



**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media  
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**Communiqué No. 1/2021**

**Communiqué by the OSCE Representative on Freedom of the Media  
On the right of the media to freely collect, report and disseminate  
information, news and opinions, regardless of frontiers**

*Media freedom is dependent on a vibrant and competitive media landscape, with a variety of voices. This includes the freedom to perform journalistic duties abroad – something that is also considered crucial for strengthening a climate of trust and co-operation within the OSCE region. Unfortunately, media coming from, or having ties to parties in, another participating State are frequently obstructed from doing their work. This is in opposition to the right on freedom of the media and inconsistent with some of the longstanding OSCE principles and commitments.*

Within the OSCE region there are many examples of media workers and media outlets coming from, or having (financial) ties to parties in, one OSCE participating State that are hindered in doing their work in another participating State.

These obstructive governmental practices vary from the placing on journalists with ties to parties in another country of extra administrative requirements and the creation of an unfavourable – and sometimes even hostile – environment towards these media, to far-fetching (economic) sanctions on, or even outright blocking or banning of, media workers and outlets with ties to parties in another OSCE participating State.

Though different in operation, these restrictive measures have the same detrimental effect: shrinking of media pluralism and security in the OSCE region and disruption of co-operation and friendly relations between nations.

This starkly contrasts with the participating States' longstanding commitments regarding the OSCE's third, human dimension as well as their international obligations. Of course, freedom of expression and media freedom should never serve as a *carte blanche* for propaganda for war and illegal "hate speech": it is universally recognised that it is not an absolute right. At the same time, it cannot be overemphasized that these freedoms constitute one of the essential foundations of any democratic society. To be justified, restrictions must therefore always meet a high barrier, and should always be under the scrutiny of a functioning, independent court system.

## **OSCE principles and commitments**

From the very beginning, and in many of their consensus documents, the OSCE participating States have touched upon different aspects of the freedom of journalists to work abroad. Taken together, these principles and commitments form clear and irrefutable support for the right of media workers and media outlets that originate, or have ties to parties, in one participating State to freely collect, report and disseminate (publish, broadcast) information in another participating State. Similarly, those at the receiving end, the public, have an undeniable right to freely seek, receive and impart information and ideas without interference by the public authorities and regardless of frontiers. This freedom encompasses access to foreign publications and foreign broadcasts and websites. Some of the most relevant principles and commitments are provided below.

### ***1975 Helsinki Agreement***

In their founding document, the *Helsinki Final Act 1975*, the participating States to what later would become the OSCE, dedicated a separate section to the issue of “information”. In this section, the participating States recognized the importance of the dissemination of information from the other participating States and of a better acquaintance with such information. In this light, they emphasized the essential and influential role of the press, radio, television, cinema and news agencies and of the journalists working in these fields. The participating States therefore made it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State could exercise their profession in another participating State. The participating States also committed to facilitate and promote the improvement of the dissemination on their territory of printed publications and audiovisual information from the other participating States.

### ***Concluding Document of the Vienna Meeting***

In their 1989 *Concluding Document of the Vienna Meeting*, the participating States recalled that the legitimate pursuit of journalists' professional activity would neither render them liable to expulsion nor otherwise penalize them. They agreed that authorities should refrain from taking restrictive measures such as withdrawing a journalist's accreditation or expelling him or her because of the content of the reporting of the journalist or of his or her information media. They also stated to ensure in practice that persons belonging to national minorities or regional cultures on their territories could disseminate, have access to, and exchange information in their mother tongue.

### ***Moscow Document***

In the *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* of 1991, the participating States reaffirmed the right of the media to collect, report and disseminate information, news and opinions. They also considered that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. Furthermore, they stated that they would, in conformity with international standards regarding the freedom of expression, take no measures aimed at

barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation. They reaffirmed the public's right to enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. The participating States made it clear that any restriction in the exercise of this right should be prescribed by law and in accordance with international standards. They also vowed not to discriminate against independent media in affording access to information, material and facilities.

### ***Istanbul Charter***

In the *Istanbul Charter for European Security* of 1999, that concluded the Sixth OSCE Summit of Heads of State or Government, the participating States committed themselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which they stated to consider to be an essential component of any democratic, free and open society.

### ***Astana Commemorative Declaration***

In the *Astana Commemorative Declaration: Towards a Security Community* of 2010, that concluded the OSCE Summit of Heads of State or Government, the participating States reaffirmed that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.

