



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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-CHECK AGAINST DELIVERY-

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Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

This is my last regular report this year. Over the past three months, we have raised cases of media harassment, co-operated with governments and parliaments on legal reform in the media field, travelled throughout the region to conduct assessment visits, to hold conferences, and to meet with journalists and officials; we have even published a book.

We further elaborated on the principles guiding our work. The idea is to cooperate with the participating States on such long-term strategic issues as libel decriminalization, access to information, or freedom of the Internet.

First of all, here are just some of the cases where I intervened:

In **Belarus**, asking for a swift investigation into the murder of journalist Veronika Cherkasova;
In **Bulgaria**, regarding Romanian television journalist George Buhnici (Bucharest-based *Pro TV*) accused of using a "special technical device designated for tacit collection of information;"
In **Croatia**, on sentencing journalist Vladimir Matjanic to a suspended prison term for libel;
In **The Netherlands**, asking for a swift investigation into the murder of journalist Theo van Gogh;
In **Russia**, concerning the arrest of journalist Mikhail Afanasyev and the need to decriminalise libel;
In **Tajikistan**, urging the government to help resume publication of five independent newspapers; also on the newspaper *Ruzi Nav* which was impounded by the tax police;
In the **US**, concerning regulations that require publishers and authors to seek a licence from the Treasury Department to publish literature from embargoed countries such as Cuba, Iran and Sudan;
In **Ukraine**, I voiced concern over several media outlets that were harassed in the regions during the post-election period;
In **Uzbekistan**, concerning the suspension of activities of *Internews* for six months for administrative violations.

Now I would like to focus on my second assessment visit as the OSCE Representative and on our long-term strategies of complying with free media principles.

Moldova

I conducted my second assessment visit in October, this time to Moldova, at both the invitations of the Government and of the OSCE Mission there.

Overall, media pluralism is highly developed in Moldova, both in terms of quantity of media outlets and of different views that are represented (albeit diversity on both counts is more present in the print press than in the broadcast media). Politicians of all ranks are regularly criticised in the media; independent TV and radio stations are very outspoken in their comments on the authorities. There is also an open debate regarding the development of the media itself; this debate was described by the Foreign Minister as “transparent.” Newspapers that support the Transdniestrian separatist authorities are freely distributed in Moldova.

Moldova, like few other OSCE participating States, has decriminalised libel. The Office of the Representative has been advocating libel decriminalisation in the OSCE region for almost four years.

The main issue that I discussed was the situation around *Tele-Radio Moldova (TRM)*. I would like to praise Moldova for being one of the first countries in the region that transformed its state broadcaster into a public service. However, the quality of news coverage, its overwhelming tilt towards the ruling party is of concern, as well as a labour dispute that is taking on political overtones. I have distributed my Report on the Media Situation in Moldova. Let me just focus on my recommendations:

- Moldova should be encouraged, both regionally and among all OSCE participating States, to publicise the fact that it is one of the few countries in the world that have decriminalised libel.
- There can be no true pluralism when there are no competing domestic nation-wide channels. In this situation, a transparent tender is needed for another nation-wide frequency.
- TRM, although legally transformed from state broadcaster into an autonomous public service institution, in reality continues to tilt towards the Government. Most of the political programming is reported to be news on and by the ruling party. In this situation, when TRM is the only domestic nationwide broadcaster, balanced coverage of political events is even more important. TRM still has to live up to its commitments as a public service broadcaster.
- Both TRM management and CADUP that represents journalists who were not hired as part of the transformation process from state to public broadcaster should agree on a compromise through negotiations.
- A new TRM selection commission should be created.
- The current TRM Supervisory Board (SB), although in theory its majority is formed by civil society, does not represent the whole spectrum of views prevalent in society, and in fact allows for political one-sidedness. The current law should be changed to allow for a different composition of the SB.
- Tenders for frequency allocations are offered at very short notice, and do not provide enough time for potential applicants to prepare all the necessary documents. The composition of the Audio-Visual Council does not guarantee its objectivity. Also, there is a lack of transparency in the decision process regarding the allocation of frequencies.
- Parliamentarians should be urged to refuse to pass a law that provides for the re-registration of newspapers.

