

■ Yearbook 10

2008

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.

© 2009 The Representative on Freedom of the Media
Organization for Security and Co-operation in Europe (OSCE)
Wallnerstrasse 6
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 978-92-9234-627-0

■ Yearbook 10 2008

The OSCE Representative on Freedom of the Media

Vienna 2009

Contents

11 **Preface by Alexander Stubb**

15 **Foreword by Miklos Haraszti**

Contributions

19 Greeting on the occasion of the 20th anniversary of ARTICLE 19
Miklos Haraszti

23 The Success Story of the Media Self-Regulation Guidebook
Adeline Hulin

29 When confrontation ends and co-operation begins. The media and
the government *Zoya Kazanzhy*

Mandate of the OSCE Representative on Freedom of the Media

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

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

Declarations

47 Joint Declaration by the four Global Rapporteurs on Freedom of
Expression on Defamation of Religions, and Anti-Terrorism and Anti-
Extremism Legislation

53 Declaration Adopted at the 10th Central Asia Media Conference
“The future of public-service broadcasting and the digital switchover
in Central Asia”

Regular Reports to the Permanent Council

- 57 13 March 2008, Report to the Permanent Council by the OSCE Representative on Freedom of the Media
- 89 3 July 2008, Report to the Permanent Council by the OSCE Representative on Freedom of the Media
- 121 27 November 2008, Report to the Permanent Council by the OSCE Representative on Freedom of the Media

Country Report

- 153 The State of Media Freedom in Montenegro

Legal Reviews

- 179 Review of the Slovak Draft Press Act
- 195 Memorandum on the Draft Law of the Republic of Kazakhstan on the Mass Media
- 255 Comments and Suggestions on the Draft Law “On Introducing Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Questions of Defamation in the Mass Media”
- 261 Comments on the Draft Law of the Republic of Belarus on the Mass Media
- 295 Comments on Draft Law on State Secret of the Republic of Moldova

Projects 2008

- 319 Training project
- 319 “Visibility vests” for Azerbaijani journalists covering street demonstrations and other public events

Interventions 2008

- 323 Albania
- 323 Armenia

324	Azerbaijan
326	Belarus
327	Bosnia and Herzegovina
327	Bulgaria
328	Croatia
328	Czech Republic
328	France
329	Georgia
329	Hungary
330	Ireland
330	Kazakhstan
330	Kyrgyzstan
331	The former Yugoslav Republic of Macedonia
331	Moldova
332	Montenegro
332	Poland
333	Romania
333	Russian Federation
335	Serbia
335	Slovakia
336	Slovenia
336	Turkey
336	Turkmenistan
336	Ukraine
337	United States of America
337	Uzbekistan

339 Meetings and Conferences 2008

346 Press Releases 2008

349	OSCE welcomes pardoning of journalists in Azerbaijan but urges legal reform
-----	---

- 350 OSCE media freedom representative welcomes President Sarkozy's plan to de-commercialize public television in France
- 352 OSCE media freedom representative protests jailing of editor in Belarus for reprinting cartoons
- 353 OSCE media freedom representative says Slovakian draft Press Act curbs editorial autonomy, asks authorities to withdraw it
- 355 OSCE media freedom representative visits Council of Europe, discusses joint concerns, co-operation
- 356 OSCE media freedom representative welcomes Kyrgyzstan's media self-regulatory body, the first in Central Asia
- 357 OSCE media freedom representative reviews Slovakia's draft Press Act, urges Government to implement recommendations
- 358 OSCE promotes public discussion on media legislation in Kazakhstan
- 359 OSCE condemns attacks on journalists
- 360 OSCE media watchdog to hold anniversary roundtable on challenges to media freedom
- 362 OSCE media watchdog, Finnish OSCE Chairmanship host forum on challenges to media freedom
- 363 Ban on independent news coverage in Armenia is contrary to OSCE commitments, says OSCE media freedom representative
- 364 New prison sentence sign of continued persecution of non-governmental media in Azerbaijan, says OSCE media freedom representative
- 366 OSCE media freedom representative calls on Azerbaijan to investigate latest attack against journalist
- 367 OSCE media freedom representative and partners call on Ukraine to further development of free media
- 368 OSCE trains Georgian government officials, journalists with focus on facilitating access to information
- 369 OSCE media freedom representative welcomes Irish government move to decriminalize libel

- 370 Latest amendments to Slovakia's draft Press Act an improvement but still fall short, says OSCE media freedom representative
- 372 OSCE helps Kyrgyz state press officers and journalists work more closely, share information
- 373 OSCE media freedom representative urges Russia to vigorously investigate murders of Dagestani journalists
- 374 OSCE media freedom representative protests against onslaught on independent media in Belarus
- 375 Slovakia's new Press Act curbs editorial freedom, grants politicians unlimited right of reply, warns OSCE media freedom representative
- 376 OSCE representative calls on Azerbaijani law enforcement to stop harassing and discrediting investigative journalists
- 378 OSCE media freedom representative launches guidebook on media self-regulation at Paris forum
- 379 OSCE media freedom representative urges Czech Parliament to use penal code reform to decriminalize speech offences
- 380 OSCE media freedom representative asks Russian legislators to halt move to allow closure of media outlets for defamation
- 381 Ahead of World Press Freedom Day, OSCE official calls on governments to lift restrictions, protect journalists from violence
- 383 OSCE media freedom representative asks new Russian President to address media freedom challenges
- 385 Public broadcasting in Bosnia and Herzegovina faces multiple threats, warns OSCE media freedom representative
- 386 OSCE media freedom representative urges Kyrgyz President to veto amendments that curb new public-service broadcaster's independence
- 387 Polish reform of public-service broadcasting should avoid politicized solutions, OSCE representative warns
- 388 OSCE media freedom official expresses concern about campaign against Radio Free Europe, detention of journalist in Uzbekistan

- 390 OSCE trains state press officers, journalists in northern Tajikistan to promote public access to information
- 391 OSCE media freedom representative protests prison sentence handed to publisher of book on Turkish history
- 392 OSCE media freedom representative urges Belarus not to adopt restrictive media law
- 393 OSCE media freedom representative urges Romanian President to veto bill on mandatory percentage of ‘good news’
- 394 OSCE media freedom representative welcomes Romanian Constitutional Court’s ruling against ‘good news’ bill
- 395 OSCE media freedom watchdog calls Baku trial ‘fake’, aimed to discredit opposition journalist and protect his real attackers
- 396 OSCE press freedom office trains media professionals to foster ethical standards and boost self-regulation
- 397 OSCE media freedom representative protests against killing during police custody of web publisher in Russia’s Ingushetia region
- 399 OSCE Office presents press vests to Azerbaijani journalists
- 399 OSCE media freedom representative visits Turkmenistan
- 401 OSCE media freedom representative presents anniversary publication
- 402 Improving access to information purpose of OSCE media seminar in Moldova
- 403 OSCE media freedom representative says journalists need free and safe access to Georgia’s South Ossetia and Abkhazia regions
- 405 Armenia should lift moratorium on licensing broadcasters to ensure media pluralism, says OSCE media freedom representative
- 406 OSCE media freedom representative urges Bulgarian authorities to swiftly prosecute violent attacks against journalists
- 407 OSCE media freedom representative welcomes acquittal of Hungarian journalist in secrecy case, urges legislative reforms
- 408 OSCE media freedom representative calls for broad public consultations on Albania’s draft media law

- 410 OSCE media freedom representative urges Uzbek government to dismiss journalist's 10-year prison sentence
- 411 Central Asia journalists discuss public-service broadcasting, digitalization at OSCE media conference
- 413 OSCE media freedom watchdog condemns killing of two journalists in Croatia
- 414 OSCE workshop promotes co-operation between state press services and journalists in Armenia
- 415 OSCE promotes media self-regulation in Romania
- 416 OSCE helps Serbian municipal officials and journalists improve communication to ease access to information
- 417 OSCE representative commends media situation in Montenegro, outlines areas for improvement
- 418 South Caucasus journalists discuss public-service broadcasting, digitalization at OSCE media conference
- 420 Recent assaults on journalists in Armenia threaten free press, says OSCE representative
- 421 OSCE promotes discussion in Belarus on Internet media regulation
- 422 OSCE media freedom representative asks Moldovan Parliament to improve draft state secrecy law
- 423 OSCE media freedom representative receives Chydenius medal
- 424 International broadcasts on Kyrgyz airwaves should be fully restored, says OSCE media freedom representative
- 425 Global free speech rapporteurs concerned about 'defamation of religion' and 'anti-extremism' laws
- 427 OSCE media freedom representative urges Moldova to renew license of independent TV station to ensure pluralism before elections
- 428 Azerbaijan's ban on foreign FM radio broadcasting is serious step backwards, says OSCE media freedom representative

Preface

By Alexander Stubb

The book you are reading is the tenth annual account of work of the OSCE Representative on Freedom of the Media. I am very glad that the anniversary of this institution was celebrated in 2008, the year of the Finnish OSCE Chairmanship.

The ten-year experience of the Office of the Representative on Freedom of the Media allows its team to reflect on successes and remaining challenges of the OSCE family in its pursuit for improved compliance with their OSCE media freedom Commitments. The anniversary event organized in Vienna in late February 2008 gathered an impressive group of professional partners and media practitioners of the Representative who shared their views on the dynamics of media freedom since 1998, and on the challenges faced by free media in the 56 participating States.

In its OSCE Chairmanship programme for 2008, Finland emphasized the importance of the freedom of expression as a fundamental freedom that bears great value in itself, but also a freedom that contributes to the fulfillment of other human rights and freedoms.

Throughout its Chairmanship, Finland gave its full support to the work of the Representative on Freedom of the Media. In 2008, his Office continued to play a great role in early warning on violations of media freedom, and to assist the participating States from Vancouver to Vladivostok to fulfill their respective commitments conceived and continuously enhanced since Helsinki in 1975.

This book includes several thematic contributions from staff members and partners of the Office, as well as the reports, legal reviews, statements and other documents issued by the Representative in 2008.

Covering a wide spectrum of geographic and subject areas, the materials of the book will be interesting and useful for journalists, experts, human rights activist, as well as for the general public interested in press freedom issues.

*Alexander Stubb is the Minister for Foreign Affairs of Finland,
OSCE Chairman-in-Office in 2008*

Foreword

Miklos Haraszi

This year the Office of the Representative on Freedom of the Media (RFOM), the only intergovernmental media freedom watchdog in the world, completes its tenth year of operation. We have received numerous congratulatory greetings, but I feel that it is the OSCE participating States who should be congratulated for establishing and maintaining this unique institution.

A unique institution

For ten years now, the Representative has scrutinized challenges to press freedoms in all geographical areas of the OSCE region. The Office has intervened in countless cases where reporters were harassed or even murdered; where pluralism was restricted by governmental or private ownership concentration; where the media were denied the right to investigate their governments; or where offending or critical views were criminalized as extremism, defamation, or hate speech.

The RFOM is mandated not only to publicly intervene in cases of media freedom violations; that job is also done by many wonderful national and international civil organizations, all our allies. In addition, we can request governments to act upon our recommendations, counsel them on legal reform and support civil society.

Ten years ago, the establishment of this Office put the last touches on a revolutionary process, in which all participating States committed themselves to the universal values of democracy. Free and fair elections, a free civil society and free speech were acknowledged as being vital not only for peace inside any nation but also for international security. A free press and media

pluralism were recognized as values to be held dear not only domestically but in co-operation among the OSCE nations.

These commitments were institutionalized with the creation of three autonomous watchdog bodies: the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM) and the Representative on Freedom of the Media (RFOM).

Meltdown of commitments?

Despite the numerous congratulations that the Office received on its anniversary, I believe we should beware of complacency. After a decade of operation, we are encountering an emerging trend that I find more worrying than all our everyday challenges: the questioning of the universality of the OSCE's commitments.

It signals what I would like to call a certain meltdown of these commitments, when today, just as in the days before the formation of the OSCE, the international community's concern for human rights is sometimes labelled as intrusion into internal affairs and even termed "cold-warish". Time and again, OSCE institutions, mandated by participating States to take care that they fulfil their commitments, are finding their requests for co-operation rejected by governments and by the media they own.

Most ominous is the re-emergence of the practice of distinguishing different sorts of democracy. Not quite like during the Cold War, when so-called real or people's democracies were pitched against fake or bourgeois democracies. Now the talk is merely of one's own or managed democracies, as opposed to other versions, labelled alien or chaotic. But, as with the old distancing, the intention is to justify saying goodbye to international scrutiny of compliance with free elections, free expression, or free co-

operation among members of civil society across border lines, values once acknowledged as desirable and indivisible.

This relativist meltdown, also with regards to speech rights, should be halted and reversed. The next ten years will be marked by new types of challenges to freedom of the media, both east and west of Vienna. Technology will be a crucial factor, but in most cases, whether in the older democracies or in the post-1989 ones, the nature of power will be the root of the problem.

We can tackle these challenges through co-operation and dialogue. Governments, members of civil society and journalists in the OSCE participating States can count on the dedication of this Office in advocating for compliance with our shared media freedom commitments.

Contributions

Greeting on the occasion of the 20th anniversary of ARTICLE 19¹

Miklos Haraszi

First, allow me a word of salutation on ARTICLE 19's anniversary.

I got to know ARTICLE 19 as a distant but most valuable ally – just as all democratic opposition activists in the Eastern bloc had – before democratization in Central Europe. I used to say then – half jokingly – that ARTICLE 19 is the best media freedom lawyers' kolkhoz (collective farm) on earth... and I continue to think of it in this way in my present capacity, as the media freedom representative of the Organization for Security and Co-operation in Europe (OSCE).

ARTICLE 19 is a collective with a noble goal and a strategy to reach that goal. It is part of the last International, the post-revolutionary conspiracy for universal human rights, which I hope will continue and prevail. Today, after 20 years, it still brings together the leading experts who do not engage in the usual constitutional hair-splitting – although their knowledge would qualify them for perpetual academic conference-going and highly profitable litigation on behalf of the wealthy media. They boldly apply scholarship, devotion and common sense wherever help for press freedom is most needed. I rely on their expertise almost every day and I am glad when I feel our institution's work has enriched their expertise.

¹ This greeting was originally published by ARTICLE 19: <http://www.article19.org/speaking-out/osce>

What has changed in terms of press freedom since the stormy end of the 1980s? It is a different world. The 'greatest leap forward' in the history of democratisation has made around 20 countries in Eurasia legally, if not always politically, acknowledge free elections, free civil society and a free press.

The formation of the OSCE in the 1990s reflected this development. Stretching over three continents, it considers peace not only to be a matter of restraining tanks and guns. Enforcement of human rights, and co-operation with international NGOs, is included in its statutes. This is what lies behind the creation in 1997 of our office, the only global intergovernmental media freedom watchdog. Our office is the fruit, I dare to say, of the peaceful revolutions in Eurasia plus ARTICLE 19's global campaign.

Since then we have been working together on the protracted rearguard battles to end State ownership and control of the media. We have acted in a world where modern mass media were not simply usurped but were created by the omnipotent State, and generations of journalists had only worked for the State. Audiences might have hated the monotony of a directed press, but were still caught by surprise by the cacophony of pluralism.

Practically every problem we are facing is a difficulty that comes with post-communism's media democratisation.

Banning censorship, privatising the print press, transforming State radio and television into publicly established independent news sources, and licensing privately owned radio and television stations – these have been the basic processes. But today in too many countries we still have a quasi-State monopoly in broadcasting, while a State-sustained agitprop print press dominates the fragile privately owned media.

The privately owned media have to endure administrative discrimination in every aspect of their operations. Criminalisation of journalists targets as a rule the independent press, as does brutalisation and even the killing of journalists. None of these grave press freedom problems is detached from the historic fight of the State against the obligation to give up control of the press and let it belong to civil society.

Naturally our office, like ARTICLE 19, continues to engage on the Western front too, albeit supported by a vigorous media eager to defend itself. There, security threats can at times lead to gratuitous limitations as much as anywhere else. (Sometimes a well-wishing Utopia about an offence-free society also takes its toll on freedom of expression – and when the model of ad-hoc speech limitations is copied in new democracies, it often becomes the old Utopia of an offence-free State...) As new media technologies take over, a whole set of new restrictive measures is emerging, especially on the Internet.

Neither is the West exempt from the fight to end State ownership and control of the media. The long revolution of society's right to freedom of information – ignited by the insurgency cell of ARTICLE 19 – has started to sweep the hemisphere from West to East. ARTICLE 19 and my office now jointly help society receive its due share of information on government.

Following the second wave of liberalisation in the post-1989 regimes, the so-called coloured revolutions, we are now experiencing a counter-revolution against media democratisation. I believe we do not have an easy time ahead. But I feel safe as long as I can work with organisations like ARTICLE 19.

The Success Story of the Media Self-Regulation Guidebook

Adeline Hulin

The *Media Self-Regulation Guidebook* was published in April 2008, following a year of thorough research. Aimed at helping media professionals to identify and overcome challenges faced by civil society in OSCE participating States pursuing effective media self-regulation, the Guidebook is the first practical publication on the topic. It provides a succinct set of answers to frequently asked questions on self-regulation and is designed to benefit a wide range of actors from media professionals to State officials and media audiences. Having been motivated by a lack of useful reference material in this field, the publication enjoyed an immediate success, as was reflected in, among other things, the number of translations requested by OSCE participating States.

The main reason for the project's success was well summarized by Peter Studer, formerly head of the Swiss Press Council: *"The Media Self-Regulation Guidebook is exactly what it claims to be: practical. For journalists and publishers who intend to establish or reform a press council, the guidebook elaborates on all important questions and problems, and offers answers and solutions."*

One key objective of the publication was to reflect the huge diversity of media accountability mechanisms existing in the OSCE area. Accordingly, the Guidebook does not focus on a single model but includes several case studies that deal with issues of concern to practitioners, allowing the readers to select solutions that can be tailored to their own country's conditions. Each chapter of the book focuses on one particular aspect of media self-

regulation, for example, the role of codes of ethics, ombudspersons, or press councils.

In 2007, in order to gather media professionals' most relevant FAQs about self-regulation, the Office of the OSCE Representative on Freedom of the Media organized two regional conferences on the subject, one for the South Caucasus and one for Central Asia. Held in Tbilisi, Georgia, and Dushanbe, Tajikistan, they helped to shed light on causes of misunderstanding and on issues of concern encountered, particularly by new democracies, when developing accountability systems.

Renowned international experts on self-regulation from the OSCE area were selected to answer the questions. Yavuz Baydar, ombudsman at the *Daily Sabah* in Turkey, was in charge of the chapter on codes of ethics; William Gore from the British Press Complaint Commission explained the role and importance of self-regulatory bodies; Ognian Zlatev from the Bulgarian Media Council spoke about the way press councils function; and Veronique Maurus, ombudswoman at *Le Monde* in France, described the duties and challenges of her post. Furthermore, Miklos Haraszti, the OSCE Representative on Freedom of the Media (RFOM), wrote the introductory first chapter of the Guidebook, highlighting the fact that media freedom is a prerequisite to an effective self-regulation.

Published in English, French and Russian, the *Media Self-Regulation Guidebook* was launched at the Eurasia Regional Forum for Media Development held in Paris on 17–19 April 2008. The forum, organized by Internews Europe, brought together hundreds of representatives from inter-governmental and non-governmental organizations concerned to reinforce and strengthen their co-operation in the field of media development. It was a highly favourable occasion at which to launch the publication and reach a wide-ranging audience. At the event, Miklos Haraszti expressed his hope that the publication would “encourage the further development of media self-

regulation, boost the quality segment of journalism and thus help improve social support for media freedom in the OSCE area.”

Later, the Guidebook was presented at the annual conference of the Organization of News Ombudsmen held in Stockholm in May 2008 and at the annual meeting of International Press Councils in Europe held in Berlin in October 2008. Participants at these events welcomed the publication of the Guidebook as an unprecedented new reference tool. By the end of 2008, the Guidebook had been translated into Albanian, Hungarian, Montenegrin and Turkish. The Montenegro Media Institute explained the need for translations: *“Journalists, media professionals and students of journalism do not have enough access to specialized literature, often because of language barriers, as the literature is mainly written in English.”* The Guidebook is currently being translated into Azerbaijani and Tajik.

Most of the translations were made by local media NGOs wanting to promote the concept of self-regulation in their countries and make the guidebook accessible to local media professionals. In Turkey, however, it was not an NGO that provided the translation but the Radio and Television Supreme Council, which is responsible for the regulation of radio and television broadcasts nationally. The Council gave its reasons for creating a Turkish version of the book as follows: *“The book encompasses and sums up in a well-structured manner almost all the needs of our age and of the foreseeable future regarding self-regulatory measures; it proposes a framework that needs to be adopted by media organizations; and it deals with the role of regulatory bodies.”*

The publication of the Guidebook came at a timely moment, just when several OSCE participating States were engaged in ongoing efforts to create self-regulatory bodies. Such efforts are still under way in France, Albania and Hungary. To quote Ilona Moricz of the Center for Independent Journalism in Hungary: *“The timing of the publication of the Guidebook was very helpful*

as it coincided with the ongoing efforts to strengthen media self-regulation in Hungary. Since 2007 the Center for Independent Journalism (CIJ) has been facilitating this process, and with a group of leading Hungarian journalists has drafted ethical guidelines, and elaborated the operating modalities of a future self-regulatory council to include all media branches. The philosophy of self-regulation is still to be explained to many media professionals in Hungary and this guidebook responds to many questions and doubts.”

Having been distributed to universities, professional organization, journalism schools, relevant NGOs and public bodies, the Guidebook has already reached a wide public. The book is put to effective use for reference at training events on media ethics and self-regulation organized by the RFOM and partner organizations. As Ilona Moricz noted, adding a pointedly optimistic rider: *“The fact that OSCE published the book gave credibility to the objectivity of its content. Good international practices do help generate attitude changes.”*

The Media Self-Regulation Guidebook is accessible on the OSCE public website:

In English:

http://www.osce.org/publications/rfm/2008/04/30697_1117_en.pdf

In Albanian:

http://www.osce.org/publications/rfm/2008/04/30697_1117_sq.pdf

In French:

http://www.osce.org/publications/rfm/2008/04/30697_1117_fr.pdf

In Hungarian:

http://www.osce.org/publications/rfm/2008/04/30697_1117_hu.pdf

In Russian:

http://www.osce.org/publications/rfm/2008/04/30697_1117_ru.pdf

In Montenegrin:

http://www.osce.org/publications/rfm/2008/04/30697_1117_me.pdf

In Turkish:

http://www.osce.org/publications/rfm/2008/04/30697_1117_tr.pdf

When confrontation ends and co-operation begins. The media and the government

Zoya Kazanzhy

“It is like going on a trip to the land of fools.” This is how many journalists I meet in the former Soviet countries describe what it is like dealing with members of official press and public information services. Perhaps the remark is an emotional exaggeration, but I must say that most press secretaries and spokespersons in these countries do seem incapable of interacting constructively with representatives of the media. And, since the feeling is very much mutual, what ensues is not co-operation but an exchange of accusations of lack of professionalism.

This is unfortunate because these supposed adversaries actually should be looking in the same direction: towards informing people about events and decisions and enabling them to be positively engaged in their country's development. The right to know is a fundamental principle of a democratic society; it is not a concept that is pursued on a journalist's whim.

As an ex-journalist and as the former spokesperson of the Central Electoral Commission of Ukraine, I am familiar with the view from both sides of the fence. Press officers continue to be hesitant about sharing information, as in the old days. It is almost as impossible to arrange a meeting with them as with the highest-ranking officials. As for journalists, they persist in seeking access to the most senior echelons of government, but often have no clue why.

Since 2005, this double dilemma has been the key concern in seminars organized by the Office of the OSCE Representative on Freedom of the

Media. As a trainer in at least ten of them so far, I am struck by the fact that, whether in Azerbaijan, Belarus or Kyrgyzstan, there is nothing to distinguish the list of grievances coming from either side of the information divide.

It never ceases to surprise me, at the start of each two-day event, how people who work in the same trade have never crossed paths. At best, they would have spoken on the phone; half the time they would have come away with a negative impression.

When participants introduce themselves around the table, the feeling of mutual wariness is palpable. Journalists sit off to one side, press secretaries off to the other. After all, “aliens” do not feel at ease in the “enemy’s camp”.

My first task is to try to relieve the tension in the air and create a relaxed and friendly atmosphere. I encourage everyone to talk freely and openly, though this is obviously easier said than done: A journalist working for an official daily might “sanitize” the actual state of affairs to avoid any conflict with local authorities. A press secretary — inevitably, someone who is new at the job — might try and paint an idyllic picture of cozy camaraderie with members of the media.

This is why we tell participants that whatever they say will not go beyond the room’s closed doors. They realize we mean it when we ask them not to record any part of the sessions and not to quote their counterparts in any of their publications. Everyone agrees to comply: Cooperation looks set to begin.

The list of complaints about press officers is endless, the most common being: The agencies and ministries they represent are extremely tight-lipped, and prying the simplest bit of information out of them is virtually impossible. State press services are slow to comment on accidents and other breaking news. Official press releases are poorly written. Experts are never available

for comment. And to top it all off, official press operations seem to be paralyzed during emergencies.

Grievances against journalists are equally wide-ranging: They distort information and misinterpret facts. They are totally off the mark — or have scant familiarity with many issues. For them to gain a basic grasp of a particular topic, they almost need to take part in a special “literacy campaign”. They ignore the importance of research, and some refuse to settle for comments coming from anyone less than a top official.

We write down the exchange of recriminations on the board and talk them through one by one, analysing solutions offered and seeking consensus. My goal is to go beyond imparting the positive aspects of the Western experience by encouraging participants to also learn how to come up with creative solutions. Through it all, the most important thing is to be polite and not to breach the principles of professional and personal ethics.

The seminar then breaks up into two separate groups: This is when we teach — or review — the techniques of journalism, focusing on practical exercises and emphasizing the highest professional standards. For press officers, we use management games simulating real-life situations aimed at demonstrating how the relationship with journalists is shaped and nurtured.

I should point out that many of us media trainers for the CIS region did not have any initial grounding in the democratic standards of journalism. Most of us studied at a Soviet-style ‘zhurfak’ — a university’s department of journalism — and, after the democratic changes of the late 1980s, pursued a long path of professional “re-education”. So my fellow trainers and I know only too well how hard it is for today’s journalists to adapt to modern practices and to shed ingrained propaganda-style methods.

At the same time, even with the best will in the world, press officers and spokespersons often confess to feeling at a loss about what precisely is expected of them. This is not surprising, given that these posts are relatively new and responsibilities are not well defined. At the seminars, press and public information officers often make it a point to tell us that life would be so much easier if participation in the same training sessions would be made mandatory for their own bosses, usually heads of public agencies and institutions.

What remains after the training events? Most importantly, human contact. I often overhear participants exchanging parting words: “So you’re the kind of people one can talk to after all!” “I will be calling you from now on!” “Drop in for a cup of coffee!” Perhaps learning to listen and to slip into the other’s skin is not such a great achievement in itself, but for our seminar participants, it marks the point when confrontation ends and co-operation begins.

Zoya Kazanzhi, from Odessa, Ukraine, is a graduate of Kiev State University. She has completed study programmes under the auspices of IREX ProMedia, the World Bank and the BBC. She is the co-author of a handbook for journalism teachers and media trainers and an active contributor to OSCE/RFOM training programmes.

Mandate

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

PC.DEC No. 193

5 November 1997

137th Plenary Meeting

PC Journal No. 137, Agenda item 1

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

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

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

The Ministerial Council,

Recalling Permanent Council Decision No. 193 of 5 November 1997 on establishing an OSCE Representative on Freedom of the Media,

Considering that the first term of office of the current Representative on Freedom of the Media comes to an end on 9 March 2007,

Underlining the important contribution of Mr. Miklós Haraszti to the promotion of the freedom of expression and free media in the OSCE area,

Taking into account the recommendation of the Permanent Council,

Decides to extend the mandate of Mr. Miklós Haraszti as OSCE Representative on Freedom of the Media until 10 March 2010.

