceptions and prejudices. They encourage the adoption of voluntary professional standards by journalists, media self-regulation and other appropriate mechanisms for ensuring increased professionalism, accuracy and adherence to ethical standards among journalists.

I note that Representative on the Freedom of the Media Miklós Haraszti has consistently emphasized the need for such a balanced approach. His campaigns to decriminalize libel, to end prosecution of journalists who keep lawful sources confidential and, more recently, to liberalize conditions for registration of media are not meant to bring about an unbridled or unruly shouting space. Equal emphasis lays on initiatives to stimulate self-regulation of media and responsible and professional behavior.

With this, he appears right on target. Actually, there can be no better evidence of his judicious leadership than the seamless renewal, on March 10, 2007, for a further three years, of his mandate at the helm of the Freedom of the Media institution by the will of a unanimous Ministerial Council.

I have known Miklós Haraszti as a discrete but steady figure. Over time, I have felt him grow in strength and in focus. I trust that in the years to come, the participating States and the OSCE stand to gain even more from his determination and dedicated work at the service of free media.

2006 Chairman-in-Office

Foreign Minister of Belgium Karel De Gucht

Foreword

Miklós Haraszi

2006 marked the ninth year of the Office of the Representative on Freedom of the Media and my third year as the head of this institution. My Office continued to monitor relevant media developments and to provide assistance to the OSCE participating States in accordance with my mandate.

Regrettably, threats to journalists continued throughout the year, taking numerous varied forms – harassment, arrests, closing down of media outlets and criminalization of publications. Most alarmingly, murders of journalists in the OSCE region continued with deplorable frequency and, generally, with impunity for perpetrators of these crimes.

My Office continued to assess the situation with media freedom in the participating States and to provide legal assistance to governments, carrying out assessment visits to Armenia and Kosovo and issuing practical recommendations on draft or adopted media legislation in six participating States, as well as on the EU Directive on Audiovisual Media Services.

Internet governance continued to feed us with conceptual challenges. In April, the long-term project *Guaranteeing Media Freedom on the Internet* was completed, having produced two conferences on Internet regulation, as well as the publication of the *Internet Cookbook* – a practical guide on media freedom on the Internet. A successful workshop in Paris in December and the active participation of my Office in the United Nations *Internet Governance Forum* underscored our continued concern with Internet regulation and paved the way for future work in this field. An Internet training

course for young online journalists in Central Asia was one of this year's pilot projects.

The decriminalization of libel and insult remains one of the priorities of my Office. Positive developments of 2006 in this field included the amendments to the Criminal Code passed by parliaments in Skopje and in Zagreb, which removed imprisonment as a sanction for defamation.

Responsibility of journalists and cultural sensitivity remained high on the agenda of my Office throughout the year, in light of the often violently expressed Muslim outrage over artistic depictions of Islamic themes. It remains the position of my Office that demands for increased sensitivity regarding religious feelings should go hand in hand with increased sensitivity for values of freedom of expression; tolerance is best served if the two are not seen as mutually exclusive. Conferences held in Budapest, Warsaw and Vienna, co-organized by my Office, covered this topic extensively.

In 2006, we began to direct our efforts to the promotion of self-regulatory mechanisms in the media, such as press councils and codes of ethics, with the conviction that self-regulation is a more appropriate tool than government regulation to cultivate cultural sensitivity or ethical standards. The importance of raising media quality while simultaneously preserving editorial independence was highlighted in the Joint Statement which I signed together with the freedom of expression Rapporteurs of the United Nations, the Organization of American States and the African Charter on Human and Peoples' Rights.

The year witnessed increasing attempts to curb freedom of the press within the context of combating hate speech and intolerance. While recognising the need for the latter, it is important that journalists remain able to report on issues of public interest and to freely participate in political and social debate. Criminalization of "extremism" and "offence" often go against this balance. In

April, my Office brought together OSCE Ambassadors from six participating States at an international conference in Budapest to discuss ways of reconciling tolerance with freedom of expression in their countries.

In consequence of heightened national security concerns in a number of the OSCE participating States, access to information by journalists and citizens has become a theme of primary significance. My Office carried out an in-depth review on existing legislation and practices in the 56 participating States on access to information, including sanctions for journalists for publishing classified information and for refusing to reveal their sources.

The Supplementary Human Dimension Meeting held in Vienna addressed today's major concerns in the domain of media freedom – access to information, artistic expression and self-regulation and administrative barriers faced by journalists.

As during the previous years, my Office placed an emphasis on improving the quality of journalism and the interaction between journalists and public officials. In 2006, this was accomplished through a number of training seminars, such as an intensive training programme in several Ukrainian cities, a training course for journalists in Azerbaijan and a workshop in Kazakhstan.

Regional media conferences have become traditional events organized by my Office. The 2006 conferences, held in Bishkek and Tbilisi, dealt with the issues of media business and management.

We continued to build networks with the representatives of civil society across the OSCE region, as well as to engage in further co-operation with other international organizations and to strengthen our contacts with members of national parliaments.

While obstacles to media freedom remained numerous, I am convinced that achievements made were profound. The present edition reviews the work done by my Office in 2006 and highlights this year's most notable developments – signifying both prospects and perils – in media freedom, access to information, and pluralism.

OSCE Ambassadors Seek Solution For Hate Speech Dilemma

Arnaud Amouroux

Worldwide debate about the regulation of hate speech reached new levels of intensity in 2006 with the Danish cartoon controversy, a discussion in which the OSCE participated actively.

OSCE States take a wide range of approaches to combating hate speech, and this diversity is well illustrated by recent legal issues: contradictory court rulings on the cartoon debate, anti-religious incitement legislation in Britain, an anti-flag burning draft bill in the United States, a one-euro fine for an anti-Semitic article printed in France, and long prison sentences for Holocaust denial in Austria.

In the United States, courts are generally hostile to content-based regulation of hate speech. Usually speech is only restricted in cases where it poses a “clear and present danger” and would almost certainly incite violence or other rule of law violations. The prevalent philosophy is that, in a democracy, hateful speech is thought to be best balanced by calm, reasoned debate.

In many other parts of the OSCE region, detailed definitions of hateful content are used to set limits on free speech. The removal of some or all kinds of offensive speech from public discourse is done in the interest of democracy and avoiding social tensions.

Gaining insight from the OSCE region

The OSCE, which includes the countries of Europe, the Caucasus, Central Asia and North America, as well as Russia, is well placed to help bridge the many approaches to free speech regulation.

“By considering the divergent approaches of different jurisdictions, insights can be achieved that are not possible when focusing on a single system or tradition,” said Miklos Haraszti, the OSCE Representative on Freedom of the Media.

He also warned that “...the proliferation of history-based national standards in hate speech limitations might render OSCE’s commitment to free speech ineffectual in the long-term.”

The OSCE participating States have signed commitments both to promote freedom of expression and to combat intolerance and discrimination.

One of the Representative’s specific tasks is to fight intolerance in the media. At the 2004 Ministerial Council in Sofia, however, he was given the additional task of combating potential misuse of hate speech regulations in silencing legitimate dissent or alternative opinions.

Haraszti has participated in several key OSCE events relating to tolerance and non-discrimination since the second OSCE Conference on Anti-Semitism in April 2004.

Building a better understanding

To begin building a better understanding of the different approaches to hate speech regulation, the Representative on media freedom organized and moderated a panel discussion of five OSCE ambassadors in Budapest on 1 April 2006.

The event was part of a Central European University international conference on hate speech, organized jointly with the Floersheimer Centre for Constitutional Democracy of the Cardozo School of Law in New York.

Opening the discussion, Haraszti said: “The problem is that we don’t have universally applicable measurements for what is legitimate speech limitation. At the same time, there are a growing number of countries, all in good faith, that pass specific speech regulations.”

He characterized the dilemma by quoting the Armenian OSCE Ambassador Jivan Tabibian, who explained that legislation is sometimes adapted to fit existing taboos: “The concept of legally established taboos now exists. There are two ways out of this: if a taboo is an acceptable notion then let us have it in the protection of the many or the few, or if it is not acceptable, let us remove them all.”

Hate speech definitions and practices

In the lively debate that followed, Russian Ambassador Alexey Borodavkin underlined the media’s responsibility to balance reporting on terrorism and discourage hate propaganda by terrorists.

American Ambassador Julie Finley said that her country fears censorship more than offensive speech.

Ambassador Yves Doutriaux of France stressed the need to fight hate speech on the Internet through government and civil society, and to develop Internet literacy. He said the OSCE is unique in this debate because of its instruments such as the Representative on Freedom of the Media and the three Representatives of the Chairman-in-Office appointed to promote tolerance.

In his address, Ambassador Yusuf Buluc of Turkey said that hate speech “... if not checked, can unleash violent conflict and historically has proven its capacity to trigger genocides.”

Slovakian Ambassador Peter Lizak highlighted the importance of respect between cultures as an important lesson from the cartoon issue. He also presented his country’s recent legislation on Holocaust denial.

In closing the panel, Haraszti stressed that the OSCE can benefit from such multilateral deliberations. The possibility of developing a common approach to hate speech regulation depends on an increased understanding of the different views that currently exist.

“The OSCE must continue its efforts to promote debate on hate speech limitations within the region,” he said.

Media Self-Regulation: Fostering Media Ethics and Media Accountability

Adeline Hulin

2006 might be recalled in media studies as the year of the so-called “cartoon crisis”. The controversy surrounding the publication of Mohammed depictions in some European countries reflected a need to foster mutual respect and cultural understanding, particularly within the media community. The promotion of responsible journalism through the development of media self-regulation appeared as the most suited answer to prevent the replication of such crisis. Therefore, in 2006, the OSCE Representative on Freedom of the Media started to campaign the strengthening of media self-regulation in the OSCE area.

The best regulation system for the media

Media self-regulation refers to the implementation of mechanisms, drafted by and for media professionals, that are independent from the control of a government and that are aimed at upholding the quality and responsibility of mass media in the society. Well-know examples of such mechanisms are codes of ethics that provide journalists with guidelines on how to best exercise their profession. In case of a breach of the code, a self-regulatory body may announce moral redress to a journalist without the need for government to interfere.

The Representative on Freedom of the Media is convinced that self-regulation is the best regulation system for the media. Indeed, by fostering respect for different ethical guidelines, it promotes media quality while maintaining editorial freedom. Media self-regulation also helps minimize State

intervention and is an antidote to judicial action against the media including in case of defamation. Instruments of media self-regulation are consequently very well suited to substitute state interference with the work of the media. In case of libel, voluntary corrections and rectifications of information ordered by a complaint commission may successfully restore one's reputation without the need for judicial proceedings.

An answer to the “cartoon crisis”

Nevertheless, it is the cartoons controversy which cast a light on the topic of media self-regulation. In 2006, the publication of Mohammed depictions in the Jyllands-Posten and the following distribution gave rise to serious political crisis in the Muslim world with strong spill-over effects to Europe. Cartoons were widely misinterpreted as a statement of hatred towards Islam. The crisis pointed out the need to promote mutual respect and cultural understanding and the need for media professionals to be more sensitive towards other cultures.

The Representative on Freedom of the Media strongly believes that growth in respect for other culture does not require the passing of new legislation to regulate media activity. Media responsibility and quality – values defended by media self-regulation – are in fact the main components of true tolerance. Therefore, fostering media accountability would encourage positive dialogue, and would help discuss the relationship between media freedom and responsibility.

This was actually assessed during the OSCE Ministerial Council in December 2006. In its decision No 13/06, the Council “recognizes the essential role that the free and independent media can play in democratic societies and the strong influence it can have in countering or exacerbating misperceptions, prejudices and in that sense encourages the adoption of voluntary professional standards by journalists, media self-regulation and other

appropriate mechanisms for ensuring increased professionalism, accuracy and adherence to ethical standards among journalists”.

Self-regulation in the OSCE area

In 2006, the Office of the Representative on Freedom of the Media examined the current situation of media self-regulation in the OSCE area. Independent press councils and professional codes of ethics proved to be the most internationally recognised mechanisms of self-regulation. The institution of ombudsperson is also widespread although more developed in countries such as the United-States or France where media professionals’ reluctance to establish press councils let the creation of self-regulation mechanisms to the good will of media outlets themselves.

Results of the study showed that 29 countries out of 56 OSCE participating States have already established self-regulatory bodies. This concept refers to an independent national or regional authority that should gather representatives from journalists associations, media owners and representatives of the civil society. Since self-regulatory bodies are first and foremost established for and by the print media –although most of them cover also electronic media- they are usually called “press councils”. The bodies’ main task is to give moral redress in case of a breach of the code of ethics by a journalist.

The establishment of press councils is not a new phenomenon. In Sweden, a press council was set into being in 1916, in Norway twelve years later. The increasing influence of the media in the society and the worrying development of sensationalism tempted government officials of interfering more in media regulation. In order to avoid state intervention, some media professionals agreed on standards of quality journalism and established authorities to guarantee the respect for ethical guidelines.

Years later, newly developed democracies also engaged in media self-regulation. Outstanding in this respect is the dissolution of the Soviet Union which transformed the work of journalists. Closely supervised by state authorities, media were not previously guaranteed free access to information and could therefore revert to biased data. The end of that period assessed a need for the media to restore the civil society's trust in the media. A solution was found by promoting quality journalism.

However, the creation of self-regulation mechanisms can be considered a long process without an internationally valid recipe. Each country should develop a model which fits the best to its political and economical particularities. During the last 10 years, an increasing number of OSCE participating States have established different models of self-regulatory bodies, among others, Bulgaria and Georgia in 2005, followed by Kosovo and Albania in 2007.

It is still too early to judge the achievements of these newly created press councils. If changes within the media community can be assessed, the process might be unfinished. Moreover, many representatives of newly created bodies voiced concerns regarding the number of difficulties they are facing. The success of self-regulatory bodies requires certain preconditions that are partly not yet established and also probably difficult to achieve in certain areas of the OSCE. Some countries trying to set up a press council can therefore expect to face challenges and even dysfunctions.

In many new democracies, the lack of professionalism in journalism work is one of the main challenges. Journalism education, when it exists, does not often include the teaching of ethical principles. As a consequence, many journalists are not automatically aware of the existence of ethical guidelines and other self-regulatory mechanisms. Setting the authority of newly created press councils is another difficulty. Divisions within the media community and the financing of some media outlets by the State –mainly

through advertisement controlling- create controversies and can reinforce the lack of respect for a new press council. Moreover, by giving moral redress, some consider self-regulatory bodies to be inefficient. The power of moral sanctions as an alternative to criminal and financial redress is not yet acknowledged by all. Eventually, media outlets do not often have enough resources to contribute to financing a self-regulatory body. Money provided by international donors is limited and press councils sometimes face the lack of financial sustainability.

Participating in the annual Meeting of the Alliance of International Press Councils has proven a very useful experience for the Office of the Representative on Freedom of the Media. Held for the first time in a post-communist country, in Sofia in September 2006, the meeting provided with the opportunity for the representatives of newly created press councils to exchange their views on various issues. A major achievement of the conference has been the consent of well-established bodies to initiate close cooperation with new bodies. This cooperation was among others achieved in December 2006 when representatives of established press councils from United-Kingdom, Switzerland and Turkey participated in a meeting in Baku, organized by the newly created Press Council of Azerbaijan and sustained by the Office of the Representative on Freedom of the Media. Other representatives of new self-regulatory bodies from Georgia, Ukraine and Kyrgyzstan participated in discussions and examined together various citizens' complaints about journalist's unethical behaviors.

Needed assistance to participating States

Considering the increasing number of requests from OSCE participating States, in 2006, the Representative on Freedom of the Media started to assist participating States in developing media self-regulation mechanisms.

Based on the office's work in recent years, the conclusion can be drawn that some OSCE regions are well-engaged in the process of establishing

media self-regulation while some others are lagging behind. Therefore, the Office will initiate raising awareness on the essential benefits of media accountability systems for all stakeholders ranging from the civil society over the government to, of course, media professionals. 2007 will be a crucial year in the sense that a series of projects on that topic will be implemented.

Protection of Journalists and Access to Information: Topical Themes of 2006

Slava Shayman

The year 2006 was rich in developments in the realm of press freedom: hate speech, media self-regulation, Internet governance and the business of media were some of the items on the agenda of the OSCE Representative on Freedom of the Media. Two of the most recurring themes in 2006 were protection of journalists and access to information. These two issues continued to consume the attention of the Representative throughout the year and prompted repeated action by his Office in all of its operational activities both East and West of Vienna.

Protection of Journalists

Summing up the year in their annual Press Freedom Round-Up, the non-governmental organization Reporters Without Borders noted that 2006 was the deadliest year for journalists since 1994. According to RSF, eighty-one journalists and thirty-two media assistants were killed in 2006, 1,472 were physically attacked or threatened and 871 were arrested.

Journalists often sacrifice their freedom for spreading information. Such was the case of Jihad Momani, editor of Jordanian newspaper Shihan, who received a prison sentence for republishing the caricature cartoons of the Prophet Mohammed. Speaking at the 2006 OSCE Supplementary Human Dimension Meeting organized by the Office of the Representative on Freedom of the Media, Mr. Momani said that, while he condemned the “silly cartoons”, his professional duty of informing society ultimately prevailed. “I chose to act as a journalist, who also had his own political thoughts on the issue, but had to cover the story and inform the public.”

At other times, journalists sacrifice their lives.

In the OSCE region, several journalists lost their lives in connection with their professional duties in 2006. Two of these cases deserve a special mention because of the scale of international outcry which followed them.

Ogulsapar Muradova, reporter for Radio Free Europe, died in prison on 14 September 2006 shortly after being sentenced to six years' imprisonment for illegal possession of ammunition. The official report received by the Office of the Representative from the Turkmen authorities stated that Muradova had been "involved in criminal activities related to the collection of defamatory information in Turkmenistan in order to create public dissatisfaction."

On 7 October 2006, Anna Politkovskaya of Novaya Gazeta was brutally murdered in her apartment building. Politkovskaya was internationally known for her critical reporting on human rights abuses in Chechnya and the North Caucasus and was the recipient of the 2003 OSCE Prize for Journalism and Democracy.

The scope and the global reach of the problem of violence against journalists is exemplified by the fact that the four global media watchdogs – the OSCE Representative on Freedom of the Media and the freedom of expression rapporteurs of the United Nations, the Organization of American States and the African Commission on Human and Peoples' Rights – placed the issue of violence against journalists at the centre of their joint declarations in 2006. On World Press Freedom Day, 3 May, the four media watchdogs issued a Joint Statement, noting that

Attacks, intimidation and harassment against journalists and media professionals have regrettably become everyday events in some parts of the world.

In their Joint Declaration of 19 December 2006, the freedom of expression rapporteurs condemned crimes against journalists:

Intimidation of journalists, particularly murder and physical attacks, limit the freedom of expression not only of journalists but of all citizens, because they produce a chilling effect on the free flow of information, due to the fear they create of reporting on abuses of power, illegal activities and other wrongs against society. States have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression.

Violence as a threat to independent journalism manifests itself not only in physical attacks against media workers. In Budapest, the work of Hungarian Public Television was suspended when a mob of hooligans stormed and vandalized the premises of its building. On 19 September, the OSCE Representative condemned the violent attack on Hungary's public service broadcaster.

Another important track in the work of the Representative is the protection of journalists from arbitrary government decisions and administrative harassment. Across the OSCE region, there is a worrisome trend of using administrative measures to hinder independent journalism, such as imposition of heavy fines on and suspension of opposition newspapers, blocking and filtering of websites, use of criminal libel and insult provisions, burdensome requirements for registration of media outlets and accreditation of journalists. These and other measures understandably lead to self-censorship and create a chilling effect on the entire journalistic profession. Sometimes such measures have a legal basis but are applied selectively. To quote Ioana Avadani, Executive Director of the Centre for Independent Journalism in Bucharest, "there is the law and there is the implementation of the law."

Access to Information

Unhindered access to information has been a recognized principle of the OSCE acquis dating back to 1986. The concluding document of the CSCE Vienna Follow-up Meeting provides that the participating States “will make further efforts to facilitate the freer and wider dissemination of information of all kinds,” will “ensure that individuals can freely choose their sources of information,” and will “allow individuals, institutions and organizations...to obtain, possess, reproduce and distribute information material of all kinds.”

Since then, some progress has been made in this area, as 45 of 56 participating States have adopted laws providing citizens and journalists with specific rights to obtain information from government bodies. Still, a number of participating States continue to limit access to information, most commonly by applying arguments of national security. Agnes Callamard, Executive Director of Article 19, notes that “...the historic abuse of restrictions on freedom of expression and information in the name of national security has been, and remains, one of the most serious obstacles with respect to freedom of expression around the world”.

Several high profile cases involving the infringement of the right to access information and resulting in action from the Office of the RFOM in 2006 testify to the continued relevance of this problem.

On 19 January, the Representative addressed the Swiss authorities regarding court proceedings against journalists of the newspaper *SonntagsBlick* in connection with the publication of a fax intercepted by the Swiss military intelligence on the issue of alleged clandestine CIA prisons in Europe. In his letter, Miklós Haraszti wrote that “the concept of overriding public interest – already applied by some courts in Switzerland – should be built into the provisions which penalize the breach of state secrets” and that “[it] is the job of the public authorities to protect secrets, so liability must be confined to the officials who leaked the secrets”.

On 26 September, the Representative raised the issue of a lack of a federal “shield law” in the United States, which would protect journalistic sources and materials. The prison sentence given to blogger Josh Wolf for contempt of a Federal Grand Jury (for refusing to hand over video footage of a San Francisco demonstration to the police) caused the intervention. Josh Wolf was released after spending 226 days in prison – a record duration for a journalist refusing to disclose a source.

On 2 October, the Representative raised the case of Juliet O’Neill of the Ottawa Citizen with Canada’s Minister of Justice. O’Neill’s home and office were searched under the Security of Information Act in connection with her article about a man under surveillance of the Canadian authorities for alleged terrorist links. The Representative requested that the matter be addressed and that the Security of Information Act be re-examined. On 26 October, the Superior Court of Ontario struck down three sections of the act as unconstitutional.

In May 2006, the Representative announced the launch of a pilot project – “a comprehensive review of laws and practices on access to information by the media in the OSCE participating States”. The Access to Information project is aimed at improving the ability of journalists to obtain and use information and at enhancing the protection offered to journalists who report about issues of public interest. The project will help to clarify access of information issues such as the adequacy of legislation and its implementation, the response times in providing information and the existence of public interest tests.

The RFOM also organized and supported several local and regional events on access to information in the OSCE area. Both the seminar on access to information in Almaty, Kazakhstan and the two-day conference on the subject in Skopje, the capital of fYR Macedonia were commended by the participants as enlightening events.

Finally, the Office of the Representative carried out a review of Albania's legislation on access to information and state secrets. The recommendations in the review are applicable generally:

- A provision in the law on state secrets which allows releasing information in the public interest and to protect whistleblowers;
- A definition of the categories of information that cannot be classified as a state secret;
- And a limitation of the maximum period of time that information can be classified as a state secret.

Conclusion

The work of the Representative on Freedom of the Media in the two directions vital for the advancement of media freedom throughout the OSCE region – protection of journalists and access to information – takes many forms. Whether through interventions with government authorities, issuance of international mechanisms for promoting freedom of expression, organization of local, regional and international conferences, or review of legislation in the OSCE participating States, the efforts of the RFOM in promoting freedom, independence and pluralism of print and electronic media will continue in 2007.

Internet Governance

Christian Möller

“Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.”

Introduction

The quote above is the the working definition elaborated by the Working Group on Internet Governance (WGIG) in its report of July 2005.¹ You will find it quite often in the articles of this publication, as it is one of the foundations for the World Summit on the Information Society (WSIS) and the UN Internet Governance Forum (IGF). But the fact that it is so widely commented on also shows that it is only a working definition that is filled with meaning at the moment.

But what already has become clear ist that Governance of the Internet does not only mean to address technical issues like software standards or the domain name system. It also includes the cultural implications new technologies like the Internet have, including implications on fundamental human rights like the right to freedom of the media.

A series of recent moves against free speech on the Internet in a number of countries has provided a bitter reminder of the ease some regimes — democracies and dictatorships alike — find in expurgating speech that they disapprove, dislike, or simply fear.

¹ Report of the Working Group on Internet Governance, June 2005 <<http://www.wgig.org/docs/WGIGREPORT.doc>>

The Web has never made speaking out so easier in the past. Coincidentally Internet censorship is spreading rapidly, being practised by about two dozen countries and applied to a far wider range of online information and applications, according to research by a transatlantic group of academics.²

This stimulated the OSCE Representative to take a more detailed look at how the Internet is governed in the OSCE region. The concept of Internet Governance will be addressed from a number of different sides and examples from different countries of the OSCE region show how different issues of Internet Governance can be addressed by different stakeholders.

Internet governance

'Internet governance' is work in progress. It might develop into a new way of policy making on a global scale, with the involvement of many different sectors, including not only governments, but also industry and civil society.

Certainly, the way of policy-making already has changed. Whereas standards for previous means of communication were set by international governmental bodies, for the Internet this is often done by the online community or expert bodies with an open membership.

For example, television frequencies or phone numbers are governed by national broadcasting authorities or international governmental bodies like the ITU. The domain name system (DNS) –that could be maybe best explained as the directory of Internet numbers – is kept by the Internet Corporation for Assigned Names and Numbers (ICANN), a private company under U.S. law.

² OpenNet Initiative is a project by Harvard Law School and the universities of Toronto, Cambridge and Oxford. Their recent six-month investigation into whether 40 countries use censorship shows the practice is spreading, with new countries learning from experienced practitioners such as China and benefiting from technological improvements.

Rough consensus and requests for comments have been a means of setting technical standards for the emerging networks of the Internet. However, any technical development also has commercial, cultural and social implications, including implications for the free flow of information, freedom of expression and freedom of the media online.

Governments do play an important role in Internet Governance. 'Governance' does not mean 'government', but at the same time it does not mean that Governments should be excluded. Governments have a function that cannot be filled by other actors, for example the guarantee of independent courts and due process of law, the protection of human rights or antitrust authorities.

However, every stakeholder has a special competency. There are government duties no other actor could fulfil, on the other hand there are many fields in which the State should leave Governance of the Internet to civil society or the private sector, for example when it comes to the technical functioning or administration.

The UN Internet Governance Forum

The Tunis Agenda for the Information Society invited the UN Secretary-General to convene a new forum for multi-stakeholder policy dialogue. This Internet Governance Forum (IGF) process is supported by the Secretariat which is hosted by the United Nations Office at Geneva.

The first meeting of the IGF was held in Athens in autumn 2006. The preparation of the 2007 IGF in Rio has already started off. Several so-called 'Dynamic Coalitions' have been founded.

For the price – or the benefit – of not being able to adopt binding decisions, the IGF has achieved to be very inclusive. The outcome of this process still

has to be seen, but the form of the IGF and its organization definitely is a new model of policy making on the international level.

The question whether another institutionalized body addressing all these different aspects of Internet Governance will evolve from the IGF process remains. Maybe it will rather be an inclusive dialogue and a process of best practices and rough consensus between all different actors. And maybe governments might have to learn that not everything needs to be regulated in a very detailed manner as long as it is functioning in a smooth way to everybody's benefit.

However, all these are issues that will be addressed at the 2007 IGF in Rio and further on 2008 in India,

The Office of the OSCE Representative participated in the 2006 Athens IGF and, together with other actors, initiated the 'Dynamic Coalition on Freedom of Expression and Freedom of the Media Online' (FOEonline)³. This coalition now combines more than a dozen partners, including the Council of Europe, UNESCO, but also NGOs, among them Amnesty International, Article 19, Reporters sans frontières or IP Justice as well as academia.

These 'dynamic coalitions' are endorsed by the Internet Governance Forum, but do not constitute formal entities in any way. They rather serve as informal, open and inclusive platforms for state and non-state actors to share their views and contribute to the IGF process.⁴

In December 2006 the Representative held a workshop on Internet Governance at the Forum des droits sur l'Internet in Paris in December 2006 in preparation of a publication that is scheduled for Summer 2007.

3 <<http://foeonline.wordpress.com>>

4 A complete list of all dynamic coalitions can be found at <<http://www.intgovforum.org/Dynamic%20Coalitions.php>>

Other than the 2005 Media Freedom Internet Cookbook, this publication will not offer 'Recipes' on how to guarantee media freedom online. It rather serves as a showcase of examples of multi-stakeholder approaches to Internet Governance.

We hope that this collection of diverse contributions will provide useful information for delegations, but also for other interested parties, to follow the process of Internet Governance. Working together with all relevant actors to improve the free flow of ideas on the Internet, to guarantee media freedom online and to enable users to participate in the information society should be the shared aim of 'governing the Internet'.

Highlights from the 8th Central Asia Media Conference

Media Voices Speak Out about the Business of Media in Central Asia*

“There are few these days who question the role of a free and independent media in a democratic society. In the last 17 years, the post-communist countries have witnessed a significant effort of advocacy, public and political debate, international support and more or less discreet pressure leverage at work – all directed toward the consolidation of a free press, as a prerequisite of a sustainable democracy. While most agree that a free press is what we need, there is a less obvious agreement on what a free press really means.

The definition seems somehow easier to formulate if one looks at the media from the democratic angle: the media should be free from interference from the governments, should enjoy a permissive legal framework that will allow for and encourage self-regulation and responsibility of the profession, and should strive on a functional and freely competitive market.

But it is when the market comes into the picture, that the things become a bit more complicated, especially in post-communist countries. The communist systems did everything in their power (which is a quite significant “everything”!) to dwarf the individual initiative, the entrepreneurial spirit. One of the first tasks of the new regimes was to revive this spirit, seen as the root of all future development, to encourage the local entrepreneurs to take the necessary risks, to put their money at work and to start a new – and just hopefully – profitable business.”

* The following quotations are from the presentations at the Central Asian Media Conference “The Business of Media” held in Bishkek in October 2006.

“The media should be seen and dealt with in their dual nature: they are in the same time a human rights vehicle and a business. The approaches that separated the two features, giving prevalence to one or the other – proved to be less than optimal, in the long run, as sooner rather than later the neglected aspect emerged as a natural conditioning of the other.”

Ioana Avadani, Executive Director,
Centre for Independent Journalism, Bucharest, Romania

“Nevertheless, it transpired that all regional media position themselves as commercial publications when gathering advertisements and are willing to step up their efforts in this area. But they do not have professional experience in this type of activity, since there is no money for developing this branch. Summing up the above, most state media organizations have no strategic plan for developing their own publication, own limited resources, and have no skills in assimilating the regional market, have an underdeveloped system for distributing printed media, and absolutely no qualified specialists in marketing, advertising, distribution, and promotion.”

Shamaral Maichiev, Media Representative,
Media Commissioner Institute, Kyrgyzstan

“Then charitable foundations and Western governmental organizations came and took root in the former Soviet states, believing it their duty to help promote democracy and its main institution – freedom of expression. The establishment of new newspapers, magazines and agencies with the help of grants donated just marked the start of the media independent of the national budget. But this situation is well known in Japanese folklore: ‘Don’t give a poor man a fish; better give him a fishing rod and teach him how to fish.’

This allegory well suits to explain the situation surrounding the mass media in the countries of Central Asia, where the attitude towards the media business is still considered to be of less importance than imitation of a fight for freedom of expression. Like over the last 15 years, there still are far fewer seminars and trainings devoted to management or alternative ways of distributing newspapers than to general problems of freedom of expression.”

Oleg Panfilov, Director,
Centre for Journalism in Extreme Situations, Moscow, Russia

“When, in 1991, back in Soviet times, the law on the press was drafted, many people still did not understand that the media are, above all, a business. Back then there was a single objective – to maintain freedom of speech, so the focus was on the rights and obligations of the editors and journalists. Times have now changed and the old law is outdated. It contravenes, for example, the law on advertising, the law on consumer rights, the law on joint-stock companies, the civil, administrative and labour codes; it fails to regulate relations between the owner/publisher, editor, advertiser and distributor and totally ignores the problem of monopolisation.”

Saidali Siddikov, Founder and Editor-in-Chief,
Sobytiya Newspaper, Tajikistan

“Sometimes journalists, when speaking of particular problems, criticise officials of various rank. Then those who come in for the criticism ‘take offence’ and call up the media management. In a small town, where everyone knows everyone else, the next day the director goes round and calls on all those who are ‘offended’, trying to explain the essence of a journalist’s job under the conditions of freedom of speech and asking the ‘offended’ not to take criticism as a personal offence. Similar things have

happened with the mayor, his deputies, the heads of the police, public utilities and so on.”

Khaliljan Khudaiberdiev, Director,
Osh TV, Kyrgyzstan

“[The EUMAP study results showed that a] standard tactic here is to hide the real ownership of the station by creating a shell that is the nominal owner, registered locally, and having the real owner (usually the owner of the shell) registered in a foreign jurisdiction that protects ownership secrecy. A second technique is the creation of multi-layered, sophisticated ownership structures locally that evade the most strenuous of investigations by regulatory bodies.”

Algirdas Lipstas, Deputy Director, Network Media Program,
Open Society Foundation, London, United Kingdom

“The measures undertaken by the state to expand the country’s information space, search for new ways to co-operate with journalists throughout the world, and ensure joint influence of the mass media on the globalization processes have created new opportunities for attracting representatives of world media organizations and agencies to Kazakhstan. The media periodical market is also widely represented by the press of other states – there are 2,594 foreign media organizations in the country.”

“Today we can confidently say that Kazakhstan’s information market has essentially come about. What is more, it has entered a phase of stable growth. Economic support of the mass media and adopting measures to raise the competitiveness of the domestic media market have played a significant role in accomplishing this. For example, from 2001 to 2004, periodicals were exempt from VAT, and a zero tax rate for added value

on their own products was in effect for television and radio broadcasting companies. Over the past five years, the fees for using radio frequencies have decreased almost annually, and in 2002, annual payments for their use were cancelled entirely. Now licensor companies only settle payment for the initial issue of a permit for the radio frequency service rate. In order to ensure transparency of the process for acquiring television and radio broadcasting frequencies, the parliament, as well as international and Kazakhstan's public associations are represented in the contest Commission for granting the right to the use of radio frequencies. What's more, the Commission's work is widely covered in the mass media, which is also having a favourable effect on the development of the information sphere.”

Berik Belzhanov, Senior Specialist,
Department for Monitoring of Printed Media under the
Committee of Information and Archives of the
Ministry of Culture and Information, Kazakhstan

Highlights from the 3rd South Caucasus Media Conference

Media Voices Speak Out about the Business of Media in South Caucasus*

“If you were to go around the news stalls in Yerevan today, you would get the impression that the newspaper business in Armenia is booming, or, at least, is on the way up. Just a few years ago all the display stands were adorned with brightly coloured Moscow publications printed on high-quality paper, and somewhere at the bottom you might have found two or three faded and unappetizing local publications.

Today the situation is drastically changing. It began with the printers, or, to be more precise, Tigran Mets Publishers, which got a whiff of where the wind was blowing on the market, bought the latest printing equipment, and are now putting out local magazines and other colour publications at a high-quality level. A new product appears on the newspaper market almost every month: a youth magazine, a women’s magazine, a colour sports weekly, an advertisement newspaper, a sociopolitical analytical weekly, and so on. A good half of them close down after a while, unable to stand the competition, but the rest, after finding their niche on the market, begin to gain momentum, launching new projects.”

“As Napoleon said at one time, three things are needed for a successful fight: money, money, and money. We newspaper people also need the same thing to build up a newspaper and make it profitable, we need to invest big money in it from the very start. But as things turned out, after the collapse of the Soviet Union, in Armenia, as elsewhere in the post-Soviet space, new

* The following quotations are from the presentations at the Central Asian Media Conference “The Business of Media” held in Bishkek in October 2006.

newspapers began to be founded either by journalists who had newspaper-making skills but no clue about economics or newspaper management, nor any money, or by political forces that were interested in newspapers not as a business, but as an additional lever for achieving their political ends.”

Vardan Aloyan, Director,
CS Publishing House, Armenia

“These ‘government-funded’ media enjoy three key advantages over the private media, thereby violating the principle of free competition on the media market. The first advantage is government subsidies from the national budget. The second advantage is the green light enjoyed by the staff of these publications to enter government agencies. Even given the limited access to information in the country, all doors are open for the staff of state-owned media and they can get hold of any information they might want. The third advantage, no less important, is the tacit tradition of mandatory subscription to state-owned media by public servants. This means more funds and better access to information.”

Kenan Guluzade, Editor,
Zerkalo Newspaper, Azerbaijan

“The EUMAP study results showed that a significant and worrying development in the commercial television sector is the increasing concentration of ownership along with a lack of transparency of the ownership of TV stations. Such concentration of ownership in a few hands is potentially dangerous as it could turn into a concentration of influence that can be used for political, personal, ideological or commercial purposes. At the same time, the reduction of a range of independently-owned TV stations raises the specter of uniform commercialized content, at the expense of

diverse coverage and – in combination with overall commercialization of media – further shrinking of public service content.”

Morris Lipson, Senior Legal Adviser, Network Media Program,
Open Society Foundation, London, United Kingdom

“To sum up the legal aspect of the report topic, I should say that Azerbaijan has a relatively democratic legal base that provides legitimate possibilities for freely engaging in the media business. But this is where all the positive things essentially end and big problems begin. This is where politics come in.”

“Here there can be no doubt that the state of the media business in Azerbaijan is a mirror of the Azerbaijani political system and economy. The ruling regime in Azerbaijan is using the entire arsenal of political and other tools to take the media business under its total political control. And it is at this point that the democratic legal base, without finding its fair application based on the equality of each and everyone before the law, turns into stacks of worthless paper.”

Ibrahim Aliev, Deputy Editor-in-Chief,
Bakinskije Vedomosti Newspaper, Azerbaijan

“In Georgia, there certainly are profitable media, but these are rare exceptions. Most of the print and electronic media barely manage to survive financially on their own or receive subsidies. This applies in particular to regional publications and radio and television channels, which for over 10 years have existed on grants from international donors. This has, in a way, allowed the Georgian media to remain under incubator-type conditions for years and to feel relatively relaxed. That is probably why there are good

editors and journalists around in the country today, but no skilled media managers or marketologists.”

“In a word, in Georgia today business is inclined towards oligarchic tendencies, which obviously presupposes unfair competition under which totally different, unwritten laws determine the success of a business and, given this, advertising is a waste of money or even counterproductive. In order to survive in this environment, the media quite logically seek some sort of support in oligarchic and political circles and it turns out that, in a country that has long since forgotten about the existence of censorship, the media are still dependent on the same political and business interests. “

Paata Veshapidze, Editor-in-Chief,
24 Saat Newspaper, Georgia

“But it is obvious that financial transparency, like litmus paper, should reveal whether or not television companies are economically protected by political forces or branches of power, the criminal world, or oligarchy structures.

Of course this protection exists! Says a man in the street – and will be right.

Of course it doesn't! Says a demagogue – and will be right.

In the final count, they will both be right as long as a television company perceives financial transparency as an end in itself, as a way of avoiding “bothersome” public and international organizations, that is, for marking up points.

The most difficult thing is to understand that financial transparency forms the legal basis for the television company's competitiveness. This is difficult to comprehend, since financial secrecy is extremely effective in the short

run. But when there are long-term business plans, it becomes clear that clandestine financial conduct will slow down the television company's economic development and competitiveness.”

Gnel Nalbandian, Deputy Executive Director,
Public Television Company, Armenia

“Most Bulgarians – journalists, media owners and the general public – are aware of the need for ethics in journalism. This does not mean that everyone in the media community is ethical. In the case of egregious violations, however, everyone seems to know that rules have been broken.

Few question the relationship between high professional standards and the business success of the media. Generally, successful Bulgarian media respect the professional ethics and the independence of their journalists. The owners of these media, in fact, cite this respect as one of the reasons for their success.”

“Thus, it can be concluded that there is a mix of good and bad practices in the Bulgarian media market. It offers several examples of how adherence to generally accepted ethical standards leads to success. The media with the highest ratings and advertising revenues have clear ethical standards, which are obligatory. On the other hand, examples of unethical behaviour are plentiful. In almost all cases, the ethically questionable media have been unsuccessful in business. Attempting to survive, they make greater and greater compromises, and consequently lose audience.”

Ognian Zlatev, Managing Director,
Media Development Centre, Sofia, Bulgaria

Mandate

PC.DEC No. 193

Organization for Security and Co-operation in Europe

5 November 1997

137th Plenary Meeting

PC Journal No. 137, Agenda item 1

Decision No. 193

Mandate of the OSCE Representation on Freedom of the Media

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 prejudge 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

Reports and Statements

to the OSCE Permanent Council and other OSCE Fora

Report to the Permanent Council by the OSCE Representative on Freedom of the Media

(16.02.2006)

Mr. Chairman, Ladies and Gentlemen,

This is my first regular report in 2006. The structure of my report will be slightly amended in light of the recent events, the storm around the so-called “Danish cartoons”, and the need to reflect on what can be done in this situation.

I already issued a public statement on the subject two weeks ago, mainly with the aim of an early warning against hasty governmental infringement on the press, while suggesting mutual respect for traditions. On this occasion, I would like to explore the issues in more depth.

The “cartoon” controversy: The need for respect in freedom

As you are all aware, what started as an intra-cultural tongue-in-cheek provocation by a Danish newspaper on the subject of the Prophet Mohammed, has now become an inter-cultural clash on a horrifying scale. This clash has already claimed lives, and mobilised mass demonstrations and even some governments against perceived collective Danish, or European, desire to humiliate the whole of Islam.