### ***Ministerial Council Decision on Safety of Journalists***

In their *Decision Nr. 3, Safety of Journalists*, of 7 December 2018, the Ministerial Council noted with concern that the use of undue restrictive measures against journalists can affect their safety, and prevents them from providing information to the public, and thus negatively affects the exercise of the right to freedom of expression. The Ministerial Council called upon the participating States to fully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers; and to bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference.

### **Restrictions**

For the purpose of this Communiqué, it suffices to underline that restrictions on freedom of expression (which includes the right of media to freely report, collect and disseminate information in the territory of another participating State) must meet a high barrier to be justified. The mere fact that media actors or outlets have (financial) ties to a party in another participating State cannot serve as a legitimate reason to stigmatize them, for instance by labelling them as being a “foreign agent”, and place upon them extra administrative burdens. Likewise, the mere fact that a media outlet with ties abroad disseminates unwanted messages should not serve as a reason to prevent it from operating.

Article 19.3 of the International Covenant on Civil and Political Rights (ICCPR) states that restrictions on the freedom of expression may only be such as provided by law and necessary for the respect of rights or reputations of others; for the protection of national security or of public order (*ordre public*), or of public health or morals. Article 20 of the ICCPR states that any propaganda for war, and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The European Convention on Human Rights provides that any limitation of freedom of expression must be prescribed by law, necessary in a democratic society and aimed at certain enumerated objectives, one of which could be the prevention of disorder or crime. It is good to realize that the fundamental right to information and ideas is not limited to statements deemed “correct” by authorities, but extends to information and ideas that may shock, offend and disturb. Even for news that authorities deem to be distorted or misleading, the right to media freedom stands in the way of restrictive measures. The European Court of Human Rights ruled that feelings or outrage, in the absence of intimidation, was insufficient for limiting freedom of expression.

In its General Comment on the freedom of expression, the UN Human Rights Committee stated that any restrictions on freedom of expression “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function”. In the case of the invocation of terrorism or extremism to justify restrictions on freedom of expression, for instance, measures must therefore be clearly defined and establish a direct and immediate connection between the expression and the threat to national security.

A report published by my Office in 2016 clarified that any accreditation system for foreign correspondents should benefit media and may not contain excessive obligations, nor should it be used as a tool to control content or as a sanction or restriction in response to media propaganda.

In short, restrictions should always be a last resort, especially since these tend to lead to arbitrary and politically motivated actions. When affected, media should therefore always have remedial recourse to a functioning independent judiciary. Limits to media freedom for the sake of political expediency often times lead to censorship. Once begun, censorship is hard to stop.

## **Recommendations**

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

should live up to their many commitments regarding the freedom to perform journalistic duties abroad, also with a view of strengthening a climate of trust and co-operation within the OSCE region;

should endeavour to promote more debate and open, diverse and dynamic media environment, also on issues that they deem “foreign” or “not correct”;

should permit media workers and media outlets coming from, or having (financial) ties to parties in, another participating State to enter the territory to be able to perform their journalistic work, including media that report or disseminate messages that the authorities deem to be unwanted;

should live up to their commitment, as described in the 2018 OSCE MC Decision, that all political leaders, public officials and/or authorities should “refrain from intimidating, threatening or condoning – and to condemn unequivocally – violence against journalists”, including when it concerns media coming from, or having ties to parties in, another participating State;

should refrain from stigmatising, or labelling them as “foreign agent”, media workers and media outlets coming from, or having (financial) ties to parties in, another participating State;

should apply the same standards, including possible restrictions, for media workers and media outlets coming from, or having (financial) ties to parties in, another participating State as they do for media workers and media outlets from their own territory. This should include media that report or disseminate messages that the authorities deem to be unwanted;

should refrain from using a system of accreditation as a means of hindering media workers and media outlets coming from, or having (financial) ties to parties in, another participating State;

should refrain from restrictive measures on media workers and media outlets coming from, or having (financial) ties to parties in, another participating State, unless prescribed by law and in the pursuit of a legitimate aim in line with the OSCE principles and commitments;

should, when they consider the imposition of restrictions to be in the pursuit of a legitimate aim as provided by international law and OSCE principles and commitments, always make sure that the concerned media have remedial recourse to a functioning independent judiciary.

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Vienna, 3 May 2021