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

Declarations

International Mechanisms for Promoting Freedom of Expression

Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation

The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information,

Having met in Athens on 9 December 2008, under the auspices of ARTICLE 19, Global Campaign for Free Expression;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006 and 12 December 2007;

Recognising the importance to democracy, as well as to holding social institutions accountable, of open debate about all ideas and social phenomena in society and the right of all to be able to manifest their culture, religion and beliefs in practice;

Emphasising that there is an important difference between criticism of a religion, belief or school of thought and attacks on individuals because of their adherence to that religion or belief;

Noting that success in promoting equality in society is integrally linked to respect for freedom of expression, including the right of different communities to have access to the media both to articulate their views and perspectives, and to satisfy their information needs;

Aware of the fact that negative social stereotyping leads to discrimination and limits the ability of those subject to it to be heard and to participate in public debate;

Stressing that the primary means to address underlying social problems of prejudice is through open dialogue that exposes the harm prejudice causes and that combats negative stereotypes, although at the same time it is appropriate to prohibit incitement to hatred, discrimination or violence;

Welcoming the fact that a growing number of countries have abolished limitations on freedom of expression

- to protect religion (blasphemy laws) and noting that such laws are often used to prevent legitimate criticism
- of powerful religious leaders and to suppress the views of religious minorities, dissenting believers and non-believers, and are applied in a discriminatory fashion;

Concerned about the resolutions on “defamation of religions” adopted by the UN Commission on Human Rights and its successor, the Human Rights Council, since 1999, and the UN General Assembly since 2005 (see General Assembly Res. 60/150, 61/164, 62/154; Commission on Human Rights Res. 1999/82, 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, 2005/3; Human Rights Council Res. 4/9, 7/19);

Concerned also about the proliferation of anti-terrorism and anti-extremism laws in the 21st Century, in particular following the atrocious attacks of

September 2001, which unduly restrict freedom of expression and access to information;

Cognisant of the important contribution of respect for freedom of expression to combating terrorism, and of the need to find effective ways to counter terrorism which do not undermine democracy and human rights, the preservation of which is a key reason to fight terrorism in the first place;

Aware of the abuse of anti-terrorism and extremism legislation to suppress political and critical speech which has nothing to do with terrorism or security;

Stressing the importance of the role of the media in informing the public about all matters of public concern, including those relating to terrorism and efforts to combat it, as well as the right of the public to be informed about such matters;

Adopt, on 10 December 2008, the 60th anniversary of the *Universal Declaration of Human Rights*, the following Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation:

Defamation of Religions

- The concept of ‘defamation of religions’ does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own.
- Restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.

- Restrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- International organisations, including the United Nations General Assembly and Human Rights Council, should desist from the further adoption of statements supporting the idea of 'defamation of religions'.

Anti-Terrorism Legislation

- The definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public.
- The criminalisation of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them). Vague notions such as providing communications support to terrorism or extremism, the 'glorification' or 'promotion' of terrorism or extremism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalised.
- The role of the media as a key vehicle for realising freedom of expression and for informing the public should be respected in anti-terrorism and anti-extremism laws. The public has a right to know about the perpetration of acts of terrorism, or attempts thereat, and the media should not be penalised for providing such information.
- Normal rules on the protection of confidentiality of journalists' sources of information – including that this should be overridden only by court order on the basis that access to the source is necessary to protect an overriding public interest or private right that cannot be protected by

other means – should apply in the context of anti-terrorist actions as at other times.

Frank LaRue

UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszi

OSCE Representative on Freedom of the Media

Catalina Botero

OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula

ACHPR Special Rapporteur on Freedom of Expression and Access to Information

10th Central Asia Media Conference

The future of public-service broadcasting and the digital switchover in Central Asia Almaty, 16 – 17 October 2008

DECLARATION

The Tenth Central Asia Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media in co-operation with the OSCE Centre in Astana, and with the assistance of other field presences in the region, was held this year in Almaty, Kazakhstan.

Media professionals and government officials dealing with media governance from Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, as well as international and regional experts, gathered to discuss the latest media developments in their countries.

The specific focus of this year's conference was **the future of public-service broadcasting (PSB) in Central Asia, and how the digital switchover can support media freedom and media pluralism.**

The conference welcomed the fact that four Central Asian participating States were represented at the conference, acknowledging the values of public-service broadcasting. The conference encouraged governments, legislatures, and journalists of the region to transform their state-owned broadcasting institutions into independent public services. The conference appealed to relevant international organizations to provide assistance in this endeavour.

The conference stated that public-service broadcasting is one of the basic tools of democracies. They are indispensable in ensuring the freedom and transparency of elections, in fighting against hate speech, and in protecting the minority cultures of a country by offering objective news reporting and by broadcasting high quality programs.

When establishing public-service broadcasters, Central Asian countries should make sure that they create a legally protected broadcasting infrastructure, with guaranteed editorial autonomy, and with a financing system that allows the public-service broadcasters to be independent from both political and commercial interests.

While greeting Central Asia's first legislative effort to create public-service broadcasting, Kyrgyzstan's law "On Television and Radio Broadcasting", many participants noted with concern the amendments tabled by the President concerning the governing board. These amendments would transform the future public-service broadcaster from a government independent institution into a dependent one. The participants urge the Kyrgyz government to abide by international standards of independence of public service broadcasting from government, and provide a positive example for the region.

The conference also called attention to the changes affecting broadcasting in the digital era. Governments should regard the convergence of all broadcasting platforms into digital as a new opportunity to strengthen media pluralism. Governments should support equal access for all who wish either to broadcast or to receive broadcast, and establish independent licensing bodies.

The participants discussed ways how the financing of public-service broadcasting should be automated, in order to ensure that it can serve its distinctive mission when a multitude of digital channels will be available to

the public. In the digital era, the importance of an advertisement-free public-service broadcasting with high-quality and objective programming only increases.

The conference ended by highlighting potential future activities in the media field in Central Asia.

Almaty, 17 October 2008

Regular Report to the Permanent Council

FOM.GAL/2/08/Rev.2

13 March 2008

Mr. Chairman, Excellencies, Ladies and Gentlemen,

This report is presented to you as our Office reaches its tenth anniversary. We have received numerous congratulations, but I feel that the OSCE as a whole, including its participating States, should be congratulated for establishing and maintaining this unique Institution, the only intergovernmental media freedom watchdog in the world.

On this occasion, on 29 February 2008, the Office hosted an expert panel. The event was initiated by the Finnish Chairman in Office, demonstrating the importance the chairmanship ascribes to press freedom commitments within the OSCE.

The Secretary of State of the Finnish Ministry of Foreign Affairs, Pertti Torstila; the OSCE Secretary General, Marc Perrin de Brichambaut; and the Director of ODIHR, Christian Strohal, addressed the gathering. Freimut Duve, the first Representative from 1998 to 2004, greeted the meeting over the phone.

An impressive array of speakers outlined current and emerging challenges that we face on a daily basis. All geographical areas and all major issues were scrutinized, including cases where states tolerate harassment, or where murders of media workers occur; where pluralism is considerably restricted by undue governmental influence over broadcasting or publishing; where investigative rights for journalism regarding governmental data are denied; where offending or critical views are often punished, almost mechanically, as 'extremism' or 'hate speech'.

The tensions since 2006 over secular depictions of religious figures, as well as the wave of criminalization of certain interpretations of history, were given special attention by several speakers, and by the famous *Le Monde* cartoonist Plantu.

I would like to specifically call attention to the presentation of Thomas Hammarberg, the Human Rights Commissioner of the Council of Europe, who, on behalf of his organisation, joined my Office's appeal to participating States to decriminalize the professional mistakes of journalists – such as defamation and insult – and to allow these offences to be treated exclusively in civil courts.

In my address, I raised attention to an emerging trend that I find more worrying than all our above-mentioned everyday challenges.

Unfortunately, today we see a certain 'meltdown' of OSCE commitments. Their universality is being questioned. Ten years ago, the establishment of this office marked a moment when all participating States committed themselves to the universal values of democracy, including the protection of free expression and media pluralism. Today, just as in the days before the formation of the OSCE, different interpretations of democracy are being cultivated again, also with regards to speech rights. The requests for co-operation from the OSCE Institutions mandated to care for the fulfilment of the human rights commitments again are sometimes regarded as 'intrusion into internal affairs'.

Notwithstanding old and new challenges, all governments, civil societies, and journalists in our participating States can count on the dedication of this Office to keep the OSCE media freedom commitments alive, and advocate for compliance.

I wish to express my appreciation to the governments of **Finland, Germany,** and **the Netherlands,** which contributed to make the anniversary event and the forthcoming publication possible.

In this report, you will find:

- a summary of the issues that we have raised with participating States;
- a follow-up on our special report ‘Handling of journalists during political demonstrations’;
- an account of our project activities;
- a list of legal reviews prepared for participating States.

ISSUES RAISED WITH PARTICIPATING STATES

Armenia

On 4 March 2007, I called on the authorities to lift restrictions on independent news reporting that have been in place since the state of emergency was declared on 1 March. President Robert Kocharian’s decree obliges the Yerevan media to cite only official sources when reporting on national politics.

The non-state broadcast media has been limited to re-airing official news and programmes. Several independent and opposition websites have been blocked, and foreign radio and television coverage on Armenia has been restricted.

I noted that the state of emergency should not diminish the public’s right to news from diverse sources. Pluralistic reporting helps ensure transparency of governmental action even in dire times.

I believe the existing legal provisions against incitement to violence should be sufficient to tackle any potential misuse of speech rights, and should not be replaced by pre-emptive restrictions.

In my 20 December 2007 letter to Minister of Foreign Affairs, Vartan Oskanian, I raised the case of *Gala TV*, a regional broadcaster in the town of Gyumri that was facing law suits for tax evasion and for its use of a municipal TV tower.

I asked the authorities to work to preserve the existing pluralism, and find a compromise settlement of the issue, so that *Gala TV* can continue broadcasting.

I also asked the law enforcement agencies to investigate the 13 December 2007 explosion in front of an opposition newspaper, *Chorrord Ishkhanutyun*.

I look forward to receiving an answer from the Armenian authorities.

Azerbaijan

On 2 January 2008, I welcomed President Ilham Aliyev's decision to pardon five of the imprisoned journalists: Rovshan Kabirli and Yashar Aghazade, editor-in-chief and editor from the newspaper *Mukhalifat*; Faramaz Novruzoglu, correspondent from the newspaper *Nota Bene*; and Samir Sadagatoglu and Rafiq Tagi, editor-in-chief and correspondent of the newspaper *Senet*.

At the same time, I urged the authorities to release the three media workers who were not pardoned: Eynulla Fatullayev, editor-in-chief of *Realniy Azerbaijan* and *Gundelik Azerbaijan*, and the brothers Genimet and Sakit Zahidov of the newspaper *Azadliq*.

On 17 December 2007, I raised the case of Ilgar Nasibov, a correspondent of *Radio Free Europe/Radio Liberty*. He received a suspended one year prison sentence, for the alleged libelling of a Member of Parliament, who is also the President of the Nakhichevan University. The prosecutor accused Nasibov to be the author of an article that the newspaper *Azadliq* published back in May 2006, which was also found on his home computer hard disk. Nasibov denies the authorship. He also declares that he has never contributed to *Azadliq*, a statement confirmed by *Azadliq*. The trial was held behind closed doors.

On 18 and 20 January, Avaz Zeynalli, editor of *Khural* weekly, and Vugar Gurdganli, one of its journalists, were sentenced to two, and one and a half years of forced labour respectively, for libelling a regional administration head.

On 21 January 2008, the Grave Crimes Court sentenced Mushfig Huseynov, a correspondent of *Bizim Yol*, to six years of imprisonment under Article 311 of the Criminal Code ("bribing an official") for accepting a bribe. He was also banned from exercising his profession as a journalist for two years after his release from prison.

The harshness of this sentence is as unprecedented as the application of Article 311 against a journalist.

This new jurisprudence seems to continue in a current investigation against Nusrat Rahimov, founder of the *Azerbaijan Junhuriyyati* newspaper, who is held in custody for allegedly receiving a bribe from a member of parliament.

I have received a letter from the authorities in response to my request for information on the above three cases. It stated that all the above decisions were taken in full accordance with the existing legislation.

On 10 March, I protested against the four-year prison sentence handed down to the editor-in-chief of the opposition newspaper Azadliq Ganimat Zahidov. He is the brother of the imprisoned journalist Zahid Zahidov.

Ganimat Zahidov was convicted for “deliberately causing light injuries” and “hooliganism” in a trial in which the court did not allow key defence witnesses to testify. The charges were brought against him after a street skirmish on 7 November 2007.

I continue to encourage the Azerbaijani authorities to stop imprisoning critically minded journalists, and start reforming its handling of the media.

I am in contact with the Azerbaijani authorities and am glad to visit the country in the near future.

Belarus

On 18 January 2008, I protested against the severe three-year high-security prison sentence handed down by a court, behind closed doors, to Alexander Zdvizhkov, ex-deputy editor of *Zhoda* newspaper. The case – for ‘incitement of religious hatred’ – started in 2006, when *Zhoda* reprinted the controversial cartoons from the Danish newspaper *Jyllands-Posten*.

Zdvizhkov was arrested in November 2007, after returning to Belarus, having spent the meantime in Russia and Ukraine.

I am glad to report that Zdvizhkov was released on 22 February 2008, after the Supreme Court reduced his three years sentence to three months, equal to the term that he had already served. I welcome the decision; at the same time I call on the authorities to reform the legal media framework of the country, in order to preclude the misuse of hate speech regulations for persecuting journalists.

On 20 December 2007, I condemned the sentencing of *Novy Chas*, a small newspaper that was founded and produced by the former editorial staff of disbanded *Zhoda*. *Novy Chas* was ordered to pay 16,000 euros in damages to Nikolay Cherginets, the chairman of the foreign affairs committee of the upper chamber of Parliament and at the same time head of the Writers' Union. *Novy Chas* had made critical comments about Cherginets' political and literary activities. The paper lost its appeal at the Minsk City Court early February, which means that the newspaper may be closed soon.

The Office continues to co-operate with the Belarusian Government on the draft Law 'On Information, Informatization and the Protection of Information'. We have received the second draft of the law from the authorities, and we were glad to see that several changes proposed by our first legal review have been incorporated. Further details can be found in the 'Legal Reviews' section of this report.

I hope that prior to the parliamentary hearings of the draft in April 2008, my Office, jointly with the OSCE Office in Minsk, could present the review at a roundtable in Minsk.

Canada

I welcome a unanimous decision by the Ontario Appeals Court of 13 November 2007 in a defamation case, which affirmed the media's right to publish even inaccurate information, provided they did so in good faith and in the public's interest.

The decision means that, in the future, carrying out responsible journalism in the public interest should be a defence against libel and slander suits for the news media. The decision referred to a case involving an Ontario police

officer, who sued The *Ottawa Citizen* for defamation over an article published in 2001, which suggested that he had acted improperly.

France

Several cases of prosecutorial attempts in France at getting journalists to reveal their confidential sources, highlights the need for more efficient provisions to protect journalists' sources.

Therefore, on 14 January, in a letter to President Nicolas Sarkozy, I welcomed his announcement to introduce in 2008 new legislation to protect journalists' confidential sources from being revealed, and their offices and homes from searches aimed at identifying such sources.

I also welcomed a broadcast reform suggested by President Sarkozy that would eliminate advertising on public-service channels, but at the same time would enable the public service to get a share of the advertisement revenues collected at the commercial channels.

If backed by the necessary legal and financial details, which need to be worked out in co-operation with all stakeholders, this reform could serve in many countries as a model for the ailing 'dual system'. The co-habitation of public and commercial broadcasting is currently in crisis in many countries, and especially in most of the post-1989 democracies, because the public channels have to compete with the private ones on the advertising market. If reformed along the proposed lines, the success of the commercial channels could feed, rather than starve, the public-service broadcasting, and also enhance its independence from government.

In another letter to the President on 21 February 2008, I expressed my concerns following his criminal lawsuit against the website of *Le Nouvel Observateur*, following a piece that made allegations about his marriage.

Even though the article might have been irresponsible journalism, I asked the President to pursue the matter in a civil-law procedure.

Georgia

I have been closely monitoring the situation around *Imedi TV*, the most watched private TV broadcaster in Georgia that, together with *Kavkazia*, a Tbilisi-based TV station, and the *25 Channel* from Batumi, was closed down in the course of the November 2007 state of emergency.

I traveled to Tbilisi, together with Peter Semneby, the EU Special Representative for the South Caucasus, to help find a solution to the crisis. In my meetings with President Mikheil Saakashvili, Speaker of Parliament Nino Burjanadze, Foreign Minister Gela Bezhushvili, the Head of the Georgian Communications Commissions (GNCC) Giorgi Arveladze, and the management of *Imedi TV*, we agreed on the resumption of the station's work by early December, the beginning of the presidential electoral campaign.

I was glad to see the return of broadcasting pluralism in Georgia. Unfortunately, on 26 December, *Imedi TV* ceased broadcasting again, after numerous staff members resigned in a protest against interference with its editorial independence by its late owner, then presidential candidate, Badri Patarkatsishvili.

The crisis over *Imedi TV* has revealed that the authorities have to improve the transparency of ownership of means of communication. Guarantees of independence and pluralism of the media have to be reinforced. Political interferences with both public-service and private broadcasting outlets have to be stopped. The upcoming parliamentary elections in May can serve as a test of a renewed self-restraint by the government, as well as vigilance against favouritism by the journalistic community.

Germany

As I informed you in my previous report to the Permanent Council, in October 2007, in a letter to Justice Minister Brigitte Zypries, I addressed the issue of the new law for telecommunication surveillance. While the law acknowledges journalists' rights to refuse testimony about their sources, it still puts the protection of journalists from surveillance measures into a lower category than what priests, parliamentarians, and defence lawyers will enjoy. I believe this arrangement would limit journalists' right to protect the sources of their pieces scrutinizing government. Shielding investigative journalists from surveillance is as much a constitutional value in a democratic society as, for example, shielding defence lawyers from surveillance.

Unfortunately, the draft was adopted by the Bundestag without the proposed changes on 9 November 2007. On 26 November, I was glad to receive the Minister's answer, in which she expressed the government's position that a further enhancement of protection of journalists from surveillance is not constitutionally necessary. In fact, a number of German journalist associations and unions challenged the law at the German Constitutional Court. I continue to follow the developments.

Hungary

On 27 November, following the short arrest of two journalists at an unauthorized demonstration in Budapest, I asked the Hungarian police to guarantee the right of journalists to cover any public event, regardless of whether it was authorized or not. I also called on journalists to visibly identify themselves as media professionals, preferably with the help of authorized vests.

On the ensuing negotiations between law enforcement and the journalistic community, please see our follow-up to our June 2007 'Report on Handling of the Media during Political Demonstrations' later in this document.

On 19 December, I greeted the long-due acquittal of Antónia Rádi, a leading Hungarian investigative journalist, who had been on trial since 2003 on breach of secrecy charges. My Office was allowed to follow the closed trial in an observer status. I also called on the Hungarian authorities to reform legislation on disclosing state secrets. The country still follows the obsolete practice of punishing civilians, among them journalists, for the publication of classified information.

Italy

In my 21 December 2007 letter to the authorities, I raised the case of journalist Giuseppe d'Avanzo, whose house was searched by the police on 13 December 2007, following his publishing of transcripts of phone conversations, which were tapped by law enforcement. The police were trying to identify the journalist's confidential sources.

I was glad to receive a prompt reply and references to the relevant Italian legislation from the Head of the Permanent Delegation of Italy. He also assured me that my suggestions for improvement of the legal framework for the protection of journalists' confidential sources would be duly considered by the government.

Kazakhstan

In December 2007 and in January 2008, at least three websites hosting independent media, including www.zonakz.net, www.kub.kz and www.geo.kz, were temporarily inaccessible. Allegedly, access to these websites was blocked by Kazakhstan's near-monopoly, state-dominated Internet Service Provider (ISP) Kazakhtelecom.

I asked our colleagues from the OSCE Office in Astana to bring my concerns to the attention of Minister of Culture and Information, Yermukhamed

Yertysbayev. I presented my Office's recommendations on the media freedom on the Internet. I hope that the authorities will ensure a blocking-free operation of the Internet in Kazakhstan.

I continue to assist the authorities in reforming the country's media legislation. Although the April 2007 NGO-formulated draft was recently revoked by Parliament, the dialogue between the authorities and the media community should continue so that Kazakhstan can adopt the legislation signalled by Minister Yertysbayev in his July 2007 address to the Permanent Council.

Regarding the legal reviews provided to Kazakhstan, please see the relevant section later in this report.

The former Yugoslav Republic of Macedonia

On 29 January 2008, I joined the call of the OSCE Spillover Monitor Mission to Skopje, asking the authorities to urgently react to a series of violent acts against journalists.

On 26 January 2008, the owner of *Kanal 77 Radio*, Goran Gavrilov, was attacked in front of his house in Stip and brutally beaten. The Ministry of the Interior immediately launched an investigation and up to date three persons were detained and charged with attempted murder.

An earlier attack on 26 September 2007 by special police unit Alfa against a cameraman from *ALSAT M TV* led to the removal of the officers from duty.

No new developments are reported in the 24 September 2007 case of the attack against a journalist by a political party-hired body guard in the Parliament, even though the incident was filmed.

Montenegro

On 6 March 2008, I wrote to newly appointed Prime Minister of Montenegro, Milo Djukanovic, asking him to drop a one million Euro lawsuit filed against the daily *Vijesti* and its director, Zeljko Ivanovic. The journalist was severely beaten in Podgorica on 1 September 2007. Thereafter he made claims that, as a former president and prime minister, Mr. Djukanovic holds responsibility for creating an atmosphere where violence against journalists is acceptable.

I asked Mr. Djukanovic to drop the case, because I believe that the suit is inconsistent with his public status, both as a former and the current Prime Minister. According to international standards, for the sake of free discussion in society, elected officials are to tolerate harsher criticism than ordinary citizens.

Poland

In my 15 January 2008 letter to newly appointed Minister of Foreign Affairs, Radoslaw Sikorski, while congratulating him, I invited the new Government of Poland to consider decriminalizing defamation.

The previous Polish Government opposed decriminalisation of defamation. Since early 2005, I had to intervene with the Polish authorities in four cases where criminal sentences were handed down to journalists, including suspended prison sentences. That made Poland the only country in the European Union where journalists are actually sentenced to prison for defamation.

I asked the new government to use the opportunity to liberate the media from fear of imprisonment for possible professional mistakes, by letting defamation cases be solved in civil courts.

Russian Federation

During the campaign leading up to the 2 December Duma elections, several press freedom commitments were not met. On 4 December 2007, I submitted a report to Foreign Minister Sergey Lavrov, on cases of harassment of media outlets, legislative limitations, and arbitrary application of rules during this campaign, which prevented equal access to the media by the competing political forces.

On 10 December, the press department of the Ministry of Foreign Affairs issued a commentary regarding my report, which the Head of the Permanent Delegation of the Russian Federation to the OSCE handed over to me as the official answer of the Ministry to my letter.

The report can be found at <http://www.osce.org/item/28666.html>.

The commentary by the Ministry can be found at http://www.in.mid.ru/brp_4.nsf/f68cd37b84711611c3256f6d00541094/e0a4052f81b80867c32573ae005bcdae.

During the election campaign leading up to the 2 March 2008 presidential election, based on the available monitoring results, the trend of a lack of equal access in the broadcast media seemed to continue. The then-candidate of United Russia, President-elect Dmitry Medvedev, refused to take part in the candidate discussions organized by television channels, but received more face, voice, and coverage time than the other candidates.

On 18 December 2007 and 21 January, I asked the Russian authorities for information about the case of Natalia Morar, a well-known investigative journalist of the Moscow-based magazine *Novoye Vremya*, who was denied re-entry to the Russian Federation and had to return to Moldova, her home country.

No reasoning was given for the denial, except that it was ordered by the Federal Security Service (FSB) based on 'national security considerations'. On 27 February 2008, Ms. Morar, who had lived for ten years in Russia, and in the meantime married her Russian fiancé in Moldova, was again denied entry to Russia.

Morar's pieces included reports on the murder of the Deputy Director of the Central Bank. Her most recent article, *The Black Cash Desk of the Kremlin* («Черная касса Кремля»), covered alleged illegal financing of parties by state companies through the presidential administration during the 2008 elections to the Russian State Duma.

In reply to my enquiry, I was officially informed that Russian law-enforcement agencies have the legal right to deny entry to Russia to any person who they deem to be a danger to the country's security, without any explanation.

I find this answer unsatisfactory. The arbitrary expulsion of a journalist violates the OSCE commitments on freedom of expression and freedom of movement, both of which are core principles of the Helsinki process.

I will continue to follow this case in the hope that the Russian authorities will review the procedure, so that Natalia Morar could return to Russia to continue her work.

Serbia

In a statement on 25 February 2008, I joined the OSCE Mission in Belgrade raising the incidents where journalists were prevented from doing their work while covering political demonstrations.

Journalists in Belgrade covering a protest on 21 February 2008 as a reaction to Kosovo's proclamation of independence suffered physical attacks. For

details, please see the follow-up section on the handling of journalists during political demonstrations.

In the above statement, I also decried the threats received by media for their reporting. In these cases, mere reporting on differing views regarding the Kosovo declaration was sufficient to be exposed to threats. The director of the TV station *B 92*, Veran Matic, and his family received death threats via email. He filed criminal charges against unknown assailants.

I call upon the Serbian authorities to continue to speak up and act against such practices. Verbal violence can lead to physical violence, as we have seen on repeated occasions. It is a basic OSCE commitment that governments uphold the right of the media to convey differing opinions, even in times of tension or heated debate.

Slovakia

On 18 January, I wrote to Foreign Minister Ján Kubiš, asking the Slovak Government to withdraw its draft Press Act from Parliament in its current version. I also offered my Office's assistance to prepare a legal review with recommendations. My early warning was prompted by the fact that the draft contained provisions that would severely restrict editorial autonomy, and could turn government officials into 'judges' of media content. This could lead to arbitrary political use of the law.

On 7 February, I was invited to Bratislava to meet with Minister of Culture Marek Mad'arič and State Secretary Ivan Sečík, to discuss the controversial sections of the draft. A week later I submitted an independent legal review of the draft law, containing key recommendations and highlighting international standards. See details in the section on our recent legal reviews.

I have been in continuous contact with the Slovak authorities, and on 28 February I also met with Mr. Kubiš to discuss this issue. Although the Parliament voted for the unchanged draft after its first reading, I have received assurances from the authorities that our recommendations would be implemented before the draft's second reading. The amendments are currently being prepared for committee and plenary level discussions in Parliament, and my Office stands ready to continue assisting in this process.

Slovenia

On 21 January 2008, following my request to provide information on the background of the 'Petition against Censorship and Political Pressures on Journalists in Slovenia', signed by many journalists, the Government expressed willingness for a dialogue with the signatories on the state of media freedom in the country. I will continue to follow this matter.

Uzbekistan

On 3 February 2008, I was glad to hear that journalist Umida Niyazova was amnestied. Originally, she had been sentenced to a prison term on three accounts, including 'production and distribution of materials containing a threat against public safety or public order', which was later mitigated to a suspended sentence. It is good to know that she is free. In order to prevent future criminalization of journalists, I ask the authorities to review the underlying legal provisions.

On 6 February 2008 I asked the authorities to facilitate the resolution of the seizure by the Customs of my Office's 2005 publication titled '21st Century Challenges for the Media in Central Asia'.

I hope that the OSCE Project Co-ordinator in Tashkent and the relevant authorities can find a solution, and the books will reach their readers.

Follow-up on the RFOM report 'Handling of journalists during political demonstrations'

During the reporting period, my Office received reports of clashes between media professionals and police during political demonstrations, rallies or other public events. The following is a non-exhaustive list of such incidents reported.

The list proves that the issue of this type of violence against journalism remains crucial in the OSCE area. I reiterate the main finding of our special report, published in June 2007 (http://www.osce.org/documents/rfm/2007/06/25176_en.pdf). On the one hand, the police should always guarantee the right of journalists to cover any public event, regardless of whether it was authorized. On the other hand, journalists should visibly identify themselves as media professionals, they should make sure that their reporting does not inflame the situation, and they should refrain from participating in the demonstration.

Armenia

The police prevented several journalists from covering the 19 February 2008 presidential election and the events that followed it:

On 19 February 2008, Samvel Avakyan, a correspondent of the Yerevan opposition newspaper *Ayk* was beaten up by policemen when he attempted to report about the situation at a Yerevan market, where policemen were allegedly handing out ballots to people, putting them into buses to be driven to various polling stations of the city.

On 28 February 2008, policemen attacked a photographer of the *Aravot* and *Chorrord Ishkhanutyun*, Gagik Shamshyan, on the Liberty Square in Yerevan, thus preventing him from exercising his professional duties.