An editorial judgement

We can now establish with some certainty the context of the original publication of the 12 cartoons. In the spirit of spreading inter-cultural understanding inside Denmark, an illustrated children’s book on the life of the Prophet Mohammed was to be published. However, the publisher couldn’t find willing illustrators for the book. The editors of *Jyllands-Posten*

were told that the reason was not a voluntary observance of the Islamic ban on depicting the Prophet, but physical fear. They saw this fear as a consequence of earlier intimidation by extremist Islamists in the wake of secular artistic representations of Islamic subjects, like the Salman Rushdie Fatwa, or the Theo Van Gogh murder. They concluded that fear is jeopardising an important component of democratic culture which is disregard for taboos, just at the moment when it matters.

This is how *Jyllands-Posten* made the decision to ask for cartoons on the subject of the Prophet Mohammed, unquestionably knowing that it is scandalous for faithful Muslims. Nevertheless, this decision was made without any intent to express or incite religious hatred. If the cartoons were intended at all as a statement, then the statement was not about Islam, but about *Jyllands-Posten's* own readiness to uphold the critical tradition.

Actually, some of the cartoons were obviously meant to express the authors' critique vis-à-vis extremist misuse of the teachings of Islam. But that critique was made in a form that for most believers made it indistinguishable from a critique on Islam itself. This was so because the editors – in a misjudgement about how this critique would be read – employed no other means to illustrate their attitude towards free speech than the Islamic ban on depicting the Prophet Mohammed. They decided not to respect the sentiments of their Muslim readers, because setting aside cultural politeness was the very technique they chose for making a harsh endorsement of freedom.

Misinterpretations of an editorial judgement

Yet it was exactly the abandonment of cultural politeness that turned out to be decisive in the course of events.

The editors “dared” to be disrespectful to Muslims not only because by publishing the cartoons they thought they did not talk *about* Muslims, but also because they thought they did not talk *to* Muslims. That was – we can

state this now with hindsight – another misjudgement, one of the current level of globalisation.

Their goal was misunderstood by good-willing Muslims around the world, and it was deliberately misinterpreted by ill-willed jihadist propagandists.

First, the cartoons were misinterpreted as a statement on *Islam as a whole*.

Second, they were misinterpreted as a statement of *hatred* towards Islam as a whole.

Third, they were misinterpreted as a statement of hatred towards Islam *by Denmark, its nation and its government*.

These misinterpretations gathered strength, and were extended to encompass the whole of the ‘West’ when a number of papers in Europe republished the cartoons in an act of solidarity with the Voltairian gesture of *Jyllands-Posten*. The republishing papers, by the very act, went out of their way to emphasise that the reprinting was not meant in any sense as anti-Muslim. However, these assurances remained unrecognised, as did a similar statement from *Jyllands-Posten*, apologising for any hurt sentiments.

Unforgiving violence

By now, what started as an issue of editorial judgement has become, in many parts of the world, a question of life and death. A wave of unforgiving mass violence, for the moment at least, succeeded in making a Huntingtonian point about the clash of civilisations. Images of burnt-down embassies of European nations suggest a profound cultural change in the world, a seemingly irreversible crystallisation of two civilizations, and an almost cold-war like divide between them.

The dignified joint statement by the Prime Ministers of Spain and Turkey, calling for calm and respect, speaks volumes about this potential rupture by reintroducing – for the first time since the Cold War – the concept of “peaceful co-existence”.

One of the immediate dangers created by misinterpretation and violence is that, at the moment, it is almost impossible to debate the issues freely. Our deliberations are taking place in an atmosphere of intimidation.

Therefore, we have to be particularly careful in making our conclusions and recommendations.

Immediate tasks and long-term considerations

In the short-term, while offering dialogue and cooperation, the context of fear should be rigorously opposed. Violence, especially State-endorsed violence, must be rejected. The actual aim of our short-term efforts must be the re-creation of a climate for a long-term constructive debate and cultural exchange.

The short-term methods may include the creation of channels to enable dialogue; clarification of misunderstandings; the bringing together of Western media (even the “cartoon-publishing” ones), with Muslim media; an assurance to the Muslim world of the respect of the papers and their home countries; and making it understood that the “cartoon” editorial decisions were entirely civil-society ones, neither asked for, nor endorsed, by governments.

It is perhaps necessary for governments to distance themselves from the publishers of the cartoons. But when doing so, concessions should not be made to demands – which are, unfortunately, central to many current protests and governmental demarches in the Muslim world – that

government leaders should take responsibility for the actions of the free press, or should even curb “their” media.

The debate should not pit freedom of speech against more respect and more care. Enhanced awareness of Muslim culture, and better responsiveness to global imperatives in the editorial work, should come as an addendum to free speech, not as a restriction to it.

It should be made very clear that, universally, only a completely free press can be a responsible press. That commitment has a strategic importance for both the democratic world and the Muslim cultures, as well as for their rapprochement.

In order to find a solution, more than just respect towards Muslim traditions is essential. Dialogue should be shaped so that it also fosters respect in Muslim societies for the democratic traditions of other countries. It is not disrespectful to assume that separation of the state from the press, and from civil society (and perhaps even from religion) can become more accepted in Muslim cultures as well. It is not realistic to demand respect from editors of the free media for a lack of respect for editorial independence demonstrated by some Muslim governments today.

Promoting responsibility in freedom

My office, while protecting the independence and pluralism and – importantly in the present situation – safety of the press, has always promoted media responsibility and quality, which are the main components of true tolerance.

We believe that the necessary growth in respect for other cultures does not require the passing of new legislation to regulate media activity.

We have to have trust in the educational effect of what has happened. It is safe to predict that editors by themselves in the future will think more globally when acting locally.

But we also encourage Press Councils, those seasoned self-regulatory ethics bodies of the quality media, to collect and summarize the wisdom of the press corps.

In European type media landscapes, it is public broadcasters, funded by the tax-payer, which are specifically tasked to promote mutual respect between cultures and to foster the heritage of both majorities and minorities. We will further encourage transformation of state broadcasters into independent centres for responsible public journalism, in those places in the OSCE region where transformation is still pending.

We support the twinning efforts inside the OSCE region, offered by the Belgian Chairmanship. We could assist by organising editorial trainings, given by established public broadcasters to the newly transformed ones. The topic of enhanced cultural dialogue is apt for such twinning.

As we did in the case of Kosovo, we continue to monitor serious violations of intercultural responsibilities by the media, and assist with the formation mechanisms to promote self-regulatory ethics. This year, we hope to explore new forms of training to support the institutionalisation of press councils throughout the OSCE region.

We are confident that the OSCE's skills in conflict prevention and resolution, and in fostering dialogue, will prove invaluable once again in the wake of the sad events of the past weeks.

My office is ready to contribute to these activities. Just as it happened throughout the Helsinki process, dialogue with Muslim societies will also

assist nations to develop mutual respect, both for values of culture and for values of free debate.

Cases

During the time since my report in December, my office has continued to monitor events and to raise issues in the OSCE region.

Azerbaijan

I am pleased that I can open this section of the report with positive news from Azerbaijan. I welcome President Ilham Aliyev's decision on 8 February to cancel the debts of all newspapers owed to the State Publishing House *Azerbaijan*. The debt, totalling 350 000 euros, will now be paid from the State budget. This gesture of goodwill will apply to, inter alia, the country's leading opposition publications.

Croatia

I welcome the steps that the Croatian government has taken to reform the country's criminal libel provisions. In her letter to me dated 11 January 2006, Foreign Minister Ms. Kolinda Grabar-Kitarovic mentioned the preparation of further amendments to the Criminal Code. These, she said, "would allow for quite constructive and positive steps in a libel law reform". I wish the Government of Croatia success in this important endeavour and welcome the willingness for further cooperation with my office.

Hungary

On 9 January I sent a letter to the Hungarian Foreign Minister welcoming a recent proposal by the Prime Minister's Office to amend the existing Hungarian law on classified information. I summarised my recommendations regarding the necessary changes and urged a similar amendment to the Criminal Code.

These amendments have become even more urgent because of two ongoing prosecutions in Hungary. In 2004, for the first time since democratization, the Budapest Prosecutor indicted a journalist for “breach of a state secret” which carries a sentence of up to five years in prison. In 2005 legal action also started against another journalist accused of the same crime. Further worrisome is the fact that the officials in charge of protecting the leaked information were not brought to trial in either of these cases.

Unfortunately, at the end of January the Hungarian Parliament postponed these much needed amendments so that work on the amendments could start only after the elections scheduled for April this year. The trials can continue uninhibited until then.

The former Yugoslav Republic of Macedonia

A few days ago, together with the Spillover Monitor Mission to Skopje, our office held an international conference in Skopje in support of decriminalisation of libel and defamation in the former Yugoslav Republic of Macedonia.

Indeed, during this conference, Ms. Meri Mladenovska-Georgievska, Minister of Justice, publicly pledged to propose to parliament to remove prison sentences from legal provisions that sanction libel and deformation. She also declared the government’s preparedness to undertake further reforms towards the complete decriminalisation of violations of honour and dignity, and to place the handling of these offences into the civilian domain.

I warmly greet this news. My office stands ready to further assist with these very welcome reforms which would help the Macedonian press to function free of old fears.

Poland

In my letter of 18 January to President Lech Kaczynski I expressed my concern about the case of Andrzej Marek, editor-in-chief of the newspaper *Wiesci Polickie*, who on 17 January began to serve a three-month jail term in Szczecin for libelling a local official. This is the first instance in democratic Poland of sending a journalist to jail on libel charges. I asked the President to pardon Marek so that the case would not become a legal precedent for the future.

I welcome the recent decision of Poland's Constitutional Court to suspend the implementation of Marek's prison sentence and set him free while deliberating on the constitutionality of the case, and of the underlying legislation.

Russian Federation

In my letter of 7 February to the Minister of Justice I raised the case of Stanislav Dmitrievsky, editor-in-chief of '*Pravozaschita*' (Human Rights Defence), the news bulletin of the Nizhny-Novgorod Society for Human Rights. On 3 February 2006, the editor was sentenced to two years imprisonment by the Sovetski District Court in Nizhny Novgorod for re-printing two documents from the internet. These were open letters, one by Aslan Maskhadov, the late Chechen separatist leader, to the European Parliament, and the other by Akhmed Zakaev, Maskhadov's London envoy, to the Russian people. The sentence was passed according to article 282.2 of the Criminal Code, which prohibits incitement of hatred or enmity towards nationalities. The sentence was suspended for four years.

In my letter, I noted that the convict was not condoning acts of terrorism by re-printing public documents, but instead was serving the Russian public's right to receive in-depth information about issues of public interest. I proposed the initiation of a legislative correction, in order that the provision about incitement to hatred is only invoked against those who actually aim

to do this, and is not used to restrict the normal functioning of the press. If Dmitrievsky appeals to a higher instance, my office will continue to monitor the case.

Switzerland

I intervened with the Defence Minister and the Justice Minister after the Swiss Federal and Military Attorneys started probing into the case of *SonntagsBlick*.

The weekly had published classified details of the interception of a fax by Swiss military intelligence. The intercepted fax message from the Egyptian Foreign Ministry to its Embassy in London was sent via satellite link on 15 November 2005. It was a summary of world press reports on the issue of alleged clandestine CIA prisons in Europe.

I asked the Swiss Government to do everything in its power to limit action against the media in this case.

I also called for amendments to the punitive provisions on breach of confidentiality so that they do not hold media accountable for keeping official secrets. In order to bring Swiss legislation in line with the internationally recognized principle of the overriding public interest, the public's right to know should be included in the Swiss Civil and Military Penal Codes, which hitherto lack any such feature.

Tajikistan

On January 11 the Tajik Committee for TV and Radio Broadcasting suspended *BBC* radio programming in FM frequencies because the company had not re-registered in time with the Tajik Ministry of Justice. The *BBC* complained it had not received adequate notification about changes to regulation that required them to re-register, and that the suspension was an unnecessarily harsh reaction to non-compliance with an administrative

procedure. Seeking explanation and the resolution of the issue, I contacted the Tajik authorities. I was informed through the Head of the Delegation of Tajikistan to OSCE that there were no political motivations behind the suspension. Unfortunately, at the time of writing this report, *BBC FM* has still not resumed broadcasting in Tajikistan.

Turkey

I welcome the news of 22 January that the trial of the writer Orhan Pamuk will not proceed, in accordance with the wishes of the Minister of Justice. However, I remain concerned as approximately 15 people are currently on trial for their writings on similar charges of ‘insult against the authorities’ or ‘Turkishness’ under Article 301 of the Penal Code.

I call for an end to all trials of those accused for having exercised their right to freedom of expression. I also call on the Turkish authorities to abolish article 301, and to amend all similar provisions according to the public’s right to exchange critical ideas.

ICTY/Croatia

With regard to their cases in the International Criminal Tribunal for the former Yugoslavia, I have continued to follow the trials of the five Croatian journalists who are charged with contempt of court. The journalists have published the name and the classified testimony of a high-ranking Croatian politician who was a protected witness in a war crime trial in 1997. If convicted, the journalists could be sentenced to up to seven years in prison.

In January, an appeals court of the Tribunal cancelled the protection of the witness in question. The witness was President of Croatia, Stipe Mesic. He had earlier asked the court to lift his anonymity.

On January 20, in the first journalist trial, Tribunal Judge Ian Bonomy stated that the accusations of contempt were “not an appropriate way to use the

court's resources". He also established that at the time of publication of the name of President Mesic, it was clear that there were no more reasons for applying protective measures to the witness in question.

We hope that the upcoming judgement will establish that international tribunals, as do national laws, would acknowledge the pre-eminence of legitimately public-interest issues over the need for classification.

Joint Declaration by three media freedom rapporteurs

On 21 December 2005, together with the UN Special Rapporteur on Freedom of Opinion and Expression and the OAS Special Rapporteur on Freedom of Expression, I issued a *Joint Declaration on the International Mechanisms for Promoting Freedom of Expression*.

The focus of this document is Freedom of the Internet and Anti-terrorism Measures. In the section on the Internet, the Declaration stresses that: all States should revoke requirements to register websites, except domain registration (which is a purely technical procedure); the Internet should only be overseen by independent bodies and that national regulation of domain names must not exercise control over content; States should promote universal access to the Internet; Content filters cannot be justified if they are not user-controlled. It also defines the clear limits of liability of content authors for their publications on the Internet.

On anti-terrorism measures, the declaration states that restricting free expression for the sake of combating terrorism could facilitate certain terrorist activities, in particular the dismantling of human rights. It says that "while it may be legitimate to ban incitement to terrorism, States should not employ vague terms such as 'glorifying' or 'promoting' terrorism when restricting expression. Incitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in

a context in which the call is directly responsible for increasing the actual likelihood of a terrorist act occurring.”

Projects supported by RFoM

I would like to take this opportunity to extend my gratitude to those Governments which have generously supported our activities with extra-budgetary contributions in the past. As always, we shall be seeking financial support for our 2006 activities and hope to count on the generosity of the participating States.

This year we will continue to implement a range of practical projects that my Office supports both conceptually and financially.

A new element of our project work is our support to the Belgian endeavour in twinning, in order that OSCE-wide cooperation to further a free and responsible press is expanded.

I would like to express my gratitude to the OSCE field presences that play a significant role during all stages of our projects – from the first steps of planning until their completion. Their contribution is invaluable in realising our activities locally.

The last months of 2005

In **Azerbaijan** we prepared and distributed a booklet consisting of a compilation of all CSCE-OSCE media commitments and information on journalists’ right to obtain information, based on the recently adopted on Freedom of Information Law.

In **Georgia** we supported a training program for judges and lawyers on the issues of freedom of expression. Trainings were held in 25 cities throughout the country. We hope that we will be able to continue this project in 2006.

In the **former Yugoslav Republic of Macedonia** we supported a series of workshops to promote e-society in the country and raise awareness about freedom of expression on the Internet.

In **Moldova**, in the **Transnistrian region**, we provided financial support to two independent media outlets, *Celovek i ego pravo* and *Novaia Gazeta*. As I proposed in my report to the Permanent Council on 10 March 2005, these media outlets have now received much-needed equipment.

In **Ukraine** we conducted several training programmes for journalists of local media and supported the drafting of amendments to articles of the Ukrainian legal framework that concern transparency of ownership of media outlets. We also supported the creation of a website for the national Association of Press and Publishers.

Plans for this year

“Hate Speech” Conference

The Central European University, as well as other international academic institutions will hold an International Conference and Consultation on the topic of “Hate Speech” on 31 March –1 April, 2006 in Budapest, Hungary. My office has offered to sponsor some of the expert panellists of the conference.

In addition, we will hold a special event, a “Panel of Diplomats” with OSCE Ambassadors. The Heads of Delegations of France, the Russian Federation, and the US, agreed to participate on the “Panel of Diplomats”, which is scheduled for Saturday 1 April in the morning. I would like to thank them once again for their readiness to participate, and shall use this opportunity to encourage all of you to come as well. Hungary’ Foreign Ministry also supports the event.

The conference should inspire scholarship which advocates convergence among seemingly opposed or different positions, or at least explains those differences. It should aid OSCE and others in understanding so it can develop policy consensus.

Our contribution is in line with our mandate to fight intolerance. Further, we are addressing the additional task set at the 2004 Sofia Ministerial Council, which is to fight the eventual misuse of speech regulation in order to silence legitimate dissent.

New Central Asia Conference

We are happy to announce this year the renewed concept of the successful series of regional Central Asian Media Conferences. A planned one-day conference will target the merits and problems of media privatisation, and the sustainability of privately owned media in the region. During the second day the participants will be offered capacity-building and training on management and business skills in running a financially sustainable media outlet. The participants will include state officials, legislators, leaders of state media, actual or would-be owners, publishers, editors, managers and media planners.

I welcome the readiness of the Kyrgyz government to host the conference in Bishkek and I look forward to good cooperation with the authorities and the OSCE Centre in Bishkek in the organisation of the event.

Other projects

In the realm of the **Internet** we will conduct three advanced training conferences for media representatives on the use of information technology in journalism in Kyrgyzstan and Tajikistan, in cooperation with the International Research and Exchange Board (IREX) and the Internet Access and Training Program (IATP). Altogether, 55 journalists will be given the opportunity to participate in a one-week training conference. The training

conferences will be conducted in Dushanbe, Tajikistan, and in Bishkek and Jalal-abad, Kyrgyzstan, at the IATP access sites.

My office will continue its **assistance projects for governments and the media**, successfully piloted in 2005 in Azerbaijan and Kyrgyzstan. The goals of the training project are: to teach governmental press and public information officers techniques to effectively manage press office; to inform them of democratic strategies and the legal basis of interaction with journalists; and to provide an overview of the international experience in this area. The project also aims to improve **journalists' professional and ethical skills**.

This year, we have received invitations for follow-up courses in Azerbaijan and Kyrgyzstan. In addition, we are planning to assist other OSCE participating States in this area (Tajikistan, Kazakhstan and Georgia) and to expand the training to include additional topics, such as **self-regulation of the media**. A series of similar seminars for press-secretaries and journalists is planned in cooperation with the Office of OSCE Project Coordinator in Ukraine, in several Ukrainian cities later this year.

Report to the Permanent Council by the OSCE Representative on Freedom of the Media

(13.07.2006)

Mr Chairman, Ladies and Gentlemen,

This is my second report to the Permanent Council this year.

The structure of my first report in 2006, in the wake of the “cartoon controversy”, was adjusted to deal with issues of profound public interest that remain a high priority. Since then, my Office has been particularly busy dealing with the same issues, as well as with the structural issues that constitute the substance of my mandate. The extent of our work is reflected in the length of this current report.

This report provides summaries of the interventions made by my Office on individual cases in the OSCE region; it summarises one of our two country assessment visits (the full Kosovo report is included as an annex; the Armenia report will follow), it includes a summary of our joint achievements in the decriminalisation of defamation offences, and provides an update on our projects and activities. Finally, I outline our planned activities for the rest of this year.

I would like to greet Montenegro as the 56th participating State in the OSCE family. Allow me to assure you that my Office will be available to fully support both Serbia’s and Montenegro’s continued efforts to promote free and independent media.

Issues raised with participating States

Over the past months, I have raised several issues in our region, among them:

In **Albania**, the Government-proposed amendments on the composition of the National Council of Radio and Television (NCRT) and the Steering Council of the Albanian Radio and Television (SCART) were adopted by the Assembly on 19 June.

Earlier, I had sent a letter to the Speaker of the Assembly of Albania proposing that the two Councils comprise a civil-society majority, including NGOs and professional organizations, who would then be appointed by Parliament. The adopted amendments have taken these suggestions on board, which I commend.

However, the final appointment of Council members by Parliament will be made by simple majority, which entails the risk of an imbalanced Council composition. I therefore encourage the Albanian Government to consider a further amendment of the law. It is a common practice in Europe that the Council or its chairperson is approved by Parliament with a qualified majority.

On 3 March I wrote to the President of **Azerbaijan**, Ilham Aliyev, regarding the case of Samir Adigozalov, the editor and founder of the newspaper *Boyuk Milat*, sentenced to one year imprisonment for libel. In my letter I also asked the President to maintain the momentum of his earlier voluntary moratorium initiative, by starting a law reform to remove the libel, defamation, and verbal insult provisions from the Criminal Code, and to set rational ceilings for civil defamation damage payments.

On 3 July I wrote to the Azerbaijani authorities regarding the arrest of Mirza Sakit Zahidov, a satiric journalist working with the newspaper *Azadliq*. Although proceedings were launched against him on charges of possessing

drugs, many members of the civil society assumed that Mr. Zahidov's arrest was a response to his poems that satirized politicians and public figures. In my letter I asked the authorities to be pro-active in informing the public regularly about the course of the investigation.

On 28 March I expressed my concern over the detentions of **Belarusian** and foreign journalists in the aftermath of the presidential elections. I stressed the pro-active role that governments must have in ensuring a safe working environment for journalists, even when they cover unauthorised events.

On 7 April, I sent a letter to the **Bulgarian** authorities expressing concern over the explosion in Sofia in front of the apartment of the *Nova Television* journalist Vasil Ivanov. Ivanov is a well-known investigative reporter. In a letter on 19 May, the Bulgarian Ministry of Interior assured me that the police are actively working to identify the perpetrators and will bring them to justice. My Office will continue to follow the developments in this case.

In **Hungary**, I welcome the decision of the Budapest Court of Appeals in May, which acquitted Rita Csík, a journalist of the national daily newspaper *Népszava*, of 'breaching state secrets.'

At the same time, my Office continues to follow the case of Antónia Rádi, a journalist of the weekly magazine HVG, who is currently awaiting a court decision. She is accused of 'breaching state secrets' in a critical piece about a local prosecutor's office.

I renew my request to the Hungarian government to amend the provisions that still allow for court proceedings against civilians who get hold of leaks.

In my letter of 14 June to the Minister of Information and Culture of **Kazakhstan**, Ermukhamet Ertysbayev, I appealed to the authorities to withdraw a set of proposed amendments to the Law on Mass Media. The

changes would multiply the number of reasons that could be used to deny print press registration, and would prohibit editors of papers that have been closed by a court from working again as editors for other papers. I noted that if adopted, the amendments would not only impose a significant threat to media freedom in the country but would also contradict the OSCE commitments and would set an unacceptable precedent in the region.

Regrettably, the amendments were adopted by the Upper House of Parliament on 29 June, and on 5 July President Nazarbayev also signed them, thus bringing them into effect. I hoped the President would reject this set of restrictive amendments, just as he did two years ago in the case of a media law that was unsuited to further democratize the handling of the press.

I reiterate my offer of legal assistance to the authorities of Kazakhstan and urge the courts of Kazakhstan not to interpret the new amendments in a restrictive manner.

On 14 February, I welcomed the decision of the Parliament of **Moldova** to follow my recommendation and reject the draft law on a national register for periodicals.

On 7 March, I sent a letter to the Foreign Minister of **Romania** regarding two journalists under criminal investigation in a breach of secrecy case. The case was opened despite the fact that the journalists recognized the character of the leaked information, returned the data to the Ministry of Defence, informed it about the leak amongst its ranks, and did not publish any of the material.

In his answer, Foreign Minister Ungureanu wrote that “the Romanian law does not distinguish between persons that are compelled to keep confidential information and the other citizens.” He assures that during an upcoming revision of the legal framework concerning national security

“appropriate attention will be paid to increasing the guarantees afforded for the full respect of the freedom of expression.”

In an open letter to my Office on 28 June 2006 by the *Convention of the Media Organizations of Romania*, I was notified that the journalists concerned continue to be called to the prosecutor’s office for interrogations, even six months after the events.

I consider the action by Romanian authorities as having a chilling effect on journalism in Romania. I call upon the Government to suspend this practice and to initiate legislative changes to remedy the situation as proposed by the Foreign Minister in his letter to me.

On 27 February, I sent a letter to the **Russian** authorities regarding the case of NTV journalist Ilia Zimin, who was murdered at his apartment in Moscow on 26 February. On 15 May, I contacted the authorities regarding the case of the murder of *L-Radio* broadcaster Oleg Barabishkin, who was murdered on 14 May in the Chelyabinsk region. On 1 June, I sent a letter to the Russian authorities, regarding the case of *TVTs* journalist Vyacheslav Akatov, who was murdered in his apartment on 27 May. On 5 July, I contacted the authorities regarding the case of Anton Kretenchuk, a cameraman for the Roston-on-Don TV company *Alternativa*, who died from knife wounds received in an attack by an unknown assailant on 24 June.

I expressed my satisfaction that the Russian authorities have acted swiftly to open criminal proceedings, and acknowledged the efforts made to bring these cases to a close. I also stressed that an open and informative manner in which the authorities deal with the inquiries is of significance, in order to send a convincing message to the public regarding their commitment to protect journalists against murderous violence.

Following the case of Stanislav Dmitrievsky, editor-in-chief of *Pravozashita* (Human Rights Defence), mentioned in my previous report to the Permanent Council, I learnt on 11 April that the Nizhny-Novgorod Regional Court upheld the guilty verdict on Dmitrievsky. Dmitrievsky was sentenced in February to a two year suspended prison term for 'encitement of hatred or enmity towards nationalities', after he reprinted two documents from the Internet in *Pravozashita*. These documents were open letters by Chechen separatist leaders to the European Parliament and to the Russian public.

In response to my letter to the Minister of Justice dated 7 February, the Russian authorities refer to the suspended nature of the sentence and the conformity of the sentence with current Russian legislation.

The position of my Office remains that incitement provisions are misused if applied to sanction publications of documents with the intention to inform about issues debated in society. Dmitrievsky plans to appeal his case to the European Court of Human Rights, and my Office will continue to monitor the proceedings.

On 17 May, I raised with the authorities of **Serbia and Montenegro** the issue of the temporary revocation of BK Television's license by the Republican Broadcasting Agency (RBA) Council. BK Television was shut down during the night of 25 -26 April in the presence of police. I reminded the authorities that a regulator should in all cases respect relevant notice procedures, and that the presence of police while closing down the TV station was an excessive display of force for such an occasion. I am relieved that the Minister of the Interior, Dragan Jovic, apologized afterwards for the police presence.

Unfortunately, the situation has since deteriorated. Although the Serbian Supreme Court annulled the decision of the RBA on 26 May, the RBA on

the same day, renewed its decision and dismissed all appeals from BK Television, and other unsuccessful applicants, for broadcast licences.

In efforts coordinated with my Office, the OSCE Mission to Serbia and Montenegro issued a public statement on 26 May voicing concern. We will, together with the OSCE field presence, closely follow the further development in this case.

I am encouraged to learn that the BBC in **Tajikistan** has now received its registration and will soon recommence broadcasting. The position of my Office is that while legitimate reasons exist to obligate a media outlet to register with the authorities in order to obtain a licence to broadcast – for example, in order to broadcast on limited FM frequencies – registration itself should be of a purely technical nature. I encourage the authorities of all the OSCE participating States to evaluate current practices to ensure that restrictive registration procedures are not serving to prevent pluralism.

On 15 March I sent a letter to the **Turkmenistan** authorities regarding the case of two Turkmen citizens, Meret Khommadov and Yumadurdy Ovezov, who were working with *Radio Free Europe/Radio Liberty* and who went missing on March 7. In response to my request for information on the case, the Turkmen authorities informed me that the men were charged with petty hooliganism under article 168 of the Administrative Code, and were sentenced to 15 days of community service on charges of disrupting a public meeting. They also noted that the two men have not received formal journalist training and, additionally, conduct private business in the Mary region. Owing to the information provided, I was able to establish the whereabouts of the *RFE/RL* journalists.

In my reply, I noted that the OSCE Commitments make it a right for civilians to be able to contribute to the media, including the foreign press, regardless of the level of their professional training. I am satisfied that following their

release the two journalists were able to make public statements with their account of the events.

On 5 July, I contacted the authorities of Turkmenistan regarding the arrest of Ogulsapar Muradova, *RFE/RL* reporter, and Annakurban Amanklychev, who was working for the broadcast company Galaxie-Press and French TV channel *France 2*.

Press reports state that the arrests were made due to previous criticism aimed at the authorities, and that the detained have been denied access to lawyers. Because of this, I noted, special attention is required in order that civil society is convinced of the fairness and transparency of the investigation. The authorities should be pro-active in informing the public regularly about these cases. Full access to the detained by lawyers, family, and visitors, could also boost confidence. My Office will continue to monitor the proceedings, and I look forward to receiving further information from the Turkmen authorities.

On June 9, I raised the attack on Sergei Yanovsky, correspondent of the *Kyivskiy Vedomosti* in Kherson, with the **Ukrainian** authorities. I welcomed the fact that the investigation was started immediately, and asked the authorities to be pro-active in regularly informing the public about the course of the investigation.

I welcomed the 15 June decision by Carla del Ponte, the chief prosecutor of the **International Criminal Tribunal for the former Yugoslavia (ICTY)**, not to prosecute three Croatian journalists accused of 'contempt of court' for revealing the identity of a protected witness, current Croatian President Mesic. However, in separate prosecutions, although the charges are the same, an editor was already convicted of contempt of court, and sentenced to a fine of 15,000 euros, while another editor still faces up to seven years in prison and a fine of up to 100,000 euros.

I reiterate what I wrote to the ICTY in 2005, urging the Court to consider revising Rule 77 of its proceedings, in order to spare the media from ‘contempt of court’ charges if they report on events of legitimate public interest.

“Cartoon controversy” – the follow-up in the courts

I have both good and regrettable developments to report about with reference to my public statement on 24 February on three cases in **Russia** and **Belarus**, where criminal charges were brought against newspapers for publishing the Danish drawings or their own cartoons with religious figures.

I was glad to learn that the Vologda Oblast Court, following a successful appeal by Anna Smirnova, editor-in-chief of *Nash Region* (Vologda, Russia), overturned the decision of the Vologda City Court, and revoked Smirnova’s sentence. In February, she received a fine of 100,000 roubles (approximately 2,900 Euro) and a two-year suspended sentence under article 282 of the Russian Criminal Code, ‘incitement of religious conflict’.

For a less fortunate reason, criminal procedures were also stopped against *Gorodskie Vesti* (Volgograd, Russia), as the municipality publisher *News-Inform* decided to close the newspaper following charges brought by the regional branch of United Russia (Edinaya Rossiya). The editorial office moved to a newly created newspaper, *Volgogradskaya Gazeta*.

The third newspaper in question, *Zhoda* (Minsk, Belarus) remains closed, and criminal proceedings are still underway against Deputy Chief Editor Alexandr Sdvizhkov. The charge is based on Article 130 of the Belarusian Criminal Code, ‘incitement of racial, ethnic or religious hostility.’ *Zhoda* was closed by a court decision on 17 March, and all its computers confiscated.

“These cases are different in nature, but they have one feature in common,” I said in February. “In all three cases, local or state authorities have overtaken

civil society's role in helping to raise the standards of editorial professionalism and global oversight. They will not be successful as authorities are unfit for that job. But they will certainly succeed in restricting the free flow of information in society.”

I call on the Belarus authorities to drop the case against *Zhoda* and its editors; as such procedures are clearly misusing hate speech laws.

In **Azerbaijan**, on 1 June 2006, the newspaper *Gun* (Day) published cartoons depicting the leader of the Islamic revolution in Iran, Imam Khomeyni, and Iran's present cleric leader, Khamene'i. As a result, the Prosecutor's Office initiated criminal proceedings against *Gun* and against another newspaper, *New Fakt*, the charges being 'incitement to ethnic and religious strife (Article 283.1), and abuse of office (Article 308.1).

My Office will continue to follow these cases, and I hope that the prosecutor will drop these charges as soon as possible.

Access to information questionnaire

On 25 May, I announced to this forum a new project of my Office **“A comprehensive review of laws and practices on access to information by the media in the OSCE participating States”**. I asked all OSCE participating States to assist my Office to collect information for the project by filling in the questionnaire that was forwarded to all Delegations on 29 May 2006 (FOM.GAL/4/06).

The aim of the project is to enhance the protection that States offer to journalists who report about issues of public interest. Acknowledging that global terrorism is a major concern, and demands for improved national and human security are legitimate, we all should continue to observe the citizens' right to learn about issues of legitimate public interest.

In addition to the cases mentioned above, let me give you examples of cases monitored in our Office, some dating back several months, to illustrate the OSCE-wide trend which finally compelled my Office to launch this inquiry.

The **Swiss** Military and Civil Attorneys opened investigations in January 2006 into a newspaper, which printed a piece of military intelligence regarding extra-legal detention facilities in Europe.

In the **United Kingdom**, Neil Garrett television journalist of *ITV News*, who revealed details of alleged police blunders leading to the shooting of Jean Charles de Menezes in a London subway station after being mistaken for a terrorist in July 2005 was arrested for a day in October 2005. He is suspected of having obtained leaked information.

In the **USA**, in January, in sentencing a violator of the Espionage Act, the judge also ruled that the laws governing classified information apply to anyone who receives such information, including the reporters who are the recipients of the leaks.

On 20 January 2006, Lewis Libby's attorneys told a federal court that they plan to subpoena several journalists and news organizations to obtain all information they deem useful for defending Libby from perjury charges. This can be seen as a reaction to, and a widening of, the precedent Special Counsel Patrick J. Fitzgerald created by issuing subpoenas for Judith Miller of the *New York Times* and Matthew Cooper of *Time Magazine* in September 2005, which led to the indictment of the former White House official.

In May 2006, the US Attorney General Gonzales said that the US federal government appears to have the authority to prosecute journalists or newspapers for publishing classified information, and he did not rule out prosecuting the *New York Times* or its reporters for publishing the leak on the government's surveillance programme.

In **Germany**, prosecutors in September 2005 searched the newsroom of the monthly *Cicero* as well as the apartment of one of their staff. This action by the judicial authorities was explained by the fact that the magazine carried an article in April 2005 with quotes from classified documents of the Federal Criminal Police Office, Bundeskriminalamt.

In **France** in January 2005, an examining magistrate led police to search the weekly *Le Point* premises in Paris. At the same time a similar raid was being carried out at the offices of the sports daily *l'Equipe*. Police carried out the raids as part of an investigation into an alleged "violation of the confidentiality of an investigation" concerning a doping scandal involving a cycling team, Cofidis.

There are reassuring developments as well, such as the adoption by the Connecticut legislature in May 2006 of a provision protecting journalists from disclosing their confidential sources (this is the 32nd State adopting a 'shield law' in the **USA**). Another example is the Senate Judiciary Committee's deliberations about a federal 'shield law'.

However, the selection of cases above is indicative of the increased pressure faced by the media, and the growing use of legal tools that had earlier been considered inappropriate for societies with virulent investigative journalism.

In order to gain a more systematic overview, my Office asked the OSCE participating States to share details of their relevant legislation and practice. Based on them, we will produce guidelines and recommendations for a renewed balance of today's heightened security concerns and press freedoms.

I therefore rely on support from all Governments of the OSCE region in this important project, and call upon your continued cooperation to receive filled out questionnaires by 1 October 2006.

Assessment visit to Kosovo

I visited Pristina 25 – 27 April 2006. This was my second visit to **Kosovo**, which was made in consultation with UNMIK and was organized by the OSCE Mission in Pristina. The purpose of the trip was to assess the current state of media freedom, especially in the context of a possible change of status as a consequence of the ongoing negotiations.

OSCE is involved in a special way in Kosovo, since the OSCE Mission as Pillar III of UNMIK is in charge of media development.

In April 2004, I issued a report on the role of the media in the March 2004 ethnic violence. My visit therefore focused on the development of the Kosovo media since then.

Overall, there is media pluralism in Kosovo, both in terms of quantity of media outlets and of different views that are represented. However, the division between Albanian and non-Albanian language media is still prevailing, especially with regard to the scarce Serbian-language print media. There is only one bilingual Albanian-Serbian language newspaper.

The high amount of media outlets is also one of the reasons for the fragility inherent in the – still young – media environment in Kosovo. Loss-making media outlets are an accepted feature, which translates into low budget journalism of varying levels of quality. Economically deprived media are also vulnerable to interference with their editorial independence.

Politicians, political institutions and the international presence in Kosovo are regularly criticized in the media; independent TV and radio stations are outspoken in their comments concerning the authorities.

The flaws in journalistic professionalism, which were so obvious in the lead-up and the aftermath of the violence of March 2004, were corrected

on the most important level, the editorial. The Kosovo media showed a high degree of maturity when covering politically sensitive topics such as the ICTY indictment of a former Prime Minister; or the debate on a border agreement with its southern neighbour, the former Yugoslav Republic of Macedonia; or the ongoing status negotiations.

This development was paralleled by the establishment of a code of ethics and a Press Council, promising elements of a future self-regulation regime. In addition, an M.A. level professional education facility was established.

The few missing pieces in the legal framework for a free media are in the making – with the support of the OSCE Mission – and are debated by the Kosovo Assembly.

The following are three of my recommendations from the 15 which are outlined in my report on Media Freedom in Kosovo.

- The established Minority Media Fund (largely financed by the license fee) offers a unique opportunity to foster a multi-cultural media in Kosovo, and the establishment of a second *RTK* channel from this Fund should be envisaged. Journalists' associations should make a particular effort to become multi-ethnic instead of organizing themselves along ethnic lines.
- The level of advertisement revenue for both *RTK* and for commercial broadcasters, should be determined by a longer-term perspective, and should be accounted for in a publicly transparent way. It is suggested to follow the model common in Europe, which allows public-service broadcasters about half the airtime for advertisement compared to commercial ones.

- The switch-over from analogue to digital broadcast transmission will offer an opportunity in Kosovo for (re-)issuing the licenses in a transparent manner through public tenders based on an updated frequency allocation plan. It is imperative that Kosovo, for the sake of its future broadcast development after Kosovo's status is defined, be given its own digital frequency allocation by the International Telecommunications Union (ITU).

The full report has been distributed and can be accessed on our website, www.osce.org/documents/rfm/2006

Supplementary Human Dimension Meeting

The SHDM, which will be held on 13 and 14 of July on Freedom of the Media, will look at three major challenges in the domain of freedom of the media.

- The first issue to be addressed will be **Access to Information**. Access to information is a precondition for the journalistic task of implementing the public's right to know about issues of public importance, and hold government officials accountable. There is a tendency among some OSCE pS to deny journalists their right to publish confidential information, or to keep their sources to themselves. However, the liability for disseminating unauthorised information should lie solely with the officials who were obliged to maintain the secrets.
- In light of recent cultural differences concerning certain artistic depictions, such as the recent cartoon controversy, the second session, with a high-profile panel of speakers, will address the **interrelation between artistic expression, self- regulation, and respect for cultural sensitivities**. Publications that are offensive to certain sections of society should be dealt with through the

self-regulatory bodies of the quality press and not through more governmental regulations.

- The last session will focus on the **administrative difficulties** faced by independent media outlets in some participating States. Independent media can only exist if the administrative requirements vis-à-vis the media, be they governmental or privately owned, are applied in a non-discriminatory manner. Such regulations should proactively provide for a normal functioning of the media. Equally, they should provide for a legal environment allowing journalists to carry out their work without fear of physical or administrative reprisal.

As usual, a separate SDHM final report will also include the discussions of the meeting.

Achievements in the decriminalization of defamation

An increased understanding of the need for reform among governments and legislators, and a growing number of nations who are actually making reforms in this area are the main achievements of the campaign against criminal defamation laws and disproportionate awards in civil cases.

The campaign – long-term in nature – is also an example of complementary action between OSCE and the CoE, which in its turn helped to raise awareness within EU Institutions.

Where we stand now

Seven OSCE participating States – **Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Moldova, Ukraine**, and the **United States** – have removed criminal libel and insult provisions from their penal codes⁵.

⁵ Certain narrowly-defined defamation provisions are still present in some of these participating States criminal codes. In the United States, 17 states and two territories have retained local criminal defamation provisions; however, there are no Federal criminal defamation laws.

Some participating States – including **Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Romania, and Serbia** – have removed imprisonment as an option for punishment for defamation.

Recent achievements

I am pleased to announce that within the last 12 months **Croatia, the former Yugoslav Republic of Macedonia, Serbia and Kosovo** have liberalized their defamation legislation.

In February, together with the Spillover Monitor Mission to Skopje, my Office held an international conference in Skopje, **former Yugoslav Republic of Macedonia**, in support of decriminalization of libel and insult. As a result, the Government elaborated and approved amendments to the Criminal Code, which were passed by Parliament on 10 May 2006 by an unanimous vote.

On 28 June 2006, the amendments to the Criminal Code of **Croatia** deleting imprisonment as an option for punishment for defamation entered into force. I welcomed this move in my public statement on 29 June. The Croatian Parliament on 9 June 2006 adopted the amendments. This result was achieved due to intensive joint efforts taken by the Government, the OSCE Mission to Croatia and my Office.