- The Representative can not recommend a forced privatization of all government-owned newspapers although the concept of a tax-payer supported print media is incompatible with advanced democracy. However, as a minimum requirement, the number of these newspapers should not grow, and there should be no administrative or advertising discrimination against the non-governmental print press. There is no need to re-establish the so-called 'rayonnie gazetii', that is, the district newspapers paid for by local governments.
- Civil defamation penalties remain high and are often misused by public officials. A reasonable ceiling could be introduced for such penalties. Courts should expose public figures to a higher degree of criticism, as endorsed by relevant rulings of the European Court of Human Rights (ECtHR).
- The Transdnestrian media are under severe pressure and international organizations should find ways to try to help independent journalists in the region.

Libel Decriminalization and Freedom of Information

Concerning our long-term work on improving preconditions for a free media, our focus remained on the exemption of journalists from criminal prosecution when they happen to publish **libellous** or **secret** information. These offences should be dealt with the help of relevant civil-law provisions; and when adjudicated as civil disputes, overriding public interest about the information in question should be taken into account.

This is an especially challenging exercise when it comes to information regarding public figures. The practice of the ECtHR established the standard that, for the sake of a free exchange of opinions, public figures have to endure more harsh criticism than 'ordinary' citizens.

In fact, at stake here is the recognition, both in old and new democracies, that the press should not be handled as an "organ" or "appendix" of the state; the media in a democracy serves as an institution of civil society, and journalists should not be treated as criminals when acting on behalf of civil society.

Joint Declaration of the Three Mandates on Access to Information

Just last week I issued, together with the UN Special Rapporteur on Freedom of Opinion and Expression and the Media, and the OAS Special Rapporteur on Freedom of Expression, a Joint Declaration on access to information.

The principles and recommendations in that document are extremely relevant to the OSCE community. There can be no free press without the citizens' right to access information held by public authorities.

The declaration states that it is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts).

The principle of maximum disclosure should be established also in modern classification rules which are based on the presumption that all information is accessible, subject only to a narrow system of exceptions.

The Joint Declaration also pointed out that the sole responsibility for protecting the confidentiality of legitimately secret information lies with the public authorities and their staff whose official job is to hold that information. That means that other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information.

We, as the three world-wide defenders of freedom of expression, recommend a reform of the penal codes. "Criminal law provisions that don't restrict liability for the dissemination of state secrets to those who are officially entitled to handle those secrets should be repealed or amended"- we said in our Joint Declaration.

The principles contained in the Joint Declaration are key to any society that is keen on freedom of the press, and provide a legislative agenda not only to new democracies.

Access to Information Cases in Participating States

The high relevance of these principles was proven in several participating States during the last months.

In **Belgium**, the prosecution is still considering a leak-of-information case in which, as I had reported to you, the office of German journalist Mr. Hans-Martin Tillack was searched and he was detained for some hours by police this March. But now the Chamber of Representatives of Parliament passed a law establishing the non-liability of journalists who publish official information known as *Loi accordant aux journalistes le droit de taire leurs sources d'information*. This new law is awaiting debate and approval by the Senate, the upper house. I congratulate Belgium on its pioneering work. It is important not only for the handling of the pending case of Tillack but for the whole of Europe and the OSCE area where outdated penal provisions are still rarely brought in line with already existent progressive rules on freedom of information.

The relevance of the Joint Declaration is also shown in **Hungary**. There, I had to intervene in the case of Ms. Rita Csik. For the first time in democratic Hungary, a journalist was indicted and menaced with a prison sentence for publishing a leaked police document on a politician's business interests. Again, I don't only hope that the damage done to freedom of the press by the very utilization of an antiquated penal law will be corrected by the courts; my more profound hope is, that, just like Belgium plans to do, the outdated law which brands any citizen a criminal who obtained, passed on, distributed, or published a classified piece of information will be changed. The new rule should retain criminality for the actual official who leaked classified information and who is an authorized handler of state secrets. This is what our Joint Declaration stipulates.