Belarus

One journalist was sentenced to 15 days in prison, and three other interrogated in Minsk after covering an unsanctioned rally of entrepreneurs in Minsk on 10 January 2008.

Arseny Pakhomov, a freelance photographer of the independent weekly *Nasha Niva*, was arrested and sentenced to 15 days in prison for participating in an unsanctioned rally and petty hooliganism.

Freelance television journalists Galina and Vladimir Samoilov and Valery Buldyka were detained and interrogated for three hours; their equipment was confiscated.

Hungary

In late November 2007, as mentioned above, I intervened in the case of the temporary arrest of two journalists covering an unauthorized demonstration in Budapest.

I greet the fact that the negotiations between law enforcement agencies and the media community have ended, and the two sides have agreed to a joint set of recommendations to ensure the safety of journalists during demonstrations. Currently, both the police and the Association of Journalists are issuing visibility vests to journalists.

Kyrgyzstan

On 20 December 2008, two journalists were detained during a protest rally after the parliamentary elections. Toleskan Ismailova, a correspondent of 24.kg news agency, and Nazgul Turdubekova, a reporter of the *Deutsche Welle*, were detained while they were covering the protest.

Russian Federation

On 26 January, journalists who attempted to cover a violently suppressed street rally in Nazran were themselves detained and some of them were beaten in Nazran, the capital of the southern Russian Republic of Ingushetia, before being deported to the neighboring Russian republic of North Ossetia.

The nine journalists involved in this incident were Vladimir Varfolomeyev, Roman Plyusov, (independent radio station *Ekho Moskvy*), Semyon Eryomin, Konstantin Shelyapin, and Andrei Zhilnikov (St. Petersburg-based independent television *Channel 5*), Said-Khusein Tsarnaev, (state news agency *RIA-Novosti*), Mustafa Kurskiev, (newspaper *Zhizn za nedelyu*), Danila Galperovich (*Radio Free Europe/Radio Liberty*) Olga Bobrova (newspaper *Novaya Gazeta*).

Yekaterina Sokiryanskaya and Tamerlan Akiyev, activists of the human rights NGO Memorial, were also prevented from filming the rally.

Serbia

On 21 February 2008, as mentioned in the section on interventions, journalists in Belgrade covering a protest against Kosovo's proclamation of independence endured physical attacks. Two Russian journalists from Russia Today and photographer Dirk-Jan Visser from Holland's *NRC Handelsblad* suffered injuries.

A crew of Radio Televizija Srbije (RTS) was attacked during a separate protest.

Switzerland

On 26 January 2008 in Basel, while trying to prevent an unauthorized, so called 'chaos-demonstration' against the Davos World Economic Forum, police temporarily detained two journalists working for both national and foreign media.

Upon my inquiry, I was informed by the Delegation of Switzerland, that an investigation by the cantonal police of Basel is ongoing. An independent report on the case, published on 6 March 2008, concluded that the detentions were not justified.

The police of Basel accepted this criticism, and as a result of the incident the police corps intends to hold talks with journalists' association, in order to agree on common procedures for easy identification of journalists, given the wide range of press cards in circulation.

PROJECTS & ACTIVITIES SINCE THE LAST REPORT

Visit to the Council of Europe, 23 – 24 January 2008, Strasbourg

On 23 – 24 January 2008, I paid a visit to several high officials of the Council of Europe (CoE) to discuss issues of common interest and reinforce cooperation in certain areas.

I met with CoE's Secretary General, Terry Davis, the Commissioner for Human Rights, Thomas Hammarberg, the standing rapporteur on media issues and member of the Parliamentary Assembly of the Council of Europe (PACE), Lord Andrew McIntosh, the Director General of Human Rights and Legal Affairs, Philippe Boillat, and other officials.

The visit emphasized that legal standards established by the Council of Europe are a solid base in RFOM's work to promote compliance of participants States with the OSCE's media freedom commitments. The CoE's standards codify the minimum that is expected from a European democracy.

Our partners outlined the plans for the next European Ministerial Conference dedicated to media, scheduled to take place in Reykjavik in May 2009.

Several topics were raised during the two-day visit.

- ***Access to information***

A Draft European Convention on Access to Official Documents is currently in the making. On 9 January 2008, I approached those Heads of Delegations to the OSCE which represent countries which are also members of the Council of Europe. I highlighted the main deficiencies of the draft Convention and asked the Heads of Delegation to forward my concerns to their respective Government bodies. As the draft stands now, it sets only minimum standards on access, although many states have enacted far more progressive laws. The following essential improvements need to be made:

- The scope of the treaty should include all information held by all bodies, including legislative and judicial authorities;
- The treaty should require the states to set a maximum period for responding requests;
- The treaty should guarantee individuals access to an appeals body that is able to order releases of information in cases of unjustified denial;
- The treaty should guarantee the right to appeal all administrative violations that infringe on their right of access;
- Proactive publication of information should be required by the treaty.

- ***Decriminalization of defamation***

During my talks with Secretary General Davis and human rights commissioner Hammarberg, I extended my gratitude for their public statements supporting the decriminalization of defamation. I also thanked Lord Andrew McIntosh for the adoption by the CoE Parliamentary Assembly of Resolution 1577 (2007) 'Towards Decriminalisation of Defamation', which calls on the CoE member states to abolish imprisonment for defamation. It also asks the states to remove any increased protection for public figures in accordance with the European Court of Human Rights' case-law.

Hearing before the Helsinki Commission in Washington D.C.

On 10 – 15 December 2007, I visited Washington for a Hearing in Congress, chaired by Alcee Hastings, Chairman of the Commission on Security and Cooperation in Europe (the Helsinki Commission) on the situation of media freedom in the OSCE region.

The issues discussed included violence against journalists; restrictions of media pluralism and governmental influence over broadcasting; criminalization of journalism.

I also voiced my support for the draft of a Federal-level ‘shield law’ (H.R. 2102) which would protect the right of journalists not to reveal their confidential sources. I noted that the adoption of this overdue law would set a positive example for other OSCE countries.

During my Washington visit, I met the Chairman of the House Committee on Foreign Affairs, Representative Tom Lantos, and received his assurances of his support for the journalist shield law in the U.S. I also thanked him for his public protest against acquiescence by certain U.S. IT firms to filtering and blocking in countries where Internet is censored.

I was shocked to hear of his death on 11 February. His relentless care for human rights made him a role model worldwide.

Protection of journalistic sources – ECHR

I am pleased to report on a landmark ruling of the European Court of Human Rights (ECHR) on a case which I followed for several years.

In its ruling of 27 November 2008, the ECHR held that a raid on journalist Hans-Martin Tillack’s home and office in early 2004 in Brussels was a violation of his right to freedom of expression. Tillack, a correspondent of

Stern magazine, reported on alleged corruption at the Anti-Fraud Agency of the **European Union** (OLAF).

The court said that it was 'evident' that the real purpose of the searches was to identify the journalist's source. It added that a journalist's right to protect his or her sources was not a 'mere privilege' but 'part and parcel of the right to information,' and therefore had to be treated with 'utmost caution'.

Self-regulation

On 12 February 2008, I congratulated the journalists of **Kyrgyzstan** on the launch of an independent media self-regulatory body, the first in Central Asia. I hope that this initiative will encourage media professionals in other countries of Central Asia to create similar accountability systems. Let me recall, that self-regulation was the topic of the ninth Central Asia Media Conference, organized by the RFOM in Dushanbe in November 2007.

Broadcast regulation in the digital age

On 3 December 2007, my Office held an 'Expert Hearing on Broadcast Regulation in the Digital Age' in Vienna. Media officers from a number of OSCE field presences were invited.

Experts including from the British Ofcom, the European Platform of Regulatory Authorities (EPRA), and the EU Commission outlined the regulatory challenges to freedom of the media in times of digital convergence. In the EU the switchover to digital TV is scheduled for 2012 the latest. This might allow for more pluralism, but, at the same time, the potential convergence of regulatory authorities might pose dangers to freedom of the media.

As there is no internationally recognized standards and only few good practices, extensive consultancy and utmost transparency and evaluation is needed in each country, the experts stressed.

My Office will continue to follow these developments and advise on them.

Joint Declaration by global media freedom rapporteurs

On 8 December 2007, I issued a joint declaration together with my counterparts of the United Nations, the Organisation of American States and the African Union. The focus of this year's meeting, facilitated by Article 19 in Amsterdam, was the new role and scope of government involvement in safeguarding diversity in the era of digital broadcast.

The joint statement emphasized the potential for more diversity following the future multiplication of available channels. But it warned that some broadcasting types which remain essential for democracy, such as public-service and community media, may be endangered.

The four rapporteurs called for less regulation, in particular for less licensing, and thereby less governmental involvement. They also called for safeguarding pluralism, especially in news broadcast, and securing enough frequencies for economically weaker programmes, such as community or minority language broadcast. Since public-service broadcasting will gain importance as a reliable source for pluralistic information in the digital era, special attention must be given to its financing and independence.

The joint declaration is available at:

https://www.osce.org/documents/rfm/2007/12/28855_en.pdf

Legal Reviews

Belarus

My Office continues to co-operate with the Belarusian authorities on the draft Law 'On Information, Informatization and the Protection of Information'. My Office has commissioned a legal analysis of the second draft of this law, which will be discussed at the next session of the House of Representatives of the National Assembly.

I hope that prior to this parliamentary hearing, my Office, jointly with the OSCE Office in Minsk, could organize a round table discussion of the draft in Minsk.

Kazakhstan

Following a request from the Government of Kazakhstan, my Office commissioned legal reviews of several legislative proposals concerning the media. An expert from a Moscow-based media law institute analyzed the draft Media Law and the amendments to defamation articles of the Criminal and Civil Codes («О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам диффамации в СМИ») submitted in one package to the Parliament on 18 April 2007.

We also reviewed the December 2007 draft amendments of the defamation provisions of the Criminal and Civil Codes of the Republic of Kazakhstan elaborated by the Ministry of the Interior («О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам диффамации в СМИ»)

The documents are downloadable in Russian and English at:

<http://www.osce.org/item/29833.html> (English);

<http://www.osce.org/item/29833.html?lc=RU> (Russian);

<http://www.osce.org/item/29834.html> (English);
<http://www.osce.org/item/29834.html?lc=RU> (Russian).

On 25 February 2008 in Astana, together with the OSCE Centre, my Office organized a round-table to present both reviews to government officials, parliamentarians, representatives of the non-governmental sector, media lawyers, journalists and experts involved in the drafting process of the media legislation.

Slovakia

As mentioned above, I commissioned an analysis of the draft Press Act, containing practical recommendations on how to bring the draft into line with the country's international commitments to protect media freedom.

The review was prepared by ARTICLE 19, a leading global freedom of expression and freedom of information organization.

The document is downloadable in Slovak and English at
http://www.osce.org/documents/rfm/2008/02/29687_sl.pdf (Slovak) and
http://www.osce.org/documents/rfm/2008/02/29687_en.pdf (English).

Internet

Regulation

My Office received information that in a number of participating States – including Azerbaijan, Belarus, Russia, and Kazakhstan – the introduction of new legislation to regulate the Internet is discussed.

Our Office holds that Internet regulation should be limited to areas where it is absolutely unavoidable, and it should be clearly based on constitutional values and international commitments such as freedom of expression and the free flow of information. Guarantees of freedom of the media hosted on the Internet shall also be explicit in any upcoming regulation.

The Internet should be seen as a space that works best autonomously and without any intervention.

I would like to reiterate my invitation to participating States to co-operate with my Office in the process of drafting and discussing such legislation.

For recommendations on the issue, see our Media Freedom Internet Cookbook at http://www.osce.org/fom/item_11_13570.html .

UN Internet Governance Forum (IGF)

I thank the governments of **Germany** and **Ireland** who made the participation of my Office in the activities of IGF possible through their extra-budgetary contributions.

On 12 – 15 November 2007, my Office participated in the 2nd IGF in Rio de Janeiro. The main activities included:

- A joint workshop on media freedom on the Internet was conducted together with the Council of Europe and UNESCO, entitled 'Freedom of Expression as a Security Issue'. All participant experts agreed that

freedom of expression and security on the Internet are not contradicting but complementing values in the information society.

- My Office also chaired a meeting of the 'Dynamic Coalition on Freedom of Expression and Freedom of the Media on the Internet' (FOEonline), an informal working group within the IGF process, attended by i.a. Amnesty International, the Open Net Initiative, the World Press Freedom Committee and Google.

Training

On 12 December 2007, we continued our series of training courses for journalists and press officers in Dushanbe, Tajikistan. The main goal of the seminar was to increase public access to official information, as well as to foster effective interaction between state administration bodies and journalists. The event was attended by 30 participants, and was organized jointly by my Office and the Presidential Administration, with support from the OSCE Centre in Dushanbe.

Participation of the Office of RFOM in other OSCE and external events

On 14 – 15 February 2008, my Office participated at the annual meeting of the Network Media Ethics in **Munich**.

On 19 December 2007, my Office contributed to a roundtable discussion on the 'Challenges of the implementation of the Law on Free Access to Public Information and the need to improve the Law' in **Skopje**.

On 18 and 19 December 2007, an Office member attended the OSCE 2007 Mediterranean Seminar and NGO roundtable on Combating intolerance and discrimination and promoting mutual respect and understanding in **Tel Aviv**, Israel.

On 3 and 4 December 2007, my Office delegated an expert to the 'Regional Conference on media self-regulation for South-East Europe, organized in **Skopje** by the OSCE Mission in Kosovo.

On 29 – 30 November 2007, the Representative attended the OSCE Ministerial Council in **Madrid**.

On 28 – 29 November 2007, my Office was invited on expert level to the Frankfurt Days of Media Law in **Frankfurt/Oder**.

On 22 – 23 November 2007, an Office member was invited to participate at the annual 'Mediendisput' in **Mainz**.

On 17 November 2007, the Representative participated as a panellist at the Liberal Thinkers' Conference on 'The Future of Freedom' organized by the Friedrich-Naumann-Foundation in **Hamburg**.

On 14 November 2007, an Office member participated at the international conference on 'Access to Information, Government and Media relations' in **Baku**.

Project activities confirmed for the next period

- On 17 March, I will chair the High Level Policy Meeting on Media Legislation Reform in **Kyiv**. The meeting is organised jointly by the OSCE, Council of Europe, and EU Commission.
- The next confirmed training seminars are planned in **Georgia** for 18 – 19 March and in Kyrgyzstan on 26 – 27 March. These seminars are made possible by a donation from Switzerland.
- On 17 – 19 May in **Paris** I will address the Eurasia Regional Forum for Media Development. The event is organised by Internews, Europe.

- 19 – 20 May 2008, I am invited to participate at the Black Sea seminar on freedom of expression in **Chisinau** as a keynote speaker. The event is organized by the European Commission and the Moldovan Ministry of Foreign Affairs.
- Together with the **Open Net Initiative (Universities of Toronto, Harvard, Cambridge and Oxford)**, my Office will continue to work on a survey on Internet filtering in the OSCE region. First results and a publication are expected for summer 2008.

As every year, I use the opportunity of my first addressing of the PC to announce our **extra-budgetary fundraising efforts for 2008**. Especially the regional media conferences in the South Caucasus and in Central Asia, but also other projects, can only be carried out if we can continue to count on the participating States. Let me extend a warm thank you to the donors who contributed in 2007.

Regular Report to the Permanent Council

3 July 2008

FOM.GAL/3/08/Rev.1

Mr. Chairman, Excellencies, Ladies and Gentlemen,

In a World Press Freedom Day statement, on 3 May, I summarized the concerns that underlie the interventions and project activities presented in this report.

I named two tasks as most important: curbing violence against journalists, and abolishing undue restrictions on free speech and reporting.

In the past year, we saw deterioration in two crucial dimensions of press freedom – the physical security of journalists, and the legal protection of critical speech.

Violence targeting journalists in several OSCE countries, mostly in revenge for critical coverage, was rising. Additionally, many such actions were conducted with impunity.

Violence against journalists is not ‘crime as usual’, because it is meant to undermine a basic institution of democracy – the free press. Those who contract murders of journalists (or, for that matter, who issue *fatwas* calling for the same) pursue the goal of silencing democracy’s press by violence.

I also called on governments to protect the safety of journalists by effectively assisting them as they cover demonstrations, including unsanctioned ones.

Arbitrary, politically motivated restrictions on dissenting or offensive speech endanger media freedom as effectively as violence does. They range from

labelling as 'extremist' the reporting, debates, or criticism on controversial issues to criminalization of historical or religious disputes. These tailor-made bans come in addition to the criminalization of 'defamation' and 'breach of secrecy', which still continues to harm professional journalism in many countries.

This is why I urged governments to abstain from arbitrary restrictions on discourse in society, and to grant broad protection to the right of discussing, dissenting, even deriding, all of which are crucial in democratic societies.

In this report, among other information, you will find:

- a summary of the issues that we have raised with participating States since my last report;
- an account of my visits to participating States;
- a summary of our latest publication on media self-regulation;
- an update on legal reviews that my Office has prepared for participating States.

Issues Raised with Participating States

Armenia

I welcome the **17 June** decision of the European Court of Human Rights (ECHR) in favour of the independent TV station *A1+*. The station was deprived of its license in 2002, and has been denied a new license ever since. According to the ECHR verdict, the repeated and unexplained denials of a broadcasting license to *A1+* violated Article 10 of the European Convention on Human Rights, and interfered with the fundamental right of freedom of expression and the right to impart information and ideas. In addition, the Armenian government was ordered to pay the station 20,000 euros (US\$31,000) in damages to the television station.

The verdict in Strasbourg does justice to a longstanding complaint. Until its deprivation of frequencies in 2002, A1+ was Armenia's most-watched TV station with an indisputably independent line. It used to be and could have remained an important component of a pluralistic media landscape.

My 2006 assessment report on the state of media freedom in Armenia dealt in detail with the plight of A1+. At that time we recommended that for the sake of pluralism, the station should be given back its license that was taken away by repeated arbitrary decisions.

We also recommended reforming the faulty licensing process. One of our main observations in our report was that the composition of the body in charge of handing out licenses itself lacks pluralism as the majority of its members are practically appointed by the president. This major weakness of Armenia's media governance should be corrected by ways of legal reform

I hope that Armenia's new presidency will assign these tasks the importance they deserve.

Azerbaijan

Already in my March report, I expressed concern over the continuing persecution of independent journalists. Three of the most famous journalists of the country, among them two editors-in-chief, **Eynulla Fatullayev, Ganimat Zahidov and Sakit Zahidov still remain in prison**, serving multi-year sentences based on fictitious charges, such as menace with terrorism, tax evasion, drug possession or hooliganism.

Since March, I had to intervene on new cases of harassment of the few independent journalists and outlets.

On 11 April, while in Azerbaijan, and in correspondences with the authorities later, I raised the case of the young *Azadliq* reporter **Agil Khalil**. Mr Khalil,

while investigating an illegal tree cutting in a public garden in Baku in February, was attacked by high-standing law-enforcement officers who have been identified since then. (In fact, the attack was captured on phone video by passers-by, and can be viewed on *YouTube*.) After this incident he was followed and threatened. On 13 March he was stabbed when leaving the editorial office of *Azadliq*.

Instead of pursuing the connection between the beating and the stabbing of Agil Khalil, the investigation against the February perpetrators was closed, while the prosecution started a campaign to discredit the victim. A half-hour video was authorized by the Chief Prosecutor claiming that the stabbing of Khalil was related to an alleged homosexual relationship. It was broadcast by almost all Azerbaijani TV channels on 7 April. Being in Baku at that time, I had the chance to watch these odd propaganda pieces.

On 7 May, Mr. Khalil suffered two new separate assaults. An attempt was made to push him under a train at a metro station, and unidentified assailants attacked him on the street.

On 24 June, I asked the authorities to investigate another physical attack, this time against **Emin Huseynov**, the head of the local media freedom watchdog organization *Institute for Reporter Freedom and Safety*. Mr. Huseynov was detained while monitoring a public event in a Baku cafe. He was threatened and insulted, struck on his head and neck, including with a handle of a gun. He lost consciousness, and is still recovering from a brain concussion.

The official media, in this case as well, was used as a tool to discredit the victim of the attack. My Office is monitoring the trial of Sergey Strekalin, a demimonde who was presented by the prosecution as the one who had claimed responsibility for the March stabbing of Mr. Khalil.

The trial started by the court's denial of Mr. Khalil's right to travel abroad, as if he were the criminal, not the victim of the case.

In my correspondence with the authorities, I criticised the worrisome prosecutorial attitude of harassing and slandering the victimised journalists, instead of defending them.

I am afraid that the dubious case against Strekalin, designed to shield the February attackers from punishment, would inevitably become an immense setback for the international reputation of Azerbaijan. The court trial against the "self-confessed perpetrator" is especially regrettable in a democracy that has overcome the era when prosecutors staged cases against critically-minded citizens.

I again appeal to the Azerbaijani authorities to release all imprisoned journalists regardless of whether or not they have signed pardoning petitions. I ask them to ensure that the law-enforcement authorities, in compliance with OSCE commitments, protect media workers from violence, and refrain from campaigning against them.

(See also section on visits.)

Belarus

On 28 March, I criticised a clampdown on independent journalists and media outlets. According to reports, on 27 March, the homes of up to thirteen independent journalists were searched. The concerned journalists work, among others, with the media outlets *Euroradio*, *Radio Racia* and the satellite TV channel *Belsat*. The premises of these outlets were also raided and searched.

The warrants for the actions were issued by the Deputy Prosecutor of Minsk, and some of them were linked to a 2005 criminal libel case involving cartoons depicting the Head of State.

My Office continues to cooperate with Belarus in the field of legal reforms.

On 26 March, in Minsk, my Office presented a legal review on the second draft law on “Information, Informatization and Protection of Information”.

On 27 June, I called on the upper chamber of Belarus’s parliament not to adopt the draft Law on the Mass Media as it would further restrict media freedom in the country.

The draft further extends the government’s right to warn, suspend and close down media outlets. A fuzzy requirement of ‘compliance with reality’ for media materials was also introduced. We found in the draft complicated, burdensome systems of media registration and journalist accreditation. The draft law does not offer sufficient measures to prevent monopolization of the media. It does not protect in practice journalists’ confidential sources. It opens the possibility for restrictive future regulations on Internet-based media.

On 28 June, the draft was adopted by the Upper Chamber of the Parliament.

On 1 July, Mr. Yuri Kulakovsky, the Chairman of the Standing Committee for Human Rights, National Relations and Mass Media of the National Assembly, informed me that some of my recommendations were taken into account before the adoption of the law.

I was glad to hear this, as well as to see some minor improvements in the final version. Unfortunately, the law as a whole has remained restrictive.

I also propose that any upcoming media legislation is carried out with the involvement of non-governmental organizations and the journalistic community of Belarus.

(See also the section on legal reviews.)

Bosnia and Herzegovina

On 29 April, I asked the authorities of Bosnia and Herzegovina (BiH) for additional information regarding the incident of Sadik Bahtič. On 18 April, in Bihac, Mr. Bahtič, a Member of Parliament (MP), used physical force against *FTV* journalist and cameraman **Avdo Avdič** and **Refik Vejsilagić**, in order to prevent them from attending a press conference organized by the Party for Bosnia and Herzegovina (SBiH), one of the leading political parties in BiH.

I was glad to learn that his party took disciplinary measures against MP Bahtič.

Endangering the free flow of information is a breach of BiH's OSCE commitments. Moreover, public-service broadcasters have a special role in providing information in a democracy, and therefore governments should secure their safe working conditions.

On 8 May, I participated in a conference on media freedom held under the auspices of the OSCE Mission to Bosnia and Herzegovina. I voiced concern that the future of public broadcasting in Bosnia and Herzegovina is under threat and requires urgent action. (See also section on visits.)

On 5 June in Vienna, I had the opportunity to discuss with High Representative and EU Special Representative in BiH Miroslav Lajcak media freedom issues pertaining BiH, such as the integration of public-service broadcasters, and the independence of the Communications Regulatory Agency (CRA).

On 10 June, the Constitutional Court of the entity of the Federation had issued judgement in a longstanding debate. The Court held that the 'Law on the Public Service Broadcaster of the Federation of BiH' did not violate the Bosnian Croats' legitimate national interests by not establishing a Croat-language independent television channel.

The lack of decision on that request has long barred the completion of the public-service broadcasting reform in Bosnia and Herzegovina. I hope that this verdict will now clear the way for the authorities of the Federation of BiH to adopt the law on the Federation's integrated public-service broadcaster.

In the meantime, the attempts to fragment public-service television into ethnicity-based units must be stopped. Nothing stands in the way of separate cultural programming, but it is urgent to establish a functioning joint news service where editorial decisions are taken by an inclusive, multi-ethnic team. In the absence of a unified public-service newsroom one can hardly claim that Bosnia and Herzegovina has complied with its commitments to OSCE and to the European Union to integrate its media system.

Bulgaria

On 14 April, I wrote to Foreign Minister Ivailo Kalfin, expressing my concern over the 8 April murder of **Georgi Stoev**, a best-selling author who had written on organized crime in Bulgaria. The writer was planning to testify in court against a mafia leader when he was shot.

I hope that the Government ensures the fast and thorough investigation of the case, and I look forward to receiving information on its course.

Croatia

On 15 April, I wrote to the Minister of Foreign Affairs and European integration, Gordan Jandroković, requesting additional information on the

attempted murder of **Ivo Pukanic**, director of the weekly news magazine *Nacional*.

I look forward to receiving update from the authorities on the investigation.

Czech Republic

On 22 April, in a letter addressed to members of the Czech Parliament, I encouraged them to use the ongoing reform of the Criminal Code to decriminalize speech offences, and refer them to the realm of civil courts.

I believe that disallowing any criminal defamation provisions in a newly adopted criminal code is not only a matter of free speech, democracy, rule of law, but also of practicality. The reason is that the Strasbourg-based European Court of Human Rights consistently overrules imprisonment for press offences, regarding it as a disproportionate sanction that damages free discussion in society.

In light of these clear norms, the Czech Republic should not miss the opportunity to remove the old defamation regime, adopting the international standards. As I learned, this is what the civil professional associations of judges and of journalists have been requesting as well.

France

Following my letter dated 21 February 2008, I was pleased to learn that on 19 March President Sarkozy decided to withdraw a criminal case against the weekly magazine *Le Nouvel Observateur*, following a piece that made allegations about his marriage.

On 16 – 17 April, in Paris, I had the chance to meet with members of the French Broadcasting Regulatory Authority, the Commission for new public television, and the head of the Europe department at the Foreign Ministry. We discussed the ongoing French broadcasting reform. It consists of de-

commercializing all public-service broadcasters and re-financing them from a part of the commercial channels' revenues. (See also section on visits.)

If implemented correctly, the planned model could play a pilot role for the new democracies of the OSCE. In many new democracies where both public-service and commercial broadcasting were established only recently, their co-existence has led to a deepening crisis of the public-service channels. The reason is that they are forced to compete with the commercial channels on the advertisement market in order to complement the taxpayer-paid fees. However, in these same countries, the fees are also difficult to collect, because of the low average family incomes.

On 25 June, the *Commission for new public television* proposed to the President to suppress advertisement on public-service channels in two steps. From 2009, there would be no evening advertisements, and after 2012 they would be fully eliminated. The re-financing would involve taxing Internet and mobile phone providers, radio-electronic frequencies, as well as the classic commercial television channels.

As the personnel at public-service channels protests the plans for fear of loss of jobs and revenue, careful negotiations with all stakeholders could enhance the chances for success of this important pioneering reform.

On 15 May 2008, the French National Assembly introduced new protections of journalists' sources, allowing media professionals not to reveal confidential sources in courts, with the exception of some rare cases, spelled out in the law. The new law also reinforces the protection concerning searches of journalists' homes. The debate of the bill in the Senate has started on 25 June. I hope that France will soon join those OSCE participating States which have adopted source protection provisions for the media.

Hungary

On 26 May, in Budapest, I met with Katalin Gönczöl, the Justice Ministry's State Secretary in charge of co-ordinating the ongoing reform of the Hungarian Criminal Code. The exchange of views focused on decriminalizing the journalism-related provisions in the code, especially the sanctions on speech offences and on publication of classified information.

I was encouraged to see openness to consider the abolishment of prison sentence for speech offences, and I look forward to continuing the dialogue on possibilities for further-stretching reforms.

(See also section on visits.)