In the **Republic of Serbia**, a new Criminal Code, which came into force on 1 January 2006, excluded imprisonment as a sanction for libel and insult. My Office had been continuously supporting the reform of the defamation legislation in the Republic of Serbia. I participated in a round-table debate on this matter organized by the OSCE Mission in Serbia and Montenegro on 24 January 2005, and held meetings with officials in Belgrade on this subject.

In **Kosovo**, the Assembly adopted a new civil law on defamation in June 2006. Still, under the existing UNMIK penal code, defamation remains a criminal offence, although media are exempted from insult charges.

Upon a commendable initiative of the Government, in 2005, experts from the Prime Minister's Office, the OSCE, and the Temporary Media Commissioner elaborated a civil version of the Law on Defamation and Insult. Adopted by Parliament in June 2006, the law is generally in line with modern concepts of decriminalizing speech offences. The definition of defamation in the new law establishes liability only for 'untrue' statements of facts. Media's complying with recommendations of the Press Council is a mitigating factor for setting damages in defamation lawsuits. Public figures have to accept to be subject to stronger criticism than ordinary citizens.

The new law has yet to be promulgated by the SRSB.

However, in Kosovo there is scope for further improvements as the new law does not exempt 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.

In **Albania**, amendments to the Criminal and the Civil Codes were prepared by non-governmental organisations, and proposed for discussion in Parliament by a group of MPs. The amendments would almost completely decriminalize defamation, and improve handling of libel and insult cases under the civil law. My Office commented on them and suggested further changes. At the time of writing, these amendments were pending approval by the Albanian Parliament. I hope that the Assembly of the Republic of Albania will adopt the amendments in the nearest future.

Co-operation with the Council of Europe and the European Union

I was very encouraged by the statement made by Terry Davis, the Secretary General of the **Council of Europe**, on the occasion of World Press Freedom Day on 3 May 2006. The Secretary General appealed to the CoE member states to decriminalize defamation. He said:

“A particularly insidious form of intimidation is the threat of prosecution for libel. In fact, more than two thirds of the Council of Europe member states maintain criminal sanctions for defamation, and these laws are often used to stifle criticism. I call on all Council of Europe member states to review their legislation, abolish criminal provisions and prevent disproportionate damages in civil cases against journalists.”

I fully support Secretary General's statement and would like to repeat my call on all OSCE participating States to lift the burden of outdated defamation provisions from the shoulders of the free press to allow for uninhibited coverage of events of a high public interest.

On June 10 my Office met with the new Commissioner on Human Rights of the Council of Europe, Thomas Hammerberg, and discussed issues of mutual concern, particularly those related to the decriminalisation of libel.

During my visit to Brussels on 29-30 May, I held bilateral meetings with MEPs and the **European Commission's** DG Information Society. My Office also met with its newly created Media Task Force. Topics discussed included the media policy in acceding countries, the decriminalization of libel and the draft EU audiovisual directive.

On the question of decriminalization of defamation, my Office is now liaising with MEP Stavros Lambrinidis, the Vice-Chairman of the Committee on Civil Liberties, Justice and Home Affairs of the **European Parliament** in order to explore possibilities for closer co-operation between our organizations on this issue.

In my communications with EU Institutions, I stress the need for the EU member states to decriminalize defamation for two reasons: to send a message to participating States outside of the EU and encourage reform

there; and to implement an important rule of law principle by removing from statute books outdated pieces of legislation, which are no longer applied by courts.

Decriminalization of defamation will remain high on my Office's agenda.

Projects/Activities since the last report

Assistance Projects

My Office this year continues its successful series of training projects "Interaction between the media and the state press services". The aim of the training is to assist press and public information officers to learn new techniques of effective management of press services. The course also includes modules on the legal bases for interaction with journalists and includes an overview of international experience in this sphere. The training aims to improve journalists' professional and ethical skills.

Together with the Office of the OSCE Project Coordinator in Ukraine follow-up training courses were held in three **Ukrainian** cites – Sebastopol, Kharkov and Donetsk and a further session is planned in Odessa at the end of July.

Further courses are planned in **Azerbaijan** (July) and additional training courses are planned in **Kazakhstan** and **Tajikistan** (September).

Internet

On 30 April, a two-year project "Guaranteeing Media Freedom on the Internet" was completed. The project comprised the second and the third Amsterdam Internet Conferences, a new publication 'Media Freedom Internet Cookbook' in English and Russian. As a direct result of the project, Internet issues have acquired a higher profile in the OSCE region.

A detailed final project report is currently in development and I would like to thank the donor countries, the **Netherlands** and **Germany**, for their generous support in this important activity.

We are planning to continue this vital program as part of our core activities.

Hate speech

On 31 March – 1 April, at the International Conference on Hate Speech organized by Central European University and other international academic institutions in Budapest I initiated the special event “Panel of Diplomats”. During the discussions, the Heads of Missions of the Russian Federation, the USA, France, Turkey and Slovakia presented their views on this important issue.

As yet, we have not developed a universally applicable measure for what are legitimate limitations on speech. I hope that the OSCE can benefit from similar multilateral deliberations and a common approach to hate speech regulation be achieved, in spite of the variety of opinion that currently exists on this subject.

This program, hitherto accomplished from extra-budgetary means, needs to be continued within our core agenda.

Legal reviews

This spring, my Office continued reviewing media legislation in the participating States. In **Albania**, the law on state secrets and its new amendments were reviewed. In **Moldova**, the draft Audiovisual Code was reviewed, and the expert provided the authorities with a second document which incorporates elements from several separate draft laws, in order to suggest the best alternatives for a model law. In **Kazakhstan**, a review on the NGO-drafted alternative media law is currently being prepared.

My Office is currently reviewing new defamation legislation, proposed by the **Irish** government in July.

Allow me to recall that RFoM's legal reviews are undertaken in close consultation with the Council of Europe, demonstrating again the close cooperation between our two organisations. All legal reviews can be found on the Legal Reviews section of the RFOM homepage <http://www.osce.org/fom>.

Other activities

In April, I was invited by the **Kazakhstan** authorities to speak at the Central Asia Media Forum held in Almaty. During my visit, I met with the Minister of Information to discuss, *inter alia*, the situation with Public TV in Kazakhstan and to voice my concerns regarding the government-proposed amendments to the media law. Naturally, I also met with representatives of civil society and media NGOs. I would like to express my appreciation to the OSCE Centre in Almaty for their assistance with the preparations for the visit.

On 22-23 May, I was a speaker at the EUROMED Seminar "Racism, Xenophobia and the Media: Towards respect and Understanding of all religions and cultures", held on 22-23 May in Vienna. The event was jointly organised by the Austrian Presidency of the EU, the European Commission, and the European Monitoring Centre on Racism and Xenophobia, in consultation with EU's Mediterranean Partners.

I also visited Brussels twice since the last PC report. During my first visit 29-30 May, I participated as a speaker at the MEDEA conference on "The role of web and satellite TV's in the relationships between the peoples of the OSCE, the Mediterranean and the Middle Eastern countries", conducted under the auspices of the OSCE Chairmanship.

On 8 May I spoke on media legislation issues at a Parliamentary Troika meeting in the Stability Pact for South Eastern Europe framework. The meeting was organised by the European Parliament and also included members of the Parliamentary Assemblies of the OSCE and the Council of Europe.

Planned activities for the next period

In my previous report to the Permanent Council on 16 February, I announced the renewed concept for the two **regional conferences**. This year's conferences, under the theme of "The Business of Media," a one-day Conference on media privatisation and sustainability will be followed by a second day of training in management and business skills. The **Central Asian** event will take place in Bishkek 19-20 October; the **South Caucasus** event on 2-3 November in Tbilisi. We are still hoping for further financial contributions from the participating States to cover the costs of these extra-budgetary projects.

Recently, a new trend concerning the development of **self-regulation mechanisms** can be observed in the OSCE region. For instance, Press Councils have been created among others in **Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Kosovo** and **Ukraine**. According to my observations, the issue of self-regulation has gained considerable importance in the last years. It has proved to be the most convincing answer to the question of how to ensure simultaneously the media's freedom and responsibility. Currently, my Office is undertaking an analysis of the current situation regarding self-regulation in the OSCE participating States. Using the results of this analysis, we will make proposals for follow-up activities.

On the **Internet**, we are complementing protection of freedom with spreading know-how. RFOM developed, together with IREX (International Research and Exchange Board), an Internet training programme for young online journalists from **Kazakhstan, Kyrgyzstan, Tajikistan**, and

Uzbekistan. The training outline was developed as a follow-up of the 3rd Amsterdam Internet Conference in Amsterdam within the two-year Internet project financed by the **Netherlands** and **Germany**. This summer's trainings will take place in Osh and Khujand, and include young journalists from **Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan**. The participants will be trained by a team of experts of the Internet Access and Training Program (IATP). After the training, the completed materials will be hosted on IATP's server for long-term sustainability of the project. The training is funded by my Office and implemented by IREX in August this year.

In **Georgia**, thirteen training courses for judges on freedom of expression standards and legislation will take place between August and October.

At the invitation of Oxford University, **UK**, in July I will give three days of lectures in the Media Law Advocates Programme, on the mandate of my Office and its activities.

Report to the Permanent Council by the OSCE Representative on Freedom of the Media

(24.10.2006)

Mr Chairman, Excellencies, Ladies and Gentlemen,

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

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

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

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

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

of action is crucial because Anna Politkovskaya was an outspoken critic of government policies.”

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

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

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

It includes:

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

Issues raised with participating States

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

Azerbaijan

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

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

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

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

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

progressive rules for civil defamation. Although certain provisions of the draft have still to be modified, I hope that a law in the same spirit will be adopted by Parliament in the near future.

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

Belarus

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

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

Canada

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

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

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

France

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

Hungary

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

Kazakhstan

On 1 August, following a request from the Kazakh authorities to provide further information on the issue of Internet regulation, I replied to the acting

Minister of Culture and Information of Kazakhstan, reiterating my Office's position in this regard.

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

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

Lithuania

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

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

Discussing this case with the Head of the Lithuanian Delegation, my Office was informed of the Government's willingness to resolve this issue according

to OSCE principles with respect to freedom of the media. I was also pleased to hear the clear words of President Valdas Adamkus on the matter. I look forward to a positive outcome of the case.

Russian Federation

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

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

Serbia

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

I was glad to hear that following my intervention, the Republican Prosecutor initiated the procedure of questioning the legality of Mr. Savic's second-

degree sentence. He asked the Supreme Court of Serbia to order re-examination of the case. I hope that Mr. Savic's verdict will be lifted.

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

Tajikistan

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

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

Turkmenistan

Continuing the dialogue with the Turkmen authorities on the case of RFE/RL journalist Ogulsapar Muradova, I wrote to the authorities on 9 August requesting that the authorities re-examine the legislation that had allowed for the detention of Ms. Muradova, and others, on the grounds of their involvement in collection and dissemination of information. In my press

release of 14 September, following the tragic death of Ms Muradova in custody, I stated that I regret that Ms Muradova will not have the opportunity to see through the appeal, launched at the end of August. I asked the authorities for transparency in the handling of her death.

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

United Kingdom

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

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

The United States of America

On 26 September, I raised the lack of a 'federal shield law' that would allow for protection of journalists' sources and materials, on the occasion that freelance journalist and blogger Joshua Wolf was ordered to return to prison by a San Francisco Court of Appeal for contempt of a Federal Grand Jury. He refuses to produce the video footage that he took during a street protest

in July 2005, which the police sought to obtain to assist an investigation. He was first found in contempt of court in August 2006 and served one month in prison.

It is my conviction that the Court should not have applied the harshest possible sanction to Mr. Wolf at a time when federal legislation on this issue is being vigorously debated, while practically all States of the U.S. have already passed 'shield laws.' Notably the journalist was found in contempt of a federal court in California, where both the State Constitution and a special 'shield law' protects journalists from having to disclose their confidential sources and unpublished materials. I asked the Department of State to use its powers to help the Free Flow of Information Act 2006 – a federal bill with shield provisions – to be passed by Congress quickly.

Uzbekistan

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

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

Assessment visit to Armenia

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

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

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

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

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

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

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

The final report can be downloaded from:

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

Access to Information Project

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

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

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

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

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

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

Supplementary Human Dimension Meeting

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

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

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

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

Self-Regulation Project

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

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

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

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

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

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

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

On 2 October, my Office held a side event at the Human Dimension Implementation Meeting on the topic of self-regulation. A representative from

the *Netherlands Press Council*, Ms. Daphne Koene, and a representative from the *Bulgarian Media Council*, Mr. Ognian Zlatev gave presentations on the merits of self-regulation and the challenges faced by new and established self-regulatory mechanisms. An important element of the presentation was the fact that the 'satisfaction factor' for those persons, who filed a complaint, is much higher in countries where a press council exists, because as much as 70 – 80% of the papers publish the ethics verdicts of the councils.

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

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

Accreditation Report

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

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

The report contains examples of the misperception of the function of accreditation. It expands on the recommendations made in a June 2005

report⁶, in which my Office recommended that “*accreditation should be used to facilitate access of journalists to officials and lack of it should not be used to deprive them from the possibility to work.*”

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

Central Asia Media Conference and Training Event

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

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

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

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

⁶ “*Coverage of the Events and Governmental Handling of the Press During the Andijan Crisis in Uzbekistan*”, http://osce.org/documents/rfm/2005/03/15195_en.pdf

Press Officer Training

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

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

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

the Presidential Administration, the Government, and the Parliament, as well as journalists from various Kazakh media outlets seized the opportunity to discuss major challenges in the domain of information exchange between media and authorities.

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

Projects & Activities since the last report

Human Dimension Implementation Meeting

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

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

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

Media Twinning Visit to Belgium

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

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

Legal reviews

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

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

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

Internet

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

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

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

Cooperation with other organisations

ICTY

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

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

European Union

Following up on my visit to the European Commission and Members of the European Parliament in May, I wrote a letter to the Rapporteur of the European Parliament's Committee on Culture and Education, MEP Ms. Ruth Hieronymi, regarding the draft Directive on audiovisual media services⁷.

The draft Directive, presented by the European Commission, is intended to replace the current 'Television without Frontiers' Directive. The draft is under discussion in a number of committees in the European Parliament.

In the letter, I commented on some technical issues in the draft, particularly those which relate to the free flow of information in the digital era. I addressed the newly established concept of 'non-linear audiovisual media services' and the impact of the proposals on media freedom on the internet. My Office also published a position paper on this issue, which examines these concepts in further detail.

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

Göteborg Bookfair

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

Planned activities for the next period

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

⁷ "Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities {SEC(2005) 1625} {SEC(2005) 1626}"

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

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

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

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

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

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

With respect to freedom of the Internet, my Office will conduct a **study on Internet governance** in the OSCE region. The first expert meeting is

planned for 15 December in Paris. This project has been made possible by generous donations of **France** and **Germany**.

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

25 October 2006

Preliminary assessment of the state of legislation and practice

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

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

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

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

Project Overview

The project has three areas of focus:

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

Summary of findings to date

Freedom of Information

Overall the trend on access to information is positive. The vast majority of OSCE countries (44 of 56) have adopted some form of a national law giving specific rights to citizens and journalists to obtain information from government bodies. The right has existed in some countries for a long period (in Sweden since 1766, in Finland since 1951, in the United States since 1966, in Norway since 1970) while a majority of countries in Central and Eastern Europe have adopted it within the past five years (Serbia and Switzerland in 2004, Germany, Montenegro and Azerbaijan in 2005, the former Yugoslav Republic of Macedonia in 2006).

State Secrets and Other Legislation

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

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

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

Protection of Journalists' Sources

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

Next steps

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

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

**Special Reports, Declarations, Legal
Reviews and Recommendations**

Comments on the Draft Audiovisual Code of the Republic of Moldova – Summary

(07.04.2006)

Dr. Katrin Nyman-Metcalf, OSCE RFOM Expert

7 April 2006

Introduction

Moldova is in the process of making new legislation for the communications sector as well as reforming communications and broadcasting as such. There are and have been in recent years a number of proposed new laws and amendments to laws. The aim appears to be to meet European standards for a free and pluralistic media operating in a democratic state ruled by the rule of law. For free and democratic media to be able to exist there should be a minimum of legal restrictions while laws should guarantee good conditions for free media. This means e.g. that there should be no laws on press, which can be free, regulated only by self-regulation and applicable general laws including defamation legislation, access to information legislation and provisions in the Criminal Code on matters related to content such as incitement to violence or child pornography. Because of the use by broadcast media of a limited natural resource – the radio frequency spectrum – and the ensuing system for use of this resource – licences – legal regulation of broadcast media is needed. Also for such media however, legal restriction should be kept to a minimum and be proportional with the object of the regulation. The independence of the regulatory agency for broadcast media should be guaranteed. In addition to the great importance of freedom of expression as a fundamental right, other rights such as those of minorities to their language and culture must

also be reflected in broadcasting legislation. This is especially true to the extent that such legislation creates a broadcasting entity, the public service broadcaster, and sets conditions for programmes. Several areas of legislation linked with but not related only to broadcasting are also important for a good media situation. Access to information legislation is very relevant to allow free media to operate. This legislation should be separate from media legislation as access to information should not just exist for journalists and media but for everybody. It is understood that there is access to information legislation in Moldova in which case there is no need for special provisions in the Audiovisual Code. If there were no such legislation, provisions in this area could be included in this draft Code. It is understood that recent drafts on information and state secrets legislation in Moldova may not meet modern European standards, but as there is specific legislation this issue should be dealt with in connection with those specific laws and consequently it falls outside of this analysis. Copyright legislation is another issue of importance regarding which the main substance of the rules should be in a separate law, with some references in the broadcasting legislation. Frequency matters are often regulated in telecommunications legislation and there is a need for close cooperation between regulatory authorities in the telecommunications and the broadcasting field.

In Moldova several different draft laws on media related matters have been prepared in recent years, including drafts covering special issues such as local and regional public broadcasting. Although it varies from country to country if there is one more encompassing broadcasting law or several more specialised ones, in a time of important reform it may be better for the sake of overview and consistency to have one main law, setting the basic rules for broadcasting, with more specific rules mainly in regulations issued by the regulatory agency.

The basis for this analysis is an English translation of the draft Audiovisual Code from the very end of March, which according to information from the

local OSCE office was passed in a first reading by Parliament on 6 April 2006. The draft Code that was first given to this consultant for review in early March was rewritten during the period of the review work. The process for adoption of the draft in parliament was also altered and speeded up. The analysis is based on the translation of what has been said to be the version delivered to Parliament and passed without amendments in a first reading. Other draft broadcasting laws also passed in a first reading on 6 April are not included in this analysis.

The draft law is analysed from the viewpoint of best European practice for broadcasting legislation as reflected in Council of Europe recommendations, the European Convention on Transfrontier Television, OSCE principles including the Guidelines on the Use of Minority Languages in the Broadcast Media by the High Commissioner on National Minorities and the Representative on Freedom of the Media and any other applicable instruments, also including case law of the European Court on Human Rights interpreting the European Convention on Human Rights, especially in this context Article 10 in that Convention on the freedom of expression.

Summary of main concerns

Please observe that this list of main concerns is a very brief summary of the main issues only. There are several other important issues pointed out in the article-by-article analysis below, but if they are of a more specific and detailed nature they are not referred to in this summary.

- The independence of the regulatory agency, the Coordinating Council of the Audiovisual, should be strengthened in relation to its appointment and financing
- The Public Service Broadcaster is dependent on and in many ways managed by the regulatory agency, the Coordinating Council of the

Audiovisual, in a manner which is not consistent with the regulatory role of this Council

- The Public Service Broadcaster lacks a proper independent board
- The systems for the technical and programming parts of broadcasting licences should be coordinated better in a one-stop-shop procedure for applicants
- Clearer rules on ownership including prevention of concentration should be included
- Guarantees for minority language broadcasting should be strengthened and/or clarified
- Provisions on licence fees for broadcasters are lacking
- There is no subscription fee for the public service broadcasting
- Provisions on appeals should be strengthened and/or clarified
- Certain unclear formulations in the draft that purport to guarantee freedoms may be interpreted as instead limiting such freedoms, as they deal with matters where constitutional guarantees and freedoms should be sufficient – any specialised legislation may lead to the impression that the freedoms are not general and absolute, furthermore they include provisions that are not properly normative and enforceable

Further comments on the draft Audiovisual Code of the Republic of Moldova – Introduction and Explanations

(10.05.2006)

Dr. Katrin Nyman-Metcalf, OSCE RFOM Expert

10 May 2006

Introduction

This analysis is a follow-up to the analysis made by this expert on 7 April 2006 and to the conference organised by the Council of Europe in Chisinau on 25-26 April 2006 to discuss different drafts for new broadcasting legislation in Moldova. In addition to the analysis made by this expert of the draft Audiovisual Code, there are also several other expert analyses on the many draft laws in the broadcasting field produced by different bodies. A further analysis of the draft Audiovisual Code by the Council of Europe will be forthcoming. The suggestions made here are based, apart from on this experts own views and previous analysis, also on the reviews made by Article 19 (April 2006) of the draft Audiovisual Code and by the Council of Europe of the APEL draft as well as other drafts in the sector (2002 to 2004). This analysis incorporates suggestions from the different expert analyses (that largely converge and do not contain any major differences).

The reason for this analysis and what makes it different from others is that it makes concrete suggestions on what parts of the different draft laws adopted by parliament on 6 April 2006 that, with or without suggested amendments, should be used for the law. There is no detailed analysis of the provisions, which can be found in the various other analyses –the

current document more resembles a kind of model law but based on the Moldovan drafts adopted by parliament. The aim of this is to facilitate for the legislator to practically use the different comments made. The need for such a document was seen at the seminar in Chisinau.

Explanations

The draft Audiovisual Code of the Republic of Moldova (referred to as “the Audiovisual Code”) that was adopted in a first reading by Parliament on 6 April as the basic text is also the basis for this analysis. The other texts used are the draft law on broadcasting (referred to as “APEL broadcasting law”) and the draft law on the Public National Broadcasting Institution Teleradio-Moldova (referred to as “APEL Teleradio-Moldova law”) drafted by APEL that were also adopted by Parliament in a first reading. In some instances the draft law on the public local broadcasting institution (referred to as “APEL local public broadcasting law”), produced by APEL but not adopted by parliament is also referred to. When it is said that something contains an Article from the other drafts, this means that the proposed basic article has the same major substantive content as that of the other draft so both mentioned articles may be looked at for ideas on wording, etc. The titles of the Articles of the draft Audiovisual Code are used as they are in the translated version of this draft, even if they at times are unclear. Such unclarity mainly appear to be due to translation issues (such as referring to radio only rather than broadcasting).

The draft Audiovisual Code in many respects meets European requirements but it also has some shortcomings, especially with regard to the relationship between the regulator and the public service broadcaster and related to appointment and similar for the different bodies in the broadcasting field. The APEL drafts are in this respect in many places more in line with European standards, as is pointed out in detail below.

Comments on Legal Regulations on Access to Information and State Secrets in Albania

David Banisar

Director, Freedom of Information Project of Privacy International¹⁰

April 2006

Introduction

The public right of access to information is an essential element of a functioning democracy. This has been widely recognized worldwide in both international conventions and national laws. Albania is among the nearly 70 countries who has adopted a national law on access to information. However, the existing system of access in Albania has not proven to be adequate and needs improvements in both law and practice. The proposed amendments to the Law on Information Classified “State Secret” would further exacerbate the problem.

Because the general laws on access to information have been previously examined by the OSCE Representative on Freedom of the Media (RFOM)¹¹, this review will focus mainly on the Law on Information Classified “State Secret” and other related laws and will propose changes to a number of laws and practices to improve access to information.

Existing System of Access to Information in Albania

The legal recognition of the right of access to information in Albania has made significant progress in the past ten years. The most important

¹⁰ Homepage: <http://www.privacyinternational.org/foi>

¹¹ See Article 19, Memorandum on The Albanian Law on the Right to Information on Official Documents, September 2004. http://www.osce.org/documents/rfm/2004/09/3760_en.pdf

development was the adoption of Article 23 of the Constitution which provides for the right of every person to access information held by state bodies and to attend public meetings.

Albania has also recognized through international agreements that it realizes the importance of access to information. In 2002, Albania ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) which requires that countries adopt laws on access to environmental information.

As a member of the Council of Europe, Albania has committed to follow the 2002 Committee of Ministers Recommendation Rec(2002)2 to member states on access to official documents.

More recently, in May 2005, Albania signed the “Declaration on 10 joint measures to curb corruption in South Eastern Europe” which commits members of the Stability Pact for South Eastern Europe Anti-Corruption Initiative (SPAI) to improve access to information as a means to fighting corruption within one year. The signatories agree to:

Enhance the free access to public information and ensure regular cooperation, coordination and consultation among public authorities, the business community and the civil society by establishing an accountable and transparent institutional framework.

These national and international agreements are all promising and Albania should be commended for these efforts. However, it is also generally recognized by commentators that the existing system of access to information as has been functioning is not adequate. This is both due to problems with the laws and more importantly with the practice and implementation of the laws.

The 1999 Law On the Right to Information over the Official Documents incorporates the right of access into national law and sets out procedures for access and appeals. A review commissioned by the RFOM in 2004 found numerous problems with the adequacy of the law.¹² The most significant problem with the law is the absence of specific provisions which set out in detail the exemptions for justifying the withholding of information, the level of harm needed to substantiate the withholding and the balancing of interests that should be considered before something is withheld. Instead, Article 4 of the law merely states that withholding is allowed when it is restricted by another law. This lack of defined exemptions is nearly unique among national freedom of information (FOI) laws and does not meet the standards of most international agreements and recommendations. Another significant problem is the lack of adequate remedies. The People's Advocate is given oversight authority but does not have the authority to order bodies to revise their decisions.

Local NGOs and institutions have found significant problems with its implementation. A 2003 survey by the Centre for Development and Democratization of the Institutions (CDDI) found that 87 percent of public employees were not aware of the act, no institutions had published the required information and few had appointed officers.¹³ In 2005, the People's Advocate recommended that disciplinary measures be imposed against officials who five years after the adoption of the law on access on the right to information intentionally or negligently violate the law.¹⁴ This was further recognized by the US State Department in their recent 2005 Human Rights Report which noted that "this law has not been fully implemented, and limited access to public information for citizens and noncitizens remained a

¹² *Id.*

¹³ CDDI, Rapport on monitoring process on Albanian Public Administration for the implementation of the law for the "Access of Information on Official Documents", 2004.

¹⁴ Annual Report of the People's Advocate for 2004, 2005.

problem. A lack of government information offices and limited understanding of the law by government officials contributed to the problem.”¹⁵

Thus, it appears that while the legal structure is mostly sound, there are clearly amendments needed to improve its effectiveness and there needs to be increased efforts to implement it for both public officials and users.

Recommendation

- *The existing system of access to information should be revised to examine its effectiveness in light of international standards and obligations. The review should consider both amendments to the law and improvements in implementation.*

Law on Information Classified “State Secret”

This section will review some of the important provisions of Law nr 8457 dated February 11, 1999 on Information Classified “State Secret”.¹⁶ Generally, the law is mostly consistent with international practices. There are a few areas where it can be improved.

Scope of State Secrets

The law sets out relatively reasonably narrow categories of information that can be classified as state secrets. Article 1 requires that for something to be classified as a state secret, it must be classified in accordance with the law and “might endanger national security.” “National Security” is defined as “the protection of the independence, territorial integrity, constitutional order and foreign relations of the Republic of Albania.”

Article 6 of the law sets out five categories of information that can be subject to classification:

¹⁵ US State Department, Country Reports on Human Rights Practices - 2005, March 2005.

¹⁶ Translation provided by the OSCE

- a) military plans, armaments or operations;
- b) capability or weakness, capacities of systems, installations, projects and plans that have to do with national security;
- c) activity of the information services, with the forms and methods of work, with cryptology in objects and technical means, in places where information is processed and the archives where it is kept;
- g) information of foreign governments, international relations or with international activity of the Republic of Albania, as well as with confidential sources;
- d) scientific, technological and economic issues that are related to national security.

Article 3 sets out three levels of classification:

- a) “top secret,” when unauthorized disclosure might cause especially serious damage to national security.
- b) “secret,” when unauthorized disclosure might cause serious damage to national security.
- c) “confidential,” when unauthorized disclosure might cause damage to national security.

In general, these definitions and categories are consistent with international practices. However, the definitions of harm in the categories should be tightened to limit unnecessary over-classification. For example, the Bulgarian Law for the Protection of Classified Information sets the harm for the unauthorized release of “Top Secret” information to that would, “endanger in exclusively high degree [...] or would be able to create danger from occurrence of irrecoverable or exclusively big damages” and information disclosed in the “Secret” level, “would be able to create danger from occurrence of difficult to recover or big damages”. In Macedonia, the Law on Classified Information requires that the disclosure of a “State Secret” (the highest level available) would, “cause irreparable damage to the vital interests

of the Republic of Macedonia” and the release of “highly confidential” information (the 2nd level) “would cause extremely serious damage”.

Recommendation

- *Strengthen the definitions of harm in the levels of classification.*

Categories of information prohibited from being classified

The Law is not as well defined when it comes to categories of information that should not be classified for reasons of important public interests. Article 10 sets out three categories of information that cannot be classified as a state secret. These are:

- hiding violations of law, ineffectiveness or mistakes of the administration
- depriving a person, organisation or institution of the right to know
- hindering or delaying the giving of information that does not require protection in the interest of national security.

This section is more limited than most other similar laws on state secrets found in the region. Typically, state secrets acts in most countries recognized that there are certain areas that the public’s right to know is always stronger than the need to protect the information through classification schemes. These include issues such as citizen’s rights, environmental hazards and disasters, constitutional, human and citizens’ rights, condition of the environment, natural disasters and calamities, statistical information on socio-economic issues such as living standards and education, illegal actions by officials and public authorities and information under international treaties that cannot be classified.

The following are some other examples of information that is not restricted elsewhere:

- *Environmental hazards.* 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.”
- *Human Rights.* The CIS Interparliamentary Assembly Model Law on State Secrets recommends that information on “mass repressions for political, social and other reasons” not be subject to classification as a state secret.¹⁷
- *Personal information about leaders and benefits.* The Russian Federation Law on State Secrets and the CIS Interparliamentary Assembly Model Law on State Secrets¹⁸ prohibit the classification of information about the health of leaders, “privileges, compensations and benefits granted by the State to individuals, officials, and also to enterprises, institutions, and organizations”.
- *Basic statistics and information.* The Lithuanian Law on State Secrets prohibits the classification of “statistical data concerning the state of economy and finances [...] as well as the state of health care, education, ecology, social and demographic situation, [and] results of social studies.” Georgia prohibits the classification of international agreements and treaties, most normative acts, and non-military maps. The Georgian, CIS and Russian laws all prohibit classification of information on currency and gold reserves.
- *Embarrassment.* The US Executive Order on Classified National Security Information prohibits the classification of information to

¹⁷ Model Law On State Secrets. Adopted at the twenty-first plenary session of the CIS Interparliamentary Assembly (decision no. 21-10 of 16 June 2003).

¹⁸ Id.

“prevent embarrassment to a person, organization or agency, retain competition.”

Recommendation

- *The categories of information that cannot be classified as a State Secret should be expanded.*

Duration of Secrets

The Law on State Secrets sets the default maximum classification period for all categories at ten years. In the region, this is among the better defined and should be commended.

However, a better practice would be to tie the duration of the secrets to the level of classification. For instance, in Macedonia, the Law on Classified Information sets the duration for “State Secret” at ten years, “Highly Confidential” at five years, “Confidential” at three years and “Internal” at two years.

This is important because even with the inclusion of provisions on declassification when something is no longer sensitive, the general practice in most countries is not to review these records and release them until the “official” date.

Another issue is the lack of limits on the total duration of classification. The fourth paragraph also allows, “A classifying authority may extend the time period of classification or may re-classify a piece of information for continuous periods that do not exceed 10 years.” This would appear to allow for nearly indefinite extensions and gives too much discretion. Most information, especially from the Cold War-era period should be made available.

Access to historical documents and the relation of the law with other laws such as those regulating state archives appears to still be a problem. The

Cold War International History Project reports that there is confusion over access to archives from the Communist era including Communist party files and finding aids.¹⁹

It should be obvious that nearly all records over twenty years old have little sensitivity and should be made public. They were written long before modern recognition of the importance of making information public and are largely over-classified. This is especially true of Cold War-era documents. The release of these documents will free up valuable resources that are currently being used for their protection and allow government authorities to focus on keeping important information secret.

Recommendations

- *The duration of the categories should be set accordingly to their sensitivity.*
 - *Top Secret – 10 years*
 - *Secret – 5 years*
 - *Confidential – 2 years*
- *The maximum number of extensions of classification should be limited in law. Additional justifications should be required for any extensions.*
- *Any remaining files from the Cold War-era governments should be declassified and released.*

Protecting Whistleblowers and Public Interest Releases

Another weakness in the law is the failure to recognize that there are instances where information should be released in the name of public

¹⁹ CWIHP and Its Partners Seek Greater Access to Albanian Cold War Files, Passport: The Newsletter of the Society for Historians of American Foreign Relations, April 2005.

interest, even if it is properly classified and may cause harm. This provision should both recognize the release in the public interest and also protects the person who made the release (the whistleblower).

There is a growing awareness of this issue globally. The Council of Europe Civil Law Convention on Corruption (CETS No 174), which was ratified by Albania in 2000 and went into force in November 2003, recognizes that employees who disclose information about corruption should not be subject to sanctions.²⁰ It is also recognized in the UN Convention against Corruption and other international instruments.

Other countries in the region include this in the freedom of information law. For instance, in Moldova, the Law on Access to Information states:

7(5) No one can be punished for the fact that he or she made public information with limited access, if releasing this information does not damage or cannot damage legitimate interests related to national security, or if the public interest for knowing the information is larger than the damage that can result from its dissemination.

Similar provisions also exist in the freedom of information laws in Montenegro and Macedonia.

Recommendation

- *A provision allowing for public interest whistleblower protection should be incorporated.*

Draft law – New “Official Secrets” Category

In 2006, the government introduced a Decision on Proposing a Draft Law “On Some Changes and Amendments to Law No. 8457, Dated 11 February

²⁰ Council of Europe, Civil Law Convention on Corruption, ETS No 174. <http://conventions.coe.int/treaty/en/Treaties/Html/174.htm>

1999 “On Information Classified as “State Secret”. The draft bill proposes a number of changes to the State Secrets Act apparently to synchronize Albanian law with NATO requirements on the security of information. However, the draft goes beyond the apparent NATO standards by creating new restrictions on information which would significantly restrict access to public information in Albania.²¹

The largest concern with the draft law is the creation of the new category of “Restricted” information. Article 2 of the draft defines “Restricted” as applying when:

“unauthorised exposure may damage the activity or the effectiveness of state institutions in the national security area.”

We recognize that this is an improvement over the previous version of the draft which defined the category as when “[...] unauthorized exposure may damage the normal state activity and the interests or effectiveness of the state institutions.”

However, the amendment remains problematic because of the broad scope of information that would be potentially covered by it. It is not clear why it is necessary in the Act on State Secrets. Currently, the lowest category of information “Confidential” already restricts the release of information “when unauthorized disclosure might cause damage to national security.”

The amendment appears to create a new class-based exemption that would cover all information on the activities of the national security agencies no matter whether it was sensitive or not and even if there is a strong public interest in knowing the information. It would not require any showing of damage to national security but rather expand it into the much more vague

²¹ Note that the NATO standards themselves are non-public restricted documents and that numerous attempts by civil society and academic to obtain the standards have been denied by the NATO secretariat.

categories of “activity” or “effectiveness” without giving any definitions or limitations on this areas. This could cover important information such as budgets and procurement, the role of the armed services in non-military missions such as disaster response and other non-sensitive areas where national security bodies play an important (but unclassified) role. The information can be classified for an indefinite period.

This problem is compounded by the lack of adequate means of challenging decisions in the existing Act on State Secrets and the lack of exemptions and balancing tests in the Law on the Right of Access to Information.

This undermines the overall purpose of the legislation which is to protect the nation from harm to its security. This is also inconsistent with the obligations under the Constitution and the many international instruments that Albania has agreed to that regulate access to information.

It would be more appropriate if there are legitimate concerns about this type of information being released under the Law on the Right to Access to propose amendments to that law and to discuss it in the appropriate forum relating to the working of that act, which as noted above, has also been found to be lacking.

Recommendation

- *This proposed category of “Restricted” should be eliminated.*

Criminal Code

In addition to the law on State Secrets, there are also provisions in the Criminal Code relating to the protection and release of state secrets. Article 294 prohibits disclosure of state secrets by those entrusted with them. Of more particular concern is Article 295 on “Divulging of state secrets by citizens” which states:

Divulging, spreading, or informing facts, figures, contents of documents or materials which, according to a publicly known law, constitute state secrets, by any person who becomes informed of them, is punishable by a fine or up to three years of imprisonment.

When the same act is committed publicly, it is punishable by a fine or up to five years of imprisonment.²²

These provisions are problematic because of their overbroad scope. They apply to all persons who come across the broadly defined “state secrets” no matter of their importance. Of particular concern is the apparent application of this provision to the media. This issue becomes even more critical if the proposed amendments to the law allow the addition of information relating to “normal state activity” and “effectiveness of state institutions” become state secrets.

It is also unlikely that these provisions are consistent with international obligations, especially if the definition of state secrets is expanded. The UN Human Rights Committee has been critical of states that use these types of provisions to repress important information, finding that it is a likely violation of the UN Declaration on Human Rights and the International Covenant on Civil and Political Rights. In 2001, the Committee criticized the United Kingdom government for using the Official Secrets Act against whistleblowers and journalists:

The Committee is concerned that powers under the Official Secrets Act 1989 have been exercised to frustrate former employees of the Crown from bringing into the public domain issues of genuine public concern, and to prevent journalists from publishing such matters.

²² Criminal Code No. 7895, dated 27 January 1995

The State Party should ensure that its powers to protect information genuinely related to matters of national security are narrowly utilised, and limited to instances where it has been shown to be necessary to suppress release of the information.²³

Recommendation

- *The Criminal Code provisions on dissemination of state secrets should be limited to only those who have received the secrets as part of their employment (recognizing as noted above the need for whistleblower and public interest releases) or in cases of espionage. They should not apply to the public or media.*

Conclusion and Recommendations

The laws governing access to information in Albania are generally consistent with international obligations on access to information and protection of state secrets. However, there are noted weaknesses in the Law on the Right to Information such as its lack of specific exemptions and weak appeals mechanism and more importantly its implementation that need to be addressed.

The Law on Information Classified “State Secret” is also generally consistent with international obligations. There are certain areas which could use improvement such as a better clarification of state secrets, the duration of secrets and recognition of public interest releases and protection of whistleblowers.

The proposed amendment to the Act would significantly weaken access to information by creating a new undefined category of state secrets that would potentially capture vast amounts of non-national security-related information and prevent its release.

²³ Concluding Observations of the Human Rights Committee : United Kingdom of Great Britain and Northern Ireland. 05/11/2001. CCPR/CO/73/UK,CCPR/CO/73/UKOT.

It would also threaten freedom of speech and the freedom of the media through existing provisions of the Criminal Code that criminalize access and dissemination to classified information by the public and the media.

Recommendations

- Improve awareness within the public bodies and practices for implementing the law on access to information.
- Meet with stakeholders to examine changes to the law on access to information.
- Eliminate new category of restricted information.
- Amend the law on state secrets to allow for releases in the public interest and protection of whistleblowers.
- Tie in the duration of classification to level of classification. Set limits on classification duration for 10 years maximum for top secret, and 5 years for secret and 2 years for “confidential”. Limit maximum period of time that information can be classified.
- Better define categories to limit classification in cases of environmental information, health of leaders and other areas.
- Improve the declassification system.
- Amend the Criminal Code to limit application of unlawful access to classified information by the public and media to cases of espionage.

Joint Statement on World Press Freedom Day

(02.05.2006)

On the occasion of World Press Freedom Day, the Special Rapporteur of the Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo; the Special Rapporteur for freedom of expression of the Organization of American States, Mr. Ignacio Alvarez; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, Mr. Miklos Haraszti; and the Special Rapporteur on Freedom of Expression of the African Commission on Human and People's Rights, Ms. Faith Pansy Tlakula, wish to commend the vital role the press has been playing in the progression of democracy and human rights.

Journalists are indispensable for disseminating information, promoting debate and facilitating dialogue, activities that constitute the foundation of a democratic society based on a pluralistic approach, where individuals and groups are encouraged to exchange information and express opinions freely. In this context, maintaining and nourishing media diversity, based on mutual respect and tolerance amongst different groups, is essential.

This year's World Press Freedom Day also sheds light on the link between freedom of the press and poverty eradication. Free and independent media is a key to combat poverty, as it serves as a medium to ensure unhindered circulation of ideas and to promote education and awareness thus upgrading opportunities. A special effort needs to be made to bring these benefits to the less developed countries and the poor in general, as they should be the

prime beneficiaries of the unprecedented opportunities the global information society offers.

It is, however, with grave sorrow that we remind ourselves that in the year 2005 the world recorded the highest number of journalists and other media professionals killed or injured in the line of duty. Attacks, intimidation and harassment against journalists and media professionals have regrettably become everyday events in some parts of the world. We note with serious concern that violence against the media and journalists often occurs with impunity. Criminal sanctions against persons and media who express critical opinions continue, including in the forms of criminal defamation or libel suits. Media ownership concentration, censorship, harassment through judicial or administrative measures, such as discriminatory application of media accreditation procedures or entry permits to a country, continue to be reported. With the rapid development of technology, Internet has become one of the main means to disseminate information and exchange opinions, but at the same time, the freedom of the Internet is being targeted more and more.