In the last months, it was the **United States of America** where we have seen the biggest number of freedom-of-information related 'criminal cases' against journalists.

Two reporters, Matthew Cooper of *Time* magazine and Judith Miller of *The New York Times* now face as much as 18 months in jail for refusing a court order to testify about their contacts with confidential sources also related to the leaking of the name of a CIA official to columnist Robert D. Novak. Now, in the US, as it should be, the crime and punishment of the actual person who leaked classified information is separate from the act of publishing such information. The journalists are protected from revealing their sources in 49 states and in the District of Columbia. However, no such protection exists at the federal level.

Therefore, in a letter written recently to Attorney General John Ashcroft, I asked for his explanation on why the prosecution refrained from considering Ms. Judith Miller's right to protect her sources. Regrettably, I have not yet had any answer from the Attorney General's Office. I understand that last week a three-judge panel of the federal appeals court in Washington has started hearing this case.

Whatever the decision will be in Miller and Cooper, the number of similar cases has reached an unprecedented level in the US. Two other journalists are also subpoenaed in this case. On 9 December, Jim Taricani, a Rhode Island investigative reporter with WJAR television, was sentenced to six months' house arrest for refusing to reveal who illegally leaked him an FBI surveillance tape.

Five other reporters are appealing contempt citations over their refusal to testify about confidential sources in a federal lawsuit by former nuclear weapons scientist Wen Ho Lee.

The US needs to pass a federal law, while European democracies like Belgium and Hungary need national legislation, that would shield journalists from forced disclosure of sources. Prosecutors are expected to act in "good faith" and not apply antiquated laws that work against freedom of the press; just as we expect journalists to act in "good faith" and be sure they do not obtain secrets in a criminal way, and they are publishing in the public interest.

Where We Stand on the Matrix

Since June 2004 my Office has been working on the project *Libel and Insult: a Matrix on Where We Stand and What We Would Like to Achieve* as part of my campaign against criminal liability and disproportionate civil penalties for defamation.

I have gathered information about the legal situation and available statistics of court practices in 35 OSCE participating States.

I would like to thank the 18 participating States whose authorities have already responded to my request for assistance in collecting information for the project.

Also, data on 17 countries and territories had been provided by OSCE field operations that were assisted by local media NGOs and independent experts. Their contributions are now being processed and translated, where needed, so that they can be included in the database. Our partner NGO *Reporters sans frontières* has assisted my Office in collecting information on six OSCE participating States.

I plan to present the results of this survey to the Permanent Council in February 2005.

Recently, I visited the Council of Europe where I had several meetings. The focus again was libel and we are looking at ways on how we can enhance co-operation between our two organisations on this matter. I also plan to present our matrix to the Council of Europe.

The European Union Must Take a Bold Lead in De-Criminalising Libel

It is imperative that the European Union, as an important group of countries within the OSCE region, take the long overdue reform initiative and jointly advise that member-states of EU should

abolish criminal libel, defamation and insult provisions, and opt instead for civil-law based solutions. Most of these democracies avoid using criminal provisions for such offences, however, the mere fact that they are still on the books sends the wrong message across the OSCE area.

A new EU guideline in this respect would be a breakthrough and a prerequisite for significant progress in journalists' working conditions in the whole OSCE area.

Legal Assistance

The **6th Central Asian Media Conference**, convened in Dushanbe on 23-24 September 2004, discussed our two themes, libel and freedom of information, from the viewpoint of the experiences of Central Asian journalists. Approximately 100 journalists agreed that the obsolete libel laws which exist in Central Asian countries are detrimental to freedom of the press. Several cases were discussed by the participants, some of whom had personal experiences of being prosecuted for libel.