Ireland

On 19 March, it was with great pleasure that I welcomed the decision of the then Irish Justice Minister, Brian Lenihan, to fully abolish criminal libel. During the on-going debate in the Seanad on the reform of the Penal Code of the country, Minister Lenihan proposed deleting the sections on criminal libel contained in a Bill, calling it 'a substantial intrusion on freedom of speech'.

Ireland is the first Western European country to initiate the complete abolition of these obsolete and impractical provisions. This development is of utmost importance not only for Ireland, but also for the entire OSCE community, which includes many countries where journalists are regularly put in jail as a result of the criminalization of defamation.

I congratulate the Minister and the unanimous support of his proposal by the Seanad. If the Seanad Bill gets approved by the Dáil chamber, libel and defamation will only be handled in civil courts.

I encourage Ireland to carry through this much-needed reform as soon as it is legally possible.

Kazakhstan

On 21 May, in a letter to Minister of Foreign Affairs Marat Tazhin, I addressed the reports that Internet users in Kazakhstan and other Central Asian republics have been barred from accessing the websites of *Radio Free Europe/Radio Liberty* since 11 April 2008. They appeared to be blocked by the state Internet service providers *Kaztelecom* and *Nursat*.

Radio Free Europe/Radio Liberty is an important public-service source of information for Kazakh citizens, as well as for viewers, listeners and Internet users throughout Central Asia and beyond. Its programmes reach audiences in 21 countries in 28 languages.

I was glad to hear that in early June the access was restored, complying with the OSCE Permanent Council Decision No. 633, whereby the participating States decided to “take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression”.

Regarding Kazakhstan’s much-anticipated media legislation reform, we did not register new developments during the reporting period. As you may recall, our Office had assisted Kazakhstan in amending its media legislation through de-monopolization, privatization, and decriminalization. We had provided legal reviews and sent an expert to Astana to discuss the next steps. As a result, a working group had been set up with the participation of the civil society representatives.

My Office is ready to further support Kazakhstan’s media reform.

Kyrgyzstan

On 19 June I wrote to President Bakiev to express concern about recent developments that could turn into a trend of deterioration in the media freedom field.

I shared my disappointment with the President that he had promulgated the Law “On Television and Radio Broadcasting”. In an earlier letter to him on **9 May**, I had already warned that in its current form, the bill could put an end to efforts to introduce an independent public-service broadcaster in Kyrgyzstan.

The law allows the Head of State to effectively control the broadcaster’s management and editorial policy. It also gives the supervisory board the power to withdraw broadcasting licenses from private broadcasters, and thus control the private broadcasting sector as well.

I was informed that the President had tasked his government to review this law and to prepare appropriate proposals. I hope that the law will be improved, ensuring the proper functioning of the first public-service broadcaster in Central Asia.

In the same letter I expressed concern over the campaign against *De Facto* and *Alibi*, two of the few independent newspapers. In June, the offices of *De Facto* were searched in connection with a charge of “spreading false information”. The police used the occasion to confiscate financial documentation and technical equipment, paralyzing the work of the newspaper. Shortly before this police action, both newspapers were ordered to pay an unusually heavy fine in a civil defamation law suit.

Moldova

On 19 and 20 May, during my stay in Chisinau on the occasion of the First European Union Black Sea Synergy Seminar on Freedom of Expression, my Office had very informative meetings with the whole spectrum of media actors in the country, including the Chairman of the Parliamentary Committee on Media, the President of the Coordination Council of the Television and Broadcasting, as well as journalists and media NGO’s from Moldova and the Transdnistrian Region. (See also section on visits.)

We have learnt that some crucial recommendations from my assessment report from December 2004 were taken into consideration, and Moldova has adopted advanced and favourable media legislation. At the same time some problems mentioned in my 2004 report remain.

Among these, *Teleradio Moldova* has to be further transformed into a genuine public-service broadcaster; the activities of the *Coordinating Council on Audiovisual*, as well as the licensing process, have to be made more transparent; the privatisation of the state media and of the distribution services should be completed; broader access to governmental information should be granted.

My Office stands ready to assist the authorities in these endeavours.

Montenegro

On 6 March, I wrote to reappointed Prime Minister of Montenegro, Mr Milo Djukanovic, asking him to drop the one million Euros lawsuit, filed by him prior to his reappointment, against Zeljko Ivanovic, director of the daily *Vijesti*, as well as the publishing house.

The case arose from comments made by Mr. Ivanovic after he was beaten by a group of unknown assailants in September 2007 in Podgorica. He claimed that Mr. Djukanovic may have had a role in the incident.

I am not disputing the truth of Mr Djukanovic's suit, as the remarks by the severely abused journalist may well have been unfair or even unsubstantiated. However, international standards hold that the potential chilling effect of a pecuniary award on freedom of expression is always to be taken into account, and that pecuniary awards should never be disproportionate to the harm done.

Moreover, this demand was inconsistent with a public status, which, the mentioned standards tell us, obliges an elected high official to defend freedom of debate also by tolerating harsher criticism than average citizens.

On 19 May, an initial decision in the matter imposed a punishment of 20,000 Euros, an amount still disproportionate in light of average incomes in Montenegro. Mr Ivanovic has appealed the decision.

Poland

On 3 June, I asked the Polish Government to ensure that the ongoing reform of public-service broadcasting will not menace its independence. The proposed Senate amendment aimed to exempt from fee payment certain social categories facing financial hardship.

Unfortunately, this socially responsive move, voted for by the Senate on 5 June, failed to propose another forms of adequate funding to replace for the falling out revenues. This may undermine the guarantees of a truly independent public-service broadcaster.

The reform of Polish public-service broadcasting is unquestionably necessary, after years of being battled by competition from commercial channels, and on the eve of the arrival of a multitude of digital channels.

However, any further reform must be conducive to financial and editorial independence for public-service broadcasting. A well-planned debate on the provisions must involve all stakeholders, and be free of any political context.

Russian Federation

On 7 May, I congratulated Dmitry Medvedev on his assuming the Presidency of the Russian Federation, and assured him of the continuing readiness of our Office to assist the Government of the Russian Federation in maintaining and augmenting media freedoms.

I provided the new Presidency with a summary of outstanding concerns. They included, among others, the endangered safety of journalists; administrative discrimination of media outlets, especially in the countryside; legal deficiencies regarding de-monopolization, de-criminalization, and licensing of media; freedom of expression issues such as limitations contained in the 'extremism' package'.

On 27 March, I urged vigorous investigation into the murders of Dagestani journalists on 21 March, in Dagestan and in Moscow.

I was glad to hear that since then the cases have been resolved by investigators as separate and not interrelated ones, and not related to the victims' journalistic activities. I hope the courts will soon close the cases.

On 30 April, I appealed to the heads of both houses of Russia's Parliament, as well as to Minister Sergey Lavrov, to halt the adoption of an amendment to the media law which would allow the Government to warn and then even close media outlets for alleged libel.

This new offence would have been added to the others listed in Article 4 of the Media Law, which already serve as grounds for government bodies to issue warnings to media outlets for 'misuse of media freedom'. The list, arbitrary by nature, currently mainly consists of so-called extremism offences. Based on these warnings, the courts can be asked to close the outlets, as allowed for by Article 16 of the same law. The system of closures based on governmental warnings is unacceptable from the point of view of press freedom standards.

On 13 June, I was informed by the Russian authorities that newly elected President Medvedev negatively assessed the proposed defamation-based closures as they would create "obstacles to the normal functioning

of the media". I was glad to hear that soon after the Duma rejected the amendment.

On 27 May, the Constitutional Court of the Russian Federation annulled the provision under which a criminal case had been opened against Manana Aslamazian, the head of the media education foundation *Obrazovannye Media* (Educated Media). The court found it unconstitutional that the customs and law-enforcement authorities regarded the small amount of foreign currency carried by Aslamazian when returning to Russia in January 2007 as a crime of 'smuggling'.

I was glad to hear that Ms. Aslamazian's criminal case has also been annulled since. Unfortunately, the foundation that she used to lead, a successor of *Internews* Russia, had to stop operation as a result of the ill-founded criminal case. The foundation had provided professional training to hundreds of Russian journalists every year. Ms. Aslamazian escaped arrest by staying outside Russia. I hope that she will be able to resume her activities in the service of Russian journalism.

On 18 June, the prosecution announced that three persons have now been charged with aiding and abetting the murder of Anna Politkovskaya. We will continue to monitor the proceedings. I hope that justice will go on from here, and both the actual killers and the persons who had ordered the crime will be arrested and brought to court.

Slovakia

On 10 April, the Slovak Parliament adopted the new Press Act, and a few days later the President signed the new law. **Since 1 June**, the law has been in force.

As expressed in my numerous interventions on this issue, Slovakia's new Press Act curbs editorial autonomy by granting politicians an unlimited right

of reply even in cases where there are no claims of factual mistakes. The right of reply comes with punishment for editors who do not publish the answer in its entirety within three days, or publish a comment along with the reply.

In the first ten days of the law's existence, between 1 and 10 June, the Slovak press have granted corrections to two politicians at the highest level, Prime Minister Robert Fico and Vladimir Meciar, leader of the Movement for a Democratic Slovakia – the People's Party.

I have to stress again that, even if used with tact and caution, the new law inevitably induces self-censorship in editors. They know now that any report or opinion that could be unwelcome by the persons mentioned in them may provoke a reply that, by the vigour of the new law, will also be the last word in the debate. This is a substantial and undue limitation of freedom of the press.

My office continues to monitor the functioning of the new Press Act.

Turkey

In April, the infamous Article 301 of the penal code was reformed. The maximum prison sentence was reduced from three years to two, and the crime of 'insulting Turkishness' was changed to 'insulting the Turkish nation'. These changes are insignificant; what nevertheless may bring an actual decrease in the number of 301 indictments is that, in the future, all cases have to be referred to the Ministry of Justice which will decide if a case can go to court.

On 19 June, I protested the five-month prison sentence handed down to Turkish publisher Ragıp Zarakolu for 'insulting the Turkish Republic' despite the fact that Article 301 of Turkey's Penal Code was recently reformed.

Mr Zarakolu had published a Turkish translation of “The Truth Will Set Us Free” by British author George Jerjian. The book covers the killings of Armenians in 1915.

The case was started in 2004 under Article 159 of the old penal code, and was handled under ‘301’ after 2005, when ‘301’ replaced Article 159. The judge decided not to refer the case to the Justice Minister, as prescribed in the reform of Article 301, claiming that he had the right to consider the case to be a ‘159’ one.

A legal dispute over the decision of the judge is ongoing, and six cases were dropped by the Ministry of Justice, as outlined in a response letter by the Turkish Delegation on 30 June.

However, it is disappointing that publishing a book critical about a country’s history could still be criminalized. I call upon the Turkish authorities to abolish Article 301 altogether.

Ukraine

On 17 March, three former police officers were charged with the murder of Georgy Gongadze, killed in 2000, and were given long prison sentences. While I welcome these developments, I urge the Ukrainian authorities to bring the investigation to an end and punish those responsible for ordering the murder of Gongadze.

I visited Ukraine on the occasion of the High Level Policy Meeting on media legislation reform. (See also section on visits.)

Here are some of the reforms in waiting, as they have emerged in the meeting: the state regulatory bodies tasked with creating a free and transparent media environment needed to be strengthened, and an independent public-service broadcaster needed to be created. The

promotion of transparency in media ownership, better access to public information, and the de-nationalization of mass media are some of the other outstanding tasks.

Ukraine was one of the first among the OSCE participating States which decriminalized defamation. I hope that the country will continue to fulfil this pioneering role and carry out a comprehensive overhaul of its media governance.

My Office is ready to support Ukraine in this important process.

United Kingdom

On 5 March 2008, the House of Lords passed an amendment abolishing the laws that made it a crime to commit blasphemy against Christianity.

The measure will go to the House of Commons later this year, as part of a larger criminal justice bill. Although blasphemy laws have not been used for a long time in the United Kingdom and in other democracies, very similar “religious insult” laws are being enforced in some OSCE participating States.

I warmly welcome this important development. It was a result of a long and legitimate campaign not only by free speech lawyers but also by Muslim groups which rightly pointed to the practice of double standards.

On the one hand, any country wishing to uphold freedom of speech needs to lift all undue bans on content. On the other, the mere existence of blasphemy laws could be used to justify violent protests in the wake of publications deemed to be insulting to Islam, and could even lend undeserved moral cover for *fatwas* that offer public rewards for the killing of disrespectful journalists.

United States of America

On 20 March, I wrote to the U.S. authorities regarding the case of Toni Locy, a former *USA Today* journalist, who is being held in contempt of court for defying court orders to reveal the confidential sources that she used back in 2002. At that time, Locy published two articles alleging a scientist's involvement in the 2001 anthrax attacks. She was asked to testify in a civil case started by the scientist against the U.S. Justice Department under the Privacy Act.

On 29 February 2008, she was also ordered to pay escalating fines up to \$5,000 a day. The fines were imposed with an unprecedented condition: Ms. Locy was not allowed to receive financial support from anyone, including her family.

I was pleased to hear that on 11 March, a federal appeals court temporarily blocked the above ruling. However, it still has to decide on the contempt of court ruling of the U.S. District Court.

I am also glad that the presidential candidates of both major political parties have endorsed the shield law, also known as the 'Free Flow of Information Act'. The bill is already accepted by the House of Representatives, and is currently waiting to be adopted by the Senate.

This long-overdue piece of legislation will protect journalists from being forced to reveal their confidential sources when there is no compelling safety or security reason to do so.

Uzbekistan

On 17 June, I expressed concern about the detention of an independent journalist. In the week before, Solidzon Abdurakhmonov was detained on drug charges.

I also raised the issue of the campaign against *Radio Free Europe/Radio Liberty (RFE/RL)*. Since 9 June, the Uzbek state television has repeatedly broadcast an hour-long program accusing reporters working for *RFE/RL* of carrying out anti-state activities.

I found these cases regrettable as Uzbek authorities, in meetings during my recent visit in Tashkent, communicated their readiness to start the much-needed reforms of the media governance in the country. (See also section on visits.)

This was my first visit to Uzbekistan, on the occasion of a seminar on media issues organised by the government.

In Tashkent, I welcomed the release from prison of human rights defender and independent journalist Mutabar Tajibayeva and asked for more releases. I also raised the lack of accreditation for *BBC*, *RFL/RL*, and *Deutsche Welle*, as well as other outstanding media governance issues.

I see my first visit in Uzbekistan, the meetings there with media professionals and the dialogue with the authorities, as a promising beginning of cooperation. I am hopeful it will be followed by actual legal reforms and the improvement of the situation of the media.

As a first step, I would be happy to welcome journalists from Uzbekistan joining us for our Annual Central Asian Media Conference. It will take place on 16 and 17 October in Almaty, Kazakhstan.

Visits and participation in external events

On 17 March in Kyiv, I participated at a high level policy planning meeting on media issues, organized by the OSCE Project Coordinator in Ukraine together with the Council of Europe and the European Commission.

Representatives of governmental institutions regulating media policy and responsible for media legislation reform in Ukraine, as well as representatives of the country's NGO sector participated in the meeting. It analyzed the progress made by Ukraine in bringing its legislation into line with European standards, and it also co-ordinated future efforts.

On 6 to 10 April, I visited **Baku** to present my Office's new publication – the *Media Self-Regulation Guidebook*. During my visit I also met high-level officials, including the Head of the Presidential Administration Ramiz Mehtiev, Foreign Minister Elmar Mammadyarov, and the General Prosecutor Zakir Qaralov.

I am thankful to the authorities for granting me access to all three currently imprisoned journalists, Eynulla Fatullayev, Ganimat Zahidov and Sakit Zahidov.

On 8 April in Vienna, my Office briefed a group of Jordanian media professionals on RFOM activities. The visit was part of a study tour organized by the Annanberg School for Communication (Pennsylvania, USA) and the Central European University (Budapest, Hungary).

On 16 April, in Paris, I met the French Broadcasting Regulatory Authority, the Commission for new public television, and the head of the Europe department at the Foreign Ministry. We discussed the ongoing reform that aims to de-commercialize public-service broadcasters, and re-finance them using a part of the commercial channels' revenues.

From 17 to 18 April, also in Paris, I participated as a keynote speaker at the Eurasia Media Development Regional Forum, which was organized by Ms. Manana Aslamazian, who is now heading *Internews Europe*. This was the official launching of our new publication *The Media Self-regulation Guidebook*. The event brought together some 130 representatives from

inter-governmental and non-governmental organizations working on media development, mostly in CIS countries.

On 24 to 26 April, in London, I participated as a speaker in a conference on 'Creativity under Censorship'. The event was organized by the UK-based Czech, Hungarian and Polish Cultural institutes.

On 7 – 8 May, in Sarajevo for a conference on media freedom organised by the OSCE Mission in BiH, I met with Dr. Nikola Spiric, Chairman of the BiH Council of Ministers, representatives of the Ministry for Telecommunications and Electronic Media, the Communications Regulatory Agency, and of public-service broadcasters.

On 19 to 20 May, in Chisinau, on the invitation of the European Commission and the Government of Moldova, I spoke at the First EU Black Sea Synergy Seminar on Freedom of Expression. Participants representing governments and media outlets of ten countries of the Black Sea region attended.

On 26 May, in Budapest, continuing my assistance to Hungary's legal reforms, I met with Katalin Gönczöl, the Justice Ministry's State Secretary in charge of co-ordinating the ongoing reform of the Hungarian Criminal Code. The exchange of views focused on decriminalizing the journalism-related provisions in the code, especially the sanctions on speech offences and on publication of classified information.

On 29 May, in Lodz, my Office participated in European Journalists' Association meeting on "A New Europe Facing Global and Local Challenges".

On 1 June, in Goteborg, I chaired two panels for the annual press freedom roundtable of the World Association of Newspapers (WAN).

On 6 June, my Office briefed a group of young diplomats from the OSCE **Mediterranean Partners for Co-operation** during their visit to the OSCE **Vienna** premises. The visit was made possible by **Greece's** Permanent Mission to the OSCE.

On 9 – 11 June, I visited **Uzbekistan** to address a seminar on media issues organised by the government of Uzbekistan. I also met the Press Secretary to the President, Mr. Beruni Alimov, and the Head of Department for UN and International Organisations at the Foreign Ministry, Mr. Durbek Amanov; organisations mandated to aid the media; and journalists from both state-owned and non-governmental outlets.

On 15 and 16 June, in **Belgrade**, my Office participated at the world congress of the International Press Institute (IPI).

On June 20, in **Brussels**, my Office participated in the regular informal consultations on EU enlargement organized by the European Commission for various international organizations on the topics of democracy, including freedom of the media.

On June 26, in **Istanbul**, my Office attended a high-level conference on 'Investigative Reporting and Law Enforcement in the areas of Terrorism, Organized Crime and Corruption', which was sponsored by the OSCE's Action Against Terrorism Unit.

Guidebook on media self-regulation

My Office has been advocating media self-regulation as a good practice to increase media quality and remedy mistakes committed by media professionals. These efforts were summarized in the publication of the *Media Self-Regulation Guidebook*.

The guidebook is a compilation of questions and answers on the topic of media self-regulation, with renowned international experts and practitioners contributing. Although media quality should never be a pre-requisite to media freedom, self-regulation is a proven method to foster ethical journalism. Quality journalism, however, can only develop in an atmosphere of guaranteed freedom. Self-regulation should therefore go in parallel with governmental self-restraint in handling of media.

The publication was presented on 17 April in Paris, during the Eurasia Regional Forum for Media Development. It has been financed by the Governments of France, Germany and Ireland.

The *Media Self-Regulation Guidebook* is available in English, French and Russian and is online at: www.osce.org/fom/publications.html .

On a related note, I welcome the approval of a code of conduct on reporting of asylum and migration issues by the Italian Council of Journalists' Association on 12 June. Known as the **Rome Charter**, it was drafted by the Journalists' Association and the Italian National Press Federation (FSNI), in collaboration with the UNHCR. It provides Italian journalists with guidelines to ensure that information on asylum seekers, refugees, migrants and victims of human trafficking is balanced and accurate.

The **Rome Charter** is a good example that self-regulation can improve media reporting on sensitive or contested issues.

Projects

Access to information

Albania

My office was glad to hear that most of the recommendations contained in the RFOM/Article 19 joint legal analysis on the Albanian *Law On the Right to*

Information on Official Document, presented in September 2004, have been incorporated into a revised draft law. It is currently under discussion by the Media and Education Committee of the Albanian Parliament. Together with the Presence in Albania, I urge the committee to create an ombudsman for oversight functions, and to introduce ‘whistle-blower’ protections.

OSCE survey

I would like to remind the Delegations that the database of responses to my last year’s ‘Access to Information by Media’ survey is updated; new information received by my Office is entered and can be consulted at <http://osce.org/item/24251.html>. A contribution from the Government of **Ireland** has recently been added to the database.

Decriminalization of defamation

Co-operation with the Council of Europe (CoE)

On 28 May in Vienna, at the regular meeting of the CoE’s Steering Committee on the Media and New Communication Services (CDMC), I called upon the member States to make further efforts to decriminalize defamation. I pointed out to the country representatives that this would bring their legislation in line with the jurisprudence of the European Court of Human Rights, and would also send an important signal to transition countries.

On 13 June, I was pleased to learn that the Committee of Ministers of the CoE endorsed a recommendation by its Parliamentary Assembly (#1814 (2007), entitled “Towards decriminalisation of defamation”), and supported the Assembly’s call on member States to “take measures, with a view to removing all risks of abuse or unjustified prosecutions” stemming from criminal defamation provisions.

Internet

My Office has been contributing to the OpenNet Initiative’s study on ‘Internet Blocking and Filtering’ around the world. OpenNet Initiative is a

partnership of four leading academic institutions (Universities of Toronto, Harvard, Cambridge, Oxford). Carrying analyses on internet filtering practices throughout the OSCE area, the publication will be issued later this year.

Legal Reviews

Armenia

My Office endorsed an ODHR legal opinion on the **'Draft Law of the Republic of Armenia On Information, Information Technologies and Protection of Information'**. The Office complemented the legal opinion with two recommendations: to introduce an overriding public interest test, and to include types of information access which may not be limited, such as information on environment, corruption, health hazards, etc. I hope that these recommendations will help Armenia bring this law closer to meeting the OSCE media freedom commitments. The text of the legal opinion is available at: <http://legislationline.org/upload/lawreviews/d5/74/488849f8c0f3d097b7e93f2c23e5.pdf>.

Belarus

I am glad to report that a legal review commissioned by my Office on **the second draft law of Belarus on "Information, Informatization and Protection of Information"** was the focus of a roundtable discussion in Minsk on 26 March. Held at the Chamber of Representatives, the event brought together parliamentarians of the relevant committees and experts of my office. The recommendations made in the legal review touched upon the possible overlap with other laws, the call for introducing the dimension of 'public interest' as a qualifying element for releasing or withholding information, and the suggestion to create an independent access to information body, with a clear appeals procedure.

The review was prepared by Andrei Richter, Director of the Media Law and Policy Institute in Moscow, a renowned international expert in the field of media legislation. The review of the law is available at www.osce.org/fom

On **18 June**, we forwarded a review of the Belarusian draft Law on the Mass Media, commissioned by my Office, to the country's authorities before the second reading of the law in the National Assembly. The review offers concrete recommendations on how the draft can be improved in line with OSCE commitments.

On **25 June**, the draft law passed the second reading in the lower chamber with only insignificant changes. On **28 June**, it was adopted by the Council of the Republic, but not yet signed by the President.

The review can be found at

http://www.osce.org/documents/rfm/2008/06/31899_en.pdf

My Office stands ready to further assist the Government of Belarus to improve its media legislation, including a round table on media legislation later this year.

Training activities

The office continued its joint training courses for journalists and press secretaries.

On **26 – 27 March**, our Office held a training seminar in **Osh, Kyrgyzstan**. It was organized in close cooperation with the OSCE Osh Field Office. The event brought together around twenty participants from the Batken, Jalalabat, and Osh regions.

On 18 – 19 March, training seminar was held in **Tbilisi, Georgia**. The event, jointly organized with the OSCE Mission to Georgia, brought together twenty participants from Tbilisi and other regions of Georgia. It focused on the legal and ethical principles of interaction between state officials and journalists, as well as on global standards related to access to information.

The events in Osh and Tbilisi were sponsored by the Government of **Switzerland**.

On 19 – 20 June, a training seminar was held in **Khujand, Tajikistan**, for journalists and press officers of the Sogd region. The event, jointly organized with the OSCE Centre in Dushanbe, brought together over thirty participants from the Northern part of the country.

These events were part of a series of seminars held since 2005, to promote effective interaction between state officials and journalists in order to increase public access to official information.

Project activities confirmed for the next period

In mid-July, I will honour an invitation for an assessment visit to **Montenegro**, which was agreed upon with the Ministry of Culture, Sports and Media. The visit will be organized in close cooperation with the OSCE Mission to Montenegro.

For 29 – 30 July, a training to promote self-regulation mechanisms is planned to be held in **Odessa**, Ukraine.

On 16 – 17 October, the 10th Central Asia Media Conference is scheduled to take place in **Almaty**, Kazakhstan.

On 13 and 14 November, the 5th South Caucasus Media Conference is scheduled to take place in **Tbilisi**, Georgia.

Both conferences will focus on new challenges in broadcasting, including public-service broadcasting and the digital switchover.

Allow me to use this opportunity to remind you of our **extra-budgetary fundraising efforts**. The regional media conferences in the South Caucasus and in Central Asia can only be carried out if our office benefits from sufficient funds. Currently, we have ensured around fifty percent of the associated costs, and will warmly welcome further donor offers. **Let me again thank the donors who have generously contributed in 2007.**

Regular Report to the Permanent Council

FOM.GAL/5/08/Rev.1

27 November 2008

Mr. Chairman, Excellencies, Ladies and Gentlemen,

During the last reporting period, an unprecedented surge in cases of violence against journalists has dominated the news on media in the OSCE region.

A substantial part of the losses were caused by the five-day war in Georgia in August. It came as no surprise that during the armed conflict the freedom of journalists to perform their duties was imperilled. We have witnessed the violent deaths of three journalists, while at least 12 others were wounded.

I honour the memories of Grigol Chikhladze, Alexander Klimchuk and Stan Storimans. They died in the war zone while protecting a major OSCE commitment – the public's right to know.

The armed conflict seems to be over now, but the free flow of information is still not restored, even as the cyber-attacks on Georgian websites and the blockage of Russian internet and television media have ceased. I repeat my 22 September call for the free and safe access of journalists to the crisis regions of Georgia, South Ossetia and Abkhazia. All undue limitations on entry for the media should be lifted.

I also have to commemorate those killed and wounded journalists who were deliberately targeted in retaliation for their journalistic work in other areas of the OSCE. These cases have resulted in at least as many casualties as the Caucasus war has this summer. Reporters or media outlets were attacked in Armenia, Azerbaijan, Bulgaria, Croatia, Greece, Hungary, the Russian Federation, and Serbia. Evidently, journalism remains a dangerous profession both in wars and in peacetime.

The authorities' handling of such cases has not been encouraging. As stressed on numerous occasions, attempts at silencing critical voices with the help of violence should be seen and handled by law enforcement not as ordinary crimes, but as acts aimed to undermine the basic democratic value of free expression, censorship in fact. Impunity in such cases will only provoke further violent cases against media workers.

Let me cite the cases of Elmar Huseynov of Azerbaijan, Anna Politkovskaya of Russia and Alisher Saipov of Kyrgyzstan. Three, two and one year respectively went by since their murders, and we are still not told who the masterminds behind these crimes were.

I am glad to report, however, that Politkovskaya's trial started on 19 November with three persons accused to have helped the perpetrators. I also welcome that the hearings were re-opened for the public and the media, after days of keeping them behind closed doors.

With this sobering assessment of the current state of media freedom, let me now turn to my report to the Permanent Council, the last one for the year 2008.

In this account you will find, among other information, the following:

- a summary of the issues that we have raised with participating States since my 3 July report;
- an account of my visits to participating States;
- an update on legal reviews that my office has prepared for participating States;
- reports on my office's recent activities.

Issues Raised with the Participating States

Albania

On 1 October, I wrote to the authorities to welcome their decision to postpone the adoption of a new Law on Radio and Television, and asked the Government to ensure broad and transparent consultations with all key stakeholders when finalizing the draft.

I noted that the draft law failed to guarantee the independence of the National Council on Radio and Television and the Albanian Radio and Television. It also did not remedy the current law's lack of compliance with OSCE recommendations earlier submitted by my office. I also asked the responsible stakeholders to draft a comprehensive strategy for digital broadcasting, involving the media and media NGOs in the process.