The four special rapporteurs would like to take this opportunity to call upon all governments to combat impunity with regard to violence against journalists and media personnel, by bringing to justice those responsible for attacks against them, and by taking measures that enable journalists and media personnel to continue providing information freely and independently. All journalists detained because of their media-related activities should be released immediately.

In this context, it is the parallel obligation of all to avoid the use of discriminatory forms of expression, such as hate speech. True freedom of expression and the press is firmly based on the culture of pluralism, diversity, tolerance and mutual understanding.

The State of Media Freedom in Kosovo – Country Visit and Assessment Report

Observations and Recommendations (03.07.2006)

The OSCE Representative on Freedom of the Media, Miklós Haraszti, visited Pristina 25 – 27 April 2006, accompanied by his Senior Adviser Roland Bless. This was the Representative's second visit to Kosovo. The trip was made in consultation with UNMIK and was organized by the OSCE Mission in Pristina. The purpose of the trip was to assess the current state of media freedom, especially in the context of a possible change of status as a consequence of the ongoing negotiations.

It is well known that the international community has invested heavily into Kosovo's free media. Since 1999, an estimated 36 million Euros have been given to Kosovo in media assistance. OSCE is involved in a special way, since the OSCE Mission as Pillar III of UNMIK is charged with media development.

In April 2004, the Representative issued a report on the role of the media in the March 2004 ethnic violence. This report will focus on the development of the Kosovo media since then.

The report was prepared in close cooperation with the OSCE Mission in Kosovo. It offers practical recommendations on how to improve the overall media situation in Kosovo.

The Representative met with UNMIK and OMIK officials as well as parliamentarians, journalists, and representatives of non-governmental organizations. Among those he met with from UNMIK/OMIK were:

- Soren Jessen-Petersen, Special Representative of the Secretary General of the UN (SRSG);
- Alexander Ivanko, Director of Public Information, UNMIK;
- Jens Modvig, Deputy Head of Mission, OMIK (Head of Mission was away of Kosovo at the time of the visit);
- Cornelis Van Zweeden, Media Division Unit Co-coordinator, OMIK;
- Eberhard Laue, Temporary Media Commissioner.

Meetings with other interlocutors included:

- Members of the Kosovo Assembly (Gjynaze Berisha (AAK), Alush Gashi (LDK), Ylber Hysa (ORA), Nebike Kelmendi (LDK), Oliver Ivanovic (SLK-GIS);
- Director of the public-service broadcaster RTK, Agim Zatriqi, and members of the RTK management;
- Editors and journalists of major Kosovar media outlets, including RTK, Koha Vision, TV 21, Koha Ditore, TV Most (Mitrovica);
- Members of the recently established Press Council were met on the occasion of a meeting of the Press Council Board;
- Director of the Association of Independent Journalists, Lundrim Aliu;
- Visit to the Kosovo Institute of Journalism and Communications (KIJAC), including meetings with members of the management, the faculty and the students;
- The Coordination Center of Serbia and Montenegro in Pristina submitted a written statement.

General Overview

The general media situation is commendable, given that Kosovo is a young democracy. The legal framework for the media is about to be completed.

Overall, there is media pluralism in Kosovo, both in terms of quantity of media outlets and of different views that are represented. The number of

media outlets is impressive for a market of around two million. There are 118 electronic outlets (3 of which are Kosovo-wide TV broadcasters), 8 dailies (with a modest circulation estimated at 30,000 copies), 5 weeklies and a number of other periodicals.

However, the division between Albanian and non-Albanian language media is still prevailing, especially with regard to the scarce Serbian-language print media. There is only one bilingual Albanian-Serbian language newspaper, the weekly M Magazine. The bi-weekly *Grazdanski Glasnik* is published in Serbian but has a mixed office, the publisher being Albanian and the editor Serbian.

The high amount of media outlets is also one of the reasons for the fragility inherent in the still young media environment in Kosovo. Loss-making media outlets are an accepted feature, which translates into low budget journalism at varying levels of quality. Economically deprived media are also vulnerable to interference with their editorial independence.

Politicians, political institutions and the international presence in Kosovo are regularly criticized in the media; independent TV and radio stations are outspoken in their comments concerning the authorities.

The flaws in journalistic professionalism, which were so obvious in the lead-up and the aftermath of the violence of March 2004²⁴, were corrected on the most important level, i.e. the editorial level. Kosovo media, therefore, showed a higher degree of maturity when covering politically sensitive topics such as the ICTY indictment of a former Prime Minister; or the debate on border agreement with its southern neighbour, the former Yugoslav Republic of Macedonia; or the ongoing status negotiations.

²⁴ Report on the Role of the Media in the March 2004 Events in Kosovo by the OSCE Representative on Freedom of the Media, 22 April 2004 - www.osce.org/documents/rfm/2004/04/2695_en.pdf

This development was followed by the establishment of a code of ethics and a Press Council, promising elements of a future self-regulation regime. In addition, a professional education facility was established. The Kosovo Institute for Journalism and Communication (KIJAC) offers a Master level postgraduate training for would-be and young active journalists. This quality education facility (in English) offers a curriculum according to European standards. Its first class will graduate in 2007.

The few missing pieces in the legal framework for a free media are in the making – with the support of the OSCE Mission – and are debated by the Kosovo Assembly.

So far were promulgated, the Law on Access to Official Documents; the IMC Law (on the independent media regulator); the RTK Law (on public-service broadcasting); whereas the Copyright Law was adopted by Parliament, pending promulgation by the SRSG.

Most of these laws, however, are yet to be fully implemented. Some provisions of them could be further improved, in some cases even before their implementation (see the recommendations).

The Law on Access to Official Documents, enacted by UNMIK (mentioned above), was complemented with an administrative guideline for its implementation by the Department for Public Works. A first draft was unnecessarily restrictive and would have deprived journalism of the legal security needed to perform its public function. A current draft carries improvements; its public and media-friendly implementation will be crucial.

The Law on Defamation and Insult, which decriminalises these offences, has passed its first reading in Parliament with the intent to establish the necessary safeguards in the civil law. The present criminal law provisions

on defamation and libel in Kosovo are affecting freedom of expression by exercising a chilling effect on media professionals.

This development is most welcome and would allow for the elimination of criminal provisions, bringing the Kosovo's legislation in line with the case law of the European Court of Human Rights.

Recommendations on how to further strengthen freedom of the media in Kosovo can be found at the end of each chapter and at the conclusion of this report.

Regulation and self-regulation

Major improvements – some remaining challenges

The regulatory framework of the Kosovo media improved significantly since the last report issued by RFOM in the aftermath of the March 2004 violence.

The law on the Independent Media Commission (IMC) was adopted by the Kosovo Assembly on 21 April 2005 and promulgated on 8 July 2005.

It introduces an independent regulator, a council (7 members, 2 of which are internationals) and an appeals board. The council reports to the Kosovo Assembly. The council and the Executive Chief of the IMC – i.e. the 'regulator' – are appointed in a procedure that guarantees the independence of the office. The office has competences regarding the licensing, oversight, control, and sanctioning of all broadcast media in line with European practices.

Some shortcomings however remain and deserve special attention: for its funding, the IMC is dependent on the Kosovo Consolidated Budget (the state budget). However, the size of the Government's financial contribution is not determined. Therefore, the IMC is subject to political interference. In

order to reduce this risk, the annual state contribution should be stipulated by law.

The establishment of a truly multi-ethnic Press Council, comprising the vast majority of Kosovo's editors-in-chief, added an important piece of self-regulation to the Kosovo media framework. The Council is in charge of print media, has the right to impose sanctions, and can order media to print retractions or to execute other remedial action as deemed necessary by the Council. The Council has so far received 10 complaints of which 8 have been adjudicated.

The Association of Professional Journalists was founded in early 2002 and is the most active of the three existing journalists' associations. Their goal is to inform media professionals on topics such as labour conditions, contractual arrangements with editors and to represent Kosovo journalists on an international level. However, their standing in the media industry is not consolidated yet and some further work on developing a representative professional interest group is needed, including a better representation of minorities.

The Independent Media Commissioner (IMC) needs sufficient funds for its operation. In order to reduce the risk of political interference, the amount of IMC's budget, which is a part of the state budget, should be stipulated by law.

The Press Council could further promote its role by passing and publishing guidelines on typical ethical problems even without waiting for specific complaints. It is advised to both the Press Council and the Independent Media Commission to engage in media legislation questions on behalf of the media.

Journalists' associations should make a particular effort to become multi-ethnic instead of organizing themselves along ethnic lines.

Public Broadcasting

The new broadcast law gives legal basis for public-service broadcasting – implementation of the law in line with European practice is crucial.

The Law on Radio and Television of Kosovo (replacing an earlier UNMIK Regulation) was adopted by the Kosovo Assembly on 20 January 2006, and promulgated by the SRSG on 11 April 2006. The law has the main features of a genuine public-service broadcast regulation, including a board guaranteeing a high degree of independence, and representing civil society in an appropriate format.

RTK has approximately 10% of its programming time in 4 minority languages (to be increased to 15% under the new law), making it the main multi-lingual media outlet in Kosovo. It runs on a yearly budget of 6 million Euros.

However, the promulgation by the SRSG added elements to the Law, which all need a follow-up for their proper implementation, while some of them may be amended sooner or later in order to help public-service broadcasting to become fully independent from government.

Special provisions for minorities

In a far-sighted provision, helping Kosovo's media to serve a multi-ethnic society, 5% of the license fee will be allocated to a fund established in the Office of the Prime Minister for the support of "minority, multi-ethnic and disadvantaged media" (paragraph i of promulgation).

The fee is collected as part of the electricity bill and amounts to 3.50 Euros/month. It is paramount that the allocation of the money earmarked for minority media are handled and distributed in a transparent manner. The

comparatively high amounts involved might lead to a situation where the money can not be absorbed by the few existing minority media.

At OMIK, a commendable idea has been developed to use these funds to establish a second Kosovo-wide TV channel under the *RTK* umbrella, dedicated mainly to minority broadcasting. Under this system, the existing minority broadcast media, as well as future minority media start-ups, would act not only as local outlets but also as production companies for the nationwide programs, to be fed into *RTK*'s second channel. Such a setup would increase the quality of productions by competition, and would increase the economic sustainability of the small minority outlets. A similar mechanism for radio should be examined.

The Representative found this idea worthy of support even cognisant of the view of some interlocutors, who put forward the idea that a separate channel might lead to an 'isolation' of minority broadcasting in Kosovo. The present system – where minority audiences have to look up 'their' programs embedded within the Albanian language channel – is no less 'isolationist' while it offers less dignity, and offers less opportunity to reach out to minority audiences. A second channel is real value for the license fee, which is to be paid in full also by minority viewers and listeners. It also offers better access to public-service broadcast media for minority community leaders, especially at election times.

Financial independence, transparency and accountability

The promulgation stipulates that all income, license fees as well as commercial income such as advertisement revenues, shall as public money be deposited in their entirety into an account designated by the Ministry of Finance (paragraph g of promulgation). This provision, as was explained to RFOM, is deemed necessary to guarantee the transparency and accountability of *RTK*'s revenue, which is public money.

However, under a public-service setup, unlike state broadcasters, funds are transferred to the board, which in its turn is not only guaranteeing the utilization of the funds in a politically independent way, but is also responsible for the proper handling of the funds including oversight, control and accountability.

Instead, the Ministry of Finance's treasury guidelines for the new Law foresee that the *RTK* management has to go directly to the Ministry of Finance to obtain funds to cover its operational costs for any amount higher than 100 Euros. Such an arrangement is likely to make *RTK* fail operationally. In addition, a door for political pressure is opened each time when *RTK* asks for money and the ministry feels unhappy about the public-service broadcaster.

We therefore recommend that the administrative guidelines regulating the disbursement of funds to the *RTK* be re-formulated in a way as to give *RTK* a) sufficient liquidity to cover operational costs, b) to allocate oversight, control and accountability function to the *RTK* board in line with other European public-service broadcasters, and to c) reduce the possibility of political interference by instructing the respective ministry to disburse the funds to *RTK* in an automated way.

Powers of the regulator over RTK's advertisement revenues

Article 14.1 of the Law stipulates that the Independent Media Commission shall determine the amount of the *RTK* income allowed to be generated from advertisement on a yearly basis. The law provides for a range from 0 to 20% of airtime which can be sold as advertisement. The promulgation by the SRSG specified this provision by obliging the IMC to take the "operational viability" of *RTK* into account when setting the percentage share²⁵, but this still leaves a vast power in the hands of the regulator, including the possibility to deprive *RTK* of any advertisement revenue.

²⁵ In 2006 the advertisement revenues contributed 8% to the *RTK* annual budget.

We therefore recommend that the advertisement percentage be defined for more than one year at a time, and that the percentage share will only be changed if sufficient alternative sources of income are secured. A possible solution is that advertisement revenue be linked to the advertisement time allotted per hour. It could be locked at a level, which is usual in European public broadcasting, a fixed 8-10 % of every hour of broadcast. As a rule, this amounts to about half of the advertisement allowance given to the commercial broadcasters.

The established Minority Media Fund (largely financed by the license fee) offers a unique opportunity to foster a multi-cultural media in Kosovo, and the establishment of a second RTK channel from this Fund should be envisaged.

In order to make the new RTK law work, the administrative guidelines regulating the disbursement of funds to the RTK should be formulated in a way as to give RTK a) sufficient liquidity to cover operational costs, b) to allocate oversight, control and accountability function to the RTK board in line with other European public-service broadcasters, and c) to reduce the possibility of political interference by instructing the respective ministry to disburse the funds to RTK in an automated way.

The level of advertisement revenue at RTK should be determined in a longer-term perspective, and should be accounted for in a publicly transparent way. It is suggested to follow the model common in Europe, which allows public-service broadcasters about half the airtime for advertisement compared to commercial ones.

Commercial Broadcasting

RTK now has the legal basis to live up to its commitments as a public-service broadcaster. The commercial broadcasting sector, however, is still vulnerable.

There are 118 broadcasting outlets in Kosovo, including 2 commercial Kosovo-wide TV stations (in addition to *RTK*).

The overwhelming majority of these stations, 93, are local radio stations. Many of them are struggling to break even. A report commissioned by the OSCE in 2005 ("*Local Electronic Media in Kosovo*") showed that almost two thirds have a negative balance sheet.

As it was recommended above, it is crucial for *RTK* to obtain its share of commercial income in a predictable and transparent way. The same goes for commercial stations and therefore transparency and accounting principles for advertisement income should be improved in general. It has to be added that the validity of the presently stated figures for *RTK*'s commercial revenue are contested by many of the public-service broadcaster's private competitors. Some of them fear that the actual advertisement revenue of *RTK* could be much higher than declared. Therefore, in order to secure a safe share of income for the commercial broadcasters on the small Kosovo advertisement market, the enforcement of the ceiling allotted by the IMC to *RTK* is just as important as the allotment itself.

In the long run, it is not only the health of both the public-service and the commercial wing of broadcasting that has to be cared for, but also that of the so-called 'dual' or 'mixed' system, i.e. the very coexistence of the two wings. The 'dual system' is enhancing pluralism and is therefore of value to freedom of the media. But in most new democracies, the success of the commercial wing has severely damaged the public-service arm. Obliging the public-service broadcaster to compete with the commercial broadcasters for the available advertisements has led to both a programming and a financial crisis at the public-service wing.

An alternative method of financing the entirety of the dual system, which would also reduce the risk of lowering the quality of programming when the public-service broadcaster competes with commercial stations, could be to declare the public-service broadcaster advertisement-free, while at the same time securing for the public-service broadcaster a fixed share of the advertisement revenue collected by the commercial stations. Thereby, the entire broadcast advertisement revenue would be produced at the commercial wing, the success of which would help sustain the public-service wing, and would even liberate its programming for true public-service quality. With the dawn of the digital era, and the multitude of broadcast channels on all platforms, a minimal mandatory contribution taken from each might be a great help to sustain advertisement-free public-service broadcasting.

It is noteworthy that the currently operated TV licences were allocated, in the year 2000, to those stations which just happened to be around at that time. In a more mature broadcast environment, the frequency allocation is overhauled at regular intervals in order to give newcomers a fair chance to enter the market. The Independent Media Commissioner in Kosovo should consider a re-allocation of frequencies in the near future.

An opportunity for this could be the switching over from analogue to digital-terrestrial transmission technology, which multiplies the number of possible channels. Kosovo was part of Serbia-Montenegro under international law in the first half of 2006, when the International Telecommunications Union agreed about the allocation of the digital spectrum. Therefore, today there is no separate frequency allocation for Kosovo. (The same is true for Serbia and for Montenegro which have even separated since the agreement.) As this worldwide map of frequencies will determine the perspectives for digital broadcasting in the years to come, the results of the ITU allocation

for Kosovo (as well as for Serbia and for Montenegro) have to be carefully examined and, if needed, the topic has to be included in the status talks.

In order to secure a fair share of income for the commercial broadcasters on the small Kosovo advertisement market, the enforcement of the ceiling allotted by the IMC to RTK should be combined with an increased transparency requirements for advertisement revenue.

The Independent Media Commissioner should consider a re-allocation of frequencies in the near future.

The switch-over from analogue to digital broadcast transmission will offer an opportunity in Kosovo for (re-)issuing the licenses in a transparent manner through public tenders based on an updated frequency allocation plan. It is imperative that Kosovo be given its own digital frequency allotment in the ITU-framework so that a lack of digital transmission capacity will not impede on its future broadcast development, after Kosovo's status is defined.

Conflicts of interests

Kosovo legislation has not yet defined the demarcation lines between political office and media ownership.

The owner of *Koha Ditore* Publishing handed over the managerial responsibility over his company to a family member upon becoming engaged in party politics. The editor in chief of *Zeri*, a leading Kosovo daily, is also engaged in politics as a member of the status negotiation team in the framework of UNOSEK. These links are openly declared and the public is informed. This is commendable but not sufficient for the future of Kosovo as a democracy.

So far, Kosovo lacks legislation governing issues concerning conflict of interests. As media ownership represents a commercial involvement in a very

special 'commodity', namely the shaping of public opinion, while also directly affecting the question of pluralism, we call upon the authorities to consider legislating in this domain.

A conflict of interest law should be enacted in Kosovo. The most promising way to resolve a conflict of interest in the domain of media ownership is that of a blind trust, that is, leaving control over the assets to an independent administrator during the time spent in public office.

The Print Press

The print press sector is not monopolized at the present time. However, for the sake of preserving media freedom proactively, there is a need for specific print media-related anti-trust legislation.

Currently, there are 8 dailies with a (declining) combined circulation of an estimated 30 000 copies per day; several weeklies and some other periodicals. This high level of diversity in the print media sector probably will not be sustained by the comparatively small Kosovo market. At present times, owners are willing to carry loss-making enterprises, but this situation might not prevail.

Commercially speaking, Albanian language media are the market leaders, whereas minority language media are scarce. It is unlikely that the minority media will ever be economically viable, and it is therefore to be welcomed that the public-service broadcast fee has a 5% built-in contribution to a fund for minority media. This should help secure some outlets and will add to the necessary cultural and linguistic diversity in line with European practice.

Given the comparatively low circulation, the Government could envisage to exempt print media from value added tax, which currently stands at 15% in Kosovo. That move could help reverse the trend of a declining readership and foster media pluralism.

A market consolidation process, especially amongst Albanian language print media, will inevitably reach Kosovo at some stage. It will lead to a danger of monopolistic ownership patterns, which might restrict media pluralism.

The Government should, under its obligation to proactively safeguard freedom of the media, start legislating in the domain of media-related anti-trust law, including provisions to limit cross-ownerships between broadcast and print media. The European Union's guidelines on protective measures for 'external pluralism' in the media could be taken into account.

Given the low circulation, the Government could envisage to exempt print media from value added tax, currently at 15% in Kosovo.

Access to Information

While a modern law on access to information is in place, the public's right to know is not yet fully guaranteed.

Another unfinished element is the implementation of the Law on Access to Official Documents. It is vital to create an environment and a culture within the Government and the public administration that allows the media to perform their function, that is, to obtain and disseminate information on governmental activities.

The Law on Access to Official Documents, promulgated in November 2003, is a solid basis for the future of freedom of information. It was drafted in the spirit of such legislation existing elsewhere in European democracies.

The Administrative Instruction (2006/1) which was issued by the Ministry for Public Services on 16 March 2006, replaced some earlier drafts, which were rather restrictive. The instruction now carries provisions on how to handle the Law on Access to Official Documents, in order to achieve an open, early and systematic information to the media and the public. It stipulates that

information is the rule and denial of it has to be the exception. Information can be sought in writing or by email, and citizens are entitled to an answer within 15 days. Unfortunately, there are no built-in appeals procedures in cases of denial of information, and the only option available is going to court.

In order to facilitate a smooth introduction of the new practice, the Kosovo Parliament, or at least the Administration (PISG), might consider appointing a high-ranking, independent “Information Commissioner” in charge of ensuring the regular, timely, and detailed information of the public as an integral part of government activity. Such a function should be entrusted with the capacity of declassifying information in cases when classification occurred illegitimately or should not persist anymore. The work of the Commissioner would speed up proceedings and diminish the number of cases which are actually taken to court.

The Administrative Instruction on Access to Official Documents by the Ministry for Public Services should be implemented mindful of journalists’ and citizens’ rights in a democracy.

An independent Information Commissioner with the competency to declassify certain types of information might be chosen to help implementing the law and the administrative instruction on access to official documents.

Defamation and Insult – major improvements adopted by Assembly

A new law to set up civil liability for defamation and insult was recently adopted by the Kosovo Assembly. However, under the existing UNMIK penal code, defamation remains a criminal offence.

At present, defamation is still a criminal offence under the Kosovo penal code. Such provisions do impede journalists from writing freely; they exercise a pressure to self-censorship and have a chilling effect on the media by their

mere existence in the criminal law. The penal code however, has a provision to exempt media from insult charges.

Upon a commendable initiative of the Government, in 2005, experts from the Prime Minister's Office, the OSCE, and the Temporary Media Commissioner started to work on a civil version of the Law on Defamation and Insult. The law, which was adopted by Parliament in June 2006, is generally in line with modern concepts of decriminalising speech offences. The definition of defamation reflects that liability only occurs for 'untrue' statements of facts. If media comply with Press Council recommendations, this is a mitigating factor for setting damages in defamation lawsuits. Public figures have to accept to endure harsher criticism, that is, they have a higher legal threshold for being awarded personal damages.

This is a major improvement, which has – once promulgated by the SRS G – the potential to bring Kosovo in line with seven OSCE participating States, which have transferred defamation and libel into the civil law domain and at the same time decriminalized it.

However, in Kosovo there is scope for further improvements. The new law does not exclude media from liability for insult, as the existing penal code does. Many of our interlocutors expressed some anxiety, that this might lead to a wave of media related insult cases in Kosovo courts.

The Assembly passed a commendable new law to transfer defamation and insult provisions into civil law. After its promulgation, particular attention should be paid to the handling of the law in the courts. If the new law leads to a wave of court cases against media, the Assembly should consider an immediate revision of the law.

UNMIK should promulgate the new Law on Defamation and Libel and could consider safeguarding the existing exemption provision for media in insult cases.

After that, the penal provisions currently in place in Kosovo should be revoked by UNMIK.

Recommendations

The media in Kosovo show a good degree of pluralism, both in terms of quantity of media outlets and of different views represented. The legal framework for a free media is almost in place, missing pieces are in the works. The political will to complete the legal framework is manifestly present.

- *The Independent Media Commissioner (IMC) needs sufficient funds for its operation. In order to reduce the risk of political interference, the amount of IMC's budget, which is a part of the state budget, should be stipulated by law.*
- *The Press Council could further promote its role by passing and publishing guidelines on typical ethical problems even without waiting for specific complaints. It is advised to both the Press Council and the Independent Media Commission to engage in media legislation questions on behalf of the media.*
- *Journalists' associations should make a particular effort to become multi-ethnic instead of organizing themselves along ethnic lines.*
- *The established Minority Media Fund (largely financed by the license fee) offers a unique opportunity to foster a multi-cultural media in Kosovo, and the establishment of a second RTK channel from this Fund should be envisaged.*

- *In order to make the new RTK law work, the administrative guidelines regulating the disbursement of funds to the RTK should be formulated in a way as to give RTK a) sufficient liquidity to cover operational costs, b) to allocate oversight, control and accountability function to the RTK board in line with other European public-service broadcasters, and c) to reduce the possibility of political interference by instructing the respective ministry to disburse the funds to RTK in an automated way.*
- *The level of advertisement revenue at RTK should be determined in a longer-term perspective, and should be accounted for in a publicly transparent way. It is suggested to follow the model common in Europe, which allows public-service broadcasters about half the airtime for advertisement compared to commercial ones.*
- *In order to secure a fair share of income for the commercial broadcasters on the small Kosovo advertisement market, the enforcement of the ceiling allotted by the IMC to RTK should be combined with an increased transparency requirements for advertisement revenue.*
- *The Independent Media Commissioner should consider a re-allocation of frequencies in the near future.*
- *The switch-over from analogue to digital broadcast transmission will offer an opportunity in Kosovo for (re-)issuing the licenses in a transparent manner through public tenders based on an updated frequency allocation plan. It is imperative that Kosovo be given its own digital frequency allotment in the ITU-framework so that a lack of digital transmission capacity will not impede on its future broadcast development, after Kosovo's status is defined.*

- *A conflict of interest law should be enacted in Kosovo. The most promising way to resolve a conflict of interest in the domain of media ownership is that of a blind trust, that is, leaving control over the assets to an independent administrator during the time spent in public office.*
- *The Government should, under its obligation to proactively safeguard freedom of the media, start legislating in the domain of media-related anti-trust law, including provisions to limit cross-ownerships between broadcast and print media. The European Union's guidelines on protective measures for 'external pluralism' in the media could be taken into account.*
- *Given the low circulation, the Government could envisage to exempt print media from value added tax, currently at 15% in Kosovo.*
- *The Administrative Instruction on Access to Official Documents by the Ministry for Public Services should be implemented mindful of journalists' and citizens' rights in a democracy.*
- *An independent Information Commissioner with the competency to declassify certain types of information might be chosen to help implementing the law and the administrative instruction on access to official documents.*
- *The Assembly passed a commendable new law to transfer defamation and insult provisions into civil law. After its promulgation, particular attention should be paid to the handling of the law in the courts. If the new law leads to a wave of court cases against media, the Assembly should consider an immediate revision of the law.*

- *UNMIK should promulgate the new Law on Defamation and Libel and could consider safeguarding the existing exemption provision for media in insult cases.*
- *After that, the penal provisions currently in place in Kosovo should be revoked by UNMIK.*

The State of Media Freedom in Armenia – Country Visit and Assessment Report

(26.07.2006)

Observations and Recommendations

The OSCE Representative on Freedom of the Media, Miklos Haraszti, accompanied by Adviser Ana Karlsreiter, visited Yerevan, Armenia from 19 to 21 June 2006. The visit was made following the invitation of the Government of Armenia, and was co-organised by the OSCE Office in Yerevan. The aim of the visit was to assess the state of media freedom, giving special attention to the forthcoming changes in the legal framework, required as a result of amendments to the Constitution adopted in November 2005.

The Representative appreciated the high level of co-operation with the Armenian authorities both in the preparations and during his visit. During the meetings with civil society and government alike, the intention to improve the media situation was strongly conveyed.

The Representative was received by the President of the Republic of Armenia, Robert Kocharyan.

He also held meetings with:

- The Chairman of the National Assembly, Tigran Torosyan;
- The Deputy Foreign Minister, Armen Baibourtian (Foreign Minister Vartan Oskanyan was away from Armenia during the assessment visit);
- The Deputy Minister of Justice, Gevorg Kostanyan;
- The President of the Council of Public TV and Radio Company of Armenia, Alexan Harutyunyan, the Executive Director of Public TV

Armen Arzumanyan, and Executive Director of Public Radio, Armen Amiryany;

- The President of the National Commission for TV and Radio, Grigor Amalyan;
- The Editor-in-Chief of the daily newspaper Azg, Hakob Avetikyan;
- Journalists, editors, and managers from various media outlets, both print and electronic;
- Representatives of national and international non-governmental organisations;
- Foreign diplomats.

General overview

Armenia has made significant progress in improving media legislation, but media pluralism remains limited to the independent, but financially weak and less influential, print media.

As noted by the Chairman of the National Assembly, Tigran Torosyan, the laws still lag behind the stipulations of the Constitution. One could also add that reality is still behind the laws. Examples include the insufficiencies of the Law on TV and Radio Broadcasting, as well as the lack of implementing regulations to acts of the Freedom of Information Law.

Limited pluralism in the broadcasting sector is a major problem. The broadcast outlets, with the exception of a limited number of programs which present alternative views, do not offer in a consistent way objective and pluralistic information to society. Broadcast media can be described as predominantly pro-Government, despite the transformation of state TV into a public-service broadcaster, and the existence of a number of private channels. In conformity with current legislation, all members of the regulatory bodies are directly appointed by the President of Armenia.

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

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

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

Taking into account every aspect of the media landscape, the media situation in Armenia could be further improved.

Recommendations on how to improve media freedom in Armenia can be found at the end of each chapter and at the conclusion of this report.

The state of broadcasting

Lack of independent broadcasting media, delay in passing the remedial legislative changes

Broadcast media remains by far the dominant source of information in Armenia. In 2001, state TV was transformed into a public-service broadcaster. Despite the fact that a high number of private TV stations operate throughout the country, the coverage of political life lacks pluralism, as it usually favours the Government, both in private and public-service broadcasting.

The explanation for this lies in the present legal setup. The current Law on TV and Radio Broadcasting provides for two bodies, the Council of Public TV and Radio Company (PCTR), and the National Commission for TV and Radio

(NCTR). The members of both boards are appointed by the President, and therefore all broadcasting outlets regulated or controlled by these boards are exposed to governmental influence.

A Constitutional amendment, approved in 2005, acknowledged this problem. If implemented, it would result in changes of the mechanism of member selection for the regulatory body of private and public media. Article 83.2 prescribes an amendment to the Law on TV and Radio Broadcasting, based on which half of the members shall be elected by the National Assembly, while the other half shall be appointed by the President of the Republic.

Yet, even if the above legal changes were already passed and implemented, the governmental control would not necessarily be reduced, namely during periods when the Parliamentary majority is of the same political affiliation as the Presidency.

Neither would these amendments handle the requirements of the digital convergence revolution. The International Telecommunication Union (ITU) this year has allocated Armenia's digital terrestrial frequency range. That would bring a proliferation of available channels, as would the convergence between telephone, satellite TV, and Internet. All this should result in an adapted licensing procedure with significantly reduced governmental influence, leaving the decision about future channels to the actual companies and to telecommunication market share regulations.

During the visit, the Representative was given no definitive information on the timing of the adoption of amendments to the Law on TV and Radio Broadcasting. It is assumed by the Representative that the amendments will not be adopted before the upcoming parliamentary elections in 2007.

As a first step, the legislative changes provided for by the Constitutional amendment should be prepared by the Government, discussed in a public

forum with members of civil society, and passed in Parliament as soon as possible, certainly before the Parliamentary elections in 2007.

However, legislative changes should not be limited to a “half Presidential – half Parliamentary” board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.

Public Broadcasting

Unsatisfactory transformation of State TV into a Public Service Broadcaster

Although in 2001 the state TV was transformed into *Channel H1*, the first public-service broadcaster in the CIS region, the channel still has yet to play its role as a public-service broadcaster.

Financed from state allocations and advertisement revenues, *Channel H1* remains the most popular TV channel since the transformation. Given its high impact on public opinion, it is problematic that all five members of its board are appointed by President Kocharyan. The lack of political independence of the Board is seen as one of the main causes for the lack of objectivity and diversity in the news coverage of the public-service broadcaster, as confirmed by recent civil-society monitoring endeavours, and also by interlocutors during the visit.

Currently, *Channel H1* does not conduct any systematic self-monitoring of, for example, access of different political parties to air time and coverage of their activities, or compliance with advertising limitations. The Executive Director explained this situation by resource constraints.

According to the President of PCTR, Alexan Harutyunyan, even after the adoption of the constitutionally required amendments of the Law on TV and

Radio Broadcasting, the members of PCTR will continue to be named by the President, and will serve as the managerial body responsible for policy making and programming.

This is also how President Kocharyan interpreted the future amendments in his conversation with the Representative. Citing the principle of the division of labour between branches of public power, he said that the appointment of the board members of PCTR will remain the task of the President.

However, the board should symbolize and ensure independence from political forces. A board nominated by the President is not compatible with a public-service broadcaster, and could result in governmental interference with its work.

Regardless of the new function of the PCTR, the members of the Council should not be selected by one political force, or by political forces alone.

The selection criteria of the public broadcasting board should reflect transparency and ensure both a high level of professionalism and pluralism of reflected views.

In order to fulfil the tasks of a genuine public-service broadcaster, the board should carry out continuous monitoring of access of different parties to air time and coverage of their activities, the results of which should be made public.

Private broadcasting

Limited alternative voices on air, partial licensing body, and inadequate anti-monopoly rules

There are four nation-wide commercial TV channels. In total 57 operate in the country, and nearly half of them are broadcast from Yerevan and have

limited coverage. Numerous radio channels exist; their role is limited to entertainment with the only exception of the re-broadcasts of *Radio Liberty* on public radio.

Although numerous private broadcasting outlets exist, in this sector the Representative found no systematic coverage of the diversity of public opinion.

The Presidential Administration informed the Representative in a letter of eleven programs of seven channels, which from April 1 until June 23 gave access to non-governmental speakers on 73 occasions. (The letter also makes a reference to the public broadcaster, stating that it does not broadcast talk shows or discussion programs that could host alternative voices, but it covers Parliamentary debates unedited.)

In spite of these examples, the monitoring survey of the *Yerevan Press Club* (YPC) confirms that there is a considerable lack of alternative voices on the air. The five largest TV channels (including the public-service broadcaster) predominantly focus on the day-to-day activities of the leadership of the country, on state structures, political figures, and influential businessmen.

Licensing is one of the main tasks of NCTR, the regulatory body for private media. President Kocharyan informed the Representative that after the forthcoming amendments to the Law on TV and Radio Broadcasting, the Parliament-nominated part of the board will not be changed immediately. Instead, new members will be phased in upon the expiration of their current mandates. That would mean no major innovation in the present system before the parliamentary elections of 2007.

Many interlocutors see the example of TV channels *A1+* and *Noyan Tapan* as proof that the licensing activities of NCTR, in the current legal setup, are non-transparent and politically motivated. In 2002, these fully operational TV

stations, regarded by many as politically independent from the Government, were denied renewal of their licenses. Since then, A1+ has applied more than ten times, but was rejected based on different reasons. The case of A1+ was submitted to, and accepted by, the European Court of Human Rights (ECHR). As indicated by the Deputy Minister of Justice, a final decision by the ECHR is expected in the near future.

NCTR doesn't have the legal power to look into the ownership structure of licensing applicants. The anti-monopoly provision of the Law on TV and Radio Broadcasting states that "each physical or legal entity can be licensed only for one Television and Radio Company". In fact, that does allow for companies to own several TV or radio stations. It only takes to establish as many companies as the number of stations the firm wishes to own. As confirmed by the President of NCTR, in reality there are people who own several broadcasting companies, which, in turn, share the same buildings and staff members.

This means that there aren't any guarantees for pluralism in ownership, which, in any society, is the foundation for a pluralistic access to information.

The amended law on TV and Radio Broadcasting should also be clear about the tender procedures of licensing. The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks.

In the coming law, provisions for pluralism should include clear-cut market share provisions. NCTR should be given the authority to check parent companies in order to preclude monopolization of the broadcast market.

Advertising

Regular violation of the laws due to poor enforcement

The market for commercial advertising in Armenia is very limited, both in size and scope. Broadcast media keeps prices artificially low by exceeding the limits of advertisement amounts allowed for them. This abuse is made possible by the poor enforcement of the laws regulating advertising, leading to unpunished violations of both time and content limitations.

The Law on Advertising regulates advertisement in private media outlets, allowing a maximum of ten minutes of advertising per hour of broadcasting. Based on surveys carried out by *IREX Armenia*, many TV companies do not observe these provisions, often carrying out as much as thirty minutes of advertising per one hour of broadcasting.

According to the Law on Advertising the advertisement of alcohol and tobacco is prohibited on TV. However, as revealed by an *Internews* survey, only 8 out of 19 television companies complied with this legal requirement. NCTR President, Mr. Grigor Amalyan, acknowledged only that this is going on in a hidden way, for example by advertising a water brand which is a namesake and a look-alike of a vodka brand. Asked if he could sanction these nevertheless, he said the law does not give his body the power to sanction hidden advertisement.

Currently, NCTR does not conduct regular monitoring. According to the explanation offered by its President, they lack the technical means to carry out monitoring, so they can only follow eight channels per day.

It is of serious concern that the public-service broadcaster is among those who violate advertising limitations. *IREX Armenia* claims that, measured on any time basis (e.g. hour, day, week), the public-service broadcaster, on average, exceeds three times the limitations of the law.

This unique situation was explained by the President of PCTR by the ambiguity of interpretation allowed by the law. He referred to the Law on TV and Radio Broadcasting, unlike the Law on Advertisement, specifies the advertising volume at a maximum 5% of programming, without defining over which period of time this 5% should be determined or averaged. They prefer, he said, to interpret this as a daily limit (thus allowing, for example, for unlimited prime-time advertisement quantities).

All these misuses of advertising limitations remove a potential income source from the print media, thus further endangering the development of a sustainable, balanced media market and a multi-access information system.

The implementation of the laws on advertising should be supervised properly to ensure the development of a pluralistic advertising market.

The new law should ensure more power to NCTR on monitoring the content and the frequency of advertisements, including the hidden ones.

Advertisement limitations of both public and private broadcasters should be regulated by one law.

Following international standards, the law should clarify that advertising limits must be measured per hour of broadcasting.

The state of print media

Free but financially weak, with limited influence

Vigorous media pluralism remains limited to the print media, where news coverage is diverse, at times openly critical of politicians of all shades. However, with none of the outlets exceeding a circulation of 3-4,000 copies per day, the Armenian print media can be described as exceptionally weak, playing a limited role in informing the public. There is some state-owned print

media, but its circulation does not reach the level which would create an obstacle to pluralism.

The main reasons behind the financial weakness of the print media can be explained by the limited commercial advertising market, and the insufficiencies of the distribution system.

Regarding the insufficient distribution system, the attention of the Representative was drawn to the necessity to amend the Law on Postal Communication. This piece of legislation is seen by the media NGOs as a hidden form of censorship. According to this Law, private distribution companies have to pay fees for the right to deliver newspapers. If implemented, this Law would eliminate most of the current small distributors from the market, and place the country's newspaper distribution service firmly in the hands of the two state-connected enterprises, *Haipost*, Armenia's postal service, and *Haimamul*, the main kiosk vendor.

As was agreed to by the Ministry of Justice, neither subscription, nor distribution should be subject to licensing.

The Government should consider introducing special protection of the print press in order to promote media pluralism, for example a supportive distribution system, VAT or tax breaks.

Access to Information

Insufficient implementation of the Freedom of Information Law

Although Armenia adopted one of the most progressive Freedom of Information Laws in CIS countries, access to information by media professionals remains limited. This phenomenon is due to the poor implementation of the law.

In order to improve the situation, the Freedom of Information Center of Armenia (FOICA) has developed sub-legislative acts necessary for proper implementation. However, so far the Government has not approved these proposals. The reason is that they are based on certain provisions of the Freedom of Information Law, which the Government wants to change. These articles are Article 5 on Recording, Classifying and Maintaining Information, and Article 10 on the Conditions of Providing Information. On the other hand, these provisions are the very progressive parts of the law, which warrant immediate implementation.

Public discussion and adoption of sub-legislative acts are necessary to ensure the proper implementation of the law.

Article 5 and Article 10 are important guarantees for freedom of information, they should not be subject to further changes or amendments.

Legislation on libel and insult

Libel and insult still remain criminal offences

Criminal libel cases have not been initiated for several years. In 2004 the Criminal Code was amended and imprisonment for defamation remained an option for punishment only when the offence is committed more than once by the same person. A maximum criminal pecuniary penalty of thousand times the minimum wage is applicable for defamation. Furthermore, Article 318 of the criminal code provides for special liability for “insulting a representative of the authorities”.

The Representative welcomed the 2004 reform as progressive. At the same time, this reform should be completed.

Defamation should be decriminalised completely.

A moratorium on criminal defamation charges may be introduced while decriminalisation amendments are being prepared and adopted.

Article 318, on “Insulting a representative of authorities”, should be repealed.

Guidelines should be introduced for civil courts in order to ensure that the amount of damages in civil defamation cases is proportionate to the charge.

An effective media self-regulation body should be established and it should assume the mediating role in media-related disputes.

Future co-operation and activities

The Office of the OSCE representative is considering a series of training activities

The Armenian authorities expressed readiness to further co-operate with the Office of the Representative on a number of issues. During a discussion with the Deputy Foreign Minister, Armen Baibourtian, the Representative offered training courses to assist press and public information officers to learn modern techniques of effective management of press services. Furthermore, trainings in the field of self-regulation could be implemented. The Representative also counts on the active participation of Armenian stakeholders in the annual RFOM conference entitled “The Business of Media”, which will take place in Tbilisi, Georgia on 2-3 November 2006.

The Office of the Representative continues to offer its legal expertise to assist Armenia in the finalization of the necessary legislative amendments.