In the freedom of information sphere substantial problems remain. None of the countries have laws that meet international standards on access to information. State Secrets' Acts that undermine the right to access to information are often used and abused. Significant efforts are required to ensure that the region joins the rest of the OSCE in recognising the right to access to information for the public and the media.

The **1st South Caucasus Media Conference** took place in Tbilisi on 25-26 October 2004. The topics discussed were similar as in Dushanbe. There was also a discussion of the developments in these three countries on libel. Earlier this year Georgia became one of the five OSCE participating States decriminalising defamation. Armenia also took an important step by reducing criminal penalties for libel. The process of elaboration of a new law regulating defamation, libel issues and protection of honour and dignity has started in Azerbaijan.

Access to official information remains a major problem area for the media in the three South Caucasus states. Among the main obstacles the journalists highlighted were: the poor implementation of existing laws on access to information; excessive state secrets' laws and criminal penalties for their violations; lack of public awareness of legal rights to access to information; and lack of professionalism among the media.

A thorough report, commissioned by my Office and researched by media NGO *Article 19*, analysed the linkages between freedom of media and freedom of information. The report includes dozens of cases in the three South Caucasus countries from the past year where media has been denied access. The report will be published in the near future.

Both conferences ended with Declarations agreed to by the participants and recommending action. Publications with all the statements by the participants will be published as a follow-up.

The **Baku legal round table**, that took place on 27 October 2004, brought together parliamentarians, judges and international and local experts on legislative processes related to libel and freedom of information. The event was organised jointly with the Council of Europe. Since Azerbaijan is in the process of amending and adopting legislation, the main focus of discussion was the two legal reviews commissioned by our two organisations earlier in the fall. As a participating State in both the OSCE and Council of Europe, Azerbaijan is bringing its legislation in line with

international commitments and standards. Therefore the exchange of views between local and international experts was an important element in this process.

Apart from the Baku round table, the **legal fund** has presented seven legal reviews (two commissioned jointly with the Council of Europe) to **Albania** at the request of the Prime Minister, the Parliamentary Media Committee and the National Council of Radio and Television. I was glad to hear that the Albanian Parliament has postponed a final vote in order to incorporate the amendments proposed by us. The OSCE Presence in Albania is closely working together with the local authorities on follow-up and further expertise. All the legal reviews can be found on our web page.

Internet Cookbook

As you know, my Office has been actively involved in Internet issues.

Today I'm glad to present to you our latest publication, **The Media Freedom Internet Cookbook**. This 270 page book combines concrete recommendations – the Recipes – of the OSCE Representative on Freedom of the Media with background papers by cutting-edge experts grouped in six different chapters from *Legislation & Jurisdiction* to *Education* and *Hate Speech*.

- The recommendations in the first part of the book provide guidelines for OSCE participating States. To all freedom-loving Internet users, legislators among them, we offer recipes on how to preserve the freedom of the Internet at a time when the Internet is facing to be controlled, conditioned, and curtailed.
- The second part of the Cookbook comprises papers by outside experts, which provide background information and insights into current debates about the Internet and also include examples of successful initiatives and best practices.

For instance:

1. What media freedoms can get lost in the hands of uninformed or uncaring legislators;
2. How good intentions by uninformed or uncaring legislators result only in loss of freedom rather than helping to fight “bad content”;
3. What are the unexplored non-regulatory ways of fighting “bad content” that use the potential of the Internet itself and that of communities that create and consume media on the Internet.

I hope you will enjoy reading it.

OSCE Safer Internet Access Policy

The second topic I would like to raise regarding the Internet is a less heart-warming one, although after I have discussed this issue with our Secretary General the problem I am confident will be resolved in the near future.

I have been warning our participating States against the use of filtering and blocking software advocating rather education over restriction. Now, what we were preaching to the outside world suddenly hit home. I learned that the competent IT department of the OSCE introduced the ***Safer Internet Access policy*** for all OSCE Vienna based staff effective 1 November. But besides the obviously meaningful security enhancements (filtering viruses, prohibiting large uploads, etc.) two items included in this package raised my concern:

- Blocking of any streaming media content (video, radio broadcast);
- Content-based filtering of websites.