My office stands ready to assist Albania in finalizing the new law.

Armenia

On 21 August, I wrote to Foreign Minister Edward Nalbandyan and Prosecutor General Aghvan Hovsepian regarding recent acts of violence committed against journalists in the country. On 18 August, the acting Chief of the Yerevan bureau of *Radio Free Europe/Radio Liberty* was beaten, an attack that the journalist had attributed to his professional activities. On 11 August, a journalist from opposition newspaper *Haykakan Zhamanak* was severely beaten, which was a second attack against her in six months.

I was pleased to receive the letter of Deputy Minister Arman Kirakossian, dated 8 October, promising to carry out rapid investigations and reveal all circumstances of the two attacks.

On 19 September, I asked the Government to review the adopted amendments to the TV and radio law that introduce a moratorium on issuing new broadcasting licenses until the planned digital switchover of 2010.

This moratorium cuts off potential applicants from entering the market until 2010. It also makes it impossible for Armenia to comply with the June 2008 decision of the European Court of Human Rights, which found that denials of licenses for television station A1+ violated Article 10 of the European Convention on Human Rights, and urged the country to allow the station to apply for a new licence.

On 19 November, I wrote to Foreign Minister Edward Nalbandian about the third reported severe attack against journalists in Armenia in the last few months. The Chairman of the Investigative Journalists' Association, Edik Bagdasaryan, was attacked on 17 November by three men in Yerevan, and sustained serious head injuries as a result.

See also the section on legal reviews and on trainings.

Azerbaijan

On 17 July, I called fake the trial against Sergey Strekalin, who was sentenced to one and a half years in prison for a combination of drug-trade charges and his self-confessed stabbing of journalist Agil Khalil of Azadliq newspaper in March 2008. The authorities stopped the case against two security officers who attacked Khalil in February when he photographed illegal cutting of trees in a public olive garden. Instead, the prosecution ordered the major television channels to broadcast videos where Strekalin confessed to the stabbing of the journalist by posing as a jealous ex-lover.

On 28 July, Foreign Minister Elmar Mammadyarov conveyed to me the authorities' view that the predicament of Agil Khalil had nothing to do with his professional activities.

I reiterate my call to the authorities to ensure that law enforcement refrained from orchestrating cases and campaigns against people critical of the

Government. I also ask them to release all journalists currently imprisoned in Azerbaijan.

On 5 November, I wrote to Foreign Minister Elmar Mammadyarov, concerning the statement by Nushiravan Maharramli, the Chairman of the National Council on Television and Radio of Azerbaijan. The Chairman spoke about his intention to ban BBC, Radio Liberty and Voice of America after 15 years of successful and popular service in the country.

According to Chairman Maharramli, his plans are based on “international standards”. But the only relevant OSCE standard is the obligation to safeguard effective pluralism of the media landscape in all of the participating States.

I urged the authorities to reassess their decision and renew the licences of the foreign public-service radio broadcasters, as they are a significant source of information for the Azerbaijani society.

On press vests for Azerbaijani journalists, see the section on projects.

Belarus

On 21 October, I wrote to Minister of Foreign Affairs Sergei Martynov regarding the first-time applications of the 2007 Law “On countering extremism” against media materials.

On 9 September 2008, the Iyve District court in the Grodno region found the August issue of the unregistered periodical *Svaboda* “extremist”, and ordered to destroy all 5,000 copies of that issue. The Grodno regional KGB office also asked the court to recognize as “extremist” other printed publications and records of radio programs.

On 16 September, in a separate case, a Grodno court declared several documents recorded on CDs belonging to a journalist to be of “extremist” nature. The border police confiscated the CDs in June.

I stressed that the above cases might set a dangerous precedent where critical speech is equated with extremism. The definition of “extremism” in the Belarusian Law “On countering extremism”, as I had warned at the time of its adoption in 2007, is overbroad and allows for arbitrary application. If applied, it could undermine the rule of law and restrict freedom of speech protected by OSCE commitments.

On 20 November 2008, the Permanent Delegation of the Republic of Belarus to the OSCE informed me that the court of appeal on 9 September 2008 had ruled against the initial verdict in the case of *Svaboda*, and returned the case to the Ilye court for reconsideration.

Regarding the case involving the confiscated CDs, the Delegation of Belarus forwarded to me a copy of the court decision, stating that the materials on the CDs were found “extremist” because they were “directed towards discrediting the main principles of internal and foreign policies of the Government of the Republic of Belarus”.

Unfortunately, this confirms that the “extremism” law is used to restrict fully legitimate communications and publications, the freedom of which is guaranteed by the OSCE principles.

My office will continue to follow these cases closely.

Bulgaria

On 25 September, I wrote to Foreign Affairs Minister Ivailo Kalfin to request that perpetrators of recent violent attacks against journalists are brought to justice in a speedy manner. I have recalled three attacks committed against

journalists within the last two and a half years where the perpetrators have not been identified or brought to justice.

On 22 September 2008, Ognian Stefanov, editor of investigative website *Frognews* was brutally beaten and hospitalized in critical condition. In April 2008, Georgi Stoev, the author of several books on organized crime in Bulgaria, was murdered. In April 2006, there was an explosion at the apartment of Vasil Ivanov, a well-known *Nova Television* investigative journalist.

I stressed in my letter that such attacks are aimed at intimidating journalists in the country, and keep them from reporting about issues of public interest. I asked the law enforcement authorities to strongly step up against acts undermining the basic democratic value of free debate.

On 27 October, Ambassador Chavdar Zhechev forwarded me an update on the investigation into the murder of Georgi Stoev. I hope to receive information soon on the success of the investigations into these hideous attacks.

Croatia

It is with great concern that I report on a recent attack in Croatia, where two prominent media workers were killed.

On July 9, I received a response from Foreign Affairs and European Integration Minister Gordan Jandrokovic, written to my information request about the investigation of Ivo Pukanic's attempted murder in April 2008. The director of the weekly newsmagazine *Nacional*, considered to be one of Croatia's most fearless investigative journalists, was shot at by unknown assailants. *Nacional* has been covering issues of corruption and human rights abuses. At that time, the authorities have updated me about the thus far unsuccessful investigation into the case.

On 24 October, I was shocked to hear that the same journalist, Ivo Pukanic, and Niko Franic, the paper's marketing executive, were killed by a bomb blast in Zagreb. This crime terrorizes the media that strive to accomplish an indispensable job in exposing wrongdoings. I have repeated my call to the Croatian authorities to ensure that journalists can carry out their work safely.

I welcome the authorities' public pledge to punish the perpetrators of this outrageous crime, and I am informed that the law-enforcers have made considerable progress in investigating this awful crime.

France

On 13 October, I expressed my concern to Justice Minister Rachida Dati about the searches of the premises and computer hard drives of two daily newspapers, "*Centre-Presse*" and "*La Nouvelle République du Centre Ouest*", conducted by police and justice officials. The searches were explained by the two newspapers' alleged "violation of the confidentiality of a judicial investigation" into a murder case. On 17 November, a journalist at the latter paper was indicted in the case.

I asked the authorities to revise the handling of the case in light of the new guidelines already set forth in the amendments to the press law. These were tabled by the French Government earlier this year, and are currently awaiting the approval of the *Assemblée Nationale*. Under this draft law, only clearly defined overriding interests would outweigh the need to protect journalists' sources, such as, for example, the prevention of an imminent violent crime. The amendments would also extend the protection to journalists' homes, thus creating a safer environment for journalism.

Greece

On 24 October, I requested additional information regarding the reports that Greek police had briefly arrested and then escorted to the border several former Yugoslav Republic of Macedonia journalists on 14 October. They had

been covering demonstrations against military training activities near the village of Lofi in Northern Greece.

I was informed of a statement issued by the Ministry of Foreign Affairs, stressing that the journalists were checked because they had entered a military zone. It called the reports of their expulsion a 'distortion of truth'.

Hungary

On 1 October, I welcomed the acquittal of Hungarian investigative journalist Antonia Radi, ending a five-year-long trial. Radi, one of the most prominent investigative journalists of the country, was indicted on breach of secrecy charges and threatened by prison, based on her reporting on a criminal case in the *HVG* weekly in 2003.

For the sake of the fight against corruption, the ongoing reform of the law on official secrets and that of the Criminal Code should assure journalists that they can report on matters of public importance without fear of being prosecuted.

My office also continues to monitor the developments in the shooting incident that took place on **15 November** in Budapest, at the editorial offices of ATV, a commercial TV station. The station had previously received threats of attack, blaming the station's religious programs. I was pleased to see that the Mayor of Budapest swiftly condemned this or any attack on freedom of speech, and I hope to soon receive news of a successful investigation in this issue.

Kazakhstan

In order to bring Kazakhstan's media legislation in line with the OSCE freedom of expression commitments, the office continued its co-operation with the Government, and offered legal assistance on several sets of draft laws and amendments (see earlier reports and section 'Legal reviews').

The latest development in this regard is that on 11 November 2008, the Government of Kazakhstan submitted to Parliament a package of amendments to several laws, including the law on media.

Unfortunately, the draft in its current shape is seen by the civil society of Kazakhstan as unable to *de facto* improve the legal environment for the work of media.

I hope that my Office will be able to study these amendments and offer its comments prior to the adoption of the mentioned law.

I missed from the package the long-pending amendments to the provisions on defamation, prepared by the Ministry of Interior in cooperation with my Office. Those changes would discard prison sentences for most defamation-type crimes, but they would stop short from decriminalizing them. I hope that they will soon be tabled with Parliament.

See also the section on legal reviews.

Romania

On 8 July, I asked President Traian Basescu to veto an amendment to the broadcasting law that would have obliged television and radio stations to ensure that half of their news coverage consists of “positive news”. Such a rule would be a severe political intrusion into editorial freedom.

On 11 July, I welcomed the fact that the Constitutional Court had ruled the draft amendment unconstitutional. It is significant that the ruling was based on freedom of expression considerations, which sets standards against future attempts by politicians to interfere with editorial autonomy. I hope that the verdict will also serve as a guideline for the Constitutional Court itself in future deliberations on matters related to media freedom.

Russian Federation

On 10 July, I wrote to Prosecutor General Yuri Chaika regarding two recent “extremism”-based court decisions. On 6 June, a Moscow court closed down the independent Internet website *Ingushetiya.ru*. On 7 July, a Syktyvkar court handed a suspended one-year sentence to Internet user Savva Terentiev, for posting a comment in an online chat forum.

I emphasized that these disproportionate court decisions set precedents for putting an end to media freedom online, using the vague notion of ‘extremism’. Politicization and arbitrariness are unavoidable when applying the subjective concept of “extremism”, given the growing myriad of Internet-based communication forms which could never be monitored in their entirety.

On 2 September, I had to protest against the killing of Magomed Evloyev, the publisher of the above-mentioned *Ingushetiya.ru*, during police custody. Evloyev’s death was the culmination of an orchestrated campaign by the authorities of Ingushetia to silence the only remaining independent news source in the region. (In August 2008, the chief editor of *Ingushetiya.ru*, Roza Malsagova, left Russia, seeking political asylum.)

On 21 October, I expressed my concern regarding new legislative initiatives on anti-extremism, recommended by the Office of the Prosecutor General to the State Duma Committee on Security.

The proposed changes would empower the state to block Internet sites, and extend already existing undue warning and restricting powers of Government bodies over the media.

On 26 November, I expressed concern about the recent attack against Mikhail Beketov, the editor-in-chief of independent newspaper *Khimkinskaya Pravda*. On 12 November, he was brutally assaulted, suffered multiple life-

threatening injuries, and is still in a coma. I am waiting for the results of the investigation.

However, on a positive note, I am also encouraged by several recent developments, notably in the Republic of Ingushetia, where a new regional President has recently assumed his duties.

On 7 November, the Supreme Court of Ingushetia has declared the closing of the website *Ingushetiya.ru* unlawful. The symbolism of this gesture should not be underestimated, notwithstanding that the Moscow court decision closing down the website is still in vigour.

On 18 November, in a further welcome development, the same court has ruled that the refusal to handle the Yevloyev case as “murder” instead of “death by negligence” was illegal.

On the legislative side, I was glad to learn that the Russian State Duma started to discuss potentially impactful proposals on Russia’s media legislation, such as abolishing imprisonment of journalists who commit professional mistakes, and granting reporters near-complete immunity from having to reveal their sources.

My Office stands ready to review all draft amendments before their adoption.

Serbia

On 5 August, I wrote to Foreign Minister Vuk Jeremic regarding attacks on journalists. On 13 July, 16 July, and 25 July, *B92*, *TV Avala*, *TV Pink*, and *Regionalna televizija* crews were attacked while they were reporting, among other topics, on the protests in Belgrade against the arrest of war crimes suspect Radovan Karadzic.

I welcomed that the aggressors were rapidly arrested in all three cases. I was also pleased to read the statement of Interior Minister Ivica Dacic, stressing the need to protect journalists from violence and other pressure.

I seized the opportunity to bring several media freedom issues to the attention of Serbia' new Government. They included the better implementation of the Law on Free Access to Information of Public Importance, the resumption of privatisation of the state-owned media, especially of the print press, as well as strengthening minority media.

In his response, Minister of Foreign Affairs Vuk Jeremic forwarded to me some updates on the above issues from the Ministry of Culture.

Slovenia

On 22 May, in my letter to President Danilo Türk, I asked the authorities to reconsider Article 166 of the new Criminal Code. That article not only failed to decriminalise defamation, but extended liability for it to editors, publishers and printing companies.

On 14 July, I received a response from the President's Office, in which I was assured that the President shared my Office's concerns with regard to the defamation provisions of the recently adopted Criminal Code.

I remain hopeful that the authorities of Slovenia will be able to draft a revision that would completely decriminalise libel and insult, and consign them to the civil domain.

Turkmenistan

Between 2 and 4 September, following an invitation from the Government, I met with stakeholders in the country's media governance to explore possibilities of reform toward compliance with OSCE commitments in the field of media freedom.

I was pleased to see interest in bringing Turkmenistan's state-owned media closer to international standards, which was expressed by both governmental and civil personalities during these meetings.

See the list of interlocutors in the section on visits.

Ukraine

On 29 July, I asked the authorities to provide further information on the 17 July confiscation of television tapes from Artyom Shirokov, a journalist of the Russian TVC channel. The Foreign Ministry claimed that the reporter had no right to work as a journalist in Ukraine, as he was not accredited at the Foreign Ministry.

On 18 November, I was informed by the Head of Delegation that the disputed action was based on a 1998 bilateral agreement between the Russian Federation and Ukraine, which prohibited unaccredited journalism, and required permission to take information materials across their mutual borders.

I reiterate that even if such an agreement exists between the two countries, it should be abolished rather than applied. Its wording and spirit are contrary both to the original Helsinki principles and to several OSCE commitments regarding the free flow of information and a helpful environment for international journalism.

Besides, such an agreement can only be applied arbitrarily nowadays, when the media have become global, communications do not recognize borders anymore, and therefore tapes and books in a person's bag are the least frequented carriers of information.

On 20 November, I asked Foreign Minister Volodymyr Ogrzyzko for additional information regarding two recent issues reported. One is the six-year

prison sentence handed down to Igor Yakovlev, a journalist with the STV television company, on charges of forgery and embezzlement. The other is a November order by the National Council for Television and Radio Broadcasting to interrupt broadcasting of certain foreign television channels through cable networks. Reportedly, this decision may concern several Russian television channels which are popular among a considerable part of the Ukrainian population.

United States of America

On 11 September, I asked the Delegation to provide information regarding arrests and charges brought against some of the journalists reporting about rallies organized during the Democratic and the Republican National Conventions.

On 27 August, an *ABC News* producer was arrested for a day when filming Democratic Party officials leaving a hotel in Denver. He was charged with trespass, and failure to follow a lawful order. On 1 September, journalists from the public TV and radio program *Democracy Now* were briefly arrested while covering demonstrations at the Republican National Convention in St. Paul, Minnesota.

On 6 November 2008, the Head of the United States Mission to the OSCE informed me that all charges against journalists in the above-mentioned cases were dropped.

Uzbekistan

On 15 October, I requested the Government to review on appeal the sentencing of journalist Salidzhon Abdurakhmanov. On 10 October, the journalist, contributing to *Radio Free Europe/Radio Liberty*, *Voice of America* and *Uznews.net*, was sentenced to ten years in prison for allegedly possessing narcotics with the intent to distribute them.

According to those present at the trial, the prosecution's witnesses had no evidence to implicate that Abdurakhmanov used or sold narcotics. His blood test results did not show any drugs either, and his fingerprints were not found on the package containing the drugs. The journalist insisted that the drugs were planted in his car.

Punishing a journalist for his work using made-up criminal charges is a practice that should no longer be tolerated. I hope that the authorities will rapidly dismiss the sentence, and thus prove the country's adherence to OSCE commitments.

On 15 and 16 October I was glad to welcome participants from Uzbekistan to our annual Central Asia Media Conference, after years of absence from this event.

See section on conferences.

Projects & Activities since the last report

Assessment visit to Montenegro

(full text of report attached to this PC Report)

On 16 – 18 July 2008, I paid my first assessment visit to the Republic of Montenegro. In close cooperation with Ambassador Paraschiva Badescu, Head of the OSCE Mission to Montenegro, I met government officials, including the President and the Prime Minister; media professionals, and representatives of civil society and international organizations.

The purpose of the trip was to collect first-hand information in order to assess the current state of media freedom in the youngest participating State of the OSCE, especially in the context of the then-two hotly disputed draft laws: the electronic communications draft law and the amendments to the public-service broadcasting law.

Results of the visit have been reflected in an assessment report published on 13 October 2008. Following the traditional methodology, the report contains observations and recommendations aiming to further improve media freedom in the country.

Let me recall the main findings:

In general, the media situation in Montenegro is largely commendable. There is a high degree of media pluralism, both in terms of the quantity of media outlets and the different views that are represented, although some unresolved shortcomings and disputed issues remain. As a special feature, Montenegro has an exemplary ban on state ownership of the media. Also, the privatization of the press is almost complete. Therefore, the report concludes that the legal framework for a free media is generally in line with OSCE commitments.

- Regarding the new Law on Electronic Communications, the report concluded that the full independence of the licensing process, and avoidance of a double-headed, two-stop licensing setup, merit a review of the Law by Parliament. Successful solutions of merging telecommunications and broadcasting authorities, such as at Ofcom in the United Kingdom or at FCC in the U.S., could be studied.
- The adoption of modifications and amendments to the Law on Public Broadcasting (RTCG) should be preceded by a broad public and parliamentary discussion.
- The present complex process of appointment to the Council and the Managing Board was designed to make the nominators immune to any pressure. Such practice should be continued in the future (instead of the selection between the candidates who received the largest support from the authorized nominators, as proposed by the draft).
- The de-commercialization of RTCG' financing scheme should be given proper consideration.

- Greater independence for RTCG can only be achieved if its dependence on collection rates of fees or other taxpayer-paid revenues decreases.
- Guaranteeing these revenues for a longer period of time – in other words, automating them – would be a substantial contribution to RTCG's financial, and therefore political, independence.
- All cases of threats, violence or even murders of journalists must be duly investigated in a timely and forthcoming manner, and the results should be made clear to the public.
- The elimination of imprisonment as a punishment for libel is a positive development. This should go further, however. Libel and insult should be decriminalized completely, and journalistic mistakes should not be criminalized. Such reforms should go hand in hand with the implementation of both a ceiling on civil fines and a determination that such fines should be calculated in a proportion that reflects the gravity of the offense.
- For the sake of uninhibited media discussion of important public issues, public officials should show a greater degree of tolerance towards criticism, even when it contains factual inaccuracy.
- In order to strengthen journalism's collective defense, all major media outlets should participate in the nation's media self-regulation body.

The full report can also be found at:

https://www.osce.org/documents/rfm/2008/11/34890_en.pdf

Press vests for Azerbaijani journalists

On 3 September, my Office sponsored the manufacturing of 200 vests for the clear identification of journalists during public events and demonstrations, in order to ensure their safety and guarantee that they can receive assistance from the police while performing their duties. The vests were presented to Azerbaijani media workers by the OSCE Office in Baku.

Regional media conferences

On 16 – 17 October, with the help of OSCE field presences, our office held the 10th Central Asia Media Conference in Almaty, Kazakhstan, and on **13 – 14 November** we held the 5th South Caucasus Media Conference in Tbilisi, Georgia.

Besides discussing the development of media freedom in the last year, the events focused on the challenges of public-service broadcasting (PSB) and how the upcoming digital switchover can support media freedom and pluralism.

The Central Asia conference brought together media professionals and government officials dealing with media governance from Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The participation of Uzbekistan at this year's event was especially welcome, and we hope that next year we can welcome all five Central Asian participating States at the conference. As only Kyrgyzstan has a law on PSB, and even there the institution still has yet to start operating, the discussions touched upon the basic democratic meaning and the social uses of public-service broadcasting.

The South Caucasus event, in animated and at the same time friendly discussions, provided a unique forum to leading media professionals, public-service directors, NGOs and Members of Parliament from Armenia, Azerbaijan and Georgia, to share experiences and good practices, as well as strengthen personal professional contacts.

In the declarations adopted at the two conferences, the participants have stressed that public-service broadcasting (PSB) is one of the basic tools of democracies. By offering objective news reporting and by broadcasting high quality programming, PSB is indispensable in ensuring the freedom and transparency of elections, in fighting against hate speech, and in protecting the minority cultures of a country. The conferences have also tackled the

changes affecting broadcasting in the digital age, and have concluded with calls to governments to regard the increase in the number of broadcasting channels on all new platforms as a new opportunity to strengthen media pluralism.

Year after year, the participants consider these media conferences as one of our office's most popular and useful activities. The events are made possible by the extra-budgetary donations of participating States. **I would like to extend a special thanks to the donors of this year's conferences, Austria, Belgium, Finland, Germany, Ireland, Sweden, and the United States**, for helping us continue this useful tradition.

Legal Reviews

Armenia

In September, as mentioned above, my Office commissioned an independent OSCE expert, to review an amendment to Armenia's Law "On Television and Radio". The amendment proposes to suspend tendering broadcasting licenses until mid-2010.

While the digital broadcasting switchover is cited by the authorities as the reason for the amendment, a moratorium on tenders for broadcasting licenses should not be the first step in the digitalization process. Digitalisation should not be allowed to reduce diversity and plurality and should never be used as an excuse to limit free and independent broadcasting. If the broadcasting landscape in a country is not pluralistic and diverse, it would be better to delay digitalisation and undertake other reforms first.

A television station which would be particularly affected is A1+ – an independent channel which has been repeatedly denied a broadcasting licence. Recently, the European Court for Human Rights has ruled that the government of Armenia violated Article 10 of the European Convention of Human Rights by denying A1+ a licence.

The amendment to the Law “On Television and Radio” effectively contravenes the decision of the ECHR.

Kazakhstan

On 29 July, I presented to the authorities comments and recommendations on the new draft amendments to the defamation provisions of the Criminal and Civil Codes.

I welcomed the fact that the amendments would improve journalists’ working conditions by removing the possibility of prison sentences as punishment for most defamation-type offences, and that the article concerning “insult” would be withdrawn from the Criminal Code, as would be the notion of “legal persons” from the definition of moral harm under the Civil Code.

However, the current draft law would not decriminalize defamation completely; in fact, the amendments would retain most defamation offences in the Criminal Code. Furthermore, allowing the possibility of imprisonment as punishment for libel against high officials contravenes international standards that require elected officials to tolerate more criticism than ordinary citizens. Finally, the draft contains provisions which are unclear, difficult to implement and merely declarative.

As mentioned earlier, these drafts were not included in the Government’s 11 November package of amendments.

Moldova

On 26 November, I presented to the authorities the recommendations of a legal review commissioned by my Office on the Draft Law “On state secrets”.

Despite some modest improvements, including better defining the categories of secrets and the inclusion of the public interest test, the draft fails to boost

democratic accountability, as it would not reduce unnecessary secrecy and other obstacles to access to governmental information by the media.

In many areas, it expands secrecy, including in the definition of state secrets; the types of information that can be classified; it also includes a new undefined category of “restricted” secrets which does not require harm to be shown. Additionally, it reduces in parliamentary oversight.

Unfortunately, on 27 November the law was passed without any debate in the Parliament.

The legal review can be viewed at:

http://www.osce.org/documents/rfm/2008/11/35108_en.pdf.

10th Anniversary publication

On 15 September, the latest publication of my Office, *“Ten Years for Media Freedom – An OSCE Anniversary: Current and Forthcoming Challenges”*, was published. Copies were widely disseminated to all delegations and OSCE field missions, as well as all interested parties, such as media professionals and NGOs.

This project was made possible thanks to the generous contributions from the Governments of **Germany, Finland, and The Netherlands**.

The book can be downloaded at

http://www.osce.org/fom/item_11_32993.html

A Russian-language version is expected to be issued by January 2009.

Co-operation with other international organizations – Council of Europe

I commended the adoption of the Resolution 1636 on “Indicators for Media in a democracy” by the Parliamentary Assembly of the Council of Europe.

This document invigorates the important principles of freedom of expression and freedom of the media after a decade of deterioration of the media freedom situation worldwide.

It reiterates a comprehensive set of minimum legal standards for free media in European democracies that is a solid base for assessing the states' levels of media freedom by states themselves, as well as for international bodies including the RFOM.

Resolution 1636 highlights the role of freedom of expression and information in the media as an essential requirement of democracy. It invites national parliaments to analyze their own media situation, to identify shortcomings in their national media legislation and practices, and take appropriate measures to remedy them.

The resolution also identifies 27 basic principles to assess the situation of media freedom. The document calls on the Committee of Ministers to endorse the list of principles and report regularly on the media situation in the CoE member states.

My Office, however, treats these principles as the essential minimum when assessing the participating States' compliance with the OSCE commitments, which go further in many respects. In my view, this represents an important synergy between our organizations.

Internet

The third **Internet Governance Forum (IGF)** will be conducted in Hyderabad, India, on **3 – 6 December**. My office will participate in a UNESCO workshop on internet filtering, along with international media freedom advocacy groups.

My office also participated in the preparatory conference for the IGF, organized by the Council of Europe in **Strasbourg, 20 – 22 October**. This event, named EuroDIG, aimed to contribute to developing a consolidated European approach to internet governance issues.

On 24 November, together with the Ministry of Information of Belarus, with the support of the OSCE Office in Minsk, my office co-hosted a roundtable discussion on Internet media regulation in **Minsk, Belarus**. The event brought together Belarusian officials and journalists, as well as international experts in the field.

At the conference, my office encouraged the Government to exercise self-restraint in regulating content on the Internet, in order to honour the important OSCE commitments on pluralism and the free flow of information.

Training activities

- *For press secretaries and journalists*

On 16 – 17 September, a training seminar was held in **Chisinau, Moldova**. Jointly organized with the OSCE Mission to Moldova and attended by around 20 participants, the event focused on increasing access to official information by fostering effective interaction between journalists and public bodies. The training seminar was sponsored by the Government of the **Czech Republic**.

On 27 – 28 October, our Office held a training seminar in **Yerevan, Armenia**. The event was organized in close cooperation with the OSCE Office in Yerevan and brought together 40 participants from press and public relations offices with the aim of improving their interaction.

On 6 – 7 November, a training seminar was held in **Belgrade, Serbia**. The event – a first of its kind in South-Eastern Europe, was jointly organized with the OSCE Mission to Serbia. It was attended by around 30 participants, mainly from the southern regions of the country.

- *On media self-regulation*

On 29 – 30 July, our Office held a training seminar in **Odessa, Ukraine**.

The event gathered 30 journalists from the Odessa region and aimed at promoting media self-regulation as a credible mechanism for upholding ethical standards and professionalism.

On 31 October – 1 November, a training seminar was held in **Bucharest, Romania** and brought together 50 media professionals from around the country. The objective of the event was to raise awareness on the importance of media accountability and to start discussing ways of creating a self-regulatory mechanism in the country.

Visits and participation in events

On 1 July, my office contributed to the annual OSCE Summer Academy in **Burg Schleinig, Austria**, with a presentation on media freedom issues.

On 7 – 8 July, I addressed the roundtable “Broadcasting Parliament Sessions – International Practices and Experiences,” convened in Podgorica, Montenegro, by the Parliament of Montenegro and the OSCE Mission to Montenegro.

On 8 July, my Office, together with the Council of Europe and the Yerevan Press Club, organized a conference on Media diversity in **Armenia**. The event discussed the priorities in reforming the legislative framework for the media in Armenia.