Recommendations

The state of broadcasting

- *As a first step, the legislative changes provided for by the Constitutional amendment should be prepared by the Government,*

discussed in a public forum with members of civil society, and passed in Parliament as soon as possible, certainly before the Parliamentary elections in 2007.

- *However, legislative changes should not be limited to a “half Presidential – half Parliamentary” board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.*

Public broadcasting

- *Regardless of the new function of the PCTR, the members of the Council should not be selected by one political force, or by political forces alone.*
- *The selection criteria of the public broadcasting board should reflect transparency and ensure both a high level of professionalism and pluralism of reflected views.*
- *In order to fulfil the tasks of a genuine public-service broadcaster, the board should carry out continuous monitoring of access of different parties to air time and coverage of their activities, the results of which should be made public.*

Private broadcasting

- *The amended law on TV and Radio Broadcasting should also be clear about the tender procedures of licensing. The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks.*

- *In the coming law, provisions for pluralism should include clear-cut market share provisions. NCTR should be given the authority to check parent companies in order to preclude monopolization of the broadcast market.*

Advertising

- *The implementation of the laws on advertising should be supervised properly to ensure the development of a pluralistic advertising market.*
- *The new law should ensure more power to NCTR on monitoring the content and the frequency of advertisements, including the hidden ones.*
- *Advertisement limitations of both public and private broadcasters should be regulated by one law.*
- *Following international standards, the law should clarify that advertising limits must be measured per hour of broadcasting.*

Print media

- *As was agreed to by the Ministry of Justice, neither subscription, nor distribution should be subject to licensing.*
- *The Government should consider introducing special protection of the print press in order to promote media pluralism, for example a supportive distribution system, VAT or tax breaks.*

Access to information

- *Public discussion and adoption of sub-legislative acts are necessary to ensure the proper implementation of the law.*

- *Article 5 and Article 10 are important guarantees for freedom of information, they should not be subject to further changes or amendments.*

Legislation on libel and insult

- *Defamation should be decriminalised completely.*
- *A moratorium on criminal defamation charges may be introduced while decriminalisation amendments are being prepared and adopted.*
- *Article 318, on “Insulting a representative of authorities”, should be repealed.*
- *Guidelines should be introduced for civil courts in order to ensure that the amount of damages in civil defamation cases is proportionate to the charge.*
- *An effective media self-regulation body should be established and it should assume the mediating role in media-related disputes.*

Legal review on Kazakhstan's Law on Mass Media – Excerpt

(26.09.2006)

Summary of recommendations

ARTICLE 19 is extremely concerned that Kazakhstan's Law on Mass Media inhibits the development of a free, independent and pluralistic media in Kazakhstan and that it has restricted the public's right to receive information on matters of public interest from a variety of sources. The Law on Mass Media was introduced in 1999 and amended several times since – most recently, in July 2006. With each amendment, the regulatory regime has become stricter; the most recent amendments introduced tough fines and barred editors or owners of publications that have been banned from editing or owning another publication for a period of three years.

Our overriding recommendation is that the Law should be reworked to become a law that truly enables media freedom. Its positive features, including primarily those conferring rights on journalists, should be strengthened. All restrictions should be reviewed against international standards on freedom of expression and either be moved to legislation of general application, such as the civil code, or be abolished altogether. The registration scheme for print media outlets should also be abandoned. Georgia's 2004 Law on Freedom of Expression may be taken as an example for this exercise. ARTICLE 19 would be happy to assist in this process.

Until such revision takes place, we recommend that Article 4(2) of the current Law, which provides that rights conferred in international treaties ratified by Kazakhstan take precedence over incompatible national legislation, is applied. Kazakhstan has recently ratified the International Covenant on Civil and Political Rights and we strongly believe that both the media registration

regime and the majority of the content restrictions contained in the Law on Mass Media restrict the right to freedom of expression beyond the extent permitted under that treaty. This should mean that these provisions cannot be legitimately applied.

We are also aware that several civil society organisations are currently working to propose amendments to the Law on Mass Media, or to propose an entire new law. We wholeheartedly support this process and encourage the organisations involved to promote the highest possible standards on freedom of expression. The fact that the Kazakhstan government has recently ratified the International Covenant on Civil and Political Rights, and is therefore under a binding legal obligation to promote media freedom, should provide significant leverage to the arguments brought by these organisations.

The following paragraphs summarise our recommendations on the detail of the Law.

Regarding regulatory authorities:

- No public bodies other than an independent regulatory agency should have any regulatory powers over the media.
- The independence of the “authorised agency” should be protected, both explicitly in the law and through rules relating to funding, accountability and the appointment of its members.
- There should be a possibility of appeal to the courts for all decisions made by the “authorised agency”.
- Self-regulation should be the preferred method of regulation for the print media. Statutory regulation for the print media should be established only when there is a pressing social need to do so; in practice, this means that it must be shown that self-regulatory mechanisms have been tried and have failed.

Regarding the right to publish and registration:

- There should be no restrictions on the right to express oneself through the media based on nationality, or on the fact that a person has been convicted of an offence.
- The restriction on foreign ownership to 20% is likely to deprive the media sector of needed foreign investment and should be revisited.
- The registration regime is unnecessary and has already been abused to restrict freedom of expression, and should therefore be repealed.
- The restrictions on who may be appointed editor are illegitimate and should be removed.
- The prescriptions regarding the internal organisation of publications are overly onerous and unnecessarily bureaucratic and should be removed.

Regarding content and language restrictions:

- All content restrictions in the draft Law should be critically reviewed for compliance with the “three part test” of legality, legitimacy and necessity, as required under international law. Illegitimate restrictions must be abolished; and to the extent that restrictions are legitimate, they should be moved to laws of general application (such as the Civil Code or Criminal Code).
- The restriction on the use of languages other than the State language should be dropped.
- The restriction on re-broadcasting foreign programming should be reconsidered in favour of providing subsidies for Kazakhstani productions and including realistic local content obligations in broadcast licences.

Regarding journalists' rights and obligations:

- The statement of rights in the Law goes to the heart of freedom of expression and should be retained and built upon.
- The definition of 'journalist' should be broadened to include every person who exercises their right of freedom of expression to communicate with a mass audience through a regularly published medium.
- The privilege of confidentiality of sources should be reworded to ensure that a court may not order disclosure unless necessary in the investigation of a serious crime, or for the defence of a person being tried for a crime, and as a matter of last resort.
- Consideration should be given to incorporating the principle that journalistic premises or materials may not be searched or seized unless absolutely necessary, and only after a court order has been obtained.
- Serious consideration should be given to removing all statements of journalistic duties from the Law in favour of a self-regulatory regime. In any event, none of the duties should be so stringent as to infringe the right of every journalist to publish critically and use appropriate investigative techniques in the public interest. In particular, the absolute duties to always publish accurately, to respect privacy and to refrain from the use of hidden cameras or tape recorders should be reconsidered to allow for publication on matters of public interest.

Regarding the right to freedom of information:

- While Articles 2(2), 18(2)-(3) and 20(2) and 20(6) of the Law state important principles, they are insufficient to provide a full guarantee of the right to freedom of information. We recommend that efforts are begun to introduce true freedom of information legislation, applicable

to all and in conformity with the principle of maximum disclosure established under international law and outlined in this Memorandum.

- The media themselves should not be subject to any freedom of information obligations.

Regarding the right of reply:

- Efforts should be made to establish a self-regulatory regime through which a right of reply may be realised. If this is not possible, the right to reply or refutation provision should be amended to incorporate the following minimum principles:
- If the impugned statement concerns a matter of public interest, the burden of proving the falsity of the information must be on the person demanding the refutation;
- The requirement that “originating” organisations withdraw or replace their publications and notify all recipients of the false information is excessive, particularly if the incorrect material only formed a small part of a magazine or newspaper; and
- The paragraph allowing for a claim of damages must be deleted. Any action for defamation should be pursued through the courts, relying on the country’s ‘normal’ defamation law.

Regarding the duty to deposit copies of all publications with central agencies:

- The requirement to deposit copies of all publications with the “authorised agency” should be abolished.
- The possibility of a voluntary deposit scheme with the national library, book chamber and library of parliament should be pursued.

Regarding the accreditation regime:

- The accreditation regime should be automatic for all applicants.
- The regime should be overseen by an independent body, whose decisions should be allowed to be appealed in court.
- Accreditation should be lost only for serious and repeated public order offences.

The full version of the report can be downloaded from the website of the Representative.

English: <http://www.osce.org/item/20706.html>

Russian: <http://www.osce.org/item/20706.html?lc=RU>

Memorandum on the Defamation Bill 2006 and the Privacy Bill 2006 of the Republic of Ireland – Summary

(29.09.2006)

Summary of recommendations

Recommendations on the defamation bill

Recommendations on the Statutory Press Council:

Press Councils are complicated and controversial bodies whose influence touches on all aspects of media regulation and which have wide reaching consequences for the right to freedom of expression. We recommend that the Defamation Bill be amended to reflect the impossibility of effectively legislating for a Press Council:

- The statutory provision for the Press Council and Press Ombudsman should be removed from the Defamation Bill.
- If the statutory Press Council is not abolished, there must be clear provisions ensuring its administrative and operational independence. These should include the protection of the security of tenure of both the directors of the statutory Press Council and the Press Ombudsman.

Recommendations on Criminalisation of Defamation:

Criminal sanctions are inappropriate for defamation cases. While this Defamation Bill decriminalises almost all forms of defamation, it creates the offence of “publication of gravely harmful statements.” This runs counter to

international legal standards which mandate that criminal sanctions must not be imposed for defamation.

- We urge that a criminal offence of “publication of gravely harmful statements” is not created and that it is incorporated into the tort of defamation.
- There must be absolutely no provision for summary conviction of “minor” crimes of “publication of gravely harmful statements” as currently exists under Section 35(5). There must be no circumstance in which an individual may be summarily convicted of a defamation related criminal offence and be imprisoned based on this conviction.

Recommendations on Defences to Defamation:

Defences are an essential part of any protection of reputation and provide important protections for the right to freedom of expression. The defences contained in the Defamation Bill do not adequately limit the restrictions on the right to freedom of expression and should be amended to reflect the following:

- There should be an absolute defence of truth and the plaintiff should bear the burden of proving falsity.
- Statements of opinion and value judgements should be absolutely protected. The defence of “honest opinion” should be amended to respect this by removing any qualifications on the defence. The defence should reflect the impossibility of assigning truth or falsity to opinions and the irrelevance of whether such opinions are based on facts.

- The defence of “fair and reasonable publication” should be amended so that it is no longer conditional upon a lack of “spite, ill will or other improper motive.”
- The defence of qualified privilege should be amended so that the threshold reflects the common law standard of ‘malice’ rather than a lower standard of ‘spite, ill will or other improper motive’.
- The defence of “innocent publication” should be clarified to absolve Internet Service Providers (ISPs) of all responsibility for what is posted on internet websites that they merely host.

Additional Recommendations to the Defamation Bill:

There are several other sections that, for various reasons, insufficiently restrain government restrictions on the right to freedom of expression:

- There should be no provision for awarding additional aggravated and punitive damages for the manner in which a defendant conducts his or her defence. Such matters should be dealt with by standard court procedures.
- The torts of slander of goods, slander of title, and malicious falsehood should either be incorporated into the tort of defamation or provided for in separate legislation.

Recommendations on the privacy bill

Recommendation on the definition of privacy:

The Privacy Bill requires a clear, workable description of what is meant by the right of privacy. Presently, the drafting only indicates what the limitations are on this right.

- Section 3(1) should be amended to also include the definition of the right to privacy contained in Article 8(1) of the ECHR.

Recommendations on the defences available to the media:

The availability of clear defences with an appropriate scope to protect the freedom of the press is absolutely critical in balancing the right of privacy with the right of freedom of expression. Our recommendations for amending the defences ensure that the correct thresholds are established and only legitimate obligations are placed on the media.

- The requirement of ‘good faith’ in section 5(1)(e)(i) should be deleted.
- The requirement of ‘public importance’ in sections 5(1)(e)(ii) and 6(1)(a) should be replaced by a requirement of ‘public interest’
- The requirement of ‘for the public benefit’ in sections 5(1)(e)(ii) and 6(1)(a) should be deleted.

Recommendations on matters to which the court shall have regard:

This section requires significant clarification and amendment. We consider that a number of illegitimate restrictions are imposed on the media under this Part of the Privacy Bill and we have made recommendations for amendment accordingly.

- Sections 4(3)(a), 4(3)(c) and 4(4) should be deleted.
- “...to his or her friends” should be deleted from section 4(3)(b).

Recommendations on miscellaneous matters in the Privacy Bill:

Our remaining concern lies with section 13, which provides for when hearings can occur other than in public. We consider section 13(1) significantly, and substantially, expands the established bounds of when an action can be heard other than in public. Any departure from the system of open justice must be carefully reasoned through and be wholly justified in terms of its restriction of freedom of expression – closed hearings seriously undermine the right of access to information and the role of the media as the eyes and the ears of the public.

- Section 13(1) should be redrafted to limit the availability of an in camera court order or limitations on restrictions on court reporting to a very limited range circumstances – such as where the individual will suffer inordinately from the fact of the trial taking place being reported; or where the disclosure of specific information which is the subject of the trial is under dispute.

The full version of the report can be downloaded from <http://www.osce.org/item/20784.html>.

Position Paper on ‘non-linear audiovisual media services’ as established in the Proposal of the European Commission for an Audiovisual Media Services Directive (AVMS) and the Draft Report of the Committee on Culture and Education of the European Parliament (CULT)

4 October 2006

Background

On 13 December 2005 the European Commission communicated a proposal for an Audiovisual Media Services Directive (AVMS)²⁶ to the European Parliament (EP). It is meant to replace the Television without Frontiers Directive (TVWF) from 1989 (last revised 1997).

The proposed AVMS is establishing regulation for two types of audiovisual media services: ‘linear’ and ‘non-linear’.

Linear services are traditional TV broadcasts. Non-linear services include ‘on demand’ services and commercial audiovisual contents, including those on the Internet.

The regulation for ‘linear’ services would be similar to those which TVWF already imposes on TV services, but simplified.

‘Non-linear’ services would be subject to a lower degree of regulation, although a number of provisions would be the same for both services. Still,

²⁶ COM(2005) 6464 final, 13 December 2005 <http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0646en01.pdf>

they would have to be identifiable and traceable, and be subject to controls on offensive content, incitement, advertising and product placement, and they would have to promote access to European works.

Another EU Directive, the e-Commerce Directive²⁷, explicitly states in no. 18 that “[...] television broadcasting within the meaning of Directive EEC/89/552 and radio broadcasting are not information society services because they are not provided by request; by contrast, services which are transmitted point to point, such as video-on-demand or the provision of commercial communications by electronic mail are information society services; [...]”

The e-Commerce Directive allows for derogations from the ‘country of origin principle’. The Commission sees this right as an obstacle for a single European market for information society services and in its proposal for the AVMS does not allow for any derogations from the ‘country of origin principle’ for ‘non-linear’ services; derogations from this principle will remain possible for ‘linear services’, however.

On 1 August 2006 the rapporteur on the directive, MEP Ruth Hieronymi, presented a draft report of the Committee on Culture and Education of the European Parliament (CULT)²⁸. The Committee discussed the draft on 28 August 2006; it is scheduled for adoption by the Committee for 23 October 2006.

As opposed to the proposal of the Commission, the CULT draft report proposes to enable member states to derogate from the ‘country of origin’ principle also for ‘non-linear’ services²⁹ similar to the tested procedures of the e-commerce directive³⁰.

27 Directive 2000/31/EC

28 2005/0260(COD) provisional, 1 August 2006 <http://ec.europa.eu/information_society/doc/library/hieronymi.pdf>

29 *Ibid.* amendment 44, art. 1, para. 4, letter b

30 *Ibid.* Explanatory Statement.

This draft report also introduces the right of reply for ‘non-linear’ services, which is seen as a particularly appropriate legal remedy in the online environment³¹.

The Position of the OSCE Representative on Freedom of the Media

- 1) The Representative on Freedom of the Media (RFOM) welcomes the move to modernise the Television without Frontiers directive by the AVMS.
- 2) The ‘country of origin’ principle is a concept that the Representative is actively promoting within the OSCE region. The Representative regrets that this principle is no longer reflected for ‘non-linear audiovisual media services’ in the proposed CULT draft report on the AVMS. Implementing this principle without exception, however, would be a step forward for the free flow of ideas and information within the EU.

The right to derogate from the ‘country of origin’ principle proposed in the draft CULT report contradicts this important principle. Facilitating the free movement of audiovisual media services, including ‘non-linear’ services within the EU internal market through the application of the country of establishment principle, as promoted by the Commission³², should be the objective of the new AVMS.

- 3) Filtering or blocking of content across borders, as proposed in the draft CULT report, is the least favourable solution in terms of freedom of the media, especially for a borderless infrastructure like the Internet.

³¹ Ibid. amendment 27, recital 38 A (new); amendment 70, art. 1, para. 17 A (new)

³² Commissioner Viviane Reding, Speech/06/352, 7 June 2006 <<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/352>>

- 4) The concept of ‘non-linear audiovisual media services’ – newly established by the Commission’s proposal – remains very vague. To the present day, despite the ongoing discussion and despite the draft CULT report, it is still not entirely clear what ‘non-linear audiovisual media services’ will comprise.

While some actors argue it will only affect ‘TV-like’ online services, such as video-on-demand or IPTV, others warn that it will also regulate online video gaming, hosting of videos, weblogs or websites with advertisement banners, mobile services and other services of the information society and might hinder development and growth in this sector and stifle the free flow of information.

- 5) It is worthwhile stressing that the rapid development of the Internet was mainly due to the absence of content regulation. The huge amount of valuable information and resources the Internet offers would not have been possible had it been regulated by States and governments to the same degree as traditional media.

As there is no scarcity of frequency, and considering the pluralistic nature of the Internet and the possibility to publish content easily, there is no justification for content regulation, as formerly applied to the traditional broadcast media with their limited bandwidth. Users of non-linear content actively and consciously choose what to consume from a broad range of content options. Considering this broad range of possibilities, as in the print press in many countries, there is no need for the same degree of content regulation as in traditional TV.

It should be borne in mind that regulation should be limited to an unavoidable minimum. Otherwise there is the risk that – even with good intentions – it goes too far and stifles the free flow of information.

'Non-linear' audiovisual media services according to the proposal will be regulated to a lower degree than 'linear' services. The 'basic tier' of regulation for 'non-linear' services, however, already contains a number of provisions that are the same for 'linear' and 'non-linear' services.

Given the open and pluralistic character of modern information and communication technologies, the users' choice, and the 'pull' character of on-demand-services, it seems doubtful that such broad content regulation is necessary in addition to the already existing general criminal law provisions, e.g. on hate speech.

Conclusions

- 1) The 'country of origin' principle is not only important for a single European market but also favourable for the free flow of information. Derogation from this principle would impede on freedom of expression in global information and communication infrastructures, such as the Internet.
- 2) A clear and narrowly defined consensus should be reached on which media types qualify as 'non-linear audiovisual media services' in the scope of the proposal. It should clearly be restricted to 'TV-like' services. This should be clarified and communicated by the Commission, and the Parliament should have a valid and reliable basis for the discussion of the proposal.
- 3) The basic tier of regulation for 'non-linear audiovisual media services' should be limited to the absolute necessary minimum. Existing legislation, like the e-commerce directive, already covers services of the information society. After the removal of the right to derogate from the 'country of origin' principle, this would be a sufficient framework for online and on-demand services.

Analysis of the digital radio and television broadcasting implementation draft plan of the Republic of Armenia – Executive Summary

(25.10.2006)

Dr. Katrin Nyman-Metcalf, OSCE RFOM Expert

Executive Summary

There are a number of key issues linked to introduction of digital broadcasting. This report looks at these issues in turn and points out key concerns and questions based on best European practice.

- Social and economic questions related to the access of the population to broadcasting:

The Armenian draft plan attempts to take a citizen perspective, it deals with population coverage rather than territory and it stresses eliminating inequalities of population coverage and increasing access to information. In some parts the draft plan should be clearer in explaining how this will happen. The role of the independent regulator in ensuring access also in a digital environment needs to be stressed. The possibility to use digitalisation for delivery of other information services should be explored more in the draft plan. Further, it is essential to have clear and fair rules on who should get free set-top boxes, as it is likely that criteria used in other context for social benefits may not be appropriate. There will be administrative work and costs related to this, which must be taken into account. It is important that people are not excluded from access to broadcasting at digitalisation, so reasonable support should be given. As for access to programming, the manner of selecting broadcasters to be part of the multiplexes, especially the social

package, must be transparent and open. The key role of the public service broadcaster as part of this package remains. Consumer protection issues shall be part of the legislative overview needed.

- Infrastructure development including costs of investment by broadcasters and means of state involvement in covering costs:

The initial investment costs for digitalisation are high and the return may only come later. Some state involvement in financing is thus normally needed and is foreseen in the draft plan. The mixture of private and public investment is good in principle but the investment incentives for private companies are not very clear. There must be a careful balance so as not to give undue preference to certain companies. Monopolisation of the market must also be avoided, by public or private companies. Technical specifications and standards should to the maximum extent possible be those adopted in Europe and internationally to ensure the greatest possible interconnectivity and possibility for goods to move freely. Privatisation of transmitter network ownership should not be delayed because of digitalisation and any holder of the transmission network must observe access rules as well as not influence broadcasting content or which channels are broadcast. Existing infrastructure should be used and upgraded when possible in order to limit the environmental impact.

- Frequency matters:

Digital television is broadcast on the same frequencies as analogue so in many countries, like in Armenia, where there are no free frequencies, there must be re-assignment to be able to start digital broadcasting, including switching off some analogue broadcasting. The draft plan foresees this and refers to relevant ITU provisions for frequency planning. The concern is how the transition is made so as not to violate existing rights and legitimate expectations of broadcasters, on which the draft plan is vague. There is a

need to ensure that non-broadcasting users (including military and similar users) of spectrum are taken into account in re-planning. Existing users also of non-broadcasting services must be accommodated and potential new users included in planning.

- The risk of monopolization of the market and interoperability and access:

As state involvement may be necessary given the size of needed investment and as in any case it is difficult to get functioning competition in early stages of digitalisation, ownership rules must be carefully applied. Limits on media ownership and related disclosure rules are very important and something that needs strengthening in Armenia but that the draft plan does not mention. Provisions on access to infrastructure are very important and must be applied properly by the independent regulatory authority to create the maximum possible competition even if there is limited infrastructure capacity. There must be transparency of terms and conditions for access. This is something that the Armenian draft plan needs to stress. The independent regulator must get sufficient powers and it is essential that the work of the regulator is objective, transparent, proportionate and non-discriminatory. The best way to proceed with selecting the network operator as well as the broadcasters to provide content would normally be through an open tender.

- Regulatory questions:

A weakness of the draft plan is that it does not touch sufficiently or clearly on regulatory questions and the very important role of the independent regulator(s). The regulator(s) should be involved in making the plan. This includes regulators for telecommunications and broadcasting as both transmission and content are relevant. Independent regulators should decide licensing matters for transmission and content, for digital broadcasting as well as for other forms of broadcasting and other communications.

Licences for digital broadcasting need to include separate parts or be divided in two for transmission and the service/content. Legal certainty is an important element of regulatory work. Amendments to conditions as well as cancellation of given authorisations must always be made in objectively justified manner and proportionately. The laws on communications need to include necessary provisions for digitalisation, in legal amendments or separate laws, while many basic broadcasting legal issues remain the same – including provisions on broadcasting standards.

- The role of the public service broadcaster:

Diversity and access to good broadcasting do not happen automatically through digitalisation but must be ensured. This means that the role of the public service broadcaster in providing the social package programmes is very important and the public service broadcaster must be independent as well as have sufficient resources to fulfil its role.

- Public participation in planning for digitalisation

Digitalisation is a major change in the broadcasting landscape and of interest to consumers/viewers as well as to the industry. A maximum public participation in rulemaking including the making of the strategy is important. There may be a need for some special body to deal with digitalisation including spreading information.

The full report can be downloaded

in English: <http://www.osce.org/item/22019.html>

in Armenian: <http://www.osce.org/item/22019.html?lc=hy>

Special report: accreditation of journalists in the OSCE area

(25.10.2006)

Background

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

In the report of June 2005 *Coverage of the Events and Governmental Handling of the Press During the Andijan Crisis in Uzbekistan*³³, the Office of the OSCE Representative on Freedom of the Media (RFoM) recommended that “*accreditation should be used to facilitate access of journalists to officials and lack of it should not be used to deprive them from the possibility to work.*” This recommendation was made in response to the governmental revocation of visas and accreditation of foreign journalists who travelled to Uzbekistan to cover the developments.

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

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

The function of accreditation for journalists

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

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

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

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

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

Obtaining accreditation

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

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

The misuse of accreditation as a work permit

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

An example of a misunderstanding of the function of accreditation was demonstrated in the regulations governing the activities of foreign journalists

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

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

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

Journalists travelling to the **United States** on business must obtain an I-visa (a journalist's visa) from the Homeland Citizenship and Immigration Services Bureau, part of the Department of Homeland Security. This measure was created in the 1950's, but rarely imposed until 2003. However, from May 2003, dozens of expulsions took place, mostly from Los Angeles, where border police started refusing entry to journalists without the I-visa. Examples of cases include Rachael Bletchley (*The People*, Britain) in October 2003, Sue Smethurst (*New Idea*, Australia) in November 2003 and Elen Lappin, a

freelance journalist from Britain in May 2004. The requirement for a special visa for journalists in this instance serves the same function as a work permit, which carries with it an unnecessary permissive character.

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

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

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

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

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

from local deputies, who cited the illegality of the revocation in accordance with the Russian media law.

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

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

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

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

Arbitrary application of accreditation procedures

Accreditation procedures differ widely across the OSCE region. For example, **the Russian Federation** has a set of clearly defined procedures that set out accreditation procedure for foreign journalists, managed by the Ministry

of Foreign Affairs and available on the Ministry's website; by contrast, the **United Kingdom** does not have any defined procedures and the management of it is outsourced to an agency independent of the Foreign & Commonwealth Office.

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

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

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

Positive example of addressing arbitrariness in the accreditation system

In May 2006 the head of the Ivano-Frankivska local administration in **Ukraine** announced the intention to change an arbitrary system of

accreditation that had been proposed by the newly elected city council in an earlier session. A decision had been taken by the newly elected local council that would allow the council to decide on a case-by-case basis whether or not to admit journalists to the council sessions. Following criticism from local media, the mayor proposed the changes in order to demonstrate the transparency of the work of the council.

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

Granting of accreditation under selective conditions

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

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

This view of the Turkmen authorities has been confirmed in recent statements to the Permanent Council in connection with the status of

the Turkmen RFE/RL reporter, Ogulsapar Muradova, who recently died in custody. The view of the authorities is that Ms Muradova cannot be considered a journalist as she was not properly accredited according to the laws of Turkmenistan.

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

Conclusions

The participating States have made commitments to facilitate the work of journalists, and have agreed to ensure that a number of procedural mechanisms are in place to assist them in their work³⁴. Procedures related to issuing visas and accreditation, the right to transmit information abroad, travel within the country, access to officials and maintaining public and private contacts are all provided for in the OSCE commitments.

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

Recommendations

- *Accreditation should not be used as a general work permit for journalism, only as facilitator of the work of journalists. Governments should facilitate the work of journalists by adopting procedures that enable journalists to work in the host country, including the timely*

³⁴ Helsinki Final Act 1975; Concluding Document of the Madrid Meeting 1983; CSCE Vienna Follow-Up Meeting 1986.

issue of visas. Governments should abolish regulations that pose a required further layer of permission to media professionals .

- *Accreditation should not be the basis on which governmental bodies decide whether to allow a particular journalist to attend and cover a public event. Further, the threat of revocation of the accreditation for an event should not be used as the means to control the content of critical reporting.*
- *The guidelines for issuing accreditation should be drawn up with the aim to promote pluralism, should be transparent and available to the public, should be applied impartially and without arbitrary exceptions. Refusal of accreditation should be accompanied by the right on the part of the applicant to dispute the reasons for the refusal.*
- *Accreditation is the means to promote diverse reporting and should not be made dependent on unrelated factors, such as education or training. Legislation that has a permissive nature over the issuance of accreditation should be re-examined in order to maintain pluralism in the press corp.*

Memorandum on the draft law of the Republic of Azerbaijan on defamation

(31.10.2006)

I. Introduction

ARTICLE 19 has been asked to comment on certain laws in force in the Republic of Azerbaijan that limit the right to freedom of expression, purportedly to protect reputation and dignity, generically referred to herein as defamation laws. The analysis is restricted to those parts of the laws under consideration that specifically address the question of reputation and dignity.

Specifically, this Memorandum considers provisions from the Constitution of the Republic of Azerbaijan (the Constitution), the Law on Mass Media (as amended in 2004) (the Media Law), the Civil Code and the Criminal Code. Our analysis also takes into consideration the elaboration of some of these provisions by Azerbaijan's Supreme Court and Constitutional Court. Our comments are based on an unofficial English translation of the provisions.

The provisions under consideration suffer from a number of defects, rendered all the more problematic by their frequent application by Azerbaijani officials against the media. In June of this year, ARTICLE 19 released a statement regarding the government's record for protecting free expression and noted that criminal charges are regularly brought against journalists, often resulting in exorbitant fines or prison sentences.

ARTICLE 19 welcomes the positive development that a working group organised by the Yeni Nesil Journalists' Association, with the participation of representatives of the Presidential Administration and of Parliament, has recently developed a set of Principles which would inform the development of a new defamation law. As the current analysis makes clear, such reform is urgently needed.

In Section II of this Memorandum, we briefly describe international standards for freedom of expression and the nature of Azerbaijan's obligations under international law to protect and promote freedom of expression. Section II also sets out the test for legitimate restrictions to the right to freedom of expression under international and European law. The sections that follow address the different laws that we have been asked to analyse.

Our analysis draws upon the jurisprudence of international bodies, including the European Court of Human Rights, in the area of defamation. These standards, as well as comparative standards in this area, have been encapsulated in the ARTICLE 19 publication, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputations* (Defining Defamation), to which we frequently refer. These principles have attained significant international endorsement, including by the three official mandates on freedom of expression, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.

II. Azerbaijan's International Obligations

Article 19 of the Universal Declaration on Human Rights (UDHR), a United Nations General Assembly resolution, guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

The International Covenant on Civil and Political Rights (ICCPR) elaborates on many rights included in the UDHR, imposing formal legal obligations on State Parties to respect its provisions. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to Article 19 of the

UDHR. Azerbaijan ratified both the ICCPR and the first Optional Protocol to the ICCPR in 1992.

Azerbaijan is also a member of the Council of Europe and, as part of the process by which it became a member, has undertaken various obligations to strengthen protection for freedom of expression in the country, including through ratification of the European Convention on Human Rights (ECHR) in 2002. Consequently, Azerbaijan's domestic legal system and practice must conform to the provisions of the ECHR and are subject to the jurisdiction of the European Court of Human Rights, which is charged with interpretation and application of the ECHR.

Article 10 of the ECHR guarantees the right to free expression in the following terms:

Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The guarantee of freedom of expression applies to all forms of expression, not only those that reflect majority viewpoints and perspectives. As stated repeatedly by the European Court of Human Rights:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.

Despite its importance to effective democratic governance, the right to freedom of expression is not absolute and may be subject to restrictions. However, any restriction on the right to freedom of expression must meet a strict three part test. This test, which has been confirmed by both the Human Rights Committee and the European Court of Human Rights, requires that any restriction must be (1) provided by law, (2) for the purpose of safeguarding a legitimate interest, and (3) necessary to secure this interest.

In order for a restriction to be deemed necessary, it must restrict freedom of expression as little as possible, it must be carefully designed to achieve the objective in question and it should not be arbitrary, unfair or based on irrational considerations. Vague or broadly defined restrictions, even if they satisfy the “provided by law” criterion, are unacceptable because they go beyond what is strictly required to protect the legitimate interest. The test is set out in Article 10(2) of the ECHR in the following terms:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Relevant to the Azerbaijani legal provisions addressed in this Memorandum is the fact that the protection of reputation and of the rights of others are legitimate grounds for restricting expression. Nonetheless, the three-part test applies to such restrictions and any restriction that fails to meet any branch of the test will fall short of international standards, thereby breaching Azerbaijan’s legal obligations.

III. The Constitution of the Azerbaijan Republic

The Constitution of Azerbaijan, adopted on 12 November 1995, contains a number of articles that provide positive protection for freedom of expression.

Article 47 states:

1. Everyone has the right to freedom of thought and speech
2. Nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions.

Article 45 guarantees the right to use one's mother tongue, Article 50 recognizes the right to information and Article 51 guarantees freedom of creative activity.

Restrictions to the right to freedom of expression are found at Articles 47(3), 46 and 75.

Article 47(3) prohibits "propaganda provoking racial, national, religious and social discord and animosity". Its wording is similar to Article 20(2) of the ICCPR, which states: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." The most noteworthy difference between these two sets of provisions is that "social discord and animosity" posits a lower threshold than "discrimination, hostility or violence", but this may be an issue of translation.

Article 46, which protects honour and dignity, states:

1. Everyone has the right to defend his/her honor and dignity.
2. The dignity of a person is protected by the state. Nothing must lead to the humiliation of the dignity of a human being.

This article underpins a number of the provisions analysed by this Memorandum which place restrictions on freedom of expression. For example, Article 23 of the Civil Code penalizes the dissemination of information that humiliates a person's "honor, dignity and business reputation".

Article 46 differs from international law in this area by referring to the concepts of honour and dignity, whereas Article 10(2) of the ECHR and Article 19(3) of the ICCPR refer to the rights and reputation of others. Furthermore, according to Decision #7 of the Supreme Court of Azerbaijan, the right to "honor and dignity" found at Article 46 is based on the International Covenant on Economic, Social and Cultural Rights (ICESCR).

There is no specific, legally binding provision in the ICESCR that recognizes the right to honour and dignity, although human dignity is mentioned in the Preamble as the general source from which human rights are derived, as it is in both the UDHR and ICCPR. This concept of human dignity is extremely general in nature, serving as the philosophical foundation for all human rights rather than the basis for a specific legal provision. As such, it is not capable of precise definition. Furthermore, honour and dignity, as they are employed together in the Azerbaijani laws considered in this analysis, represent a different conception of dignity, more closely aligned to reputation than the more general reference in the preambles to the international documents noted above. This is relevant because international and European law unambiguously require restrictions on freedom of expression to be prescribed by law, and not to be unduly vague.

ARTICLE 19 suggests that "dignity" is too vague a legal concept on which to justify a specific restriction to freedom of expression. This is certainly true of the term as referred to in the preambles to the international documents noted above, to which it was linked in Decision #7. The courts of Azerbaijan and the government should therefore seek to clarify that the legal provisions

analysed in this Memorandum are aimed at protecting individual reputation – which is more obviously tied to the concept of honour than to dignity. As stated in Defining Defamation:

Defamation laws cannot be justified unless their genuine purpose and demonstrable effect is to protect the reputations of individuals – or entities with the right to sue and be sued – against injury, including by tending to lower the esteem in which they are held within the community, by exposing them to public ridicule or hatred, or by causing them to be shunned or avoided.

Article 75 of the Constitution also provides a constitutional basis for some of Azerbaijan's defamation provisions. It states: "Every citizen must respect state symbols of the Azerbaijan Republic -- its banner, state emblem and hymn." Under international law, the protection of the reputation of State symbols per se cannot justify a restriction on expression.

Similarly, Article 106 of the Constitution states that the honour and dignity of the President are protected by law. It is well established under international law, as repeatedly stressed by the European Court of Human Rights, that public figures should be subject to greater criticism, not less (see Section V, below). Consequently, this constitutional provision, which singles out the president's office for special legal protection, is inconsistent with international legal norms.

Furthermore, and more seriously, none of the provisions above imposes a three-part test for restrictions on freedom of expression as described above in Section II. Very limited guidance regarding when and how rights may be restricted, or on how to balance conflicting rights, is found at Article 71, which provides:

- (2) No one may restrict implementation of rights and liberties of a human being and citizen.
- (3) Rights and liberties of a human being and citizen may be partially and temporarily restricted only on announcement of war, martial law and state of emergency, and also mobilization, taking into consideration international obligations of the Azerbaijan Republic. Population of the Republic shall be notified in advance about restrictions as regards their rights and liberties.

These provisions appear to prohibit any restriction on freedom of expression outside of the limited circumstances envisaged in Article 71(3). However, they fail to provide any guidance as to how the right to honour and dignity, protected by Article 46, should be reconciled with the right to freedom of expression, protected by Article 47.

This lack of guidance is not resolved by Article 57(2), which grants constitutional protection to criticism, which is the expression of a negative view, while simultaneously denying protection to insult, which also constitutes the expression of a negative view. The provision states:

Citizens of the Azerbaijan Republic have the right to criticize the activity or work of State bodies, their officials, political parties, trade unions, or other public organisations and also the activity and work of individuals. Prosecution for criticism is prohibited. Insult or libel shall not be regarded as criticism.

This is highly ambiguous and fails to provide a basis upon which courts should distinguish between protected criticism and unprotected insults.

Furthermore, the court decisions reviewed by ARTICLE 19 provide little additional guidance. The decision of the Constitutional Court “On interpretation of Articles 21 and 23 of the Civil Code of Azerbaijan Republic”,

dated 31 May 2002, acknowledges that the application of one legal provision should not necessarily “imply the restriction of [an]other right” – in that case Article 10 of the ECHR – but the Court does not set out how a balance should be struck between competing rights, beyond mentioning that “proportionality” between rights should be observed, on a case-by-case basis.

The result is that these constitutional protections fail to impose the necessary limits on restrictions on freedom of expression for purposes of protection of reputation, as required under international law. In particular, the constitution fails to ensure that any restrictions on freedom of expression meet the three-part test outlined above.

Recommendations:

- Article 46 of the Constitution should make specific reference to reputation rights, or should be interpreted in this manner, rather than relying on the more vague and unarticulated concept of dignity.
- Article 47(3) should be amended to incorporate the language of Article 20(2) of the ICCPR, which provides a higher level of protection to freedom of expression.
- Articles 75 and 106 should be repealed.
- All restrictions on the right to freedom of expression should be subject to the three-part test, described in Section II, and Articles 71 and 57(2) should be amended to reflect this test.

IV. The Civil Code

Article 23 of the Civil Code has the heading “Protection of honor, dignity and business reputation” and consists of six provisions.

Article 23(1) grants all physical persons the right to seek a court order for refutation of information that: “humiliates his/her honor, dignity and business reputation, interfere[s] with the secrets of his/her private life or security of a person”, if the person that disseminated the information cannot prove that the information is true. A similar order may be obtained where the information disseminated is true but “only partially published”. Finally, the rights associated with the protection of honor and dignity of a physical person may be exercised by “interested persons” after the death of the physical person.

Article 23(2) provides that if the offending information was disseminated by mass media then the refutation shall appear in the same mass media. If the information was published in an official document, then the document shall be changed.

Article 23(3) grants the right of refutation to physical persons whose rights or “lawful interests” have been “humiliated” by the mass media.

Article 23(4) allows for compensation for damage caused by the dissemination of information that humiliates a physical person’s honor, dignity or business reputation. Article 23(5) states that if it is impossible to determine who disseminated the offending information, then the subject of the information may demand to have the information considered false.

Finally, Article 23(6) extends the rights associated with the protection of business reputation to legal persons.

Analysis

There are a number of problems with these provisions. First, they fail to set out any specific criteria regarding how the right to refutation will be exercised in practice. Although the Civil Code makes no reference to relevant provisions of the Media Law, Decision #7 of the Supreme Court, referred to earlier in Section III, specifically notes that the Media Law and its provisions

regarding the exercise of the right to refutation are the applicable rules for exercising the right to refutation contained in the Civil Code. Chapter VI of the Media Law sets out some rules in this regard but these are presumably restricted in application to the mass media. Furthermore, the Court's statement, at paragraph 8, that a right of refutation can arise if the media merely refers to the interests of a person, regardless of whether there has been "humiliation of honor and dignity", is alarming, although it appears to be consistent with the overbroad wording of Article 23(3).

Second, there is no indication of what constitutes "partial information". This term could be interpreted very broadly to include, for example, various different conclusions that people might draw from an article which was itself factually correct. It should at least be limited to situations in which the article in question presented the facts in a way that was, factually, clearly misleading so as effectively to constitute a false, factual statement.

Third, the provision makes no distinction between statements of fact and statements of opinion. Statements of opinion receive no specific protection under Azerbaijani law and Decision #7 of the Supreme Court makes it clear that the expression of a negative opinion can constitute humiliation to a person's honour and dignity. This is in clear contradiction to the jurisprudence of the European Court of Human Rights, which has on numerous occasions distinguished between statements of fact and of opinion. For example, statements of opinion are not susceptible of being proven true but it would appear that this is not recognised by the Civil Code. As the European Court has often noted:

In its practice, the Court has distinguished between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible to proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom

of opinion itself, which is a fundamental part of the right [to freedom of expression].

Furthermore, it is recognised that greater latitude should be accorded to statements of opinion. ARTICLE 19 is of the view that such statements should never attract defamation liability. The European Court of Human Rights has not gone quite that far, holding that freedom to express value judgements is not entirely unfettered. In practice, however, the Court allows a considerable degree of leeway to statements of opinion. For example, in *Dichand and others v. Austria*, the Court stressed that the discussion was on a matter of important public concern and recalled:

It is true that the applications, on a slim factual basis, published harsh criticism in strong, polemical language. However, it must be remembered that the right to freedom of expression also protects information or ideas that offend, shock, or disturb.