Both these points hinder the access to valuable content, unlike the stability and security measures for the Secretariat's network.

The first issue (streaming media) seems to be a technical problem because of large amounts of bandwidth used for these applications. Nevertheless, the blocking of this type of content is hindering my work directly and I cannot imagine that it would not harm the work of other OSCE institutions. It is simply impossible to get all news that is available.

- Some examples of streaming media made inaccessible: my recent video interview for State Russian TV *RTR*; my recent radio interview to *Voice of America*; a report on Amnesty International's assessment of the human rights situation in on one of our participating States; the *Article 19 Handbook on Freedom of Expression*.

The second issue, filtering of websites, is even more troubling, because it directly targets content. My Office is campaigning against filtering and blocking because it is endangering freedom of expression. Instead, at many conferences and in publications, I am advocating 'more speech', better education, plurality of opinions in the competition of ideas, etc.

- Some examples again: legal websites, if they deal with how to fight child pornography on the Internet; these include the websites of several universities.

The measures by the OSCE show that filtering indeed is over-blocking, and at the same time under-restrictive. Websites of organisations that fight child pornography are filtered, whereas access to obviously obscene sites is still possible.

And even if the OSCE IT Section - the work of which I appreciate - is offering the possibility to report to them falsely blocked content, this still hinders our activities because of delays and additional workload; hinders online research; and, most of all, does not respect the principles of autonomous and responsible use of new technologies.

ODIHR has informed my Office that they do not filter content.

I suggest that the OSCE IT should not hinder the free access to the Internet as long as it does not concern security issues directly. The decision what is 'obscene' or unwanted should be left to the user. This is what I advocate in the region and this is what I will advocate at home here, in the OSCE.

Kosovo

After I issued my report on the *Role of the Media during the March Events in Kosovo*, I appointed a special representative of my Office there to help implement the recommendations I presented to the Permanent Council this April.

I am pleased to inform you, that our recommendations have been taken into account and most of them are in the process of being implemented. While a lot remains to be done, significant progress has been made since the tragic events in March, when the media in Kosovo displayed an unacceptable degree of sensationalism, bias and hate speech.

The report issued by my Office, and a similar report drafted by the Temporary Media Commissioner in Kosovo, did contribute to a debate on journalistic standards and ethics in Kosovo and helped initiate a range of reforms.

Let me outline a few important achievements in line with my recommendations.

Coordinated by the OSCE Mission, a reform process was started by the Board at the public broadcaster, *RTK*, which opened itself to outside advice and training with regard to its news programming. *RTK* will, however, need more thorough reforms in order to strengthen its accountability and repair the existing deficiencies and shortcomings.

The media, including *RTK*, have acknowledged their mistakes during the March events and have pledged to install safeguards in cases of crisis reporting that should prevent similar situations.

The adoption of media legislation and the creation of a media landscape free of hate speech are goals that have been prioritized within the framework of the "Standards for Kosovo" policy (Standard One, Goals 19, 20 and 21). The Assembly must adopt the Law on the Establishment of the Independent Media Commission and a law to establish *RTK* as a public broadcaster ahead of the mid-2005 Standards review.

With regard to self-regulatory aspects of the media in Kosovo, progress has been made as well. A Draft Press Code for Kosovo is in place and will be soon put into effect.

OMiK is also in the process of shifting priorities from projects that support individual journalists and media to interventions that focus on the creation of an environment in which journalists and media can operate freely and in a responsible manner.

My representative in Kosovo has been working closely with the OMiK's Department for Democratization and the Temporary Media Commissioner on these subjects and I would like to thank both, the OSCE Mission and the TMC, for their excellent cooperation.

Also, thanks again to the UK and to the OSCE Mission for the financial support for this project.

Thank you.