On 2 to 4 September, during my familiarization visit to **Turkmenistan**, invited by the Government, I met with relevant stakeholders in the media governance of the country:

- Rashid Meredov, Deputy Chairman of the Cabinet of Ministers and Foreign Minister; Maysa Yazmuhammedova, Deputy Chairperson of

the Cabinet of Ministers; Akdja Nurberdiyeva, the Chairperson of the Mejlis (parliament); Gulmyrat Myradov, Minister of Culture, TV, and Radio Broadcasting; and Djeren Taimova, the Chairperson of the State News Agency.

- I also met accredited and non-accredited journalists contributing to international media, as well as media NGOs.

During the meetings, I offered assistance in legal reviews and training projects, and discussed other ways of co-operation. The need for a transparent and uncomplicated system of accreditation was also discussed, so that journalists could safely provide reliable information on the country for foreign media.

The visit was prepared jointly by the Turkmenistan Foreign Ministry and the OSCE Centre in Ashgabat, headed by Ambassador Ibrahim Djikic, who participated in the official meetings.

On 17 September, my office addressed a training event for Kazakh diplomats organized by the Foreign Ministry of Norway in **Oslo**, as part of the activities to prepare for the upcoming Kazakh Chairmanship.

On 29 September, I contributed to the opening at the Human Dimension Implementation Meeting (HDIM) in **Warsaw**. On 30 September, I gave a keynote speech in the HDIM working session 2 on “Freedom of expression, free media and information”. My address centered on the major challenges faced by the media, particularly the aftermath of the war in the South Caucasus and some general concerns about the erosion of media freedom standards.

On 7 – 8 October, my office participated in a Seminar for journalists from Central Asia organized in **Helsinki** by the Finnish Foundation for Media,

Communication and Development in co-operation with the Finnish Ministry of Foreign Affairs.

On 20 – 22 October, my office addressed the 4th international conference on terrorism and electronic media in **Paphos, Cyprus**. The event was organized jointly by the Union of Cyprus Journalists and the Federal Agency for Press and Communications of the Russian Federation.

On 23 – 24 October, my office addressed the 10th Anniversary International Conference “Law & Internet”, organized by ICOS UNESCO in **Moscow, Russia**. The conference took place in the framework of UNESCO’s “Information to All” programme.

On 23 – 24 October, my office participated in the meeting of the 10th Annual Conference – Alliance of International Press Councils in Europe in **Berlin, Germany**, presenting our successful publication *Media Self-Regulation Guidebook*.

On 29 October, my office participated at the UNESCO-organized commemoration of the 60th anniversary of Article 19 of the Universal Declaration of Human Rights in **Paris, France**.

On 3 November, I helped launch a Hungarian-language version the *Media Self-Regulation Guidebook* in **Budapest, Hungary**. The translation was made possible by a grant of the Center for Independent Journalism, where the launching took place. The *Guidebook* is also available in English, French and Russian and online at: www.osce.org/fom/publications.html

On 5 – 6 November, my office participated at the SEEMO Conference on Media and Democracy in South-Eastern Europe in **Sofia, Bulgaria**. The event focused on ways to increase professional standards and good practices in the education of journalists.

On 21 November, my office addressed a conference on media self-regulation and broadcast digitalization in **Tirana, Albania**. The event was organized by the OSCE Presence in Albania, together with the Friedrich Ebert Foundation.

Activities confirmed for the next period

On 2 December, I will speak in Helsinki at an event marking the Finnish-Swedish Freedom of Information Day, to commemorate the first freedom of information act of 2 December 1766. The event is jointly conducted by the Helsinki Sanomat and the Anders Chydenius foundation.

On 8 – 10 December, I will address the 2nd Global Forum for Media Development in Athens, Greece. I will present the activities of my office as part of the overall topic of the conference: Building enabling environments – The role of international organisations.

During the above mentioned conference, the annual meeting of the global mandates on freedom of expression **on 9 December** will also be held in Athens. As in previous years, a joint declaration will be adopted together with my counterparts at the United Nations, the Organisation of American States and the African Union. The meeting is facilitated by the London-based media NGO Article 19.

On 3 February, I will address The London Conference on Free Media to commemorate the 20th anniversary of the fall of the Berlin wall.

Country Report

FOM.GAL/4/08

13 November 2008

The State of Media Freedom in Montenegro

Observations and Recommendations

The OSCE Representative on Freedom of the Media (RFOM), Miklós Haraszti, visited Montenegro on 16-18 July 2008. He had been invited by the Minister of Culture, Sport and Media on behalf of the Government of Montenegro, in order to assess the current state of media freedom in the OSCE's newest participating State. He was accompanied by Arnaud Amouroux, Project Officer².

The RFOM met with government officials, media authorities, journalists and representatives of non-governmental organizations.

Officials of the Republic of Montenegro with whom he met included:

Filip Vujanovic, President of the Republic of Montenegro;

Ranko Krivokapic, Speaker of Parliament;

Milo Djukanovic, Prime Minister;

Milan Rocen, Minister for Foreign Affairs;

Andrija Lompar, Minister of Transport, Maritime Affairs and Telecommunications;

Branislav Micunovic, Minister of Culture, Sport and Media;

Miras Radovic, Minister of Justice.

Others with whom he held meetings included:

² Previously, on 7 – 8 July, he also participated in the roundtable "Broadcasting Parliament Sessions – International Practices and Experiences," convened in Podgorica by the Parliament of Montenegro and the OSCE Mission to Montenegro.

Abaz-Beli Dzafic, Director of the Broadcasting Agency (BA);
Jadranka Vojvodic, Deputy Director of the BA;
Djordje Vujnovic, Adviser to the Director of the BA;
Branislav Calic, Chairman of the Council of Radio and Television of Montenegro (RTCG);
Budimir Raicevic, Director of Radio CG;
Radojka Rutovic, Chief Editor of Television CG;
Valentina Scekcic, Marketing Director, RTCG.

Radojica Bulatovic, Executive Director, Montenegro Media Institute (MMI);
Daniela Seferovic, Program Director, MMI;

Mihailo Jovovic, Newsroom manager, *Vijesti*;
Lisa C. McLean, Senior Resident Director, NDI;
Mladen Milutinovic, Director, *Dan*;
Mirsad Rastoder, Chairman of the Journalists' Self-Regulatory Body (JSRB);
Milka Tadic-Mijovic, Editor, *Monitor*;
Ranko Vujovic, Executive Director, Union of Independent Electronic Media of Montenegro (UNEM).

The RFOM also met with foreign diplomats posted in Podgorica, as well as with representatives of the European Commission and the Council of Europe.

The RFOM wishes to extend his gratitude to Ambassador Vesko Garcevic, Permanent Representative of Montenegro to the OSCE, and Ambassador Paraschiva Badescu, Head of the OSCE Mission to Montenegro, and her staff, for their crucial support.

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

I. GENERAL OVERVIEW

In general, the media situation in Montenegro is largely commendable.

There is a high degree of media pluralism in the country, in terms of both the quantity of media outlets and the different views that are represented.

**Montenegro has an exemplary ban on state ownership of the media.
The privatization of the press is almost complete.**

Montenegro's 2003 Media Law bans State ownership of the press. Article 7 states: "The Republic, local authorities or legal entities, the majority share of which is owned by the state, or completely or in a greater part funded from the public revenues, shall not be the founder of media, except under the conditions prescribed by the Broadcasting Law."

The mere existence of this piece of legislation is praiseworthy, and could serve as a 'best practice' model for OSCE participating States with preserved or even bolstered state ownership of media.

The Government strives to finalize the privatization of *Pobjeda*, the one remaining State-owned daily. At the end of 2007, at a public tender for a majority stake in the publisher of *Pobjeda*, no company expressed interest, because of the high debts swamping the paper. The State has recently launched another tender whose results remain to be seen.

Montenegro has an exceptionally high number of electronic and print media outlets – roughly 70 in a country of an estimated 680,000 inhabitants. Considering the abundance of outlets, many observers foresee that a healthy collapse of the market will come in the future. The Government is right to refrain from unduly interfering in this process.

Commercial broadcasters are to a great extent independent, but poor finances jeopardize their activity, professionalism and prospects.

The legal framework for a free media is generally in line with OSCE commitments.

The Constitution of Montenegro, adopted in October 2007, guarantees freedom of expression “through speech, the written word, pictures or any other way” (article 47), as well as freedom of the press (article 49), prohibition of censorship (article 50) and access to information (article 51).

Most key laws were adopted in 2002 (i.e. the Media Law, Broadcasting Law, and Law on Public Broadcasting Services). These provide a solid basis for the development of the media community and the protection of free speech. The inconsistent implementation of regulations, however, has remained a problem.

Following a legal reform in 2003, libel and insult are not punished anymore with incarceration. This is a positive development, albeit ‘libel’ (or ‘defamation’) and ‘insult’ remain crimes punished with a fine (Articles 195 and 196 of the Criminal Code).

Montenegro’s unarguably pluralistic scene is still accompanied by certain unresolved shortcomings and disputed issues.

At the time of the RFOM visits in July, two draft laws that undoubtedly will have great implications on the free media environment were under heated debate.

One of these was the then-draft Law On Electronic Communications, which was under debate when the RFOM visited Montenegro. Unfortunately, this law was passed after the RFOM’s visit without any substantial improvements

in its provisions that practically downgrade the competences and autonomy of the Broadcasting Agency (BA). (See Chapter II).

The other major controversy involves the law regulating the Public-Service Broadcaster of Montenegro (RTCG). The amendments to the RTCG law are still under consideration at the time when this report is published. Also, earlier, the decision by RTCG not to provide live coverage of all parliamentary sessions had prompted opposition parties to boycott plenary sessions of Parliament. (For RTCG-related issues, see Chapter III.)

The RFOM took part in a special roundtable on the topic of parliamentary broadcasting, held on 7-8 July in Podgorica, and made the point that the crisis, though politicized, had its roots in RTCG's insecure sources of financing, due in part to a poorly functioning system of fee collection. As a result of the OSCE Mission's mediating efforts and the personal engagement of its head, Ambassador Paraschiva Badescu, a temporary solution to the parliamentary broadcast coverage issue was reached in October 2008.

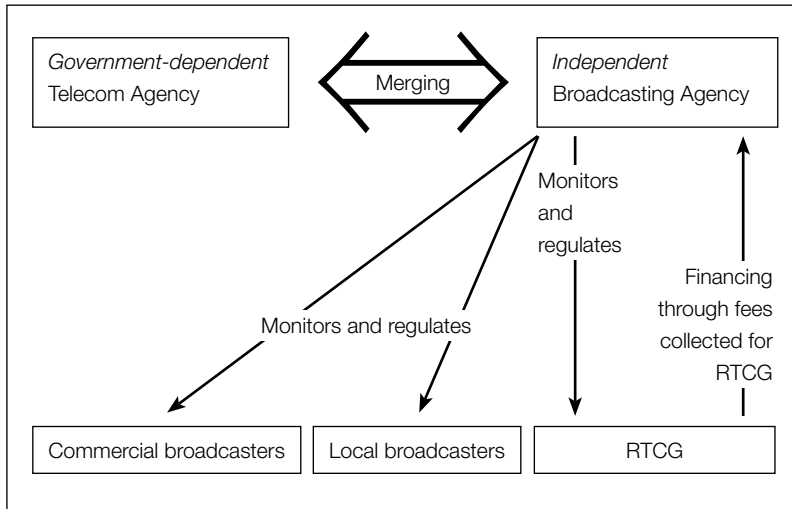
The lack of progress in investigating some of the cases of violence against journalists provides another source of tension in Montenegro's record of media freedom (see Chapter IV).

Montenegro is one of the OSCE participating states that have done away with prison sentences for libel. However, civil courts continue to award disproportionately high compensation for cases of defamation. These exert an overall chilling effect on journalists and media outlets (see Chapter V).

In this respect, bolstering the Montenegrin media's self-regulatory mechanisms would help decrease the number of complaints and boost investigative journalism (see Chapter VI).

II. THE NEW LAW ON ELECTRONIC COMMUNICATIONS AND THE INDEPENDENCE OF THE BROADCASTING AGENCY

Chart: The Broadcasting Problem Fields in Montenegro



A well-performing regulator with an uncertain future

Unfortunately, the institutional solutions pursued by the new Law on Electronic Communications put the independence of Montenegro's otherwise well-functioning Broadcasting Agency (BA) into question.

The new law merges the technical sector of the BA, which decides on the allocation of frequencies when it licenses the broadcasters of the country, with the Government-dependent Agency for Telecommunications to create a new body, the Agency for Electronic Communications and Postal Activity, which will be established and controlled by the Government.

The BA had won praise throughout Europe as an exemplary institution, both for the autonomy it has enjoyed and for the professionalism of its staff.

The BA and the Agency for Telecommunications have cooperated well in the past. The Ministry of Transport and Telecommunications, which prepared the new Law, offered no clear reasoning for merging the two regulators in a way that puts the licensing body's important functions under Government control.

The now-defunct Broadcasting Law, adopted in September 2002, established a best practice model for the appointment of the BA, which is responsible for licensing broadcasters and other key regulatory functions. A number of stakeholders nominated members of an oversight Agency Council, and these appointments were then submitted to Parliament for ratification.

In stark contrast, the new Law provides that members of the proposed Council of the Agency for Electronic Communications and Postal Services "shall be appointed by the Government, upon the Ministry proposal."

The precise relationship between the old BA and the new Agency is still not clear. Among other things, the Law provides for the new Agency to take over assets and staff of the BA, although it does not appear to formally abolish the latter.

A hasty procedure

During his visit, the RFOM held a roundtable discussion between various institutions and state mechanisms involved in the proposed legal change. He recommended a longer period of negotiation so that objections could be addressed and a satisfactory solution found before the law was passed. It was his position that such a solution would preserve the independence of the oversight of the broadcast licensing decisions presently managed

by the BA, and at the same time care for the unified technical oversight of telecommunications, brought in by the new law as necessary in the times of convergence of all platforms into digital ones.

Unfortunately such a result was not achieved, neither were assurances from state officials regarding the negotiation process upheld.

During his visits, the RFOM received assurances from government officials, including the Prime Minister, the Speaker of Parliament and the Minister of Transport and Telecommunications, that a longer consultation period would take place.

Despite this, on July 29, only days after the RFOM's visit, Parliament approved the draft law in an unchanged shape and form, together with some 30 other laws. Amendments proposed to improve the draft law, including those brought by the BA, were not given the study they deserved. What's more, the vote took place in the absence of opposition MPs, who were still boycotting Parliamentary sessions to protest the lack of live TV coverage.

With the draft now enacted as law, the RFOM recommends that Parliament amends the law to correct the omissions. There are several compelling reasons for this:

– One, for constitutional reasons: The Government must provide pro-active care for media pluralism. A key guarantee of this is the independence of the licensing process. Unfortunately, under the new law, some indispensable elements of the licensing functions of the BA will be carried out by Government-appointed officials. It is not clear what BA's role in the licensing process will be, and how it will be represented in the bodies that decide on tenders.

It is a well-established principle under international law that bodies that exercise regulatory or other decisive powers over the media should be protected against political interference. A body whose members are appointed by the government does not meet the required standard.

– Two, for practical reasons: The amendments suggested by the BA and supported by the RFOM would have precluded a double-headed, two-stop licensing, where the decision about licensing is preceded by a decision about the available frequency, made by a different body.

– Thirdly, for political reasons: A legal setup that theoretically allows for arbitrary or biased decision-making (and the double-headed mechanism falls into this category) leads to a lack of public trust.

Recommendations

- Montenegrin authorities should continue their efforts to comply with the Media Law, which bans State ownership of the press, and complete the privatization of *Pobjeda*, the only remaining State-owned daily.
- The Montenegrin authorities should start work on new amendments to the Law on Electronic Communications. The new provisions should avoid a double-headed, two-stop licensing setup, in order to provide transparency and accountability in decision-making. They should guarantee the independence of the oversight of the licensing process, in order to provide due care for media pluralism. At least the appeals against the licensing decisions should be placed with a fully independent body empowered to cancel the disputed decisions if found faulty or at variance with the interests of a pluralistic media scene.
- Successful solutions of merging telecommunications and broadcasting authorities, such as at Ofcom in the United Kingdom or at FCC in the U.S., could be studied.
- Before passing such new amendments, the authorities of Montenegro are urged to submit the draft to a review by international experts, such as

the competent services of the Council of Europe. Obviously, the RFOM also stands ready to lend expertise.

III. AMENDMENTS TO THE RTCG LAW

Another source of discussion and concern that was raised by the RFOM during his visits was the fate of the Public-Service Broadcaster of Montenegro (RTCG). At the time this report was being written, the Draft Law on modifications and amendments to the Law on Public-Service Broadcasting was still under discussion.

Although the hitherto tabled amendments contain some improvements, such as the downsizing of RTCG staff, they also introduce novelties that are questionable from the point of view of the overall independence of the public-service broadcaster. These include a new method for electing Council members, who will now be appointed by a majority of votes in Parliament, and the failure to resolve the RTCG's ongoing financing problems. (See the discussion below.)

Undue political influence in the proposed appointment procedure

The RFOM subscribes to recommendations spelled out by the freedom of expression watchdog *Article 19* in its own analysis of the Montenegro broadcasting law.³

- The list of those empowered to nominate members for the RTCG Council should be restricted to single entities, or very small groups of entities; large composite bodies should not be nominators.

3 <http://www.article19.org/pdfs/analysis/montenegro-broadcasting-law.pdf>

- Nominators either should nominate a single candidate for parliamentary ratification, or a framework of rules should ensure that parliamentary decision-making regarding Council members is open and participatory.
- The law should include more detail as to the content of the reports that the RTCG Council is required to provide, along with a requirement to make these reports public.
- Greater detail on the complaints system should be added to the law, such as a requirement to adopt a code of conduct, and basic rules on the processing of complaints and remedies.

Under the current law, RTCG is supervised by civil society – not by the Government or political parties. A total of 11 organizations, ranging from cultural institutions to trade unions and NGOs, nominate representatives to the Council. Parliament then verifies whether the nomination procedure complied with the RTCG Law. If the civil society organizations do not reach consensus on the nominees, the candidate with most signatures wins the nomination. Parliament merely ratifies the nominations with a simple majority; it has no right to change or add candidates.

However, in the proposed draft, Parliament does not only approve the board members but actually selects out of the two candidates which had received the largest support from authorized nominators.

The present process of appointment to the Council and the Managing Board was deliberately made complex in order to ensure that the nominators be immune to any pressure. Such practice should be continued in the future.

The license fee and the sustainable financing of RTCG

Under the current distribution of license fees, RTCG is responsible for the fee collection. It can though contract out the collection. Itself then gets 75% of

the total collected fee, 5% goes to the Broadcasting Agency, and local public services and commercial media receive 10% each.

But RTCG (or any public-service broadcaster) should not be pushed or even allowed to worry about the taxpayer-paid part of its revenues. The procedure should be automated, and the RTCG should receive its share of the collected license fees directly. Only this will result in a financially sustainable – and politically independent – RTCG.

Under the current system of collecting license fees from the public, they are paid as part of normal electricity bills. Under this system, introduced this year, the first reports indicated that RTCG may receive only 30 per cent of its full income. This is because the license fee part of the electricity bill is optional (detachable), meaning that anyone can choose not to pay it.

Making license fee collection automatic (or, alternatively, designating a specific percentage of state or tax revenues that will be automatically transferred to the public-service broadcaster) would avoid such uncertainties and at the same time make RTCG independent from arbitrary governmental decisions.

Legislators are urged to study the successful automation methods implemented in the United Kingdom, Georgia and Latvia. These prove that both fee collection and budget transfers can be automated.

If they choose to automate fee collection, the British method of making it defined several years in advance can be a model. Of course, a result-oriented fee collection method is another key element of success. The payment should not be made optional on the payee side.

Alternatively, given that low-income households of Montenegro may find it difficult to pay broadcast fees, the Georgian and Latvian methods of

automated budget transfers could be the solution. Under this scheme, the law defines a constant percentage of the national income or of the overall income tax revenues, and this sum is automatically transferred to the public broadcasting system and all other recipients of the fee. (In Montenegro's case, for example, the BA also receives a share of the fee.

Whatever model is chosen, the key factor in assessing its success will be the extent to which it contributes to the sustainability of the RTCG while at the same time precluding possibilities for political interference.

The dispute over broadcasting of parliamentary sessions, and the opposition boycott

The RFOM participated in the roundtable "Live Coverage of Parliament Sessions – International Practices and Experiences", organized on 7-8 July 2008 by the OSCE Mission to Montenegro.

In 2003, opposition parties walked out of Parliament after RTCG decided to end its live broadcasts of parliamentary sessions on the ground that such broadcasts would entail large expenses and obligations rather than earn income. The same scenario repeated itself in June 200+8.

On 6 October 2008, with the help of mediation from the OSCE Mission, Parliament and RTCG reached agreement that some parliamentary sessions should be broadcast live.

Recommendations

- The adoption of the Draft Law on modifications and amendments to the Law on RTCG should be preceded by a broad public and parliamentary discussion.

- The present complex process of appointment to the Council and the Managing Board was designed to make the nominators immune to any pressure. Such practice should be continued in the future.
- Article 19's detailed recommendations should be embraced:
 - » The list of those empowered to nominate members for the RTCG Council should be restricted to single entities, or very small groups of entities; large composite bodies should not be nominators.
 - » Nominators either should nominate a single candidate for parliamentary ratification, or a framework of rules should ensure that parliamentary decision-making regarding Council members is open and participatory.
 - » The law should include more detail as to the content of the reports that the RTCG Council is required to provide, along with a requirement to make these reports public.
 - » Greater detail on the complaints system should be added to the law, such as a requirement to adopt a code of conduct, and basic rules on the processing of complaints and remedies.
- A de-commercialization reform of RTCG should be given proper consideration.
- Greater independence for RTCG can only be achieved if its dependence on collection rates of fees or other taxpayer-paid revenues decreases.
- Guaranteeing these revenues for a longer period of time – in other words, automating them – would be a substantial contribution to RTCG's financial, and therefore political, independence.
- Automation of income for RTCG can be carried out either through fee collection alone or through State financing. Both methods may be compatible with "automation". It is advisable to study the British method of advance fee setting, or the Georgian and Latvian solutions, whereby a certain pre-set percentage of the state's tax revenues is mechanically transferred to the fee recipients.

IV. UNRESOLVED CASES OF VIOLENCE AGAINST MEDIA PROFESSIONALS

In recent years, Montenegro has witnessed a disturbing series of violent acts against journalists. Some serious cases are still unresolved. OSCE media freedom commitments demand enhanced governmental concern for safe working conditions for journalists. A crime against a journalist is not a “normal” crime, but an attack against one of the foundations of a democratic society.

The unresolved cases include:

The murder of Dan’s owner and editor-in-chief, Dusko Jovanovic

Dusko Jovanovic, editor-in-chief of the opposition daily *Dan*, was shot dead in a drive-by killing in 2004. His murder has not yet been solved. Although suspects in this crime have been identified, they remain at large.

The attack on journalist Mladen Stojovic

On 23 May, 2008, Mladen Stojovic, a journalist with the daily *Danas* and Belgrade correspondent of the Podgorica-based daily *Vijesti*, was assaulted in his apartment in Bar. Beaten unconscious, he sustained severe injuries. The attack came five months after Stojovic had appeared on “Insider,” an investigative series on B92 Television.

Although Stojovic himself has stated that the attack was not related to his journalistic work, I believe that the lack of progress in its investigation adds up to the chilling effect exerted on the professional media community.

The authorities must address lengthy police investigations and other obstacles in administering justice in cases of attacks against media

professionals. Swift investigations and judicial proceedings will boost trust between citizens and the government.

Recommendations

- All cases of threats, violence or even murders of journalists must be duly investigated in a timely and forthcoming manner, whose results are made clear to the public.

V. DEFAMATION: A LACK OF FULL DECRIMINALIZATION AND A CHILLING EFFECT FROM DISPROPORTIONATE CIVIL FINES

No one can be imprisoned for libel and insult in Montenegro due to the legal reform in 2003. This is very positive. However, ‘libel’ (or ‘defamation’) and ‘insult’ remain crimes albeit punished with a fine (Articles 195 and 196 of the Criminal Code).

Preferably, the adjudication of all verbal offences against honor and dignity should be placed into the domain of the civil law.

But two recent court cases show that civil law combined with disproportionately high fines can also endanger journalism in Montenegro:

Monitor vs. Emir Kusturica

In November 2007, Andrej Nikolaidis, a writer and journalist from the weekly *Monitor*, was fined €5,000 after film director Emir Kusturica was found to have been defamed by an article published in June 2004. On appeal, the Higher Court in Podgorica increased the fine to €12,000.

Milo Djukanovic vs. Zeljko Ivanovic

On the night of 1 September, 2007, three assailants wielding baseball bats and metal rods attacked Zeljko Ivanovic, the founder and director of the independent daily *Vijesti*, in downtown Podgorica. The perpetrators of this crime have been identified and convicted. They are currently serving prison terms.

In his comment immediately afterwards, Ivanovic called the attack “a greeting card” from Milo Djukanovic (at that time a former Prime Minister). As a result of this statement, in September 2007, (at the time of this report Prime Minister) Milo Djukanovic sued the independent daily *Vijesti* and its director Zeljko Ivanovic for €1 million, claiming damage to his reputation after statements saying Djukanovic and his “family” were responsible for an assault on Ivanovic.

Most media outlets had reported the comments made by Ivanovic that were ruled to be defamatory, but *Vijesti* was the only one Djukanovic chose to sue.

On 19 May 2008, a court in Podgorica ordered *Vijesti* and Ivanovic to pay Djukanovic €20,000.

In order to ensure safe working conditions for journalists, changes in both the law and in the mindsets of public officials are needed.

Both “libel/defamation” and “insult” should be decriminalized, and the system of punitive fines should be reformed according the international free speech standards stemming from the jurisdiction of the European Court of Human Rights:

- Proportionality: Fines should be proportionality commensurate with the gravity of the offence;

- Ceiling: maximum fines should not be “killing” for the media outlets;
- Public interest: High officials should come under a different system of scrutiny from ordinary citizens. To ensure free discussion of public issues, only reckless libel should be the basis for high officials to claim infringement of personality rights. Criticism intended in good faith to be in the public interest may contain factual inaccuracy.

Recommendations:

- The elimination of imprisonment as a punishment for libel is a positive development. This should go further, however. Libel and insult should be decriminalized completely. Journalists’ mistakes should be handled according to the existing provisions of the Civil Code.
- Such reforms should go hand in hand with the implementation of both a ceiling on civil fines and a determination that such fines should be calculated in a proportion that reflects the gravity of the offense.
- For the sake of uninhibited media discussion of important public issues, the law should make clear that public officials must show a greater degree of tolerance towards criticism, even when it contains factual inaccuracy, than average citizens can be expected to display (See the relevant case law of the European Court of Human Rights).

VI. MEDIA SELF-REGULATION

The deficiencies of decriminalization, and the chilling effect from the practice of imposing high fines, have contributed to the limited progress of investigative journalism in Montenegro, especially in cases of corruption. But these deficiencies do not eliminate the necessity for the media community to develop stronger means of self-regulation.

The Journalists' Self-Regulatory Body (JSRB) was established in 2003. Its signal achievement so far has been the almost complete elimination of hate speech in the media – a very welcome development so soon after the post-Yugoslav wars.

But the fact that not all of Montenegro's leading dailies cooperate within the JSRB lends weakness to this structure.

Dan, for example, one of the most influential dailies, has decided not to participate in the JSRB, even though it faces more lawsuits than any other media outlet.

According to Human Rights Action (HRA), there are currently close to 30 civil cases against *Dan*, with claims totaling more than €1 million. Some 23 complaints, with claims approaching €2 million, have been lodged against the daily *Vijesti*. And there are nine cases against the weekly *Monitor*, with plaintiffs claiming more than €200,000 in damages.

Were *Dan*'s management to join the JSRB, it would be a powerful statement of its adherence to rules of ethical work. Additionally, self-regulation by news organizations, by providing quick correction to those with a legitimate complaint about mistakes committed, decreases the number of lawsuits, and deprives politicians of a moral pretext when they demand "tougher actions" against the media.

During his visit, the RFOM offered to finance a local translation of his office's *Media Self-Regulation Guidebook*, which was published in 2008.

Recommendations

- In order to strengthen journalism's collective defense, all major outlets should participate in the nation's media self-regulation body.