Fourth, as noted, Article 23(1) provides that truth is a defence for defendants charged with defamation. This is partially consistent with *Defining Defamation*, which provides that no one should be liable for a statement which has been found to be true. However, the Civil Code places the entire burden of proof on the defendant, a position which is clearly affirmed by Decision #7 of the Supreme Court. This is inconsistent with evolving international practice, particularly regarding statements on matters of public concern. As set out in Principle 7(b) of *Defining Defamation*:

In cases involving statements on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.

Fifth, Article 23 is seriously deficient in relationship to the defences which are available to an allegation of defamation, presently limited to the possibility of proving the truth of the information at issue.

An important defence not recognized by Article 23 of the Civil Code is that of reasonable publication, known in some jurisdictions as “due diligence” or “good faith”. Under this defence, defendants accused of publishing defamatory statements are protected against liability if they can establish that they acted reasonably in publishing a statement on a matter of public concern. This defence is particularly important to the media, which have a duty to satisfy the public’s right to know and be informed of matters of public interest, and thus cannot always exhaustively verify the accuracy of every fact alleged to be true. The European Court of Human Rights, in finding a breach of the right to freedom of expression even in the context of inaccurate statements, has noted that when the media has acted in accordance with accepted professional standards, the reasonableness test will normally be satisfied.

Additionally, Article 23 fails to exempt statements made in certain contexts from liability. The Media Law does include exemptions of this sort (see Section VI) but, given that it is restricted in application to the media, this does not assist others exercising their right to freedom of expression. Principle 11 of Defining Defamation defines the types of statements that should be protected against liability in defamation:

- (a) Certain types of statements should never attract liability under defamation law. At a minimum, these should include:
 - i. any statement made in the course of proceedings at legislative bodies, including by elected members both in open debate and in committees, and by witnesses called upon to give evidence to legislative committees;

- ii. any statement made in the course of proceedings at local authorities, by members of those authorities;
 - iii. any statement made in the course of any stage of judicial proceedings (including interlocutory and pre-trial processes) by anyone directly involved in that proceeding (including judges, parties, witnesses, counsel and members of the jury) as long as the statement is in some way connected to that proceeding;
 - iv. any statement made before a body with a formal mandate to investigate or inquire into human rights abuses, including a truth commission;
 - v. any document ordered to be published by a legislative body;
 - vi. a fair and accurate report of the material described in points (i) – (v) above; and
 - vii. a fair and accurate report of material where the official status of that material justifies the dissemination of that report, such as official documentation issued by a public inquiry, a foreign court or legislature or an international organisation.
- (b) Certain types of statements should be exempt from liability unless they can be shown to have been made with malice, in the sense of ill-will or spite. These should include statements made in the performance of a legal, moral or social duty or interest.

There are a number of decisions from the European Court of Human Rights that recognize that statements of the sort noted above should never, or only very rarely, attract liability.

Finally, Article 23 does not provide for a defence of “innocent dissemination”, which would apply, for example, to Internet Service Providers that have no means of verifying the content of all the information that they transport over the Internet.

A sixth problem with Article 23 of the Civil Code is its failure to provide for a limitation period for launching defamation actions, although a generic provision of this sort, for a range of actions in tort, is probably found elsewhere in the Civil Code. Allowing cases to be initiated long after the statements on which they are based have been disseminated undermines the ability of those involved to present a proper defence and exerts a chilling effect on defendants' freedom of expression. Defining Defamation proposes a limitation period for defamation actions of one year, absent exceptional circumstances, an approach that has been adopted and/or recommended in a number of jurisdictions.

Finally, defamation laws cannot be justified if their purpose or effect is to protect individuals against harm to a reputation that they do not have or no longer have. Perhaps even more importantly, relatives and others do not have a sufficient interest in the reputation of a dead person in order to be allowed to sue on their behalf.

Decision #7 of the Supreme Court

This Decision has been referred to on a number of occasions above. In addition to the points already made, ARTICLE 19 has the following observations on this decision. First, it states that a negative opinion may attract liability but then goes on to state that criticism of faults will not attract such liability. The difference between the two is not elaborated, leaving the issue in a state of some confusion. It would appear to provide for a hierarchy of opinions, some of which relate to 'faults', a clearly subjective term when used in relation to public policy, and some of which do not.

Second, in discussing the quantum of damages that may be awarded following a claim under the Civil Code for moral damages, the Court does not set an upper limit for monetary awards, leaving open the possibility of unreasonable damages being imposed on defendants.

ARTICLE 19 is reluctant to draw strong conclusions from this troubling decision given that it predates Azerbaijan's accession to the Council of Europe by two years and that subsequent decisions have begun to refer to Article 10 of the ECHR. We are, however, strongly of the view that the application of Article 23 of the Civil Code will need to be revisited by the courts.

Recommendations:

- The content of the right of refutation should be set out in the Civil Code and should reflect the principles discussed below, in Section VI of this Memorandum.
- The term “partial information” should be defined to include only statements which are so misleading as effectively to constitute false statements of fact.
- The Civil Code should distinguish between statements of fact and statements of opinion. The latter should not attract liability for harm to honour or reputation but, at a minimum, and in accordance with the decisions of the European Court of Human Rights, they should be accorded additional protection.
- Defendants should not bear the burden of proving the truth of defamatory statements where these relate to matters of public concern.
- The Civil Code should incorporate the defences of reasonable publication and innocent dissemination. In addition, the Code should recognize that certain statements will not attract liability or will only attract liability in limited circumstances.

- The Civil Code should include a limitation period for initiating actions under Article 23, if it does not already. This period should be no more than one year from the date of publication.

V. The Criminal Code

Articles 147, 148 and 323 of the Criminal Code prohibit the dissemination of information that in some way damages the honour and dignity of a person or, in the case of Article 323, that of the President of the Republic of Azerbaijan.

Article 147(1) states that the slander of a person, which consists of the “distribution of obviously false information which discredit honour and dignity...or undermining his reputation in a public statement, publicly or in mass media products”, will be punished by a fine of up to 500 “nominal financial units”, by up to 240 hours of “public works”, by “corrective works” for up to one year or by up to six months of imprisonment. Article 147(2) doubles the work and imprisonment sanctions if the slander “is connected with” an accusation of “serious or especially serious” criminal wrongdoing.

Article 148 provides that the dissemination of insults will also be punished by a fine, by public works, by corrective works or by imprisonment. The severity of these sanctions is the same as for Article 147 except that the fine can range from between 300 and 1000 nominal financial units. Insult is defined as the “deliberate humiliation of honor and dignity of a person, expressed in the indecent form in the public statement, publicly or in mass media”.

Finally, Article 323(1) states:

Disgrace or humiliation of honor and dignity of the President of the Republic of Azerbaijan in public statement, publish shown product or mass media shall be punished by fine of five hundred up to one thousand of nominal financial unit, or corrective works for term up to two years, or imprisonment on same term.

Article 323(2) increases the period of imprisonment to between two and five years where the statement contains an accusation of “serious or especially serious” criminal wrongdoing.

Analysis

Consistent with evolving international standards in this area, ARTICLE 19 is of the view that defamation should not be punished through the application of criminal laws but rather should be subject only to civil or administrative sanctions, or dealt with through self-regulatory mechanisms.

There is a strong and growing body of law in support of the principle that criminal defamation is itself a breach of the right to freedom of expression. For example, the UN Human Rights Committee, the body with responsibility for overseeing implementation of the ICCPR, has repeatedly expressed concern, in the context of its consideration of regular country reports, about the possibility of criminal sanctions for defamation.

Similarly, the UN Special Rapporteur on Freedom of Opinion and Expression, in his Report in 2000, and again in 2001, called on States to repeal all criminal defamation laws in favour of civil defamation laws. Every year, the Commission on Human Rights, in its resolution on freedom of expression, notes its concern with “abuse of legal provisions on defamation and criminal libel”.

In a similar vein, the three special international mandates for promoting freedom of expression – the UN Special Rapporteur, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – have met each year since 1999 and each year they have issued a joint Declaration addressing various freedom of expression issues. In their joint Declarations of November 1999, November 2000 and again in December 2002, they called on States to repeal their criminal defamation laws. The 2002 statement read:

Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.

The European Court of Human Rights has never actually ruled out criminal defamation and there are a small number of cases in which it has allowed criminal defamation convictions. Nonetheless, the Court has clearly recognised that there are serious problems with criminal defamation; it has frequently reiterated the following statement, taken from the case of *Castells v. Spain*, involving a charge of criminal defamation:

[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.

Even where sanctions have been financial, the Court has still held these to be, in a number of cases, illegitimate restrictions on freedom of expression. In the very first defamation case brought before it, *Lingens v. Austria*, it stated:

[T]he penalty imposed on the author...amounted to a kind of censure, which would be likely to discourage him from making criticisms of that kind again in the future...In the context of political debate such a sentence would be likely to deter journalists from contributing to public discussion of issues affecting the life of the community. By the same token, a sanction such as this is liable to hamper the press in performing its task as purveyor of information and public watchdog.

The principal concern expressed by these bodies, as well as by various national courts, with respect to criminal defamation is the chilling effect of criminal penalties, which are disproportionate to any harm incurred.

Additionally, given that defamation is already subject to sanction under the civil laws of most countries, and that these laws are effective in redressing harm to reputation, there is no need for parallel criminal provisions.

The provisions in Azerbaijan's Criminal Code, like other criminal defamation provisions, are both disproportionate and unnecessary. We are not aware of the precise rules relating to the application of these provisions but, like all criminal provisions, they should place the burden of proof of the offence clearly on the party bringing the case and require that all elements be proved on the criminal standard of beyond a reasonable doubt. Furthermore, again consistent with general criminal law, liability should depend on mental guilt, or *mens rea*, which, in this case, should include knowledge of the falsity of the statements and a specific intention to harm the person who has been defamed.

The available sanctions – particularly the threat of imprisonment – are clearly disproportionate to the offence. The threat of criminal sanctions necessarily inhibits healthy public debate, thus seriously undermining democracy by stifling important political speech. Furthermore, the deprivation of liberty – as contemplated by the provisions – is a very severe penalty affecting a fundamental human right.

Article 148 of the Criminal Code is also open to criticism on the basis that it penalizes expressions of opinion. As already discussed above in Section IV, expressions of opinion are granted special status under both international law and the laws of many national jurisdictions.

Article 323 constitutes a violation of the right to freedom of expression because it accords special legal protection to a public official, the President. It is well established in international law that public officials should tolerate more, rather than less, criticism and should not derive greater protection from defamation laws than ordinary citizens. Democracy depends on open

debate about public figures and institutions, and laws that offer higher standards of protection for the reputations of public officials or higher penalties for defendants that have defamed public officials have a chilling effect on freedom of expression. As the European Court stated in *Lingens v. Austria*:

The limits of acceptable criticism are...wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed both by journalists and the public at large, and must consequently display a greater degree of tolerance.

The principle is not limited to criticism of public officials acting in their public capacity, but extends to private or business matters. It also applies to cases involving not officials but, rather, statements on matters of public interest.

The severity of the violation to freedom of expression that Article 323 represents is aggravated by the fact that, unlike Article 147, there is no requirement that the information be false and liability is not dependent on the impugned statement being “expressed in the indecent form”, as required by Article 148.

The ‘Note’ at the end of Article 323, which states that the provision does not apply to criticism of the activity of the President is not particularly helpful, although presumably it creates the possibility of a defendant arguing that the impugned statement concerned actions taken by the President and not the person of the President. This note is probably based on Article 57(2) of the Constitution, discussed above in Section III.

These Criminal Code provisions contain certain ambiguous concepts and terms that should either be clarified or removed, although we recognise that some of these may be due to translation. For instance, as already noted,

Article 148 states that in order to qualify as an insult, a statement must be “expressed in indecent form.” This is highly subjective. Articles 147 and 323 both refer to “serious or especially serious” crimes. Arguably all crimes are serious and the terms are clearly ambiguous; alternatives might be crimes of violence or crimes attracting a certain level of penalty.

Finally, as noted above in relation to civil defamation law, defendants should benefit from a range of defences, all absent from these criminal provisions.

Recommendations:

- Articles 147, 148 and 323 should be removed from the Azerbaijani Criminal Code.
- In the event that any of the provisions are retained, the following amendments should be introduced:
 - prosecution of these offences should be consistent with basic criminal rules relating to onus and standard of proof, as well as mental guilt;
 - there should be no possibility of imprisonment or other harsh criminal sanctions for defamation;
 - strict proportionality should be required between the harm done and any penalty imposed;
 - clear guidelines should be set out regarding penalties; and
 - ambiguous language should be removed or clarified.

VI. Law on Mass Media

A number of provisions in the Media Law are relevant to the question of defamation or harm to reputation.

Article 10 sets out and prohibits a number of acts that constitute abuse of “the freedom of mass information”. Among these is the offence of “printing

under cover of reliable source rumors that humiliate honor and dignity of citizens...[and] slandering or acting unlawfully”.

Article 62 of the Media Law lists the circumstances in which the publication of false information will not result in liability for the editor or the journalist.

These are:

1. if disseminated by official state bodies or their press services;
2. if obtained from news agencies or press services entities, organizations, political parties and public associations;
3. if obtained from other mass media and is not refuted.
4. if quoted as it appeared word by word in official speeches of the deputies of Milli Mejlis, representatives of state organs, municipalities, entities, organizations and public associations as well as political figures and officials;
5. if mentioned on the air in live translation, or passed in the texts that were not to be edited, according to the present law.

Article 10 is similar to Article 23 of the Civil Code and Articles 147 and 148 of the Criminal Code and, as such, suffers from the same defects. Furthermore, given that the prohibition appears in the Media Law, it singles out the media and imposes another layer of sanctions for them alone. It is not clear, but it does not seem unlikely, that a member of the press could face legal action and punishment under the Media Law, the Civil Code and the Criminal Code for the same allegedly defamatory publication. This is supported by Article 60 of the Media Law, which states that the editorial office and the journalist will face “civil, administrative, criminal and other responsibility” (*italics added*) for revealing information in breach of the Media Law, presumably including defamatory material.

Given that there are already prohibitions against defamation in the Civil and Criminal Codes, there is no need for an additional provision in the Media

Law and it is inappropriate to single out the press in this manner as the threat of special sanctions can have a chilling effect on free expression. Furthermore, the layering of sanctions (civil, criminal, administrative, “other”) is unreasonable and creates the possibility of seriously disproportionate sentences being imposed.

Article 62, which provides a defence to charges arising under Article 10, is largely consistent with Principle 11 of Defining Defamation, discussed above in Section IV, regarding the Civil Code. However, the provision has limited application as it is in the Media Law and thus does not appear to apply to charges made under the Civil Code or the Criminal Code, or at least to non-media practitioners.

Recommendations:

- Article 10 should be removed from the Media Law.
- The defence provided by Article 62 should be extended to all defamation cases.

Article 10-1 limits the use of secret audio and video recordings, film footage and photographs to cases where the person or citizen being recorded has provided his or her written consent and where the “necessary measures were taken to guarantee the rights and freedoms of other person”, as provided by the Constitution. Alternatively, a court order may be obtained to permit use.

This provision essentially prohibits the use of secret recordings and visual images, thus precluding the possibility of investigative journalism. If consent has been obtained, the action is hardly secret. Even then, the material may not infringe the individual's right to have his or her reputation respected. If a journalist records a conversation that reveals that a politician is corrupt, this will undoubtedly harm the politician's dignity as defined under the provisions

analysed above, thereby breaching the second condition for using secret recordings.

The other means of engaging in secret recordings, gaining permission of the court, seems to confuse the media with the police or secret services, a serious error. It grants the courts the power effectively to act as editors as censors, able to prevent stories even before they are made, contrary to Article 50 of the Constitution which guarantees the right to distribute information and prohibits censorship.

The right to privacy is widely recognised and protected. However, at the same time, there are certain limits on protection of this right in the public interest. Most countries do not prohibit the publication of photographs of people taken in public places, even if the subject's permission was not obtained. Furthermore, most countries recognise a general public interest defence to a claim of privacy, based on the recognition that in many circumstances, the public's right to know can override a privacy interest.

Recommendations:

- Article 10-1 should be amended to permit the use of photographs, and sound and video recordings, if these are gathered in a public place.
- The use of recordings and photographs gathered in a private place should be permitted when this is in the overall public interest.
- The media should not be required to obtain the court's prior permission to use secretly recorded material.

Articles 44 and 45 of the Media Law set out the right to refutation, correction and answer, and the means by which these rights should be implemented.

These provisions are also applicable when a right to refutation is exercised under Article 23 of the Civil Code, discussed above in Section IV.

Article 44 grants these rights following the publication of any information that is “of slanderous and offensive nature that humiliates the honor and dignity as well as distorted thoughts of physical and legal persons”. The provision also grants the right to an apology or to have the matter addressed directly in court. The person who exercises his or her rights to refutation, correction and answer must do so within a month of publication.

This provision goes beyond penalizing defamatory content by introducing the vague concept of “distorted thoughts”, not seen in any of the other provisions.

The following conditions for the publication of a refutation, correction or answer are set out in Article 45:

- If the offending material appeared in a print publication then the refutation, correction or answer must appear on the same page as the original story under the headline “Refutation” and in the same font.
- The refutation, correction or answer should indicate what information in the original story is false, as well as when and how it was published.
- The refutation, correction or answer must be published in the next issue of the offending publication, or be read on the first radio or television programme following the making of the request.
- The physical person who makes the request, or his or her authorized representative, may appear on air to make an answer.

- The refutation or answer must be transmitted without any changes made to the text. It may be up to twice as long as the original piece. No additional commentary may be made to the refutation or answer.
- If the media is going to refuse to publish the refutation, correction or answer, then the person who made the request must be informed of the decision within three days, with reasons.

The following are acceptable grounds under Article 45 for refusing to publish a refutation (and possibly a correction or answer, although this is not explicitly stated):

- it contradicts a court order that is already in force;
- it is unsigned;
- it was already provided to the media;
- it is more than twice as long as the original; or
- more than one month has passed since the original publication.

The right of reply, which would appear to embrace both the right of refutation and the right of answer, constitutes a highly disputed area of media law and advocates of media freedom, including ARTICLE 19, generally suggest that such a right should be voluntary rather than prescribed by law. The right of reply constitutes an infringement to editorial independence, which is an important element of the right to freedom of expression. As an interference with freedom of expression, any measures enforcing a right of reply should therefore comply with the three-part test. Certain conditions should apply:

- The reply should only be in response to statements which are false or misleading and which breach a legal right of the claimant; it should not be permitted to be used to comment on opinions that the reader or viewer doesn't like.

- It should receive similar but not necessarily identical prominence to the original article or broadcast.
- It should be proportionate in length to the original article or broadcast.
- It should be restricted to addressing the incorrect or misleading facts in the original text and not be taken as an opportunity to introduce new issues or comment on correct facts.
- The media should not be required to carry a reply which is abusive or illegal.

The Media Law provisions do not conform to these provisions in important ways. First, their scope is not restricted to false or misleading statements which breach a legal right. As noted, they also provide for a reply for 'distorted thoughts'. The allowable length of twice the original article is almost certainly disproportionate, particularly given that the reply should be restricted to addressing the incorrect statements, although this ground for refusing a reply is not included in the Media Law.

Furthermore, the Media Law provisions are confusing because they refer to three different remedies: refutation, correction and answer. The drafting of Article 45 implies that all three may be claimed, whereas Article 44 implies that only one of the options is available.

Further confusion arises because Article 44 refers to the right to demand an apology or to go to court, but there is no elaboration on how these remedies are to be pursued by the claimant or complied with by the media. In any event, the right to demand and receive an apology is a clear violation of the right to freedom of expression. Forcing someone to produce an apology contradicts the absolute right to freedom of opinion. In any case, it is unnecessary given that a refutation or correction is available.

Article 61(1) states that an editor who refuses to publish a refutation, correction or answer without grounds will be subject to administrative, criminal or other responsibility. The exact nature of the responsibility should be specified since the threat of unknown sanctions has a chilling effect on expression and may grant courts the discretion to impose unreasonable and disproportionate punishments.

Recommendations:

- The right of reply should be elaborated in more detail and restricted in scope in accordance with the principles set out above. In particular, the right should be restricted to cases where a legal right of the claimant has been infringed and should be restricted to addressing false information.
- The right to demand a refutation, correction and answer for the publication of “distorted thoughts” should be removed.
- The Media Law should remove the confusing and redundant language and grant only one remedy rather than referring to three different rights.
- The right to demand an apology should be removed from the Media Law.
- Article 61 should specify the sanction for failure to publish a refutation, answer or correction.

*International Mechanisms for Promoting Freedom of Expression***JOINT DECLARATION***by**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 (20.12.2006)**Having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression;**Recalling and reaffirming their Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004 and 21 December 2005;**Stressing the importance of respecting the right of journalists to publish information provided to them on a confidential basis;**Emphasising the importance of the recent ruling of the Inter-American Court of Human Rights in the case of *Marcel Claude Reyes and others v. Chile*, which confirmed the existence of a right to access information held by States;**Aware of the adoption by the Global Transparency Initiative, a civil society movement, of the Transparency Charter for International Financial*

Institutions: Claiming Our Right to Know, calling for greater openness by multilateral development banks and other international financial bodies;

Welcoming the progressive amendments that a number of international financial institutions have made to their information disclosure policies in recent years;

Noting that international public bodies and inter-governmental organisations, like their national counterparts, have an obligation to be transparent and to provide access to the information they hold;

Cognisant of greater public awareness of the tensions that may result from certain types of expression due to different cultural and religious values, in particular prompted by the Danish cartoons incident;

Concerned about calls from certain quarters to resolve the tensions noted above by reversing hitherto well-established standards of respect for freedom of expression;

Reaffirming that freedom of expression and a free media can play an important positive role in addressing social tensions and in promoting a culture of tolerance;

Recalling that attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public;

Noting the need for specialised mechanisms to promote freedom of expression in every region of the world and the lack of such a mechanism in the Asia-Pacific region;

Adopt, on 19 December 2006, the following Declaration:

On Publishing Confidential Information

- Journalists should not be held liable for publishing classified or confidential information where they have not themselves committed a wrong in obtaining it. It is up to public authorities to protect the legitimately confidential information they hold.

Openness of National and International Public Bodies

- Public bodies, whether national or international, hold information not for themselves but on behalf of the public and they should, subject only to limited exceptions, provide access to that information.
 - International public bodies and inter-governmental organisations should adopt binding policies recognising the public's right to access the information they hold. Such policies should provide for the proactive disclosure of key information, as well as the right to receive information upon request.
 - Exceptions to the right of access should be set out clearly in these policies and access should be granted unless (a) disclosure would cause serious harm to a protected interest and (b) this harm outweighs the public interest in accessing the information.
 - Individuals should have the right to submit a complaint to an independent body alleging a failure properly to apply an information disclosure policy, and that body should have the power to consider such complaints and to provide redress where warranted.
- Freedom of Expression and Cultural/Religious Tensions

- The exercise of freedom of expression and a free and diverse media play a very important role in promoting tolerance, diffusing tensions and providing a forum for the peaceful resolution of differences. High profile instances of the media and others exacerbating social tensions tend to obscure this fact.
- Governments should refrain from introducing legislation which makes it an offence simply to exacerbate social tensions. Although it is legitimate to sanction advocacy that constitutes incitement to hatred, it is not legitimate to prohibit merely offensive speech. Most countries already have excessive or at least sufficient 'hate speech' legislation. In many countries, overbroad rules in this area are abused by the powerful to limit non-traditional, dissenting, critical, or minority voices, or discussion about challenging social issues. Furthermore, resolution of tensions based on genuine cultural or religious differences cannot be achieved by suppressing the expression of differences but rather by debating them openly. Free speech is therefore a requirement for, and not an impediment to, tolerance.
- Professional and self-regulatory bodies have played an important role in fostering greater awareness about how to report on diversity and to address difficult and sometimes controversial subjects, including intercultural dialogue and contentious issues of a moral, artistic, religious or other nature. An enabling environment should be provided to facilitate the voluntary development of self-regulatory mechanisms such as press councils, professional ethical associations and media ombudspersons.
- The mandates of public service broadcasters should explicitly require them to treat matters of controversy in a sensitive and balanced fashion, and to carry programming which is aimed at promoting

tolerance and understanding of difference. Impunity in Cases of Attacks Against Journalists

- Intimidation of journalists, particularly murder and physical attacks, limit the freedom of expression not only of journalists but of all citizens, because they produce a chilling effect on the free flow of information, due to the fear they create of reporting on abuses of power, illegal activities and other wrongs against society. States have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression.
- States should, in particular, vigorously condemn such attempts when they do occur, investigate them promptly and effectively in order to duly sanction those responsible, and provide compensation to the victims where appropriate. They should also inform the public on a regular basis about these proceedings.

Ambeyi Ligabo

UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszti

OSCE Representative on Freedom of the Media

Ignacio J. Alvarez

OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula

ACHPR Special Rapporteur on Freedom of Expression

Projects 2006

Internet Governance in the OSCE Region

Good Internet governance is becoming increasingly important due to the continuous development of the Internet. Traditional structures developed from technical necessities are gradually transformed into governed structures and institutions. This issue is at the moment discussed at UN, European, international and national levels.

Besides technical means introduced by some governments to restrict access to certain content on the Internet also efforts can be seen to modify Internet governance structures to restrict the free flow of information.

The World Summit on the Information Society (WSIS) in November 2005 defined that "Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet."

The debate on the future role and function of the Internet Corporation for Assigned Names and Numbers (ICANN) during the WSIS was just one example of many of the ongoing discussion on Internet governance. It showed that there is a great variety of concepts of Internet governance and that consensus still has not been found.

The Internet Governance Forum (IGF) was established as a result of the WSIS. It is due to convene for the first time at end of 2006 in Athens. Results from this UN meeting will be included in the study.

The Internet is more and more becoming an infrastructure of every-day usage for many people. At the same time legislation aiming particularly at the Internet is adopted by governments. The legitimate aims of such regulations

could be to counter hate speech, prevent the use of the Internet for terrorist purposes or the prosecution of illegal content.

However, the Internet is a very specific infrastructure and legislation needs to be well tailored to suit the technical complexities and particularities of the network. At the same time, Internet media deserve the same protection regarding the right to freedom of expression as 'classical' media.

This project will evaluate exemplary Internet legislation and address the complex new situation global networks create.

Central Asia Media Conference and Training Event “The Business of Media”

The Central Asian Media Conference and Training Event was organized on 19-20 October 2006 in Bishkek, Kyrgyzstan, by the OSCE Representative on Freedom of the Media together with the OSCE Centre in Bishkek and with the assistance of the other four regional field presences. The focus of the Event was the media as a profit-oriented business.

The first day of the Event which had a Conference format and was aimed at all participants, two sessions addressed the following aspects:

- **Media privatization** eg. history of successful post-Communist privatization in Eastern Europe (case studies), necessary legal frameworks and requirements, general rules applying to all commercial entities versus specific ownership restrictions applying to media, different methods of privatization and their impact, cross-ownership and concentration.
- **Media management** eg. general framework of competition, funding of media business and its link to editorial independence, transparency of ownership and transparency of financing sources.

The second day of the Event specifically targeted the participants who are key figures dealing with management issues in media outlets (eg current or future owners, publishers, editors, managers). They were offered capacity-building as practical training in how to successfully run media outlets, including all phases of the managerial cycle starting with successful business plans, how to improve advertisement income, sales strategies, distribution etc. This training component was implemented by Eurasia Foundation of Central Asia.

Third South Caucasus Media Conference and Training Event “The Business of Media”

The Third South Caucasus Media Conference was organized in Tbilisi, Georgia, on 2-3 November 2006 as a joint project by the OSCE Representative on Freedom of the Media Office and the OSCE Mission to Georgia and was be organized with the assistance of the OSCE Offices in Baku and Yerevan. The focus of the Event was the media as a profit-oriented business.

The first day of the Event which had a Conference format and was aimed at all participants, two sessions addressed the following aspects:

- **Media privatization** eg. history of successful post-Communist privatization in Eastern Europe (case studies), necessary legal frameworks and its implementation in practice, general rules applying to all commercial entities versus specific ownership restrictions applying to media, cross-ownership, vertical and horizontal concentration.
- **Media management** eg. general framework of competition, funding of media business and its link to editorial independence, transparency of ownership and transparency of financing sources.

The second day of the Event targeted the participants who are key figures dealing with management issues in media outlets (eg current or future owners, publishers, editors, managers). They were offered capacity-building as practical training in how to successfully run media outlets, including all phases of the managerial cycle starting with successful business plans, how to improve advertisement income, sales strategies, distribution etc. This training component was implemented by Eurasia Foundation in South Caucasus.

Legal Assistance in 2006

In 2006, the Office of the Representative on Freedom of the Media continued to provide legal assistance to the OSCE field presences and participating States for the sixth year. This is done as a part of the activities under the mandate to assist the participating States to fulfil their OSCE commitments in the sphere of freedom of media and freedom of expression.

This year, the Office commissioned seven legal reviews from independent international media experts. The reviews included both current and draft legislation; in some cases several laws or alternative drafts were reviewed in one single review. In 2005 the number of commissioned legal reviews was 12, in 2004 it was 18.

Six OSCE participating States benefited from this assistance in 2006: Albania, Armenia, Azerbaijan, Ireland, Kazakhstan, and Moldova.

All reviews include recommendations on how to bring the legislation in line with OSCE commitments and other international standards.

In addition, follow-up round tables were organized in Armenia, Azerbaijan and Moldova to provide an opportunity for the local authorities to discuss the reviews and the recommendations with the experts. Furthermore, a project which already started in 2005 providing training for Georgian judges and other legal professionals on applying the media law continued in 2006.

*All legal reviews can be found on the webpage of the Representative:
<http://www.osce.org/fom/documents/reports/country/>*

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

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, Haraszti 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.

Media Access to Information Project

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.

The survey aimed at drawing up **major trends in deficiencies** of laws and practice pertinent to access to information by media, 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.

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.

Criminal Defamation Laws: Current Practices in the OSCE Area

Overview

Libel is defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Defamation is the act of imposing unjustified injury of the good reputation of a person by means of slander. Criminal defamation laws are the laws that make it a criminal offence to say or publish true or false facts or statements of opinion that offend a person or undermine his or her reputation.

The danger of these laws for journalists and the media lies in that they generate fear of prosecution for speech, therefore impeding free discussion of important public issues, criticism of government officials, as well as transparency of the political process. This so-called *chilling effect* is detrimental to freedom of the media.

In almost 90% of OSCE participating States (48 countries), defamation is a criminal offence and in six countries journalists have recently been imprisoned for defamation. At least 35 penal codes provide for imprisonment for libel, while in 18 countries, the law envisages a maximum sentence exceeding two years. Special protection of public officials and punishment for insult against national symbols is commonplace.

Recent legislative amendments

In the last ten years, the following countries have amended their criminal libel and defamation legislation: Bosnia and Herzegovina; Bulgaria; Cyprus; Croatia; Estonia; the former Yugoslav Republic of Macedonia; Georgia; Kyrgyzstan; Moldova; Montenegro; Romania; Serbia, Kosovo (the Republic of Serbia); and Ukraine.

South Eastern Europe: A positive example

South Eastern Europe (SEE) is noteworthy in terms of its regional efforts to reform defamation legislation over the last ten years. Even those SEE States which have not yet fully decriminalized libel and insult laws have initiated the process to do so.

- Bosnia and Herzegovina , as well as Moldova, have decriminalized defamation (except a few narrowly-defined provisions in Moldova);
- Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Romania, and Serbia have deleted imprisonment for libel;
- Kosovo (the Republic of Serbia) has adopted a new civil defamation law;
- Reform is underway in Albania.

Defamation and Libel Legislation in the OSCE Area³⁵

Albania: Defamation is a criminal offence, carrying a maximum penalty of two years' imprisonment and three years' imprisonment in case of defamation of the President or senior foreign officials. A proposal to decriminalize libel and insult is being considered by Parliament.

Andorra: Defamation is a criminal offence, carrying a maximum penalty of three years' imprisonment.

Armenia: Defamation is a criminal offence, with one year's imprisonment for defamation of a citizen, four years' for defamation of a judge, prosecutor, investigator and executor of court decisions and five years' if libelous information is disseminated about a candidate or a party during an election campaign.

Austria: Defamation is a criminal offence. Political figures enjoy increased protection under defamation provisions.

Azerbaijan: Defamation is a criminal offence, with the maximum imprisonment of five years for defamation of the President.

Belarus: Defamation is a criminal offence, with the maximum imprisonment of five years for defamation of the President. Recent amendments to the Criminal Code of Belarus criminalize "discrediting Belarus", and

³⁵ This section is based on the document "Libel and insult laws: a matrix on where we stand and what we would like to achieve. A comprehensive database on criminal and civil defamation provisions and court practices in the OSCE region (<http://osce.org/item/4361.html>) and on the RFOM's monitoring of legislative developments in the OSCE participating States.

dissemination of “knowingly false information” about Belarus carries a penalty of up to 5 years’ imprisonment, if the offence is committed in the media.

Belgium: Defamation is a criminal offence carrying a maximum of one year’s imprisonment. Public officials enjoy increased protection under defamation provisions.

Bosnia and Herzegovina: Defamation was decriminalized in 2001.

Bulgaria: Defamation is a criminal offence but imprisonment as an option for punishment was repealed in 2000.

Canada: Defamation is a criminal offence with the maximum imprisonment of five years.

Croatia: Imprisonment for defamation was removed from the Criminal Code in 2006.

Cyprus: Defamation was decriminalized in 2003. However, a provision remains in the Criminal Code which envisages prison sentences for up to two years for insulting the National Guard. A specific provision envisages criminal liability for insult to a foreign sovereign, ambassador or any other foreign state official.

Czech Republic: Defamation is a criminal offence carrying a maximum penalty of two years’ imprisonment.

Denmark: Defamation is a criminal offence carrying a maximum penalty of two years’ imprisonment.

Estonia: Defamation was decriminalized in 2002, with the exception of defamation against the state and state authorities, persons enjoying international immunity, and official symbols, all carrying a maximum penalty of two years' imprisonment.

Finland: Defamation is a criminal offence carrying a maximum penalty of two years' imprisonment. The national flag is protected against defamation.

France: Defamation is a criminal offence with a penalty of one year's imprisonment and/or a fine applicable to cases relating to a person or group's origin, real or imputed membership of an ethnic group, nation, race, religion or to their gender, sexual orientation or handicap. Since 2004, defamation of foreign heads of state is no longer a criminal offence.

Georgia: Defamation was decriminalized in 2004.

Germany: Defamation is a criminal offence carrying a maximum penalty of five years' imprisonment. Special protection of public officials is afforded in the law.

Greece: Defamation is a criminal offence, carrying a maximum penalty of five years' imprisonment.

Holy See: Punishment for defamation, libel and insult is provided for in the *Code of Canon Law*.

Hungary: Defamation is a criminal offence carrying a maximum penalty of two years' imprisonment. Special protection of public officials and state symbols is envisaged.

Iceland: Defamation is a criminal offence carrying a maximum penalty of one year's imprisonment.

Ireland: The Defamation Bill was drafted in Ireland in 2006, which while decriminalizing almost all forms of defamation, introduces a criminal offence “publication of gravely harmful statements” punishable by fine not exceeding €50,000 or imprisonment for a term not exceeding five years, or both.

Italy: Defamation is a criminal offence carrying a maximum penalty of six years’ imprisonment. Special protection of public officials is envisaged. Reform of defamation provisions is currently being discussed in the Italian Senate.

Kazakhstan: Defamation is a criminal offence carrying a maximum penalty of five years’ imprisonment. Special protection is offered to public officials and state symbols.

Kyrgyzstan: Defamation was decriminalised in March 2007.

Latvia: Defamation is a criminal offence carrying a maximum penalty of one year’s imprisonment. Provisions envisaging larger penalties for defamation of public figures were repealed in 1998.

Liechtenstein: Defamation is a criminal offence carrying a maximum penalty of one year’s imprisonment. Special protection is offered to public officials and national symbols.

Lithuania: Defamation is a criminal offence carrying a maximum penalty of two years’ imprisonment. The President enjoys increased protection against defamation.

Luxembourg: Defamation is a criminal offence carrying a maximum penalty of one year’s imprisonment.

The former Yugoslav Republic of Macedonia: Amendments to the Criminal Code in 2006 deleted imprisonment from libel and insult provisions.

Malta: Defamation is a criminal offence carrying a maximum penalty of three months' imprisonment.

Moldova: Defamation was decriminalised in 2004, excluding some state authorities and symbols. The maximum term of imprisonment for insulting state symbols is seven years.

Monaco: Information not currently available.

Montenegro: Libel and insult are criminal offenses. Imprisonment for libel was abolished in 2003, but disproportionately high fines remain.

Netherlands: Defamation is a criminal offence carrying a maximum penalty of 32 months' imprisonment. Public officials enjoy special protection from defamation.

Norway: Defamation is a criminal offence carrying a maximum penalty of three years' imprisonment and five years in the case of defamation of the King. Public officials enjoy special protection under the law. Changes to these provisions are currently being considered.

Poland: Defamation is a criminal offence carrying a maximum penalty of three years' imprisonment and ten years in a case of public insult against the Polish nation, the Polish Republic, its political system and public organs in the media.

Portugal: Defamation is a criminal offence carrying a maximum penalty of two years' imprisonment and three years' imprisonment in the case of the

President. Public officials enjoy special protection under the defamation legislation.

Romania: Libel and insult were decriminalized in 2006, however in a later ruling, the Constitutional Court found the decriminalization unconstitutional in 2007.

Russian Federation: Defamation is a criminal offence with the maximum penalty of four years' imprisonment. Public officials enjoy increased protection under the country's defamation provisions.

San Marino: Defamation is a criminal offence carrying a maximum penalty of two months' imprisonment, but one year in a case of defamation in the media.

Serbia: The new Criminal Code, which came into force on 1 January 2006, excluded imprisonment as a sanction for libel and insult.

In **Kosovo (the Republic of Serbia)**, The Special Representative of the UN Secretary General in Kosovo promulgated on 28 February 2007 the civil Law against Defamation and Insult. Adopted by the Kosovo Assembly on 15 June 2006, the law introduces a much needed civil defamation regime. However, under the existing UNMIK penal code, defamation remains a criminal offence, with media exempted from insult charges.

Under the new law, true statements may not be regarded as defaming. Media's complying 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 for reward.

Slovak Republic: Defamation is a criminal offence carrying a maximum penalty of five years' imprisonment. Penalties for defamation were reduced in 2003.

Slovenia: Defamation is a criminal offence carrying a maximum penalty of one year's imprisonment.

Spain: Defamation is a criminal offence carrying a maximum penalty of two years' imprisonment.

Sweden: Both criminal and civil actions for libel and defamation may be brought to court under the Freedom of the Press Act, carrying a maximum penalty of two years' imprisonment.

Switzerland: Defamation is a criminal offence carrying a maximum penalty of three years imprisonment.

Tajikistan: Defamation is a criminal offence carrying a maximum penalty of five years' imprisonment for libel and public insult of the President and two years for libel and insult of a representative of the authorities.

Turkey: Defamation is a criminal offence carrying a maximum penalty of three years' imprisonment and four years' imprisonment in a case of libel and insult against the President.

Turkmenistan: Defamation is a criminal offence carrying a maximum penalty of five years' imprisonment.

Ukraine: Defamation was decriminalised in 2001, however one may still be sentenced to six months' detention for insulting the Ukrainian State and its symbols.

United Kingdom: Defamation is a criminal offence, punishable under the Libel Act 1843, carrying a maximum penalty of two years' imprisonment.

United States of America: At the federal level, there is no criminal defamation law, however, at the state level, 17 states and two territories continue to have criminal defamation prescribed in the law.

Uzbekistan: Defamation is a criminal offence carrying a maximum penalty of three years' imprisonment and five years' imprisonment for defaming the President. Public officials enjoy increased protection under the criminal code.

Visits and Interventions in 2006³⁶

The Office of the Representative on Freedom of the Media visited or communicated with the governments of the following OSCE participating States:

Albania

Press Releases

- 28 September 2006: OSCE welcomes establishment of media ethics council in Albania

Armenia

Visits

- 19-22 June 2006: Assessment visit to Armenia

Press Releases

- 16 June 2006: OSCE media freedom representative to visit Armenia next week
- 21 June 2006: OSCE media watchdog notes improvements in Armenian media legislation, calls for more pluralism
- 26 July 2006: Armenian media situation improved, but more diversity needed, OSCE media watchdog says in new report
- 22 November 2006: OSCE presents expert recommendations on the digital broadcasting draft plan of Armenia

³⁶ This is a list of selected visits and interventions

Azerbaijan

Visits

- 9-11 October 2006: OSCE Round Table on Decriminalization of Defamation in Azerbaijan

Press Releases

- 2 March 2006: OSCE voices concern over course of investigation of murdered Azerbaijani journalist
- 3 March 2006: OSCE media watchdog asks Azerbaijan President to initiate law reform as editor is jailed for libel
- 4 September 2006: OSCE media freedom representative asks Azerbaijan's president to help stop new wave of prosecution of journalists, urges legal reform
- 9 October 2006: OSCE media freedom representative calls on Azerbaijan's president to decriminalize defamation
- 23 October 2006: OSCE Office in Baku welcomes Azerbaijani president's pardon of two newspaper editors
- 27 November 2006: OSCE Representative concerned about deteriorating media situation in Azerbaijan
- 12 December 2006: OSCE satisfied that private broadcaster in Azerbaijan resumes transmission

Interventions:

- 1 March 2006: Letter to President Ilhan Aliiev, about the sentence of Samir Adigozalov, the editor and founder of *Boyuk Milat* newspaper, to one year imprisonment for libel and insult.

