



The Representative on
Freedom of the Media

EXPERT MEETING

Central Asia Judicial Dialogue

Thursday, 24 June 2021

Opening remarks

**Distinguished guests,
Ladies and gentlemen,**

It is my pleasure to welcome you to the third judicial dialogue in Central Asia. Due to the on-going pandemic-related restrictions, this year it will be held online. A very warm welcome to you all!

I am grateful that even in this complicated situation, the five Central Asian participating States are supporting this event by nominating experienced and knowledgeable judges. I also appreciate hosting two experts, the presiding judge of the Bavarian Supreme court, Manfred Dauster and Arnfinn Bardsen who serves as a judge on the bench of the European Court of Human Rights. I am also very pleased that two legal experts, Antonina Cherevko and Joan Barata Mir, have accepted to take on the roles of moderators.

Holding the third round of this regional forum and bringing together judges and legal researchers from across Central Asia and the broader OSCE area, allows us to continue to discuss relevant legal issues and to exchange best practices and reports from the States concerning new or revised legislation. Today and tomorrow, we will look closely at of decriminalisation of defamation, a topic which remains among my priorities and where Central Asia has been making considerable progress. While this topic was part of the previous Dialogue in 2020, this year we will dedicate more time and attention to discussions of all aspects of cases in which media are involved.

Above all, I hope these two days will be useful for you, when you go back to your important role: adjudicating cases related to the media, safeguarding freedom of expression and freedom of the media.

I would like to start with the most pressing problem: the lingering application of paragraphs of the criminal code pertaining to defamation. Across the OSCE region, including Central Asia, there have been many interventions by my predecessors and myself, where serious, accurate reporting became a target of civil servants and politicians, who were challenged by a media stance or individual comments.

While I am genuinely pleased with the decisions by your authorities to decriminalise defamation, and I am looking forward to hearing your statements concerning changes in national legislations, there are still criminal provisions, which first and foremost affect journalists and bloggers. Special protection granted to high-ranking civil servants or politicians and other dignitaries are among them. These provisions impose restrictions on freedom of the media, which cannot be justified.

Another legal phenomenon, which has been of great concern to my Office, are the rulings, which award high damages in cases against media outlets, which sometimes leads to the closure of the media.

Journalists reporting on controversial or divisive issues face many challenges. Even if they manage to avoid charges of defamation, they may face lawsuits because of an alleged breach of privacy or breach of the right to one's image. While perfectly reasonable *per se*, these legal norms, when indiscriminately applied - for example to news reporting- become a tool for silencing the media.

Much of our news and entertainment consumption happens online. Increasingly, in the OSCE area norms of offline regulations have

been extended to cover the information flow online. And indeed, purported online defamation may pose a serious problem due to its ramifications: *wide-spread coverage, instantaneous communication, anonymity and impersonation*. The use of any digital devices, such as mobile, computer or laptop, coupled with an assumed identity, contribute easier spreading of online defamation, which may be used to settle a personal score or harm somebody's reputation.

However, interactions provided by social media platforms show another side of the situation. Throughout the OSCE area, countless officials or politicians switch off or delete critical comments. Equally, they turn to courts if individuals or online media outlets publish unflattering opinions or details of embarrassing stories. Moreover, there are cases when victims of cyberbullying have been tried on charges of defamation for naming the abuser online.

It is essential in these times of manipulation of the news that there be protection for professional, independent and ethical journalists. They are the most well placed to play as fact checkers and therefore counteract false information.

It is fundamental to our democratic way of life to hold power to account. But this is not done through hate speech, abuse and sensationalistic accusations on social media. Paradoxically, they diminish the value of free speech and empower those who might otherwise be held to account, to engage in confusing, misleading and bullying online behaviour.

Your duty combines a delicate task to protect the reputation of the citizens of our countries without compromising on the fundamental right to freedom of expression. In ensuring compliance with international standards, you protect the right of citizens to know, to have access to timely and useful information and ensure that rank or position in society do not provide additional protection from legitimate criticism.

Therefore, it is the objective of our meeting today and tomorrow to raise awareness across the region of the relevant international human rights standards on freedom of expression and freedom of the media, which must be taken into account when deciding on cases concerning defamation and libel.

The outcome of this judicial dialogue will be recommendations on various aspects of cases relating to defamation and libel, including retaining criminal provisions in the national codes, linguistic expertise and its independence from the investigative bodies, awarding damages and special protection granted to certain categories of citizens.

I hope that these recommendations will be useful in your future work. The international legal standards, which underpin these recommendations, are common throughout the OSCE and no doubt familiar to you. Once again, I would like to stress that I am happy that in Central Asia, many provisions pertaining to defamation have been decriminalised. However, national judicial practice sometimes differs from the spirit of the law, in which most forward-thinking legal reforms have been included. There is still space for improvement to ensure that freedom of expression and freedom of the media are properly upheld.

Let me conclude my introduction by once again welcoming you to this expert meeting. I look forward to our discussions over the next two days. Next year, I very much hope to see you in person in one of the region's capitals.