Summary of Recommendations

- In line the Media Law, which bans State ownership of the press, Montenegrin authorities should complete the privatization of *Pobjeda*, the only remaining State-owned daily.
- The new Law on Electronic Communications is not satisfactory, and Montenegrin authorities should begin work on a new draft in order both to guarantee the independence of the licensing process – which is at the core of media pluralism, and to avoid a double-headed, two-stop licensing setup, which always and inevitably leads to arbitrariness in decision-making.
- Successful solutions of merging telecommunications and broadcasting authorities, such as at Ofcom in the United Kingdom or at FCC in the U.S., could be studied.
- The adoption of modifications and amendments to the Law on RTCG should be preceded by a broad public and parliamentary discussion.
- The present complex process of appointment to the Council and the Managing Board was designed to make the nominators immune to any pressure. Such practice should be continued in the future (instead of the selection between the two candidates who received the largest support from the authorized nominators, as proposed by the draft).
- Article 19's detailed recommendations should be embraced:
 - » Regarding the process of appointments to the governing board of the public-service broadcaster, the list of those who have the power to nominate members for the RTCG Council should be restricted to single entities, or very small groups of entities.
 - » Nominators should either be asked to nominate a single candidate for parliamentary ratification or a framework of rules should be put in place to ensure that parliamentary decision-making regarding Council members is open and participatory.
 - » The law should include more detail as to the content of the reports the RTCG Council is required to provide, along with a requirement to make these reports public.

- » Greater detail on the complaints system should be added to the law, such as a requirement to adopt a code of conduct against which to measure complaints, a list of key issues which such a code should address, and basic rules on the processing of complaints and remedies.
- The de-commercialization reform of RTCG should be given proper consideration.
- Greater independence for RTCG can only be achieved if its dependence on collection rates of fees or other taxpayer-paid revenues decreases.
- Guaranteeing these revenues for a longer period of time – in other words, automating them – would be a substantial contribution to RTCG's financial, and therefore political, independence.
- Automation of income for RTCG can be carried out either purely through fee collection or through State financing. Both methods may be compatible with “automation”. It is advisable to study the British method of advance fee setting, or the Georgian and Latvian solutions, whereby a certain pre-set percentage of the state's tax revenues are mechanically transferred to the fee recipients.
- All cases of threats, violence or even murders of journalists must be duly investigated in a timely and forthcoming manner whose results are made clear to the public.
- The elimination of imprisonment as a punishment for libel is a positive development. This should go further, however. Libel and insult should be decriminalized completely, and journalistic mistakes should not be criminalized. Such reforms should go hand in hand with the implementation of both a ceiling on civil fines and a determination that such fines should be calculated in a proportion that reflects the gravity of the offense.
- For the sake of uninhibited media discussion of important public issues, public officials should show a greater degree of tolerance towards criticism, even when it contains factual inaccuracy, than average citizens can be expected to display (see relevant ECtHR case law).

- In order to strengthen journalism's collective defense, all major media outlets should participate in the nation's media self-regulation body.

Legal Reviews

ARTICLE 19

Global Campaign for Free Expression

Statement on the Draft Slovak Act on Periodic Press and News Agencies

London, February 2008

**Commissioned by the Representative on Freedom of the Media of the
Organization for Security and Co-operation in Europe**

KEY RECOMMENDATIONS

On Content Restrictions

- Section 6(1) should be removed in its entirety from the Act. It is unnecessary, as well as vague and overbroad, and members of the executive should never have the power to impose sanctions on media outlets.

On the Rights of Correction, Reply and Supplementary Information

- We recommend that, to avoid the risk of abuse, the three remedies be reduced to a single remedy which is engaged only where the claimant demonstrates that he or she has a justified interest in correcting an incorrect or misleading fact published by a periodical. The conditions for refusing a correction/reply should be extended to include cases where the reply is longer than what is necessary to correct the original mistake; where the reply is disproportionate or illegal or introduces new issues; where a correction has already been provided which redresses the harm done; and where the original statement was justified by an overriding legitimate public interest.

Introduction

A draft Act on Periodic Press and Agency News Service and the Amendment and Supplementing of Certain Acts (the Press Act) (hereinafter the draft Act) is currently being considered by the Slovak authorities. The draft Act was recently approved by Cabinet and is currently before Parliament. ARTICLE 19 has been asked to comment on the draft Act, in particular to assess it against international standards on freedom of expression.⁴

The draft Act includes a small number of positive protections for freedom of expression, including protection of sources, a right to access information and protection against liability for the publication of certain statements made by others. At the same time, it is mostly concerned with regulating periodicals,⁵ including by imposing a number of restrictions on the content of what may be published, by requiring certain information to be carried in each edition, by granting rights to correction, reply and supplementary information, by providing for the registration of periodicals and by establishing a system of sanctions for breaches.

For the most part, the provisions in the draft Act are uncontroversial. In certain key respects, however, they fail to conform to accepted international or European standards. In some cases, apparently subtle differences – such as the use of the term ‘promoting’ or ‘trivializing’ – have proven in practice to be highly problematical in some countries. In other cases – such as granting the Ministry the power to impose sanctions – the problems are more blatant. The proper scope of the right to correction and/or reply is a particularly complex issue. In many European countries, long-standing rules on this formally fail to conform to European standards and yet have not been tested constitutionally or at the European Court for various reasons. The analysis

4 This Statement is based on an English translation provided to ARTICLE 19 by the OSCE, produced by the Ministry of Culture of the Slovak Republic. ARTICLE 19 takes no responsibility for errors based on mistaken or confusing translation.

5 In this Statement, references to periodicals should be understood as including news agencies.

of these issues in this Statement is based on authoritative statements, in particular by the Council of Europe, as well as a principled analysis of the right to freedom of expression, which requires any restrictions on this right to be carefully tailored and proportionate.

Analysis of the Draft Act

Protection of Sources

Section 4 of the draft Act provides that publishers of periodicals and news agencies and their employees are obliged to respect the confidentiality of sources of information as requested by those sources. Under international law, it is well-established that the media have a right to protect the confidentiality of their sources of information.⁶ As the European Court of Human Rights has stated:

Protection of journalistic sources is one of the basic conditions for press freedom ... Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected.⁷

In most European countries, however, this is cast as a right or privilege, not as an obligation.⁸ Although the matter has never been dealt with by an international court, there are potentially serious problems with imposing source confidentiality as an obligation on the media and it would be preferable for Slovakia to follow the dominant European practice in this area.

⁶ See, for example, *Goodwin v. United Kingdom*, 27 March 1996, Application No. 17488/90 (European Court of Human Rights) and Recommendation No. R (2000) 7 of the Committee of Ministers of the Council of Europe to member states on the right of journalists not to disclose their sources of information, adopted 8 March 2000.

⁷ *Goodwin, ibid.*, para. 39.

⁸ Sweden is a well-known exception to this.

Furthermore, the rule should not be restricted to publishers and employees, but extend to “any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication”.⁹ This is of particular importance in Slovakia, due to the large number of consultants and freelancers working for the media.

Recommendation

- The rule on protection of sources should be cast as a right of the media, not an obligation, and it should apply to everyone regularly engaged in the professional dissemination of information.

Content Restrictions

Section 6(1) of the draft Act imposes a number of restrictions on what content may be published in a periodical. Section 6(1)(a) prohibits the dissemination of statements that “promote war or describe cruel and other inhuman actions in a manner that trivialises them, justifies them or indicates approval of them”, while section 6(1)(b) contains a similar prohibition on statements that “promote the use of narcotic or psychotropic substances or describe the use of narcotic or psychotropic substances in a manner that trivialises such use, justifies it or indicates approval of it”. Section 6(1)(c), for its part, prohibits the promotion of violence or incitement to hatred based on a list of some 18 grounds (depending on how you count them), including ‘social origin’, ‘genetic characteristics’, ‘language’, ‘religion or faith’, ‘class’, ‘property’ and ‘political or other thinking’. Finally, section 6(1)(d) prohibits the publication of information which is forbidden by various special regulations.

⁹ Recommendation No. R (2000) 7, note 3, Appendix, Definitions.

Pursuant to section 12 of the draft Act, the Ministry has the power to impose fines of up to 200,000 SKK (approximately USD 9,000) for breach of these rules.

ARTICLE 19 is of the view that laws governing the print media should not contain any content restrictions whatsoever. If the publication of a certain category of statement carries a sufficient risk of harm to justify a restriction on freedom of expression, this should apply regardless of the manner in which the statement is disseminated – in a newspaper, in a book, orally and so on – and, as a result, the restriction should be placed in a law of general application, such as the criminal or civil code. Slovakian law already protects many of the interests set out in section 6(1). Articles 423 and 424 of the Criminal Code, for example, prohibit hate speech. To reiterate these general prohibitions in a specific law governing the print media sends a double warning to periodicals, and subjects them to two sets of potentially conflicting rules on the same matter. It cannot be necessary to prohibit these statements in two different legal rules, and so the specific restriction for the print media cannot be justified as a restriction on freedom of expression.

It may be noted that the codes of conduct that are imposed in many countries on the broadcast media are fundamentally different from the rules in the draft Act. Regulation of broadcasters is, under international law, treated very differently from regulation of the print media, among other things because broadcasters are given special access to a limited public resource, the airwaves.

This problem is very significantly exacerbated due to the fact that a Minister is responsible for imposing penalties for breach of these provisions, unlike under the civil or criminal laws, where such decisions are made by the courts. This breaches the well-established international standard that only independent bodies may regulate the media. The reasons for this are obvious; if politicians are given the power to impose sanctions on media

outlets, they will naturally be tempted to abuse those powers for political ends. As the three special 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 – stated in a Joint Declaration in 2003:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.¹⁰

Ministers clearly do not meet these criteria. Furthermore, the fact that a periodical may appeal any decision by the Minister to impose a sanction to the courts in no way resolves the problem, which is that the Minister has the power to impose a sanction in the first place.

The substance of the restrictions is also highly problematical. International law, for example as set out in the *International Covenant on Civil and Political Rights* (ICCPR),¹¹ accepts, indeed requires, that States prohibit incitement to racial and religious hatred, as well as to war, but such restrictions are required to be cast in clear and narrow terms to avoid being subject to potential abuse. There is nothing wrong with writing about war and/or drugs in an approving way – and many renowned books do just that – as long as one does not incite others to illegal acts. Furthermore, it is simply not legitimate to prohibit the promotion of hatred based on ‘political or other thinking’; formally, this could even be interpreted to prohibit the condemnation of racist ideas. It may be noted that the right to freedom of

¹⁰ Adopted 18 December 2003. Available at: <http://www.article19.org/pdfs/igo-documents/three-mandates-dec-2003.pdf>.

¹¹ UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976. Slovakia became an independent party to this treaty in May 1993.

expression protects statements that “offend, shock or disturb the State or any sector of the population” and that this is one of the demands of “pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.”¹² It is only where a statement poses an actual risk of harm to a legitimate interest that a restriction may be justified.

A related problem with the restrictions in sections 6(1)(a) and (b) is that the standards they set out are cast in unacceptably vague terms. The notions of ‘promotion’ and what constitutes a “trivialising, justifying and approving way” of referring to war, inhuman acts or drugs are inherently subjective, whereas the idea of incitement to war is susceptible of more objective interpretation. We understand that the criminal law also uses the terms “trivialising, justifying and approving way” and, to this extent, it should also be amended.

The broadness and vagueness of the restrictions means that they could be arbitrarily abused to prohibit legitimate reporting on the subjects covered, thereby undermining the ability of the print media to fulfil its function in a democratic society, as well as the public’s right to know.

The purpose of section 6(1)(d) is unclear. Inasmuch as it simply reinforces rules set out in other legal provisions, it would appear to have no independent legal effect and, as a result, cannot be justified. To the extent that the rules regarding print media coverage of elections need to be revised, this should be done directly in the legal provisions referred to.

Recommendations:

- Section 6(1) should be removed in its entirety from the draft Act.
- Members of the executive should never have the power to impose sanctions on media outlets.

¹² *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72 (European Court of Human Rights), para. 49.

- There should be no content restrictions which are not set out clearly and narrowly, or which go beyond prohibiting incitement to crime or hatred.

Rights of Correction, Reply and Supplementary Information

Sections 7-10 of the draft Act provide for the rights of correction, reply and supplementary information. A correction may be claimed where a statement by a periodical contains untrue facts which identify someone. That person may, within 30 days, provide a written correction which the periodical must carry within eight days, or in the next edition, unless they are able to prove that the original statement was true or that a correction has already been provided. A right of reply may be claimed whenever a periodical publishes factual statements impinging on the honour, dignity or privacy of a legal or natural person, whether or not a correction has already been provided. The application for a reply must be in writing and not exceed the length of the original article. It must be published within three days, or in the next edition, unless the original article was published with the consent of the applicant or a reply has already been provided. A claim of a right to 'supplementary information' arises when a periodical publishes facts relating to a procedure before a public authority against any person which identify that person, once the matter has been finalised. The periodical must publish the supplementary information, which does not appear to be subject to any length constraints, within eight days or in the next edition, unless the periodical itself published an announcement on the final ruling.

Corrections, replies and supplementary information must be published in the "equivalent position and the same format" as the original article and without further comment by the periodical. Where a periodical refuses to publish a correction, reply or supplementary information, an application may be made to the court to force publication and for 'proportional' financial compensation.

We note that the right of reply and related rights are a highly contentious area of media law. It is not disputed that the right represents an interference with freedom of expression.¹³ Some see it as a low-cost, low-threshold alternative to expensive lawsuits for individuals whose personality rights (for example to reputation or to privacy) have been harmed by the publication of incorrect or misleading statements about them; others regard it as an impermissible interference with editorial independence.

In the United States, a mandatory right of reply for the print media has been struck down on the grounds that it is an unconstitutional interference with the First Amendment. In *Miami Herald Publishing Co. v. Tornillo*, the Supreme Court held:

[A mandatory right of reply] fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials – whether fair or unfair – constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.¹⁴

On the other hand, within Europe, the right of reply is seen as an appropriate means of addressing harmful reporting and also as a means of contributing towards pluralism. In a 1989 case, the European Commission of Human Rights stated that “in a democratic society, the right of reply constitutes a

¹³ See, for example, *Ediciones Tiempo S.A. v. Spain*, 12 July 1989, Application No. 13010/87 (European Commission of Human Rights) and *Enforceability of the Right to Reply or Correction*, 29 August 1986, OC-7/86, Inter-American Court of Human Rights, Ser. A, No.7, Advisory Opinion.

¹⁴ 418 U.S. 241 (1974), p. 258.

guarantee of the pluralism of information which must be respected.”¹⁵ The Committee of Ministers of the Council of Europe has adopted a Resolution on the right of reply which recommends that the right be recognised, but suggests that exceptions be made in the following cases:

- i. if the request for publication of the reply is not addressed to the medium within a reasonably short time;
- ii. if the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate;
- iii. if the reply is not limited to a correction of the facts challenged;
- iv. if it constitutes a punishable offence;
- v. if it is considered contrary to the legally protected interests of a third party;
- vi. if the individual concerned cannot show the existence of a legitimate interest.¹⁶

Other commentators, including ARTICLE 19, have suggested that the right of reply should ideally be voluntary. The UN Special Rapporteur on Freedom of Opinion and Expression, for example, has stated:

The Special Rapporteur is of the view that if a right of reply system is to exist, it should ideally be part of the industry’s self-regulated system, and in any case can only feasibly apply to facts and not to opinions.¹⁷

It may be noted that the objections to overbroad rights of correction/reply are not academic. Requiring the correction of false statements of fact is one

¹⁵ *Ediciones Tiempo S.A. v. Spain*, note 10. See also European Union Directive 89/552/EEC of 3 October 1989, OJ L 298, 17 October 1989, pp. 23-30, Article 23, prescribing a right of reply in the broadcast sector for all EU Member States, and Article 14 of the *American Convention on Human Rights*, 22 November 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force 18 July 1978, which requires State Parties to provide for either a right of reply or a right of correction.

¹⁶ Resolution (74)26 on the right of reply – position of the individual in relation to the press, 2 July 1974. Available at: [http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Res\(1974\)026_en.asp#TopOfPage](http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Res(1974)026_en.asp#TopOfPage).

¹⁷ Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Report of the mission to Hungary, 29 January 1999, E/CN.4/1999/64/Add.2, para. 35.

thing, going beyond this to allow a reply in response to critical reporting, or reporting which is not deemed to be sufficiently in-depth on an issue is quite another. This will create a chilling effect inasmuch as editors will not wish to publish material which might lead to them being required to publish a correction/reply and thus undermine the free flow of information, contrary to commitments in this area by the Council of Europe and the OSCE.

The right to freedom of expression requires that the least intrusive remedy which will address a problem be applied. It may be noted that requiring a periodical to carry a statement by someone else is a far more intrusive remedy than simply requiring a periodical to insert its own statement. ARTICLE 19 thus notes that where the provision by a periodical of its own correction to a false statement of fact will effectively undo the harm, this should be the preferred solution. As a result, where a periodical has published a correction which has undone the harm, this should be a grounds for rejecting a claim for a reply.

We note the following problems, relative to the standards discussed above, with the draft Act's provisions on the rights of correction and reply:

- The draft Act provides for a right of correction whenever a false statement of fact published by a periodical identifies someone. There is no requirement that the statement harm the person's reputation or any other personality right. Resolution (74)26 of the Council of Europe on the right of reply calls for corrections only where the applicant has a 'justified interest' in having the information corrected. Even the current Press Act (Law 81/1966), in Article 19 on the right to correction, only requires a correction in cases of false or misleading facts which impinge on the claimant's honour.
- A periodical may refuse to publish a correction if they can prove the truth of the statement. This places the onus on the periodical, not the claimant. However, since falsity is inherent to the claim, the onus should be on the claimant. Otherwise, anyone could make a claim for a

correction, thereby forcing the periodical to prove, potentially in a court of law, the truth of their statements. This may be difficult, for example where the periodical has relied on confidential sources of information. The claimant should, for the same reason, be required to show that he or she has a justified interest in the correction.

- Under the draft Act, a reply may be demanded only where a statement of fact impinges on the honour, dignity or privacy of a person. However, there is no requirement that the statement be false. This could lead to situations where periodicals were required to provide replies to individuals simply for having published true, if uncomplimentary, statements about them. It is quite clear from Resolution (74)26 of the Council of Europe that the right should arise only in the context of inaccurate, or at least misleading, statements of fact. As with a correction, the onus should be on the person claiming a reply to prove that the original statement was false and that it breached his or her rights.
- Replies have to be published within three days, which does not leave editors sufficient time to consider whether or not they are justified. Resolution (74)26 of the Council of Europe calls for the publication of replies “without undue delay”; the period of eight days the draft Act allocates for corrections and supplementary information clearly satisfies this standard and should be considered for replies as well.
- The draft Act sets out only very limited circumstances in which a reply may be refused. The Council of Europe Resolution additionally allows a reply to be refused where its length exceeds what is necessary to correct the inaccurate statements, where it goes beyond addressing the contested statements, for example by introducing new issues or by commenting on other statements, and where it contains illegal material or breaches the legitimate interests of third parties. It may be noted that the draft Act not only fails to include the Council of Europe limitation on length to what is required to correct the challenged statements, but it specifically provides that replies may be as long as the original text. This

is clearly open to abuse, for example where a long article contains only one factual statement concerning the claimant.

- It should also be possible to refuse a claim for a correction/reply where a periodical itself publishes a correction which effectively redresses the harm done.
- Under the draft Act, there are no apparent restrictions on the ‘entities’ which may claim a correction or reply. The Council of Europe Resolution prohibits “state and other public authorities” from claiming this right, due to the obvious possibilities of abuse that this may entail, and the fact that taxpayer supported public authorities do not have personality rights, since their ‘good fame and reputation’ belongs to the public.
- In the draft Act, the overriding importance of open debate on matters of public interest is not taken into account. The Council of Europe Resolution specifically recognises that certain legitimate public interests may override both the right to privacy and the right to reputation. A reply should not be available where the publication of the statement was justified by an overriding legitimate public interest.
- The draft Act specifically allows claimants to demand both a right of correction and a right of reply, as well as any other legal remedies they may have, whether or not a correction or reply has been granted. This is clearly illegitimate and allows two remedies for the same wrong. Indeed, given that criminal penalties for defamation, contrary to international standards, still exist in Slovakia, claimants could potentially claim four remedies for the same wrong: a correction, a reply, a civil remedy and a criminal remedy.
- The draft Act allows claimants to ask for financial compensation where a correction or reply has improperly been refused. This is illegitimate and constitutes double dipping – potentially being compensated twice for the same harm – since claimants still have the right to take advantage of any civil remedies which may be available. Instead, when assessing damages in a civil case, the court should take into account in mitigation any correction or reply which has been provided.

- Both corrections and replies are required to be published in the “equivalent position and the same format” as the original article. That goes beyond the requirements of the Council of Europe Resolution, which simply call for replies to be given, “as far as possible, the same prominence”. This recognises the practical challenges facing publishers, which a requirement of identical position does not.
- The draft Act prohibits periodicals from publishing any accompanying material to either a correction or a reply. That is not justifiable; accompanying material might, for example, be required to avoid confusing readers and to provide them with background information.

There should be no right to supplementary information, over and above cases in which a right of reply is engaged. This is simply not necessary, as reflected in the fact that this rule is rarely found in other democracies. While it is not very professional for periodicals to cover high-profile trials and yet not announce the final results, giving those who have been accused a right to make a statement in the periodical is not the solution. It not only represents a serious interference with editorial freedom, but it is also only a solution to one particular failure of unprofessional reporting. Ultimately, a lack of professionalism cannot be resolved by giving individuals who feel their issues have not been covered appropriately access to the media. This means that the media no longer have the power to decide when they have provided sufficient attention to an issue. Working towards a more professional media, along with developing public service media, represent better solutions to this problem.

Recommendations:

- We recommend that, to avoid abuse, the rights of correction and reply be reduced to a single remedy which is engaged only where the claimant demonstrates that he or she has a justified interest in correcting an incorrect or misleading fact published by a periodical.

- The length of time for providing a reply should be extended, for example to eight days.
- The conditions for refusing a correction/reply should be extended to include cases where the reply is longer than what is necessary to correct the original mistake; where the reply is disproportionate or illegal, breaches the rights of third parties or introduces new issues; where a correction has already been provided which redresses the harm done; and where the original statement was justified by an overriding legitimate public interest.
- The length of a reply should explicitly be restricted to what is necessary to correct the original statement.
- It should be explicitly stated that the State and public authorities are not eligible to claim a right of correction/reply.
- The right to claim financial compensation for an improper failure to provide a correction/reply should be removed.
- The rule that corrections/replies must be given “an equivalent position and the same format” as the original statement should be replaced by a rule requiring only that they be given similar prominence.
- The prohibition on a periodical publishing accompanying material to a correction/reply should be removed.
- There should be no right to supplementary information.

Memorandum on the Draft Law of the Republic of Kazakhstan on the Mass Media 2008

Commissioned by the Office of the OSCE Representative on Freedom of the Media from Mr. Andrei Richter, Doctor of Philology (Moscow State University Faculty of Journalism), Director of the Media Law and Policy Institute (Moscow)

Summary, brief recommendations

Having analyzed the draft law of the Republic of Kazakhstan on the Mass Media, the explanatory note thereto, the draft law of the Republic of Kazakhstan on Amending Certain Legislative Acts of the Republic of Kazakhstan on the Mass Media in the context of the Constitution of the Republic of Kazakhstan, the current media legislation of the Republic of Kazakhstan, as well as international standards on freedom of expression, and the best practices of other post-Soviet OSCE participating States, the expert has come to a conclusion that this draft law, in spite of certain obvious merits, contains provisions that jeopardize development of media freedom in Kazakhstan and is in need of follow-up revision in light of recommendations based on international law.

The draft law contains the following main advantages:

- Considering that it was accepted for consideration by the Majilis of the Parliament of the Republic of Kazakhstan in one package with amendments to the Criminal Code of the Republic of Kazakhstan, the draft law has obvious merits, such as decriminalization of libel and insult. The process is not, however, carried through to the end: alongside the removal of other articles on criminal liability for libel and insult, the article establishing punishment for infringement upon the honour and dignity

of the President of the Republic of Kazakhstan should also have been removed as unjustifiably restricting the activities of journalists.

- Another positive example of the proposed amendments is the introduction of administrative liability for wrongful refusal to provide information to journalists and for violation of the deadlines for providing the requested information.
- Of practical importance, also, is the proposed ban on confiscation of media products in a number of cases of administrative offences. At the same time, the possibility remains for suspending the issue (broadcast) of media products for a period of up to three months.
- The lifting of the ban on foreigners to hold the office of editor-in-chief of a media outlet is a positive step envisaged by the draft law on the Mass Media.
- A major advantage of the draft law on the Mass Media is the provision of Article 31.5, which restricts the statute of limitations on claims for refutation of information harming one's honour, dignity and business reputation or for publication of a response in a media outlet to one year from the date on which this information appeared in the media outlet.
- A major merit of the draft law on the Mass Media consists in the provision of Article 30.10, which requires state authorities and their officials, whose activities have been criticized in the media to provide written explanations, within a period of ten days, to the editorial board of the media outlet on the substance of the circumstances subjected to criticism. This will help make media statements more effective and authoritative, and strengthen the media as an institution of civil society.
- The provision of Article 31.6 and corresponding amendments to the Tax Code of the Republic of Kazakhstan should be perceived as another merit of the draft law on the Mass Media. These determine the size of the state duty levied for applying to a court of law for compensation for moral damage as a percentage of the amount of the claim entered.
- Also worthy of support is the shortening of the period allowed for state authorities and other organizations to reply to requests for information on

the part of media editorial boards from one month (for requests “requiring additional study and verification”) in the current law

- Article 18.2-1) to 10 days in the draft law (Article 30.5). This innovation will facilitate the work of the mass media, strengthen public control and comply with the practice in other post-Soviet states.
- The novel provision of the draft law on the Mass Media on freeing journalists of liability for quoting persons verbatim (Article 39.1.4) cannot but be welcomed. At the same time, it should be specified whether this applies to statements by anyone or only, for example, state officials.
- Also to be welcomed is the intention to introduce into the legislation provisions banning media monopolization, but these provisions should not be merely declarative in nature.
- A major positive effect will be derived from the draft law provision (Article 31.1) to the effect that “information expressed as personal views, convictions, opinions or critical judgments shall not be subject to refutation”.

The draft law fails to create an adequate legal framework for reforming the media system in Kazakhstan to bring it into line with the OSCE-accepted guarantees of freedom and independence of the media, democracy and civil society:

- This applies above all to the absence from the draft law of provisions opening up the way for creating public service media, namely, public service television as a forum for free discussion of the country’s most topical problems, for conducting dialogue with the political opposition, with national and other communities, as well as a platform for educating the population in the interests of unity and prosperity of Kazakhstan.
- This also applies to the draft law securing the legal conditions for domination in the media market of state-run media, which, by virtue of its very existence, violates the principles of a free market for information and

ideas. State organizations and authorities should be prohibited not only from dominating, but even from being serious players in this market.

- The draft law does not establish any legal guarantees for the independence of the television and radio broadcasting licensing authority from the institutions of state power. It does not provide for accountability of this authority to civil society or for openness of the licensing and control procedures. No guarantees are established against a possible conflict of interests between the members of the licensing authority and business and political interests. Not even the basic criteria are determined for choosing the winners of tenders for broadcasting rights.
- The draft law does not take account of the impending technological changes in the mass media of Kazakhstan, such as the potential creation of a multitude of digital broadcasting channels, and the legal problems arising in connection with this, such as the licensing of these channels.
- In spite of the comments made by the Office of the OSCE Representative on Freedom of the Media, the draft law preserves the previously introduced system of restrictions on use in the media (including the privately owned media) of languages other than Kazakh, on broadcasting of foreign television and radio programmes and on foreign ownership of the media.
- The draft law does not remove the restrictions on freedom of speech already criticized by the Representative on Freedom of the Media, such as the special registration procedure required of media outlets, engendering the possibility of forcible termination (suspension) of their activities.
- Despite assurances made previously by the authorities, the draft law fails to create the legal framework for introduction into journalistic practice of the principle of independence of editorial policy from the media owners and from the state. The draft law makes mention of this, but does not, in fact, create any conditions for limiting media concentration.

- The draft law suffers from the inaccuracies listed below, which are fraught with the possibility of varying interpretations of its provisions in interests contrary to those of freedom of speech.