- 3 July 2006: Letter to Amb. Fuad Ismaylov, Head of Mission of the Republic of Azerbaijan to the OSCE, about the arrest on 23 June of Mirza Sakit Zahidov, a journalist of the newspaper *Azadliq* and a satirical poet.
- 1 September 2006: Letter to President Ilham Aliyev about the numerous cases of legal prosecution of media workers.
- 27 November 2006: Letter to President Ilham Aliyev about the shutting down of the transmitters of *ANS* television and radio stations, the eviction of the *Azadliq* newspaper's editorial office from its state-owned premises, as well as about the arrests of the *Senet* newspaper's journalists for stirring up religious hatred.

Belarus

Press Releases:

- 24 February 2006: OSCE media freedom representative asks prosecutors in Russia and Belarus to drop 'cartoon cases'
- 28 March 2006: OSCE media freedom representative concerned over treatment of journalists covering demonstrations in Belarus

Belgium

Visits

- 29-30 May 2006: Brussels MEDEA Conference
- 8 June 2006: Brussels Troika Stability Pact Meeting
- 23-25 October 2006: Twinning Project, Brussels
- 4-5 December 2006: Meeting of the OSCE Ministerial Council in Brussels

Bulgaria

Interventions

- 7 April 2006: Letter to Charge d’Affaires of the Permanent Mission of the Republic of Bulgaria to the OSCE, Peter Popchev, about the explosion on 6 April in front of the apartment of the *Nova* television journalist Vasil Ivanov, who is well-known in Bulgaria for investigative reporting.

Canada

Interventions

- 2 October 2006: Letter to Vic Toews, the Minister of Justice and Attorney General of Canada, about the case of journalist Juliet O’Neil of the *Ottawa Citizen*, who appealed against the search warrants executed in her home and office after she wrote a story based on information from a confidential source.

Croatia

Press Releases

- 29 June 2006: OSCE media watchdog praises Croatia’s abolition of prison sentences for defamation

Denmark

Interventions

- 20 November 2006: Letter to Henning Fode, Director of Public Prosecutions, about the trial of reporters Michael Bjerre and Jesper Larsen, as well as editor Niels Lunde of *Berlingske Tidende*, for articles they produced based on leaked reports.

Press Releases

- 22 November 2006: OSCE media representative concerned about trial of Danish journalists for publishing leaked information

France

Interventions

- 17 October 2006: Letter to Christian Poncelet, the President of the Senate of the Republic of France, about the adoption of the first reading of an amendment that would criminalize the denial of the Armenian genocide of 1915.

Press Releases

- 17 October 2006 OSCE Representative urges French Senate to reject criminalization of Armenian genocide denial

Hungary

Visits

- 31 March – 1 April: moderated the “Panel of OSCE Diplomats” as part of the international conference on hate speech, organized by the OSCE and Central European University.
- 10-12 May 2006: participated at journalist Rita Csik’s trial, and at the Open Society Institute’s conference on “The individual vs. the state: free speech and religion”.
- 3 November 2006: Gave a keynote speech at the conference of the European Broadcasting Union and Hungarian TV.
- 30 November – 1 December 2006: Participated at journalist Antonia Radi’s trial, and at the Expert Workshop on the EU Audiovisual Media Directive at Central European University.

Press Releases

- 19 September 2006: OSCE media freedom representative condemns attacks on Hungarian Public Television building

Ireland

Press Releases

- 29 September 2006: Irish draft bill on defamation major improvement, but job unfinished, says OSCE media freedom representative

Kazakhstan

Visits

- 20-21 April 5th Eurasia Media Forum in Almaty
- 12-13 June: OSCE Tolerance Implementation Meeting on promoting inter-cultural, inter-religious and inter-ethnic understanding, Almaty

Press Releases

- 19 June 2006 OSCE Representative on Freedom of the Media asks Kazakhstan to withdraw media law amendments
- 27 September 2006: Amended Kazakh media law needs further improvements, OSCE media freedom representative says
- 24 November 2006: OSCE promotes public access to government information in Kazakhstan

Interventions:

- 19 June 2006: Letter to Minister of Culture and Information of the Republic of Kazakhstan, Ermukhamet Ertysbayev, about the proposed amendments to the Law on Mass Media that had been passed to the parliament.
- 1 August 2006: Letter to E. Babakumarov, Acting Minister of Culture and Information of the Republic of Kazakhstan, about the regulation of the Internet.

- 7 August 2006: Letter to Amb. Doulat Kuanyshev, Head of the Permanent Delegation of the Republic of Kazakhstan to the OSCE, about two libel cases in Kazakhstan where journalists were charged with libeling the President.

Kyrgyzstan

Visits

- 19-20 October 2006: Central Asian Media Conference and Training Event “The Business of Media”.

Lithuania

Interventions

- 19 September 2006: Letter to Minister of Foreign Affairs Petras Vaitiekunas, about the detention of the editor of *Laisvas Laikrastis*, Aurimas Drizius and the confiscation of the 15,000 copies of the newspaper, as well as computer and hard drives, to prevent the newspaper from publishing classified data and identify confidential sources who leaked these data.

Macedonia

Press Releases

- 11 May 2006: OSCE media freedom representative praises Skopje's abolishment of prison sentences for defamation

Moldova

Interventions

- 19 December 2006: Letter to Andrei Stratan, the Minister of Foreign Affairs of Moldova, about the interruption of the broadcasting signal of *Antenna-C* radio's broadcasting signal, and about the planned privatization of *Antena-C* and *Euro-TV*.

Press Releases

- 19 December 2006: OSCE media freedom watchdog urges Moldovan authorities to help resume Antena-C transmission, ensure transparent privatization of broadcast media

The Netherlands

Interventions

- 29 November 2006: Letter to the Minister of Foreign Affairs, Bernard Bot, about the jailing of journalists Bart Mos and Joost de Haas of *de Telegraaf* for refusing to reveal their confidential sources of information.

Press Releases

- 30 November 2006: OSCE media freedom representative concerned over detention of Dutch journalists for refusing to name source

Poland

Interventions

- 18 January 2006: Letter to President Lech Kaczynski about the beginning of a three-month jail term of editor-in-chief of regional weekly *Wiesci Polickie*, Andrzej Marek, for libeling a local official, asking for pardoning the journalist and for decriminalization of defamation.

Press Release

- 18 January 2006: OSCE media freedom representative asks Polish President to pardon imprisoned journalist

Romania

Interventions

- - 6 March 2006: Letter to Foreign Minister, Mihai-Razvan Ungureanu, about the judicial pressure against Ziua and Romania Libera journalists for mishandling classified documents.

Press Releases

- 8 March 2006: OSCE media watchdog calls on Romania to drop leak cases against journalists

Russian Federation

Interventions

- 7 February 2006: Letter to Minister of Justice, Yuri Chayka, about the case of Stanislav Dmitrievsky, chief editor of the news bulletin of the Nizhny Novgorod Society for Human Rights *Pravozashchita* who was sentenced to two years' imprisonment, suspended for four years, for incitement of hatred or enmity towards nationalities.
- 27 February 2006: Letter to Amb. Alexey Borodavkin, Head of the Permanent Mission of the Russian Federation to the OSCE, about the murder of *NTV* journalist Ilya Zimin on 26 February in Moscow.
- 15 May 2006: Letter to Amb. Alexey Borodavkin, Head of the Permanent Mission of the Russian Federation to the OSCE, about the murder of journalist Oleg Barabyshev of the Chelyabinsk radio station *L-Radio*.
- 1 June 2006: Letter to Amb. Alexey Borodavkin, Head of the Permanent Mission of the Russian Federation to the OSCE, about the death of *TVTs* journalist Vyacheslav Aktov.

- 17 October 2006: Letter to Amb. Alexey Borodavkin, Head of the Permanent Mission of the Russian Federation to the OSCE, about the death of Anatoly Voronin, the business chief of the news agency Itar-Tass.

Press Releases

- 24 February 2006: OSCE media freedom representative asks prosecutors in Russia and Belarus to drop 'cartoon cases'
- 7 October 2006: OSCE Chairman shocked by murder of Russian journalist Anna Politkovskaya

Serbia and Montenegro

Interventions

- 17 May 2006: Letter to Amb. Vesko Garcevic, Head of the Permanent Mission of Serbia and Montenegro to the OSCE, about the temporary revocation of BK television's license by the Republican Broadcasting Agency (RBA) Council.
- 30 August 2006: Letter to Slobodan Jankovic, Republican Prosecutor of Serbia regarding the case of the senior editor of *RTV Kursumlija* TV station, who received a second-instance verdict confirming his previous sentence to four months' imprisonment with one year of probation for libel. The sentence was announced after Serbia deleted imprisonment as a sanction for defamation.
- 29 November 2006: Letter to Slobodan Jankovic, Republican Prosecutor of the Republic of Serbia, about the suspended libel sentence of six months' imprisonment that the second-instance court confirmed in January 2006, when Serbia had already abolished imprisonment for defamation.

Kosovo (Serbia and Montenegro)

Visits

- -26-27 April 2006: Assessment visit to Kosovo

Press Releases

- 27 April 2006: OSCE media watchdog welcomes improved climate and work in Kosovo – ‘press freedom in good shape’
- 3 July 2006: OSCE media watchdog gives good marks to Kosovo media, but says more improvements needed

Sweden

Visits

- 21 September 2006: Göteborg book fair

Switzerland

Interventions

- 18 January 2006: Letter to the Minister of Defence, Civil Protection and Sports, Samuel Schmid, about the investigation opened against the staff of the newspaper *SonntagsBlick* by the Swiss Military Attorney for the publication of classified information.
- 18 January 2006: Letter to the Minister of Justice and Police Christoph Blocher, about the investigation opened against the staff of the newspaper *SonntagsBlick* by the Swiss Military Attorney for the publication of classified information.

Press Release

- 19 January 2006: OSCE Media Freedom Representative asks Swiss to add a public right to know to secrecy laws

Turkmenistan

Interventions

- 15 March 2006: Letter to Amb. E. Aydogdyev, Head of the Permanent Mission of Turkmenistan to the OSCE, about the arrest of two Radio Free Europe journalists who were sentenced to 15 days of community service for disrupting a public meeting, and whose whereabouts were unknown to their families after the arrest.

Press Releases

- 28 August 2006: OSCE media freedom representative concerned over jailing of Turkmenistan journalists
- 14 September 2006: OSCE media freedom representative calls for transparency in handling of imprisoned Turkmenistan journalist's death

Ukraine

Visits

- 26-27 July 2006: Training seminar for press secretaries of public bodies and journalists in Odessa
- 8 November 2006: High Level Policy Meeting on Media Issues

United Kingdom

Visits

- 17-19 July 2006: Lecture at the Oxford University
- DATE November 2006: Visit to Association of European Journalists and to the BBC, London

Press Releases

- 16 October 2006: OSCE media freedom representative welcomes highest UK court's decision backing investigative journalism

United States of America***Interventions***

- 26 September 2006: Letter to Amb. Julie Finley, Chief of the United States Mission to the OSCE, about the imprisonment of blogger Joshua Wolf, who refused to comply with a federal court order to produce his unedited materials to assist an investigation.
- 11 December 2006: Letters were sent to Peter Yeo, the Democratic Deputy Staff Director, U.S. House of Representatives; Representative Tom Lantos; Senator Richard Lugar and Senator Arlen Specter, urging them to support the reintroduction early in 110th Congress of the "Free flow of Information Act" to ensure that journalists are protected from orders to reveal their confidential sources.

Meetings and Conferences

The Office participated in the following OSCE and other international meetings and conferences:

OSCE events:

- 9-10 February 2006: International Conference Decriminalization of Defamation: Sharing Best Practices, Skopje, former Yugoslav Republic of Macedonia
- 9-10 May 2006: ODIHR's Muslims Round Table Meeting, Warsaw, Poland
- 29-30 May 2006: First Consultation Meeting on the ODIHR Human Rights and Counter-Terrorism Manual, Warsaw, Poland
- 8-9 June 2006: Press and Public Information Section's round table, Split, Croatia
- 29-30 June 2006: Training seminar for government press officers and journalists in Sevastopol, Ukraine
- 19-20 July 2006: Training seminar for government press officers and journalists in Baku, Azerbaijan
- 8-9 August 2006: Meetings on the ODIHR Tolerance and Non-discrimination Unit's new website/database, Warsaw, Poland
- 7-8 September 2006: Training seminar for government press officers and journalists in Kokshetau, Kazakhstan

- 2-13 October 2006: Human Dimension Implementation Meeting in Warsaw, Poland
- 19-20 October 2006: Central Asian Media Conference and Training Event “The Business of Media”.
- 23-24 October 2006: Twinning Project, Brussels, Belgium
- 26-27 October 2006: Second Consultation Meeting on the ODIHR Human Rights and Counter-Terrorism Manual, London, United Kingdom
- 2-3 November 2006: Third South Caucasus Media Conference and Training Event “The Business of Media”, Tbilisi, Georgia
- 24-25 November 2006: Training seminar for government press officers and journalists in Almaty, Kazakhstan
- 9-10 November 2006: Regional round table: Access to Information: Best Practices and Lessons Learned, Skopje, former Yugoslav Republic of Macedonia
- 15 December 2006, Experts roundtable on the forthcoming FOM publication on “Internet Governance”, Paris, France
- 15-16 December 2006: International conference on media self-regulation in the post-soviet countries organized in Baku, Azerbaijan.

Other events:

- 6-7 February 2006: Council of Europe meeting, Group of specialists on freedom of expression and information, Strasbourg, France

- 20-21 April 2006: 5th Eurasia Media Forum in Almaty, Kazakhstan
- 2-3 May 2006: Wilton Park tolerance conference (HS)
- 9-10 May 2006: Round Table Meeting on representation of Muslims in Public Discourse, Warsaw, Poland
- 11-12 May 2006: OSI Hate Speech Conference, Budapest, Hungary
- 22-23 May 2006: IGF Advisory Group, Geneva, Switzerland
- 22-23 May 2006, EUROMED Seminar “Racism, Xenophobia and the Media: Towards respect and Understanding of all religions and cultures”, Vienna, Austria
- 4-8 June 2006: Annual Congress of the World Association of Newspapers, Moscow, Russia
- 8-9 June 2006: Budapest CEU Conference, Budapest, Hungary
- 09-11 September, Council of Europe Meeting, Strasbourg, France
- 14-15 September 2006: Meeting of press councils in Sofia, Bulgaria
- 11- 13 October ICMEC Focus Group on combating child pornography on the Internet, Salzburg, Austria
- 30 October – 2 November Internet Governance Forum (IGF), Athens, Greece
- 9-10 November 2006: Mainz Media Days, Mainz, Germany

- 16-17 November 2006: E-society conference, Skopje, former Yugoslav Republic of Macedonia
- 30 November – 2 December 2006, international conference “Freedom of Expression: Principles and Turkey”, Ankara, Turkey.

Press Releases 2006

OSCE media freedom representative asks Polish President to pardon imprisoned journalist

VIENNA, 18 January 2006 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, has asked the President of Poland to pardon imprisoned journalist Andrzej Marek.

Marek, the Editor-in-Chief of the regional weekly *Wiesci Polickie*, was sent to jail on 17 January in Szczecin for libelling a local official.

In a letter to Polish President Lech Kaczynski, the OSCE Representative on Freedom of the Media said that the imprisonment could have serious consequences for freedom of the media in Poland.

“You now have the possibility to pardon Mr. Marek. By doing so, your High Office could help ensure that no legal precedent for the future could be constituted in Poland by this punishment,” wrote Miklos Haraszti.

The OSCE Representative also stressed the need to start phasing out all punitive laws in Poland that hinder the free flow of information and an uninhibited debate of public issues.

Haraszti asked the Polish Government to impose a moratorium on punitive libel and defamation provisions, or at least on prison sentences in these cases, and to start the process of decriminalization of the country's relevant legislation.

Several countries in the OSCE region have already decriminalized libel and defamation, placing the legal remedy for these offences fully into the domain of civil law.

OSCE Media Freedom Representative asks Swiss to add a public right to know to secrecy laws

VIENNA, 19 January 2005 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has voiced his concern over possible consequences for the media stemming from investigations into the disclosure of confidential military information by a Swiss newspaper.

Swiss Federal and Military Attorneys have started probes into *SonntagsBlick's* publication on 8 January of classified data on the interception by Swiss military intelligence of a fax from the Egyptian Foreign Ministry to its Embassy in London. The fax, sent via a satellite link on 15 November 2005, was a summary of world press reports on the issue of alleged clandestine CIA prisons in Europe.

In letters to Defence Minister Samuel Schmid, and Justice Minister Christoph Blocher, Haraszti has requested the Swiss Government to do everything in its power to limit action against the media in the *SonntagsBlick* case.

He also asked the Government to start amending the country's punitive provisions on breach of confidentiality, in order to bring them into line with modern concepts of the overriding public interest.

“The protection of government should be balanced with the internationally recognized principle of the public's right to know”, he wrote. “The concept of overriding public interest – already applied by some courts in Switzerland – should be built into the provisions which penalize the breach of state secrets.”

Haraszti also noted the media could not be held accountable for revealing confidential information.

“It is the job of the public authorities to protect secrets, so liability must be confined to the officials who leaked the secrets”, he added.

OSCE Media Freedom Representative defends papers’ right to publish controversial cartoons, asks for mutual respect for traditions

VIENNA, 3 February 2006 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, defended the traditional right of a free press to publish satirical cartoons, even if they depict figures in established religions.

Commenting on the recent publication by several European newspapers of a set of cartoons depicting the Prophet Mohammed, which originally appeared in a Danish newspaper, he said, “I understand the sensitivities of those who feel their traditions have been slighted by these cartoons. But the right to question all beliefs is itself a cherished tradition in democratic countries.

“When respect for traditions is recommended, it should be mutual. What many of the demonstrators, and some governments, demand is State interference into the work of the media. This action would contradict the core commitments of the 55 OSCE participating States.”

He added: “The OSCE stands by responsible journalism, but we believe that governments are no agents in this business. Publications that are offensive to certain sections of society should be dealt with through the self-regulatory ethics bodies of the quality press, for example, press councils.

“This Office has always defended the right to ridicule ideologies as part of freedom of expression, even in cases when the satire might have been provocative,” the OSCE Representative on Freedom of the Media pointed out.

In this respect, Haraszti was referring to the case of Gerhard Haderer, the Austrian caricaturist who was sentenced to prison in Greece in 2005 for depicting Jesus Christ in a demeaning manner. In another case in 2005, Polish editor Jerzy Urban was prosecuted for insulting the dignity of the Pope.

“In both cases, without siding in any way with the views of the defendants, our Office protested the fact that these people were brought to court by the state, and insisted that their right to differ be honoured,” said the OSCE Representative on Freedom of the Media.

OSCE-backed Skopje conference calls for decriminalizing libel

SKOPJE, 10 February 2006 – Conference participants here have offered full support to the Government in preparing changes in the country’s criminal code to abolish imprisonment for libel changes and in developing efficient independent media self-regulatory bodies.

The two-day international event that ended today in Skopje was organized by the Association of Journalists and the Macedonian Institute of Media, was supported by the OSCE Spillover Monitor Mission to Skopje and the Vienna-based Office of the OSCE Representative on Freedom of the Media.

Justice Minister Meri Mladenovska said that her Ministry accepted the challenge to begin discussion of decriminalizing libel as part of a broader process. “We will analyze the situation and propose changes to the criminal code, removing prison sentences as a penalty option,” she said.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, said: “The commitment on the part of local politicians is an important step towards

improving the legislative framework for free journalism. We stand ready to continue our support to the authorities.”

Governmental officials, legislators, legal experts and media freedom activists from OSCE participating States also discussed the role of the civil society in promoting changes, legal aspects of decriminalizing defamation, civil code penalties, the balance between freedom of expression

OSCE media freedom representative delivers report on cartoon controversy

VIENNA, 17 February 2006 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, yesterday delivered a report to the OSCE Permanent Council on the current media freedom issues in the OSCE region, including an analysis of the recent cartoon controversy.

“The debate should not pit freedom of speech against more respect and more care. Enhanced awareness of Muslim culture, and better responsiveness to global imperatives in the editorial work, should come as an addendum to free speech, not as a restriction on it. It should be made very clear that only a completely free press can be a responsible press,” the report points out.

The report also reflects on the work of the Office of the Representative in Azerbaijan, Georgia the former Yugoslav Republic of Macedonia, Moldova (including the Transnistrian region), and Ukraine, and outlines the events the Office plans to organize in 2006, which include regional media conferences and Internet-related issues.

OSCE media freedom representative asks prosecutors in Russia and Belarus to drop ‘cartoon cases’

VIENNA, 24 February 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, appealed to prosecutors in Russia and Belarus to drop criminal charges against newspapers that are under investigation for “incitement of hatred,” after illustrating articles about the Mohamed cartoon controversy with actual cartoons.

“It is civil society that must deal with eventual editorial misjudgement in publishing cartoons that are offensive to Muslims,” he said today at a special debate on freedom of expression and respect for religious beliefs at the winter session of the OSCE Parliamentary Assembly. “Authorities should not use criminal charges against editors who are trying to inform their readers about issues of public interest.”

In Russia last week, both the Vologda-based *Nash Region* and the Volgograd-based *Gorodskie Vesti* were brought to regional Prosecutor’s offices under an incitement provision, article 282 of the Russian Criminal Code.

In Belarus this week, the Committee for State Security (KGB) initiated a criminal case against the Minsk-based independent weekly *Z’hoda* under article 130 of the Belarusian Criminal Code, “incitement of racial, ethnic or religious hostility.” The paper’s premises were searched and their computers confiscated, effectively preventing the paper from publishing.

“These cases are different in nature, but they have one feature in common,” said Mr Haraszti. “In all three cases, State authorities have overtaken civil society’s role in helping to raise the standards of editorial professionalism and global oversight. They will not be successful as States are unfit for that job. But they will certainly succeed in restricting the free flow of information in society.”

“I hope that the prosecutors will soon drop these cases, because such procedures misuse hate speech laws,” added the OSCE Representative. “Editorial misjudgment of the global situation is not equal to any intentional incitement to hatred. This is exactly how violent extremists would like to represent this issue.”

OSCE voices concern over course of investigation of murdered Azerbaijani journalist

BAKU, 2 March 2006 – The Head of the OSCE Office in Baku, Ambassador Maurizio Pavesi, today called on the Azerbaijani authorities to take all necessary steps in order to bring those responsible for the murder of journalist Elmar Huseynov to justice as soon as possible.

“Unfortunately, one year after the assassination of the founder and editor-in-chief of the independent weekly Monitor, the case remains unresolved,” said Ambassador Pavesi. “We firmly believe that until the real motives of the perpetrators are identified and proven in court, public opinion cannot consider the case closed.”

Elmar Huseynov, 38, was shot and killed outside his apartment on 2 March 2005. The Monitor magazine was under constant pressure for the critical nature of some of its articles. It also had difficulties with printing and distribution, and was facing several defamation law suits.

The OSCE Representative on Freedom of the Media, Miklos Haraszti, who personally knew Huseynov, added: “Elmar Huseynov’s death was a great loss to the journalistic community of Azerbaijan. He was in the frontline of fighters for strong independent media, a true hero of the free press.”

OSCE media watchdog asks Azerbaijan President to initiate law reform as editor is jailed for libel

VIENNA, 3 March 2006 – The OSCE Media Freedom Representative Miklos Haraszti has written to Azerbaijan's President, Ilham Aliyev, reminding him of his call a year ago for a moratorium on the use of criminal defamation against the media.

In his letter, Mr Haraszti raised the case of Samir Adigozalov, the editor and founder of the newspaper *Boyuk Milat*, sentenced last week to one year's imprisonment for libelling the rector of the Baku University and newly elected Member of Parliament.

"I am very concerned about the severity of this sentence," wrote Haraszti.

Referring to the President's speech a year ago, after the murder of prominent journalist, Elmar Husseyinov, in which the President urged government officials to refrain from filing lawsuits against the media, Mr Haraszti said it was now time for the Head of State to push for permanent reform of the libel law.

"I have praised your practical moratorium on criminal persecution of journalists on many occasions. I valued it as a very important first step towards the complete decriminalization of libel and defamation in your country," wrote Haraszti in his letter.

"However, even the expressions of good will at the highest level are not sufficient to guarantee media freedom if speech offences remain criminal acts, bearing in mind this latest case of imprisonment," the Representative added.

Mr Haraszti asked the President to maintain the momentum of his earlier initiative by taking the necessary legislative steps.

“The reform could start with an official moratorium on criminal suits against journalist, and be completed by removing the libel, defamation and verbal insult provisions from the Criminal Code. Simultaneously, civil law should be revised, particularly with regard to rational ceilings for damage payments, so that it can handle defamation offences in a measured way,” wrote Haraszti.

OSCE media watchdog calls on Romania to drop leak cases against journalists

VIENNA, 8 March 2006 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, has written to Romanian Foreign Minister Mihai-Razvan Ungureanu, urging Bucharest authorities to do everything in their power to drop criminal charges against two journalists who risk imprisonment for the possession of classified material.

On 7 February anonymous sources provided two national dailies, *Ziua* and *Romania Libera*, with military documents about Romanian and US troops in Afghanistan and Iraq. The newspapers exercised journalistic responsibility by deciding not to publish the information and later handed the documents to Romanian authorities.

Nevertheless, two journalists were charged with possession of classified information. One of them was held in custody for two days and the premises of both journalists have been searched.

“It is an accepted international standard that the obligation to keep governmental secrets applies solely to the employees in charge of handling the information,” the OSCE Media Representative said.

“In democracies, civilians, including journalists, cannot be treated as criminals merely for obtaining state secrets. Journalists are even entitled by law to keep their confidential sources to themselves.”

In his letter, Haraszti noted that the cases were based on an antiquated criminal provision, and urged Romanian authorities to annul old laws that do not comply with modern democratic standards.

“The Criminal Code should be amended in the spirit of the Romanian Constitution and European standards in order to exempt non-officials from the old-style duty to protect state secrets and to empower journalists to serve the public’s right to know,” Haraszti said.

OSCE media freedom representative concerned over treatment of journalists covering demonstrations in Belarus

VIENNA, 28 March 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that the detentions of Belarusian and foreign journalists in the aftermath of the presidential election was an infringement of OSCE commitments to safeguard free reporting.

Journalists from Canada, the Czech Republic, France, Georgia, Russia, Poland, Ukraine and the United States have reportedly been assaulted and detained, with some of them sentenced to a maximum of 15 days imprisonment under the country’s Code of Administrative Offences.

“Although the exact number of violations is not available, it has been independently confirmed that dozens of Belarusian and foreign journalists were prevented from reporting, arrested, physically assaulted, and sentenced to short-term detention in summary procedures,” said Haraszti.

On 23 March, the OSCE Representative asked the Belarusian authorities to provide details and comment on the reports that the journalists had been detained. But the authorities have neither confirmed nor denied the reports so far. Only Belarus state television has announced that one of their crews had been abused by some demonstrators on 25 March.

“I would like to stress that the protection of journalists performing their professional duties, and guarantees of their safety, are fundamental OSCE commitments. The Government must have a pro-active role in ensuring a safe working environment for journalists, even when they cover unauthorised events”, he added.

“The lack of permission for an actual event should not be a reason to prosecute the journalists covering it. Society has the right to be informed about all issues of public importance. This right can only be fulfilled if the press is guaranteed access to them.”

The OSCE Representative on Freedom of the Media will continue monitoring violations of freedom of reporting in Belarus. He expressed hope that the authorities would investigate all the cases that had occurred so far.

OSCE media freedom representative, with OSCE Ambassadors, to focus on hate speech issues at Budapest conference

VIENNA, 29 March 2006 – Whether or not to regulate hate speech in various contexts will be the question exercising a two-day international conference that opens 31 March in Budapest, supported by the OSCE Representative on Freedom of the Media.

The event, entitled “Hate speech from the street to cyber-space: cases and policies in specific contexts,” will bring together governmental

representatives, academics, media members, as well as non-governmental organizations from various parts of the world.

The OSCE Representative on Freedom of the Media, Miklos Haraszti, will also host a Panel of Ambassadors, including the heads of the delegations to the OSCE from France, the Netherlands, Russia, Slovakia, Turkey, and the United States. They will outline the different hate speech definitions and practices in their countries and reflect on the issues that have emerged from the recent cartoon controversy.

OSCE media freedom representative and ambassadors address hate speech issues at Budapest conference

VIENNA, 3 April 2006 – Moderated by the OSCE Representative on Freedom of the Media, Miklos Haraszti, a panel of OSCE Ambassadors discussed hate speech definitions and practices, as well as issues that have emerged from the recent cartoon controversy, on 1 April in Budapest.

The event took place in the framework of a two-day international conference, entitled “Hate speech from the street to cyber-space: cases and policies in specific contexts,” held at the Central European University.

In the panel, the Heads of delegations to the OSCE from France, Russia, Slovakia, Turkey and the United States were outlining their positions.

Ambassador Alexey Borodavkin of the Russian Federation underscored the responsibility of the media for striking a balance between reporting about terrorism, and avoiding to be a help of hate propaganda by terrorists.

French Ambassador Yves Doutriaux recalled the need to fight hate speech on the Internet both by government and civil society, and stressed the necessity to develop Internet literacy, especially among young users.

Ambassador Julie Finley of the U.S., while drawing attention to the evils that racial or religious hatred can impose on societies, illustrated her country's stance by stating that the U.S. fears censorship more than offensive speech.

Ambassador Yusuf Buluc of Turkey described the dangers tolerance was facing in the post-9/11 world, while pointed out the need that all communities in a society are given the same level of protection from potential harm.

Ambassador Peter Lizak of Slovakia presented his country's recent legislation on hate speech, and, speaking of the lessons of the 'cartoon crisis', highlighted the importance of respect between cultures.

The conference brought together academics as well as non-governmental organizations from all over the world. Issues addressed included hate speech crises in specific contexts, like those of the Middle East, or East Europe's, regarding hatred against Roma and Sinti communities; broadcast and online hate; and alternative policies instead of prosecution.

In the audience, several OSCE dignitaries followed and contributed to the debate. Among them, Ambassadors Lysander Migliarissis-Phocas and Marianne Berez, respectively from the Greek and the Hungarian OSCE Missions, as well as Anastasia Crickley, Personal Representative of the OSCE Chairman-in-Office on combating racism, xenophobia, discrimination, also focusing in intolerance and discrimination against Christians and members of other religions.

OSCE media watchdog welcomes improved climate and work in Kosovo – ‘press freedom in good shape’

PRISTINA, 27 April 2006 – Concluding a two-day visit to Kosovo, Miklos Haraszti, the OSCE Representative on Freedom of the Media, said he had been impressed by the progress he witnessed in the province and the work done by media professionals, especially since the events of March 2004.

At a press conference the OSCE Representative said he was there to assess the situation of freedom of the media at an importance juncture when the future status of Kosovo is being determined.

“Press freedom in Kosovo is in good shape. The good spirit in the present political climate contributes to a situation where media can work with few obstacles and their rights are largely respected and guaranteed,” said Mr. Haraszti.

He elaborated on the key elements of his visit: improving the guarantees for the independence of public broadcasting; ensuring a more modern framework for defamation and libel legislation; and the status of minority language media.

“The politicians I met made clear their willingness to further improve minority media,” he added.

Mr. Haraszti also stressed that the situation on Kosovo had improved since the special report he commissioned on the Role of the Media in the March 2004 Events, saying: “The work done by media professionals demonstrates the greater progress being made, and is comparable to media throughout the South East European region.”

The Representative on the Freedom of the Media regularly conducts assessment visits in the OSCE region. He will present his findings in a

report to the OSCE Permanent Council, with an analysis of the situation and practical recommendations for improving the freedom of the press.

To mark World Press Freedom Day, international organizations urge governments to combat violence against journalists

VIENNA, 2 May 2006 – On the occasion of World Press Freedom Day on 3 May, the media freedom watchdogs of four of the world's leading international organizations have issued a joint statement urging governments not to let violence against media personnel go unpunished and commending the vital role the press plays for democracy.

“We take this opportunity to call upon all governments to combat impunity with regard to violence against journalists and media personnel, by bringing to justice those responsible for attacks against them, and by taking measures that enable journalists and media personnel to continue providing information freely and independently. All journalists detained on the grounds of their media-related activities should be released immediately,” the statement reads.

“It is a grave sorrow to remind ourselves that in the year 2005 the world recorded the highest number of journalists and other media professionals, killed or injured in the line of duty.”

“The media constitute the foundation of a democratic society where individuals and groups are encouraged to exchange information and express opinions freely. Nourishing media diversity is essential for maintaining pluralism,” the four rapporteurs stressed.

The joint statement was signed by:

- the Special Rapporteur of the United Nations Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression, *Mr. Ambeyi Ligabo*;
- the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, *Mr. Miklos Haraszti*;
- the Special Rapporteur for freedom of expression of the Organization of American States, *Mr. Ignacio Alvarez*;
- and the Special Rapporteur on Freedom of Expression of the African Commission on Human and People's Rights, *Ms. Faith Pansy Tlakula*.

OSCE media freedom representative praises Skopje's abolishment of prison sentences for defamation

VIENNA, 11 May 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has welcomed the adoption by the Parliament in Skopje of amendments to the Criminal Code, which abolish imprisonment as a punishment for defamation.

“This impressive development is in line with our ongoing campaign against criminalization of defamation,” said Haraszti.

“Imprisonment for speech offences, especially when committed in criticising public figures, is always a disproportionate punishment. It exerts a chilling effect on free discussion of public affairs.”

In February, the Representative, together with the OSCE Spillover Monitor Mission to Skopje co-sponsored an international conference in Skopje, during which State authorities, legal experts, civil society and media activists from many OSCE participating States shared best practices on the process of decriminalizing defamation.

The passing of the amendments was the result of long-term efforts by local authorities, in particular the Ministry of Justice, as well as media groups, such as the Association of Journalists and the Macedonian Institute for the Media.

“This reform will have a liberating effect on journalists, and will help them to fulfil their responsibilities in a more professional way. If they are not under threat of being imprisoned for practicing their profession, editors, reporters and commentators will perform their duty by informing citizens, and contribute to greater transparency in public life,” added Miklos Haraszti.

“I am pleased that ‘young democracies’ are taking the lead in reforming their legal provisions and removing the criminal libel laws from the statute books, as my Office has been urging. The authorities in Skopje have set a good example for many OSCE participating States.”

The Representative added that criminalization of speech offences, as well as disproportionate civil damages, remain a major challenge for freedom of expression in the OSCE region.

OSCE media watchdog to survey sanctions against press for publishing classified information or not revealing sources

VIENNA, 30 May 2006 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, has announced that his Office will produce a database of classification rules, sanctions for disseminating unauthorised information, protection of sources and other laws affecting accessibility of information by the media in the OSCE region.

The aim of the project is to enhance the protection that States offer to journalists who report about issues of public interest.

“In a period when global terrorism remains a major concern, demands for improved national security are legitimate. But governments also need to continue to observe the citizens’ right to know,” said Haraszti. “The media has come under increased pressure when serving society’s need for news.”

He asked the 55 OSCE participating States to share details of their relevant legislation and practice. Based on them, the Office would produce guidelines and recommendations.

“Security should be strengthened without weakening investigative journalism. Punishing the media for obtaining confidential information or for not revealing its sources will erode its ability to uncover corruption and report wrongdoings,” he added.

“A knowledgeable and informed public is the goal of the responsible press. It is also a precondition for the fulfilment of our Organization’s noble commitment to provide human security in freedom.”

The database will be the Office’s second comprehensive review of media legislation after the database on criminal and civil defamation laws and court practices. Since it was released in 2005, the Republic of Serbia and the former Yugoslav Republic of Macedonia have abolished imprisonment as a sanction for defamation. Five other countries are currently discussing the decriminalization reform.

OSCE media freedom representative to visit Armenia next week

VIENNA, 16 June 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, will visit Armenia from 19 to 21 June to collect first-hand information on the media in the country.

The visit, which comes at the invitation of the Armenian Foreign Ministry, will help assist the country in further promoting free and pluralistic media in pursuance of its OSCE commitments.

The Representative will meet President Robert Kocharyan, the Chairman of the National Assembly Tigran Torosyan, Deputy Foreign Minister Armen Baibourtian, and Deputy Justice Minister Gevorg Kostanyan.

Miklos Haraszti will also have discussions with the President of the Council of Public TV, the Radio Company of Armenia, and the President of the National Commission for Television and Radio, as well as representatives of State and independent media, international and non-governmental organizations.

The visit is co-organized with the OSCE Office in Yerevan.

OSCE Representative on Freedom of the Media asks Kazakhstan to withdraw media law amendments

VIENNA, 19 June 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today asked the Kazakh authorities to withdraw from parliament a set of proposed amendments to the media law he argues would represent a setback for media freedom in Kazakhstan.

Haraszti noted in his plea that the proposed amendments contain several restrictive elements, such as high administrative fines and registration fees for media outlets, and mandatory re-registration in case of any minor changes in business data. The Government has defended the measures by arguing that they reduce the number of registered media outlets and that they “safeguard the public’s trust in the media.”

“However, it is against international democratic standards for the Government to define which press outlets are trusted by the public, or to decide on the right number of outlets,” Haraszti said.

In the appeal, sent to the Minister of Culture and Information, Mr. Ermukhamet Ertysbayev, Haraszti said he was particularly disappointed that the amendments would ban editors whose media outlets had previously been closed by the courts from opening a new outlet in the future.

“Kazakhstan has the chance to demonstrate its commitment to become the leading media reformer in the region. It would be regrettable if this opportunity were missed with the hasty adoption of these amendments,” Haraszti added.

Media NGOs and some deputies in the parliament have criticized the amendments.

“I have asked the Minister to withdraw the proposed amendments in order to allow for a public debate on media reform,” Haraszti said. “Withdrawing the amendments would also pave the way for closer co-operation with the OSCE. My Office will continue assisting Kazakhstan in passing media legislation that is in compliance with OSCE principles.”

OSCE media watchdog notes improvements in Armenian media legislation, calls for more pluralism

YEREVAN, 21 June 2006 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that Armenia has made significant progress in improving media legislation, but actual media pluralism remained limited to the print media.

"I am pleased that since 2005 there have been very few atrocities reported against journalists. It is similarly welcome that criminal libel cases have not been initiated since several years," said Haraszti, who was on a three-day official visit to Armenia at the invitation of the Government.

"However, the coverage of political life still remains one-sided, both in private and public-service broadcasting. This confines actual pluralism to the diverse, at times even partisan, but economically very weak print media."

The aim of the visit, co-organized by the OSCE Office in Yerevan, was to assess the state of freedom of the media, giving special attention to the upcoming changes in the legal framework, required by amendments to the Constitution adopted in November 2005.

The OSCE Representative expressed his appreciation for having been received by President Robert Kocharian. He also met the Chairman of the National Assembly Tigran Torosyan, and other government officials, as well as broadcast operatives, journalists and media NGOs.

"We see good pieces of legislation, such as the Constitutional amendments on broadcasting, and the Freedom of Information law," added Mr. Haraszti. "However, implementation is behind the blueprints in some fields. For example, the broadcast law reform required by the Constitution is still missing, as are the implementation rules for the law on Freedom of Information."

Haraszti suggested that pluralizing the composition of the broadcasting boards would lead to diversity in the licensing of private broadcasters, and to more objective news coverage in public television, saying that: "Media reform should be accelerated, especially in view of the upcoming elections."

The Representative on the Freedom of the Media regularly conducts assessment visits in the OSCE region and presents his reports to the Organization's Permanent Council. The reports include an analysis of the media situation and offer practical recommendations for improving the freedom of the press.

OSCE media watchdog praises Croatia's abolition of prison sentences for defamation

VIENNA, 29 June 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today commended the Croatian Parliament for adopting amendments to the Criminal Code that abolish imprisonment as a sanction for defamation.

“I welcome Croatia's move to liberate the country's journalists from the fear of imprisonment for their words,” Mr Haraszti said. “This will boost the self-confidence of the press, and also improve its professionalism.

“Journalistic ethics can only mature in an environment that allows for an uninhibited and free press. The amendments to the law will also help journalists to contribute to greater transparency in public life.”

Both the Representative and the OSCE Mission to Croatia have continuously advocated the decriminalization of defamation. Their co-operation with the Government on defamation and libel has intensified following several convictions of journalists for defamation in 2004 and 2005.

After Serbia and the former Yugoslav Republic of Macedonia, Croatia is the third state since last September to abolish imprisonment as a punishment under its criminal libel law.

“I am pleased that these countries are taking the lead in removing criminal libel laws from their penal codes and letting the civil courts deal with these offences. I hope that all OSCE participating States will follow their example,” Mr. Haraszti said.

OSCE media watchdog gives good marks to Kosovo media, but says more improvements needed

VIENNA, 3 July 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said in a report issued today that the media freedom situation in Kosovo has changed for the better, but singled out areas where more work needed to be done.

“The flaws in journalistic professionalism, which were so obvious in the lead-up and the aftermath of the violence of March 2004, have since been corrected on the most important level, the editorial,” Haraszti said.

The paper offers concrete recommendations for further improvements in the context of the ongoing status negotiations. It points out that the framework of the Kosovo media has improved significantly after a series of laws were enacted, including one on broadcasting.

It also praises the introduction of an Independent Media Commission with regulatory functions, the formation of a Press Council for ethics self-regulation, and the Kosovo Assembly’s recently adopted new civil law on defamation and libel, saying that it has the potential to bring Kosovo in line with the modern European practice of decriminalizing such offences.

At the same time, the report says that the division of media along ethnic lines remains problematic, and suggests that some improvements can be expected as a result of the pioneering minority media fund, financed

from 5 percent of the public service broadcast fee collected from Kosovo households.

“I strongly support the establishment of a second channel on the public broadcast network paid for from the minority media fund. This offers the opportunity of servicing minority communities with quality broadcast programmes on a much larger scale than existing arrangements,” said Mr. Haraszti.

“I also invite professional associations to make an effort to include minority journalists amongst their ranks. In order to reflect the nature of Kosovo’s society, it is imperative that the minority and Albanian language media become better interlinked.”

The OSCE Representative said the remaining challenges for the media in Kosovo touch mostly on the business environment. “I recommend introducing a more sustainable split of advertisement income between the public service and the commercial broadcasters in order to make both economically more viable,” he said. In order to relieve the pressure from the print press, Haraszti recommended exempting print media from value added tax.

The OSCE is heavily involved in helping develop the media in Kosovo, since the OSCE Mission as Pillar III of United Nations Interim Administration Mission in Kosovo’s (UNMIK) four operational ‘pillars’ -- is charged with the democratization and institution-building, including media development

Caricatures controversy and media freedom issues will be focus of OSCE international conference

VIENNA, 10 July 2006 – Access to information, protecting sources and promoting tolerance will be on the agenda of a two-day OSCE media freedom conference that opens in Vienna on Thursday.

Organized by the OSCE's Belgian Chairmanship, the Office of the Representative on Freedom of the Media, and the Office for Democratic Institutions and Human Rights, it is expected to bring together some 200 participants representing international and non-governmental organizations, as well as representatives of OSCE participating States.

In light of the recent cartoon controversy, a special session will feature high-profile speakers, including Jihad Momani, former editor of the Jordanian newspaper *Shihan*, who was fired for publishing some of the controversial cartoons, as well as world-renowned cartoonists, Patrick Chappatte of the *International Herald Tribune* and Ali Dilem of the Algerian daily *Liberté*. They will address the relationship between freedom of artistic expression and respect for cultural sensitivities.

A full list of speakers plus additional information can be found on the Conference Website:

http://www.osce.org/conferences/shdm2_2006.html?code=26d28c749b

OSCE media watchdog's office ends training seminar to improve reporting of governmental information in Azerbaijan

BAKU, 20 July 2006 – An OSCE-organized seminar aiming to improve public access to government information by strengthening relations between authorities and the media concluded today in Baku.

“Effective communication and professional interaction between governments and journalists are essential in a modern democratic society,” said Alexander Boldyrev, Senior Adviser to the OSCE Representative on Freedom of the Media, at the opening of the event.

Journalists from the main Azerbaijani media outlets in Baku and in the regions as well as spokespersons and representatives of the press services from key governmental bodies, including the Presidential Office and the Cabinet, took part in the three-day seminar.

Discussions focussed on the implementation of a new Azerbaijani law on access to information.

The event, organized by the Office of the OSCE Representative on Freedom of the Media, was part of an extensive training programme that covers several OSCE participating States. The course was a follow-up of a successful training seminar in Baku last year.

Armenian media situation improved, but more diversity needed, OSCE media watchdog says in new report

VIENNA, 26 July 2006 – Armenia has made significant progress in improving media legislation, but media pluralism remains limited to the independent, but financially weak, print media, OSCE Representative on Freedom of the Media Miklos Haraszti said in a report released today.

Haraszti prepared the report following an assessment visit to Yerevan between 19 and 21 July.

“In order for Armenia to continue the process of media democratization, the broadcasting sector needs to reflect diversity of opinion, and the composition

of all boards should represent the political and social diversity of the country,” Haraszti said. “Although Armenia has a good set of laws and has adopted a progressive Freedom of Information Law, their proper implementation should be ensured.”

The report also offers detailed recommendations to further promote free and pluralistic media.

Armenian and Russian translations will follow shortly.

OSCE media representative’s office ends Ukrainian series of seminars aiming to improve governmental reporting

ODESA, 28 July 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today addressed press secretaries and journalists participating in a two-day training seminar aiming to improve reporting on governmental issues.

The training session in Odesa, held in co-operation with the OSCE Project Co-ordinator in Ukraine and the Independent Association of Television and Radio Broadcasters, completed a series of seminars for governmental press secretaries and for journalists in Ukraine. About 150 participants attended seminars in Sevastopil, Kharkiv, Donetsk and Odesa.

“I hope the seminars have been a step toward an improved relationship between media and the authorities, bringing the country closer to a situation where state authorities respect the independence of pluralistic media and co-operate with it,” Haraszti said when opening the Odesa seminar. “This would grant the media the freedom necessary for developing the highest professional standards.”

In 2005, the OSCE Representative's office started conducting a series of training sessions to strengthen and professionalise relations between state press officers and the media in Ukraine, Azerbaijan and Kyrgyzstan. The project will soon continue in other OSCE participating States.

OSCE media freedom representative concerned over jailing of Turkmenistan journalists

VIENNA, 28 August 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today criticised the sentencing of journalists in Turkmenistan and condemned the lack of transparency in the handling of the cases.

“Turkmenistan did not allow observers to monitor this case. The international community is right to worry that the defendants are in trouble because of their journalistic and human rights activities,” Mr. Haraszti said.

Annakurban Amanklychev, an assistant to Galaxie-Press and France 2 reporters, and Ogulsapar Muradova, a reporter for Radio Free Europe, were detained in Ashgabad in June, and held without any official charges being announced. Government sources informed Mr. Haraszti that Mr. Amanklychev was apprehended during “illegal collection of information in order to encourage public dissatisfaction” and for “transmitting materials to foreign citizens.”

However, on 25 August, family members and international non-governmental organizations reported that the two were sentenced to seven and six years imprisonment respectively at a closed trial in Ashgabad.

Reportedly, the charges which led to the sentencing were connected to alleged illegal possession of ammunition. A third defendant, human rights activist Sapardurdy Khadzhiev, was also sentenced.

OSCE observers and family members were denied access to the trial and, in contravention of Turkmen laws, the bill of indictment was not delivered in advance to the defence lawyers. Reportedly, the accused denied the charges and will appeal the verdict.

Mr. Haraszti had earlier asked the Turkmen authorities for information regarding the case and had received an explanation stating that Amanklychev and Muradova were “involved in criminal activities related to organization of subversive acts and collection of defamatory information in Turkmenistan in order to create public dissatisfaction.” In response, Mr. Haraszti had sent a letter to the Turkmen Foreign Minister, reminding him of the OSCE commitment to assist journalists to report on matters of public interest.

“OSCE commitments oblige participating States to help journalists to collect and disseminate information regarding matters of public interest. The appeal is an opportunity for the authorities to send a signal to the journalist community that fulfilling their professional duties is considered a welcome activity”, said Mr. Haraszti.

OSCE media freedom representative asks Azerbaijan’s president to help stop new wave of prosecution of journalists, urges legal reform

VIENNA, 4 September 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has expressed concern over recent cases of prosecution of journalists in Azerbaijan and proposed a legal reform as a way out of the situation.

In a letter sent to Azerbaijan's President, Ilham Aliyev, Haraszti wrote: "The current wave of oppressive lawsuits against journalists makes it vital that your March 2005 initiative be followed by tangible action. At that time, you appealed to public officials not to file lawsuits against the media. I am disappointed that your moratorium request is no longer being respected."

At least five journalists and a number of newspapers are facing criminal and civil defamation cases. Some of them, including Shahin Agabayli, the Editor-in-Chief of *Milli Yol*, and Fikret Faramazoglu, Editor-in-Chief of *24 Saat*, have already received harsh sentences, including imprisonment. Mirza Sakit Zahidov, a satirical poet and journalist of *Azadliq*, has been accused of drug charges, an allegation he totally denies.

Haraszti pointed to the fact that in all of the cases the plaintiffs are public officials, including Interior Minister Ramil Usubov, who has filed five suits against the media this summer.

The letter asked the authorities to ensure full access for journalists to all trial hearings to provide transparent and detailed information to the public.

The OSCE Representative said it was time for Azerbaijan to go beyond the political moratorium on defamation, and translate the President's intention into legal reform.

"The reform could start with an immediate legal moratorium on criminal suits against journalists, and be completed by the transfer of the libel, defamation, and verbal insult provisions from the Criminal Code to the civil law domain. Simultaneously, civil law should be revised so that it can handle defamation offences in a measured way. This should be made in compliance with the principles of the European Court of Human Rights. In particular, rational ceilings have to be established for damage payments; and the civil libel

provisions should acknowledge that public figures have to endure harsher criticism than ordinary citizens,” wrote Haraszti.

Haraszti also said that his Office was ready to assist Azerbaijan in reforming its media legislation to improve the working environment for journalists.

OSCE media freedom representative calls for transparency in handling of imprisoned Turkmenistan journalist's death

VIENNA, 14 September 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today urged the Turkmenistan authorities to handle the death of Radio Free Europe reporter Ogulsapar Muradova in a transparent way.

Ms. Muradova, 58, died today in custody in Turkmenistan.

“I am saddened to hear of the death of Ms. Muradova. I also regret that she will not be able to appeal the court decision of 25 August, which sentenced her to six years in prison,” Mr. Haraszti said.

Ms. Muradova and two Turkmen human rights activists, Annakurban Amanklychev and Sapardurdy Khadzhiev, were convicted in August on charges of illegal possession of ammunition. Amanklychev and Khadzhiev were handed seven-year sentences.

A report from the Turkmenistan authorities received earlier by Mr. Haraszti stated that Amanklychev and Muradova were “involved in criminal activities related to the collection of defamatory information in Turkmenistan in order to create public dissatisfaction.”

OSCE media freedom representative condemns attacks on Hungarian Public Television building

VIENNA, 19 September 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today he condemns last night's violent attacks on the building of the Hungarian public television in Budapest.

“The independence of public service broadcasters should be secured not only from pressure by political parties and governments,” said Haraszti. “Editorial work should also be free from all forms of anti-democratic pressure and especially from intimidation and violence. All parties and civil groups in a democracy should be committed to maintaining independence and peaceful conditions for broadcasting.”

According to reports, on Monday night demonstrators outside Parliament went to the TV headquarters, throwing cobblestones and bottles at police and setting cars alight. The crowd stormed the Hungarian public TV, looted and destroyed equipment, and briefly forced the TV off the air. Employees were evacuated and could resume work only in the morning, after police restored order. Hungarian officials said up to 150 persons, including more than 100 police officers, have been injured.

Amended Kazakh media law needs further improvements, OSCE media freedom representative says

VIENNA, 27 September 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has presented a comprehensive report to the Kazakh authorities that includes recommendations to improve the recently amended media law of Kazakhstan.

The report, prepared for the OSCE by the London-based media freedom advocacy group Article 19, was discussed during a meeting between

Mr Haraszti and members of a high-level delegation from Kazakhstan, headed by the Secretary of State of the Republic of Kazakhstan, Oralbai Abdykarimov.

“Kazakhstan has been co-operating with my Office successfully on a number of issues, related to the Internet and training for public officials and journalists in the establishment of democratic and professional channels of communication” said Haraszti.

“I hope that the Government of Kazakhstan will be able to adopt these recommendations with the same positive approach, in order to further improve the nation’s stand as a democracy with a free media.”

The legal review analyzes all the features of the Kazakh media law that could impede independent journalism.

In June, the Representative asked the Minister of Culture and Information, Ermukhamet Ertysbayev, to withdraw from Parliament a set of amendments. The government-proposed amendments oblige the media to re-register. They also banned media professionals, whose publications had previously been closed down by the courts, from exercising their profession at the same level.

In the meeting with Mr Haraszti, the delegation was represented by the Deputy Head of the Presidential Administration, Maulen Ashimbayev. Other members included Senator Kunanysh Sultanov and MPs Dariga Nazarbayeva and Darya Klebanova.

OSCE welcomes establishment of media ethics council in Albania

TIRANA/VIENNA, 28 September 2006 – The OSCE Representative on the Freedom of the Media, Miklos Haraszti, and the Head of the OSCE Presence

in Albania, Ambassador Pavel Vacek, welcomed today the creation of the Albanian Council on Media Ethics.

On 27 September, the Association of Professional Journalists, the Journalists' League, the Forum of Free Media, and the Union of Journalists signed an agreement to establish the Council and commit to respect a revised Code of Ethics.

“Such instruments of self-regulation as press councils and codes of ethics are very well suited to increase professionalism in the media, while preserving editorial independence,” said Miklos Haraszti.

“As they are used by the media and in the interest of the media, their level of acceptance should be high. It is important to create these instruments of self-regulation with an inclusive approach. I am pleased to see this happen in Albania.”

The Council on Media Ethics will comprise seven recognized public figures and serve as an ethics coach and a non-official court on disputes between the public and media.

Ambassador Pavel Vacek added: “The OSCE Presence supported this initiative of the media community from the very beginning. The Council is a very useful body that will help further develop the ethical and professional standards of the Albanian media. We will continue to work with the Council in the future.”

Irish draft bill on defamation major improvement, but job unfinished, says OSCE media freedom representative

VIENNA, 29 September 2006 – A legal review presented today to the Irish government by the OSCE Representative on Freedom of the Media, Miklos Haraszti, acknowledges that the draft bills on defamation and privacy contain major improvements but also highlights the need to completely decriminalize defamation.

“I welcome the planned abolition of all existing criminal libel provisions,” said Haraszti. “However, it is worrying that the draft introduces a new crime, namely ‘publication of gravely harmful statements’, and would even introduce the possibility of a summary conviction for that offence in so-called minor cases.”

The report has been prepared for the OSCE by the London-based media freedom advocacy group Article 19.

“The fact that prison sentences are envisaged for the new offences clearly contradicts the guidance of the European Court of Human Rights which has never approved imprisonment sentences for defamation,” added Haraszti.

Courts in Western Europe do not apply such provisions anymore, and in May, Terry Davis, the Secretary General of the Council of Europe, called on all member states to abolish criminal defamation laws and replace them by appropriate civil-law provisions.

“Full decriminalization would make Ireland a positive example for the OSCE area. No remainders of the old way of thinking should be left in place, which could then elsewhere be used to justify laws oppressive to free media,” Haraszti said.

Referring to the planned establishment of a press council by the same law, he added: "I welcome that the draft recognizes the need for self-regulatory bodies for media ethics. However, I believe they should remain fully civil-society institutions without the need for legislation."

The Office of the Representative has campaigned for several years in OSCE participating States to decriminalize defamation and libel. The Office also promotes media self-regulation in the OSCE region.

OSCE Chairman shocked by murder of Russian journalist Anna Politkovskaya

BRUSSELS, 7 October 2006 – The OSCE Chairman-in-Office, Belgian Foreign Minister Karel De Gucht, expressed profound shock today about the news of the murder of prominent Russian journalist Anna Politkovskaya.

"I condemn the murder of Anna Politkovskaya, one of Russia's most outstanding investigative journalists and political commentators," said Minister De Gucht. "This is a tragic and profoundly shocking loss, and I call upon the Russian authorities to track down those responsible as quickly as possible."

According to news reports, *Novaya Gazeta* journalist Anna Politkovskaya was shot and killed in Moscow on Saturday afternoon in the residential building where she lived.

Ms. Politkovskaya gained international recognition for her extensive reporting on the war in Chechnya. In her stories, she drew attention to human rights abuses in the region. Her work has also been published in English in the form of a book, 'The Dirty War: A Russian Reporter in Chechnya'. For her

investigative reporting, Politkovskaya had on several occasions received death threats.

The OSCE Representative on Freedom of the Media, Miklos Haraszti, added: "It is extremely important to break the circle of inconclusive investigations in regard to the recent murders of journalists in Russia. The violent death of any member of the media stifles the free spirit of journalism. But in this case the expediency of action is extremely important also because Anna Politkovskaya was an outspoken critic of government policies."

In 2003, Anna Politkovskaya received the OSCE Prize for Journalism and Democracy for her courageous professional work in support of "human rights and freedom of the media".

OSCE media freedom representative calls on Azerbaijan's president to decriminalize defamation

BAKU, 9 October 2006 – The OSCE Media Freedom Representative, Miklos Haraszti, today urged Azerbaijan's president and foreign minister to decriminalize defamation.

Mr. Haraszti addressed a recent wave of prosecutions against the media during meetings today in Baku with President Ilham Aliyev and Foreign Minister Elmar Mammadyarov.

He asked them to help stop the deterioration of the media situation by decriminalizing defamation soon, so that only civil-law courts would deal with offences against honour and dignity.

"During my first meeting with President Aliyev in April 2005, I thanked him for his call on government officials to refrain from suing journalists for defamation. Unfortunately, since March this year, his moratorium appeal

has not been respected by officials. Without a legal moratorium and reform, Azerbaijan might become a journalist-imprisoning country,” Haraszti said.

Mr. Haraszti is in Azerbaijan to meet officials and journalists. He will also chair a Roundtable on Defamation, organized by the OSCE Centre in Baku with experts, international organizations and parliament members.

“My visit is an immediate response to the deterioration of the media situation. Four journalists are in jail or received suspended prison sentences in Azerbaijan for defamation, and several others are facing similar punishment in ongoing trials.

“Although the president voiced his disappointment with the lack of constructive behaviour by the press, I still hope he will support the urgently needed reform,” Haraszti said. “There are many ways of enhancing accuracy and professionalism in the media other than criminalization. The OSCE is ready to support ethics self-regulation initiatives.”

In his meetings with the president and the foreign minister, Mr. Haraszti raised last week’s conviction of satirical journalist Mirza Sakit Zahidov, to three years imprisonment for alleged possession of drugs. He also asked about warnings by the National Council on TV and Radio to ban re-broadcasting of BBC, Voice of America and Radio Liberty programmes on local stations.

OSCE media freedom representative welcomes highest UK court’s decision backing investigative journalism

VIENNA, 16 October 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, praised the decision of the Law Lords, Britain’s highest court, to grant journalists the right to publish unproven allegations in

cases of public interest, provided that they have done their best to establish the facts.

“I am confident that a very positive precedent has been set by the highest court. It offers protection to investigative journalism, and makes it possible to use confidential sources in responsible reporting on public interest issues,” said Haraszti.

“This judgement is a step forward in the ongoing libel reform in the OSCE area. The ultimate goal of this process is to transform defamation from a crime into a civil-law offence, and do so in a way that protects both personality rights and the right of societies to know about issues of public importance.”

Courts in Britain do not treat defamation as a crime; however, until now, in civil defamation disputes journalists had to fully prove their allegations, even in cases where the complainant was a public figure, and the issues were of public interest. This practice ran against the principle of the European Court of Human Rights, which holds that public figures have to endure harsher criticism for the sake of freedom of information in debating public issues.

“The change in defamation law was vital for the United Kingdom, which, in recent years, has been labelled as a ‘libel tourism’ destination. Many foreigners favoured bringing their libel charges to British courts whose practice was hostile towards journalists,” added Haraszti.

In the unanimous judgement in the case of *Jameel v. Wall Street Journal Europe*, on 11 October the Law Lords held that the newspaper had the right to publish allegations about a foreign company whose bank accounts were monitored in an effort to trace whether they were misused – to finance terrorist groups.

OSCE Representative urges French Senate to reject criminalization of Armenian genocide denial

VIENNA, 17 October 2006 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, expressed his concern today about the French National Assembly's adoption in a first reading of an amendment that aims to criminalize the denial that the 1915 killings of Armenians in Turkey was genocide.

In a letter sent to the President of the French Senate, Christian Poncelet, the Representative asked the Senate members to reject the amendment when it reaches the Senate in its capacity as second chamber.

"I acknowledge the humanitarian intentions of those members of the Assembly who support this proposal. However, the adoption of the amendment raises serious concerns with regard to international standards of freedom of expression," wrote Haraszti.

"It is in the name of these same standards that I continue to call upon Turkey to remove Article 301 of the Penal Code, 'Insulting Turkish identity', which prosecutors in Turkey repeatedly use in the context of the Armenian genocide debate."

France recognized the genocide in the 19 January 2001 Law. The proposed amendment would introduce a punishment for denial amounting to one year's imprisonment and a fine of EUR 45,000.

"Both the fact of criminalization of statements, and the severity of the sanctions would infringe upon editorial freedom in France," added Haraszti. "The adoption of the amendment by France, a nation with a long-standing tradition of freedom of expression, could set a dangerous precedent for other nations of the OSCE."

OSCE media freedom representative promotes media development in Central Asia

BISHKEK, 19 October 2006 – Legal issues and other challenges related to the privatization of the media was the focus of a one-day conference today in Bishkek attended by the OSCE Representative on Freedom of the Media, Miklos Haraszti.

Journalists, lawyers, media business managers and government officials took part in the meeting, jointly organized by Mr. Haraszti's office and the OSCE Centre in Bishkek.

Opening the event, Foreign Minister Alibek Djekshenkulov stated: "I am sure that with the support of the OSCE, a new phase of media development will be launched, not only in Kyrgyzstan, but also in the region."

In his opening remarks, Mr Haraszti said "The subject of the conference is no less than the democratization of the media itself. Privately-owned media with sufficient ownership diversity is society-owned media. The press should be a matter for civil society."

Conference participants discussed how Central Asian media outlets can be operated professionally and successfully.

"Media workers in Central Asia perform a daily tightrope-walk," said Ambassador Markus Mueller, Head of the OSCE Centre. "While professional reporting is their major aim, they also need to survive economically and, sometimes, physically."

During his visit to Kyrgyzstan, Mr. Haraszti met several officials, including the speaker of parliament, the ombudsman and the media commissioner, to discuss the privatization of state media, in particular the importance of public

television in a democratic society. He also met with journalists and media professionals from the region.

Today's conference will be followed by a media business skills capacity-building workshop tomorrow. Commercial directors, managers and chief editors will learn about production, advertisement and distribution at the workshop, jointly organized by the OSCE and the Eurasia Foundation.

OSCE organizes media training programme in Brussels

BRUSSELS, 23 October 2006 – The relationship between journalism and politics, media laws, investigative reporting, and the role of the media in a democratic society will be the focus of a training course organized by the OSCE Belgian Chairmanship in Brussels this week.

The four-day event will bring together journalists from Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Moldova, Montenegro, Serbia, Tajikistan and Ukraine. They will meet journalists and editors of Belgian media outlets, including *De Standaard* and *Le Soir*, visit the headquarters of the Belgian French language TV and Radio channel RTBF, and the Belgian Dutch language TV and Radio channel VRT.

“This ‘twinning’ of journalists and media organizations will help them share their expertise and skills and foster contacts,” said the OSCE Chairman-in-Office, Belgian Foreign Minister Karel De Gucht, who will be meeting the group of journalists.

“The cornerstone of any democratic society is a free and well-developed media. The media are also an essential instrument for ensuring democratic transparency and accountability, both in established democracies and societies in the process of democratization.”

The visiting journalists will also attend a news conference at the European Commission, and meet representatives of the Belgian Union of Professional Journalists, the external communication department of the prime minister's chancellery, the International Federation of Journalists and the International Press Centre.

"There is still a lack of proper media training and media resources in some of the 56 OSCE participating States. The lack of professionalism can make media members and outlets more vulnerable to interference and pressure. Better prepared journalists can help defend the values of peaceful coexistence and mutual understanding, thus playing an objective role in conflict prevention, management and resolution," added Minister De Gucht.

The OSCE Representative on Freedom of the Media, Miklos Haraszti, whose Office provides early warning on violations of freedom of expression and promotes full compliance with OSCE media freedom commitments, will speak to the journalists about the role of the media in a democratic society.

OSCE Office in Baku welcomes Azerbaijani president's pardon of two newspaper editors

BAKU, 23 October 2006 – The Head of the OSCE Office in Baku today welcomed the Azerbaijani president's pardon of two newspaper editors imprisoned this year for libel.

A presidential decree issued yesterday pardoned Shahin Agabayli, editor-in-chief of the Milli Yol daily, and Samir Adigozalov, editor of the Boyuk Millat newspaper. Both were serving one-year sentences. Agabayli had about 10 months remaining of his sentence; Adigozalov about four months.

“The decision by President Ilham Aliyev to pardon journalists is a demonstration of a political goodwill to improve relations between the authorities and the press,” said Ambassador Maurizio Pavesi, Head of the OSCE Office. “We hope in the future to witness a more responsible and professional journalism balanced by higher tolerance toward criticism on the part of public officials.”

The OSCE Media Freedom Representative, Miklos Haraszti, requested that journalists convicted of libel be pardoned in a meeting with President Aliyev earlier this month in Baku. He also urged Azerbaijani authorities to decriminalize defamation.

The decree pardons 99 convicts. It also reduces by half the unserved terms handed to three convicts, and the life sentences of two others are commuted to 25 years of imprisonment.

Several journalists remain under suspended sentences after being found guilty of libel against public figures.

The OSCE Office in Baku remains ready support the government to preserve, consolidate and reinforce the freedom of the press.

OSCE media watchdog presents report on anomalies in accrediting journalists

VIENNA, 25 October 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, presented a special report today on the administrative problems journalists have recently faced in several countries of the OSCE region.

The paper, *Accreditation of Journalists in the OSCE area: Observations and Recommendations*, was presented to the OSCE Permanent Council, the Organization's main decision-making body.

"A smooth and helpful accreditation for the media was one of the first jointly accepted commitments of the Helsinki process 30 years ago," said Miklos Haraszti.

"We have observed a growing number of cases in different OSCE participating States where the misuse of accreditation has prevented coverage of events deemed to be of public interest. Misunderstandings over the function of accreditation, and its discriminative use by authorities, prevent many domestic and foreign journalists from covering important events or simply working as journalists."

The report examines specific cases and offers concrete recommendations to the 56 OSCE participating States to help them improve the handling of accreditation. It points out that accreditation should not be the basis on which government bodies decide whether to allow a particular journalist to attend and cover a public event, and states that the threat of revocation of accreditation should not be used as the means to control the content of critical reporting.

It also suggests accreditation is the means to promote diverse reporting and should not be made dependent on unrelated factors, such as education or training.

The full report is available on this page under "documents".

OSCE conference discusses media freedom in South Caucasus

TBILISI, 2 November 2006 – Challenges and prospects for the privatized and privately owned media in the South Caucasus are the focus of the third annual OSCE Media Conference, hosted by the Government of Georgia, which opened in Tbilisi today.

The event brought together more than 60 editors-in-chief, media owners and managers from Armenia, Azerbaijan and Georgia. They will discuss the financial and commercial situation of the media and related implications for their editorial independence.

“Media outlets can only be truly independent if they are commercially able to withstand pressure from business or political interest groups,” said Roland Bless, Director of the Office of the OSCE Representative on Freedom of the Media. “This event will show ways to strength media outlets so they become robust businesses in addition to editorially independent.”

Participants at the conference said the future of democracy in the South Caucasus was intimately linked to the media situation.

A new dimension to this year’s conference is a capacity-building training programme on successful media management, implemented by the Eurasia Foundation.

The event is 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.

OSCE Mission to Skopje supports efforts to improve access to information in south-eastern Europe

SKOPJE, 10 November 2006 – How to best help citizens use their rights under laws on access to information was the focus of an international conference that ended today in Skopje.

The two-day meeting, supported by the OSCE Spillover Monitor Mission to Skopje and the Vienna-based OSCE Representative on Freedom of the Media was organized by the National Commission on Free Access to Public Information and the local non-governmental organization, *Pro Media*.

“Free access to information is vital for achieving genuine freedom of media and for the democratic functioning of the state,” said Ambassador Natalya Drozd, the OSCE Mission’s Deputy Head. “It enables citizens to expect and request information from government and state institutions, thus guaranteeing transparency and accountability.”

Representatives of regional Access to Information State Oversight Institutions, judges, lawyers and civil society experts discussed their best practices and lessons learned.

“By sharing experiences, we can work more efficiently as we establish all structures and mechanisms that will provide citizens with information,” said Janko Nikolovski, President of the National Commission.

The participants from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Hungary, Serbia and Slovenia also discussed legislation and practices related to access to information issues in different OSCE participating States, collected by the OSCE Representative on Freedom of the Media.

Prior to this event, the OSCE Mission supported the training of the Commission members and funded the publication of handbooks on the rights and duties of officials, holders of information and of citizens that request information from official institutions.

OSCE media representative concerned about trial of Danish journalists for publishing leaked information

VIENNA, 22 November 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that he was concerned about the trial of three Danish journalists charged with publishing classified information.

The journalists, reporters Michael Bjerre and Jesper Larsen, as well as editor Niels Lunde, work for the Danish newspaper, *Berlingske Tidende*. Based on leaked classified information, they published articles about the amount of information possessed by the Danish government on the existence of weapons of mass destruction in Iraq in 2003. They face a fine or up to two years of prison.

“I consistently said in a number of similar cases that journalists and the media may not be held liable for the possession or publication of leaked information,” Mr Haraszti wrote in a letter to Denmark’s Director of Public Prosecutions, Henning Fode.

“Only those who actually leaked the information – the officials who gave an oath to protect classified information and who failed to do so – should be held liable for a breach of confidentiality.

“I hope the prosecution will drop the case and will go back to the accustomed Danish standards favourable to investigative journalism,” the Representative said.

The official who leaked the documents in question, a colonel of the Danish Defence Intelligence Service, was sentenced in 2004 to four months in prison for disclosing confidential information.

Mr. Haraszti also expressed his surprise about the decision to prosecute the three journalists since the Danish Penal Code recognizes the legitimate public interest as a mitigating factor in cases of disclosure of classified information.

“Prosecuting journalists who are investigating and reporting on issues of public interest will exert a chilling effect on the entire profession, and hamper the role of the media as a watchdog, which is crucial in a democratic society,” the Representative said.

OSCE presents expert recommendations on the digital broadcasting draft plan of Armenia

YEREVAN, 22 November 2006 – An OSCE expert review of Armenia’s draft plan for digital TV and radio broadcasting in the country was presented today in Yerevan.

The report highlighted that social and economic issues, as well as infrastructure development, were key issues of concern when it comes to ensuring more access to broadcasting in Armenia. It was also recommended that more attention should be paid to avoid monopolization.

In an address delivered on his behalf in the Armenian capital, Miklós Haraszti, the OSCE Representative on Freedom of the Media, welcomed the Armenian Government’s initiative to establish a regulatory basis for the digitalization of broadcasting media and to encourage a public discussion on the move.

“This ‘switch-over’ from analogue to digital transmission will multiply the number of available channels and make state licensing largely unnecessary,” he said in his speech.

Ambassador Vladimir Pryakhin, Head of the OSCE Office in Yerevan said: “I hope that today’s discussion will help identify the challenges in making the ‘switch-over’ an achievable and well-managed objective. This is very important for the safeguarding and promotion of media pluralism in Armenia.”

Following the allocation of a digital terrestrial frequency range to Armenia by the International Telecommunications Union earlier in the year, the Armenian authorities drafted an implementation plan as an initial step to put into practice the changes from analogue to digital broadcasting. At the request of the Armenian Government, the OSCE Media Representative, who in an earlier country report on Armenia had recommended to establish the legislative framework for the switch to digital broadcasting, provided an expert review on the draft plan.

The presentation of the expert review was organized by the OSCE Office in Yerevan, the Office of the OSCE Representative on Freedom of the Media together with the the Open Society Institute Assistance Foundation-Armenia, and the Armenian Ministry of Transport and Communication.

OSCE promotes public access to government information in Kazakhstan

ALMATY, 24 November 2006 – Improving public access to government information at the regional level by increasing transparency and strengthening relations between the authorities and the media is the main topic of an OSCE seminar that opened today in Almaty.

Journalists from regional media outlets and representatives from several regional authorities' press services are taking part in the two-day event, organized jointly by the OSCE Centre in Almaty and the Office of the OSCE Representative on Freedom of the Media.

"Freedom of expression and the right to receive truthful information are some of the fundamental elements of a democratic state," said Ambassador Ivar Vikki, head of the OSCE Centre. "Independence and pluralism in mass media are of great significance in a free and open society, as well as for ensuring accountability of official bodies."

The seminar is part of a training programme for several OSCE participating States implemented by the Office of the Representative on Freedom of the Media. Earlier this year, journalists from the main Kazakhstani outlets and representatives of press services of key governmental bodies took part in a similar event.

OSCE Representative concerned about deteriorating media situation in Azerbaijan

VIENNA, 27 November 2006 – The recent shutdown of an Azerbaijani broadcast channel and a print press editorial building is a clear sign of the deterioration of the media situation in the country, the OSCE Representative on Freedom of the Media, Miklos Haraszti, said today.

In a letter sent to Azerbaijan's President Ilham Aliyev, Haraszti wrote: "In October, I welcomed your decision to pardon editors who were serving prison sentences for insulting public officials. Unfortunately, recent developments are again seriously restricting media pluralism and freedom of expression. I ask you again to do everything in your power to stop the deterioration of the situation for the independent media."

Azerbaijan's most-watched independent TV Channel, *ANS*, was shut down on 24 November. The decision by the National TV and Radio Council (NTRC) also put an end to *ANS*'s news programmes contracted from international public-service producers like *BBC*, *Radio Liberty*, and *Voice of America*.

On the same day, the police evicted *Azadliq*, an opposition newspaper, from the state-owned building that was assigned to the paper by the Mayor of Baku in 1992. Other outlets also forced to leave the building were *Bizim Yol*, the *Turan* news agency, the *Yeni Nesil* Publishing House, as well the Institute for Reporter Freedom and Safety, a civil body.

Commenting on these cases, the OSCE Representative said: "The silencing of *ANS* is a serious loss of independent information for the audiences in Azerbaijan. This sudden decision of the National TV and Radio Council is a clear misuse of its administrative power."

ANS has been waiting for a renewal of its license by the National Council since 2003. "Instead of closing down TV channels, the NTRC should guarantee media diversity by assuring that *ANS* can continue broadcasting, while the administrative paperwork is completed," added Mr Haraszti.

The eviction of *Azadliq* was requested by the State Property Agency because of a rent dispute. "This behaviour is discriminative towards the independent press," Haraszti wrote. "In a country where the largest newspapers are still state-owned, the Government should devise special policies to help maintain pluralism in the press, applying the same preferential treatment to the independent papers that it offers to its own outlets."

The letter also stated that the OSCE Representative was monitoring the case of writer Rafiq Tagi and editor Samir Sedagetoglu of the Baku-based *Senet* who have been detained on charges of stirring up religious hatred with an allegedly derogatory statement on the prophet Mohammed in an essay published on 1 November.

At the end of the letter, Mr Haraszti referred to the 10 November hunger strike by several editors and journalists who protested the media situation.

“The new measures against *ANS* and *Azadliq* do not contribute to resolving the situation,” said Haraszti. “For the sake of easing tensions, it is vital that you help reverse the trend of negative developments. Azerbaijan’s OSCE commitments to protect the free flow of information, pluralism in the media, and freedom of expression, demand the same.”

OSCE media freedom representative concerned over detention of Dutch journalists for refusing to name source

VIENNA, 30 November 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that he was concerned about the detention of two Dutch journalists for refusing to reveal their sources.

Bart Mos and Joost de Haas of the daily *de Telegraaf* were detained in the Hague on 27 November and ordered to disclose who in the Dutch intelligence service supplied them with confidential information on contacts between local criminals and law enforcement officials.

“I consider the detention of the journalists a deeply worrying development that has a chilling effect on the media and on their potential sources,” wrote Miklos Haraszti in a letter to the Dutch Foreign Minister Bernard Bot.

“If journalists are obliged to disclose their confidential sources, they will become an effective investigative tool for law enforcers; and investigative journalism will not be possible.”

Mr. Haraszti also encouraged the Dutch Government to consider a new law to protect the confidential sources of journalists. “Reporters in The Netherlands, unlike in many other democracies, lack this safeguard,” he said.

“The right to refuse to disclose journalistic sources should be protected by law. It should be a journalist’s right to freely access information, and handle the sources in confidence, as this is paramount for free reporting and discussion of public issues,” added Mr. Haraszti.

OSCE media freedom representative marks 240th anniversary of first access to information law

VIENNA, 1 December 2006 – Marking the 240th anniversary of the world’s first freedom of information act, the OSCE Representative on Freedom of the Media, Miklos Haraszti, encouraged those OSCE participating States which have not yet developed and enforced access to information legislation to speed up this process.

Forty five out of 56 OSCE participating States have adopted national laws giving specific rights to citizens and journalists to obtain information from government bodies.

The first access to information act took effect in the then Kingdom of Sweden and Finland on 2 December 1766. Since then, many democracies worldwide have adopted freedom of information laws and set up transparent principles of classification.

“Public access to information has become the foundation of modern media rights. Free flow of information, a core principle of the 1975 Helsinki Final Act, is unrealisable today without the media having guaranteed access to data on activities of state offices,” said Haraszti.

The Representative said his Office was in the process of reviewing laws and practices on access to information by the media in the OSCE region. He also plans to issue a report and recommendations next year on how participating States could implement best practices in public access to information.

“Governments should carefully balance legitimate concerns for protecting vital information in the field of national security or crime prevention with the right of societies to know. As media are the embodiment of the public’s right to know, their access to information is a vital component of this human right” added Haraszti.

OSCE satisfied that private broadcaster in Azerbaijan resumes transmission

BAKU/VIENNA, 12 December 2006 – The OSCE Office in Baku and the Organization’s Representative on Freedom of the Media have welcomed yesterday’s decision to allow Azerbaijan’s private TV and radio broadcaster ANS to resume transmission.

The National TV and Radio Council (NTRC), has said that, as an exception, ANS can resume broadcasting so that “the channel’s frequencies do not stay empty until the recently announced tender closes”. The Council also explained that the decision was a result of “the good will of President Ilham Aliyev and numerous appeals made by the public and rights activists.”

“We commend this decision, which signals some political flexibility by the National Council in view of the public's desire to see the channel on air,” said Robin Seaward, Acting Head of the OSCE Office.

“We understand that no conditions accompany the decision to allow the resumption of ANS work and hope to see an unchanged editorial line of the channel as confirmation of that.”

Commenting on a tender announced for the frequencies currently used by ANS, Miklos Haraszti, the OSCE Representative on Freedom of the Media, said: “The people of Azerbaijan are entitled to choose out of variety of information sources to know about what's happening in their country, region, and the world. “

“We hope that next February, when the NTRC will be considering applications for frequencies, it will do it in a transparent and fair manner in order to take into account pluralism and reflect on the already expressed choices of the public of Azerbaijan,” he added.

Founded in 1991, ANS is considered as one of the most-viewed and professional TV channels in Azerbaijan. ANS TV and ANS Ch.M radio were taken off air on 24 November without being allowed to appeal an NTRC decision.

OSCE media freedom watchdog urges Moldovan authorities to help resume Antena-C transmission, ensure transparent privatization of broadcast media

VIENNA, 19 December 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, expressed his concern today over the disruption of the nationwide transmission of the *Antena-C* radio station, as well as

the way the privatization of the radio station and *Euro-TV*, both municipal broadcasters, began.

“The interruption of *Antena-C*’s broadcasts limited the pluralism of the country’s media scene. I hope that *Antena-C*, which is valued as an important and professional broadcaster, will be able to resume its national coverage soon,” wrote Haraszti in a letter to Moldovan Foreign Minister, Andrei Stratan.

Before the interruption of *Antena-C*’s broadcasts on 18 December, the Chisinau Municipal Council decided to tender out the frequencies of *Antena-C* and *Euro-TV*, as stipulated by the new Moldovan Broadcasting Code.

The OSCE Representative supported the idea of privatizing broadcast media, but stressed that the privatization process had to be fair, independent and transparent.

“Both *Antena-C* and *Euro-TV* have been key sources of information, offering an indispensable platform for democratic political debate,” Haraszti said.

“The main criteria for granting frequencies to competing broadcasters should be the choices already made by viewers and listeners of Moldova. The authorities in Chisinau should ensure that *Antena-C* and *Euro-TV* continue their work.”

Global freedom of expression rapporteurs condemn violence against journalists, urge self-regulation

VIENNA, 20 December 2006 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that violence against journalists should never go unpunished.

Commenting on a joint declaration he signed together with the UN Special Rapporteur on Freedom of Opinion and Expression, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression, Haraszti said: "Those who commit violence against journalists must not be allowed to do so with impunity."

"It is a basic OSCE principle that acts of violence and intimidation against media professionals must be thoroughly investigated in accordance with the rule of law and the perpetrators must be brought to justice," he added.

The OSCE Representative also said that the principles and recommendations laid out in the declaration reinforced a number of OSCE commitments to promote a free, independent and pluralistic media.

"The declaration recognizes the role played by self-regulatory bodies in fostering inter-cultural dialogue. It also demands strong governmental measures against intimidation and violence threatening journalists. On both accounts we have lived through difficult moments in the year 2006," said Haraszti.

"Although journalists and others should never be punished for publishing controversial statements which may offend cultural, religious, or other sensitivities, media professionals do have high responsibilities in this field. In democratic countries, cases of media-induced social tension must be resolved through self-regulatory mechanisms, including press councils, ombudspersons, and professional codes of ethics. Such instruments need constant updating and upgrading to cope with changing moral, ethical and cultural patterns," said Haraszti.

The joint declaration also called on national and international public bodies to provide access to information, subject only to limited exceptions. The document reaffirms the right of journalists to protect their sources.

The joint declaration was signed by:

- *The United Nations Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo*
- *The OSCE Representative on Freedom of the Media, Miklos Haraszti*
- *The Organization of American States Special Rapporteur on Freedom of Expression, Ignacio J. Alvarez*
- *The African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression, Faith Pansy Tlakula.*

www.osce.org/fom

THE REPRESENTATIVE ON FREEDOM OF THE MEDIA



Organization for Security and
Co-operation in Europe

ISBN 3-9501955-3-x