Below is a summary of the recommendations proposed in relation to this draft law:

- All the restrictions on freedom of speech in the draft law should be reviewed in the light of compliance with international law standards. By virtue of this, the volume of Article 3 of the draft law “Inadmissibility of abuse of freedom of speech, receipt and dissemination of mass information” should be restricted to the scope Article 20.3 of the Constitution of the Republic of Kazakhstan.
- Special registration of media outlets should be abolished as superfluous and restricting media freedom.
- The possibility of forcible termination (suspension) of media activities should be excluded from the draft law.
- The “truthful information” principle mandatory for all media under the draft law (Article 4) should be abolished. The newly introduced provision on liability for dissemination of any “false information” should be removed from Article 38 of the draft law. The obligation of the journalist “not to disseminate false information” should be removed from the draft law.
- There should be no restrictions on the right to express one’s opinion through the media on the grounds of statelessness or a record of previous convictions.
- The restriction on use in the media of languages other than the state language should be removed. The restriction on re-broadcasting of programmes in other languages should be reviewed and replaced by obligations to place state orders for local media products and products in the Kazakh language.
- The restriction on re-broadcasting of foreign television and radio programmes should be reviewed. The intention of the Government

of Kazakhstan to promote domestic media products would be better implemented within the scope of the existent successful system for placing state orders for such products.

- The restriction on the share of foreign ownership deprives the media sector of essential foreign investments and experience and should be reviewed.
- It would be desirable to provide guarantees of editorial independence either by including provisions on the editorial charter into the law on the Mass Media or by creating a system of agreements between journalists and media owners.
- The draft law should define the concept of “protection of the public interest”, very important in journalistic practice. Other circumstances allowing hidden cameras to be used should be specified.
- The draft law should clearly specify legal guarantees of the independence of the television and (or) radio broadcasting licensing authority from the institutions of state power and its accountability to civil society, and openness of the licensing and control procedures. There should be legal safeguards against any possible conflict of interest between the members of the licensing commission and business and political representatives.
- The conditions for licensing of television and radio broadcasting as a factor behind the development of freedom of the media are: impartiality, competence and non-application of political criteria by the national licensing authority, as well as predictability of the rules for obtaining a licence, consideration of viewer/listener interests, and extended licence validity. The draft law should provide legal guarantees of these conditions.
- The draft law requires revision in order to ensure that it not only in word but also in practice restricts monopolization of the media and ensures the transparency of media outlets necessary for this purpose.
- The provision of the draft law on the right of journalists not to reveal their sources of information should be specified, making this the measure of last resort which a court might apply. The rights of the editorial board to secrecy and to protection of editorial premises from search and seizure

of journalistic materials without a court order, issued only in cases of absolute necessity, should be added to the draft law.

- The accreditation procedure should apply automatically with respect to all applicants. Withdrawal of accreditation should be permitted only for serious and repeated violations of the public order. Measures should be taken to specify the provisions of Article 35 in order to apply the rules governing accreditation of journalists in full, as envisaged by the draft law and in accordance with the objectives of the ICCPR.
- Alongside exclusion of other articles on criminal liability for libel and insult, Article 318 “Infringement upon the honour and dignity of the President of the Republic of Kazakhstan and obstruction of his activities” should be removed from the Criminal Code of the Republic of Kazakhstan as it creates unjustified restrictions on journalistic activities.
- The possibility of suspending the issue (broadcast) of a media outlet should be removed from the Code of Administrative Offences of the Republic of Kazakhstan.
- The provisions of the draft law concerning the hierarchy of legislative sources of the Republic of Kazakhstan on the mass media (Article 5), the definition of “information” (Article 1), and the use of images of people without their consent (Article 2) should be revised. The provisions of Article 20 “Publisher’s imprint”, Article 31 “The right of refutation and reply” and other articles of the draft law should be specified to add clarity to the provisions of the law and exclude the possibility of their varying interpretations.
- The danger that, in contrast to the current Civil Code of the Republic of Kazakhstan and the law on the Mass Media, a possibility will arise for anyone to demand refutation of and reply to information about anyone, not only about oneself (as is the case in other countries), should be eliminated from the wording of the draft law. The procedure for applying the provisions of Article 31 in relation to the procedure for publication of a reply or refutation should be clarified. A provision should be introduced

into the draft law stipulating that the amount of moral damages levied should not entail a restriction of media freedom.

INTRODUCTION

This memorandum contains an analysis¹⁸ of the submitted draft law of the Republic of Kazakhstan on the Mass Media, the explanatory note thereto, the draft law of the Republic of Kazakhstan on Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Mass Media in light of the Constitution of the Republic of Kazakhstan, the current media legislation of the Republic of Kazakhstan, as well as international standards on freedom of expression. The texts of the Kazakh laws and draft laws were studied in their Russian-language versions.

This draft law of the Republic of Kazakhstan on the Mass Media, developed by journalistic non-governmental organizations, was initiated by a group of deputies of the Majilis of the Parliament of the Republic of Kazakhstan. At the 18 April 2007 plenary session of the Majilis, the deputies accepted it for consideration.

The draft law was first brought to the public eye in the spring of 2005. Subsequently, it has been repeatedly revised by representatives of journalistic NGOs, discussed at public hearings with the participation of parliamentary deputies and representatives of the mass media, considered by the National Commission for Democratization and Civil Society under the President of the Republic of Kazakhstan, and sent to international human rights organizations for expert review. The draft was introduced to the Majilis of the Parliament

18 The author of the memorandum is Andrei Richter, Doctor of Philology (Moscow State University Faculty of Journalism), Director of the Media Law & Policy Institute (Moscow), Member of the International Commission of Jurists (ICJ, Geneva), Co-Chairman of the law section and member of the International Council of the International Association for Media and Communication Research (IAMCR).

for the first time in June 2006, but it was recalled after receiving a negative assessment by the Government. The draft law was submitted for a second time in November 2006 and was again recalled, this time “for technical reasons”.

The issue of amending Kazakhstan’s media legislation has been on the agenda for several years. The current law of the Republic of Kazakhstan on the Mass Media was passed in 1999; since then, it has been repeatedly amended (most recently in July 2006). Thus far, however, these amendments have mainly served to tighten state control over the media rather than to strengthen media freedom. For example, on 5 July 2006, Kazakhstan’s President Nursultan Nazarbayev signed the law on Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Mass Media, initiated by the Ministry of Information and passed by Parliament. This law introduced media registration fees, toughened registration requirements, set a three-year ban on holding the office of editor-in-chief for anyone previously held responsible for termination of the media outlet, stiffened media name requirements, prohibiting new publications from taking the names of the ones that had been closed down by court ruling, established mandatory re-registration of media outlets in the event of change of their editor-in-chief, editorial office address or frequency of publication, introduced harsher sanctions for administrative offences to the point of revocation of the registration certificate and a ban on the issue.

The RFOM, as well as a number of international nongovernmental organizations, protested at the time and called on the Parliament not to pass these amendments and on President Nazarbayev – not to sign this law.¹⁹

19 See the text on the website of the Office of the OSCE Representative on Freedom of the Media: “OSCE Representative on Freedom of the Media asks Kazakhstan to withdraw media law amendments” (<http://www.osce.org/item/19551.html>).

After the law was signed by the President of the Republic of Kazakhstan, the OSCE Representative on Freedom of the Media, Miklos Haraszti, proposed that the Constitutional Council of Kazakhstan, even though the law had been signed, intervene in the situation because it impaired conditions for the media.

Even without these amendments, the current law on the Mass Media contains a number of vague restrictions as to what can and cannot be published, for example, the obligation not to promote “*disruption*” of state security or violation of the integrity of Kazakhstan (Article 13); it limits the range of people who can be owners or editors-in-chief of media outlets (Articles 7 and 10), imposes a number of “obligations” on journalists, including the requirement that they do not disseminate information that subsequently turns out to be false and that they “fulfil other obligations in accordance with the legislation of the Republic of Kazakhstan” (Article 21).

The expert believes that this approach cannot be regarded as complying with the right to freedom of expression. Kazakhstan is a party to various OSCE commitments that establish the right to freedom of speech and it has ratified the International Covenant on Civil and Political Rights – the principal United Nations treaty on human rights. In accordance with the Covenant, Kazakhstan is required to “adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant”.²⁰ This means that Kazakhstan should not only refrain from encroaching on these rights, but should also adopt positive measures to ensure respect for them, including freedom of expression.

20 Article 2 of the International Covenant on Civil and Political Rights. Adopted by resolution 2200 A (XXI) of the General Assembly on 16 December 1966. Came into effect on 23 March 1976. See the full official text on the English- language website of the UN High Commissioner for Human Rights: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

The Message of the President to the people of Kazakhstan dated 4 April 2003 (section “Democratization and good governance”) notes: “there is now a need for passing a new law on the mass media that would take account of modern reality in ensuring freedom of speech, as well as protection of journalists against pressure exerted by owners, and would tighten the liability of officials for interfering in the activities of the free press”. The Explanatory Note to the draft law on the Mass Media adjusts these objectives somewhat. It states that the development of the new law is “dictated by the need to improve media legislation to ensure compliance of media regulation with modern requirements”. Section 1 of this memorandum is devoted to the international obligations of Kazakhstan in the sphere of human rights and sets out the international standards with respect to the right to freedom of expression. These standards are established in international law, including the International Covenant on Civil and Political Rights, as well as in various agreements within the framework of the OSCE and the UN, to which Kazakhstan is party. They are contained in decisions of international courts and human rights tribunals, in statements made by representatives of international agencies, the OSCE Representative on Freedom of the Media, as well as in comparative constitutional law on issues of freedom of expression.

Section 2 of the memorandum contains an analysis of the draft law on the Mass Media in light of these standards and provides comments on the current version of this draft law. In addition to the draft law on the Mass Media, amendments are considered to the Code on Taxes and Other Compulsory Payments to the State Budget of the Republic of Kazakhstan, the Criminal Code and the Civil Code, and the Code on Administrative Offences.

The recommendations of the section are based on international law and offer examples of and suggestions for improvement of the draft law.

1. INTERNATIONAL STANDARDS IN THE SPHERE OF FREEDOM OF EXPRESSION AND MEDIA REGULATION

1.1. The importance of freedom of expression

The right to freedom of expression has long been recognized as one of the most essential human rights. It is of fundamental importance for the functioning of democracy, a necessary condition for the exercise of other rights and itself constitutes an inalienable element of human dignity. The Universal Declaration of Human Rights (the UDHR), a fundamental document on human rights adopted by the General Assembly of the United Nations in 1948, defends the right to freedom of expression in the following wording of Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.²¹

The International Covenant on Civil and Political Rights (ICCPR)²² – a treaty with mandatory legal force that was ratified by Kazakhstan in January 2006 – guarantees the right to freedom to hold and express opinions in a wording very similar to that of the UDHR, also in Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

21 Resolution 217A (III) of the General Assembly of the United Nations Organization, passed on 10 December 1948. A/64, page 39-42. See the full official text in the English language on the website of the United Nations Organization at: <http://www.un.org/Overview/rights.html>.

22 The International Covenant on Civil and Political Rights. Adopted by resolution 2200 A (XXI) of the General Assembly on 16 December 1966. Came into effect on 23 March 1976. See the full official text in the English language on the website of the UN Office of the High Commissioner for Human Rights: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

According to Article 4(3) of the Constitution of Kazakhstan, the provisions of this treaty have priority over provisions of the domestic legislation that are incompatible with it. The Constitution of Kazakhstan, in Article 20, defends the right to freedom of expression of opinion.

Freedom of expression is also guaranteed by various documents of the Organization for Security and Co-operation in Europe, with which Kazakhstan has expressed its agreement, such as the Helsinki Final Act of the Conference on Security and Co-operation in Europe,²³ the Final Document of the Copenhagen Meeting of the Conference of the Organization for Security and Co-operation in Europe on the Human Dimension,²⁴ the Charter of Paris (agreed in 1990)²⁵, the closing document of

23 Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975. See text in English on excerpts concerning freedom of expression and information on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

24 Copenhagen session of the OSCE Conference on the Human Dimension, June 1990. See, in particular, clauses 9.1 and 10.1 in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

25 The Charter of Paris for a New Europe. Summit within the framework of the OSCE, November 1990. See in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

the Budapest CSCE Summit of 1994,²⁶ the Declaration of the Istanbul OSCE Summit.²⁷ The Charter of Paris, in particular, states:

Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person... We affirm that, without discrimination, every individual has the right to freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and peaceful assembly, freedom of movement (...).²⁸

A similar statement is included in the Istanbul Charter on European Security of the Organization for Security and Co-operation in Europe:

We [participating States] reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded trans-border and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.²⁹

The participants of the Moscow meeting of the Conference of the Organization for Security and Co-operation in Europe on the Human Dimension unambiguously agreed that "independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental

26 Towards a Genuine Partnership in a New Era. Summit within the framework of the OSCE, Budapest, 1994, clauses 36-38. See in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

27 Summit within the framework of the OSCE in Istanbul, 1999, clause 27. See also clause 26 of the Charter on European Security, adopted at the same meeting. Text in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

28 See in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf, note 11.

29 See in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf, note 13, clause 26.

freedoms”, as well as that any “restriction in the exercise of the right of expression of opinion will be prescribed by law and in accordance with international standards”.³⁰

Global recognition of the importance of freedom of expression has been reflected in three regional systems for protection of human rights – the American Convention on Human Rights,³¹ the European Convention on Human Rights (ECHR)³² and the African Charter on Human and Peoples’ Rights.³³ All of them guarantee the right to freedom of expression. Although neither of these documents or rulings of courts and tribunals based on them enjoy mandatory enforcement in Kazakhstan, they do serve as major comparable examples of the meaning and application of the right to freedom of expression and may be used in interpreting Article 19 of the ICCPR, which is binding on Kazakhstan.

International organizations and courts clearly indicate that the right to freedom of expression and freedom of information constitutes one of the most important human rights. At its first session in 1946, the General Assembly of the United Nations Organization adopted Resolution 59 (I), which, concerning freedom of information in the very broadest sense, states:

Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.³⁴

³⁰ Moscow meeting of the Conference of the OSCE on the Human Dimension (October 1991), clause 26. See in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

³¹ Adopted on 22 November 1969, coming into effect on 18 July 1978.

³² ETS Series No. 5, adopted on 4 November 1950, coming into effect on 3 September 1953. Status as of 7 July 2003.

³³ Adopted on 26 June 1981, coming into effect on 21 October 1986.

³⁴ United Nations Organization. Sixty-fifth plenary session, 14 December 1946. Official text in English published on the UN website at: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NRO/033/10/IMG/NR003310.pdf?OpenElement>.

In this and all subsequent resolutions, freedom of information is understood by the supreme UN authority as “the right to gather, transmit and publish news anywhere and everywhere without fetters” to promote the peace and progress of the world. The key principle of freedom of information from the point of view of this UN resolution is “a moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent”. As can be seen from resolution 59 (I), freedom of expression is of fundamental importance in itself and also serves as the basis for the exercise of all other human rights. This has also been reflected in judicial decisions on human rights. For example, the Human Rights Committee (since 3 April 2006 – Council) of the United Nations – an authority set up as an auxiliary body to the General Assembly for supervising observance of the ICCPR – established:

The right to freedom of expression is of paramount importance in any democratic society.³⁵

Declarations of this type abound in decisions of courts and tribunals on human rights throughout the world. The European Court of Human Rights, for example, has stressed that “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”.³⁶ As noted in this provision, freedom of expression is of fundamental importance both in itself and as a basis for all other human rights. Full democracy is only possible in societies where information and ideas are allowed and guaranteed to flow freely. In addition, freedom of expression is of decisive significance in revealing and disclosing violations of human rights and combating such violations.

³⁵ Tae-Hoon Park v. Republic of Korea, 20 October 1998, Communication No. 628/1995, para. 10.3.

³⁶ Handyside v. the United Kingdom, 7 December 1976, Application No. 5493/72, para. 49. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionId=4647705&skin=hudoc-en>.

The guarantee of freedom of expression is particularly important with respect to the mass media. The European Court of Human Rights invariably stresses the “pre-eminent role of the press in a State governed by the rule of law”³⁷. It goes on to say:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.³⁸

Moreover, free mass media, as stressed by the Human Rights Committee of the United Nations, play a vital role in the political process:

... the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.³⁹

In turn, the Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality”.⁴⁰ The European Court of Human Rights has also declared that the media bear the

37 *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=thorgeirson&sessionId=4691853&skin=hudoc-en>.

38 *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=castells&sessionId=4648759&skin=hudoc-en>.

39 General comment No. 25 of the Committee of the United Nations Organization for Human Rights, 12 July 1996.

40 Recommendation “Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism”, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

obligation to disseminate information and ideas concerning all spheres of public interests:

Although the press should not cross the boundaries set for [protection of the interests defined in Article 10(2)⁴¹]... it is, nevertheless, assigned the mission of disseminating information and ideas of public interest; if the press is set the task of disseminating such information and ideas, the public, for its part, has the right to receive them. Otherwise, the press would be unable to fulfil its function as society's watchdog.⁴²

1.2. Restrictions on freedom of expression

The right to freedom of expression is not absolute: in a few specific circumstances, it may be restricted. In view of the fundamental nature of this right, however, the restrictions must be precise and specifically determined in accordance with the principles of a rule-of-law state. Moreover, the restrictions must pursue legitimate goals; the right to freedom of expression cannot be restricted merely because a certain statement or expression is viewed as being offensive or because it casts doubt on accepted dogmas. The European Court of Human Rights has stressed that it is precisely such statements as these that deserve protection:

41 Article 10 (part 2) reads: "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".

42 See *Castells v. Spain*, note 25, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (I)*, 26 November 1991, Application No. 13166/87, para. 65. The texts of the judgments on these cases are to be found in English on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=observer&sessionId=4648759&skin=hudoc-en> and <http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=sunday%20%7C%20times&sessionId=4648759&skin=hudoc-en>, respectively.

[Freedom of expression] applies not only to “information” or “ideas” that are received favourably or are considered as harmless or neutral, but also to those that offend, shock or concern the state or some part of the population. Such are the requirements of pluralism, tolerance and liberalism, without which there is no “democratic society”.⁴³

Article 19 (3) of the ICCPR sets strict limits to admissible and legitimate restrictions on freedom of expression. It reads:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- For respect of the rights or reputations of others;
- For the protection of national security or of public order (ordre public), or of public health or morals.

This is interpreted as the setting of a three-tier criterion, requiring that the restrictions (1) be prescribed by law, (2) pursue a legitimate aim and (3) be necessary in a democratic society.⁴⁴ This means that vague or not clearly formulated restrictions or ones allowing excessive freedom of action for the executive authorities are incompatible with the right to freedom of expression. An interference should pursue one of the aims set out in Article 19 (3); this list is exhaustive and, consequently, any other interference constitutes a violation of Article 19. An interference must be “necessary” for achieving one of these aims. The word “necessary” has a special meaning in this context. It means that there must exist “an urgent social need”⁴⁵ for

⁴³ Ibid.

⁴⁴ See, for example, resolution of the UN Committee for Human Rights in *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, 18 April 2005, para. 6.8.

⁴⁵ See, for example, *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.

the interference; that the reasons presented by the state as grounds for the intervention must be “relevant and sufficient” and that the state must demonstrate that the intervention is proportionate to the aim being pursued. As the Committee for Human Rights declared, “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect”.⁴⁶

In this connection, it should be recalled that Article 39.1, of the Constitution of the Republic of Kazakhstan reads:

“Rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, defence of the public order, human rights and freedoms, health and morality of the population”.

1.3. Media regulation

For the purposes of protecting the right to freedom of expression, it is vital that the media have an opportunity to perform their activities independently of state control. This ensures that they function as “the watchdog of society” and gives the population access to a broad range of opinions, especially on issues affecting public interests. Thus, the primary goal of regulating the activities of the media must be to promote development of independent and pluralistic media, thereby ensuring the population’s right to receive information from different sources.

Article 2 of the ICCPR makes the state responsible for “adopting such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant”. This means that it is required of states

⁴⁶ Rafael Marques de Morais v. Angola (note 31, para. 6.8).

not only to refrain from violating rights but also to take positive steps to guarantee respect of rights, including the right to freedom of expression. In reality, states are required to create the conditions under which diverse and independent media might flourish, thereby satisfying the population's right to information.

An important aspect of the positive obligations of states to promote freedom of expression and freedom of the media consists of the need to develop pluralism within the media and ensure equal access for all to them. The European Court of Human Rights has noted: “[Dissemination] of information and ideas of general interest...cannot be successfully accomplished unless it is grounded in the principle of pluralism”.⁴⁷ The Inter-American Court of Human Rights has stated that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media”.⁴⁸

The Human Rights Committee of the United Nations for stressed the role of pluralistic media in the process of national construction, noting that attempts to compel the media to engage in propaganda of “national unity” violate the right to freedom of expression:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.⁴⁹

47 Informationsverein Lentia and Others v. Austria, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38. The text of the resolution in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=&sessionId=4648759&skin=hudoc-en>.

48 Recommendation “Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism”, (note 27, para. 34).

49 Mukong v. Cameroon, 21 July 1994, Communication No. 458/1991, para. 9.7.

The obligation to promote the development of pluralism also presupposes that there should be no legislative restrictions on those engaged in journalism,⁵⁰ and that systems for licensing or registration of independent journalists are incompatible with the right to freedom of expression. In their Joint Declaration of December 2003, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Representative of the Organization for Security and Co-operation in Europe on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression noted:

Individual journalists should not be required to be licensed or to register.

...

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance.⁵¹

Similarly, the three special representatives on freedom of expression criticized the system for registration of the media, since it can easily be subject to abuse for the purpose of suppressing media freedom. The same Joint Declaration of 2003 states:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose

50 Recommendation "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism", note 27.

51 Joint Declaration by 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, 18 December 2003, see on the website of the Office of the OSCE Representative on Freedom of the Media at: http://www.osce.org/documents/rfm/2003/12/27439_en.pdf.

substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.⁵²

In this connection, it is nowadays generally recognized that any state regulatory authorities in the sphere of the media or telecommunications must be completely independent of and protected from interference on the part of political and business circles. Otherwise, the media regulation system may easily be abused for political or commercial purposes. The three special representatives noted:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointment process for members which is transparent, which allows for public input and is not controlled by any particular political party.⁵³

2. ANALYSIS OF THE DRAFT LAW OF THE REPUBLIC OF KAZAKHSTAN ON THE MASS MEDIA

The draft law under review contains 11 chapters and 40 articles. Below, comments are given on the chapters, with corresponding recommendations for improving the text of the draft law in accordance with the international obligations of the Republic of Kazakhstan and international standards on democracy and freedom of speech, for the purpose of adopting a law that would be enforceable in practice.

52 Ibid.

53 Ibid.

2.1. Comments on and proposals to Chapter 1 of the draft law: General provisions

2.1.1. *Ban on media monopolization*

The authors of the draft law stress, among its merits, the provision envisaging a ban on media monopolization. Indeed, Article 2.8 indicates that

“Monopolization of any type of media (print periodicals, television or radio programmes or other types of media) shall not be permitted”.

The intention to introduce legislative provisions banning media monopolization should be welcomed, but these provisions should not be merely declarative.

It is believed that, in a democratic state, the media should not be used to promote the economic and personal interests of anyone. In addition, one proceeds from the assumption that, in the long run, such “promotion” restricts public access to information countering or not complying with these interests, leads to suppression of socially important information, to so-called “information wars” and, as a consequence, is detrimental to the development of media freedom and democracy in general. It is generally accepted that, in order to consolidate media pluralism, it is necessary in a democratic society to guarantee both absolute transparency of ownership and maintenance of a healthy competitive climate. The latter should include not only normative (statutory) measures to restrict concentration and unfair competition, but also organizational measures to promote decentralization of the market.⁵⁴ Here, one proceeds from the assumption that media freedom is a personal right, while the owners of the media enjoy only additional rights of ownership to a specific media product.

⁵⁴ See, for example, the corresponding resolution of the European Parliament: Resolution on Media Takeovers and Mergers, OJ C68/137-138. 15 February 1990.

Recommendation

The draft law requires revision in order to ensure that it not only in words but also in practice restricts monopolization of the media and ensures the transparency of media outlets necessary for this purpose.

2.1.2. Abuse of media freedom

In the explanatory note to the draft law, the authors stress among its merits the fact that “the grounds for forcible suspension and termination of media activities are reduced to cases of grievous socially dangerous actions. This rule is the principal incentive to creation of the institution of freedom of speech in our society”.

Articles 18.3 and 18.4 of the draft law indicate that the grounds for suspending production and distribution of media is a violation of the requirements of Articles 3.1 and 3.2 of the draft law, while those for termination – their repeated violation in the course of a year. The above clauses of Article 3, in turn, prescribe:

- “1. It shall not be permitted to use the media for propaganda and advocacy of forcible change of the constitutional system, of social, racial, national, religious, birth or tribal supremacy or of cruelty and violence.
2. It shall not be permitted for the media to disclose information constituting state secrets or other secrets protected by law, to advertise or justify terrorism and extremism, narcotic drugs, psychotropic substances and precursors, as well as pornography”.

Indeed, the list of grounds for termination (suspension) of media activities has been shortened in comparison with the current law on the Mass Media (Article 13), primarily through the exclusion of such grounds as propaganda and advocacy of war, violation of the integrity of the Republic of Kazakhstan and undermining of state security; re-transmission of television and radio

programmes from the foreign media; violation of the procedure for publishing imprint data, sending mandatory free copies of periodicals and storing recordings of a company's own broadcasts. This cannot but alleviate the conditions under which the media function.

On the other hand, the list of grounds for termination (suspension) of media activities has been extended. First of all, there is a ban on justification of terrorism and extremism. The concept of "justification" is a vague one and makes it possible for regulatory authorities to take decisions which unjustifiably restrict freedom of expression. Second, grounds for termination of activities now include "disclosure in the media of information constituting official secrets or other secrets protected by law", while the current law envisages only suspension of the activities of the media in such a case. Such grounds for termination (suspension) of media activities most definitely run counter to the major and undoubtedly positive rule under Article 39 of the draft law:

"Liability for dissemination in the media of information constituting state secrets or other secrets protected by law shall be borne by the source of the information. The media owner, editor-in-chief (editor) or journalist shall be held liable for disseminating information constituting state secrets or other secrets protected by law in the event that they have received a written notification from the source of the information of the presence in the information provided of data constituting state secrets or other secrets protected by law".

This potential conflict should be removed by eliminating the clause on disclosure of information constituting secrets protected by law from the list of grounds for termination (suspension) of media activities.

In itself, Article 3 of the draft law "Inadmissibility of abuse of freedom of speech, receipt and dissemination of information" might be acceptable in

such a law. Yet its application in combination with the article on the grounds for termination (suspension) of media activities presents an unjustified restriction on freedom of the media.

Although freedom of speech is not an absolute right, any restrictions on this right must satisfy the three-tier criterion mentioned in section 1.2 of this memorandum: they must be clearly defined by law pursue a legitimate aim and be necessary in a democratic society. As noted in this section, imprecise restrictions that are formulated too broadly constitute an unlawful violation of freedom of expression. Importantly, moreover, some of the restrictions are defined in the draft law in ambiguous terms and undermine the essence of freedom of expression.

Many definitions in the draft law do not comply with the given criteria of international law. For example, the ban on dissemination of information constituting state secrets or other secrets protected by law should allow for publication of such materials if this is done in the public interest, such as when they reveal corruption.

To the extent that these restrictions are lawful and necessary, they should be included in the general purpose legislation, such as the civil and criminal codes. Liability of some sort for violating the law may be borne and shall be borne by journalists, editors-in-chief, media owners and outlets, but this liability should be fair and proportional to the offence.

Closure of a media outlet is an excessive form of liability. Forcible termination (suspension) of media activities, even by court ruling, is a procedure that is not permissible in a democratic society.

In this connection, it should be noted in particular that the entire text of the draft law should remind us of the provision of Article 2.6, which is so important for understanding the essence of the new law:

“Mass media are recognized as an essential public institution for the exercise of everyone’s constitutional right to freedom of speech, creativity, receipt and dissemination of information and are under state protection”.

Recommendations

All the restrictions on freedom of speech in the draft law should be reviewed in the light of compliance with standards of international law. By virtue of this, the volume of Article 3 of the draft law “Inadmissibility of abuse of freedom of speech, receipt and dissemination of mass information” should be restricted to the scope Article 20.3 of the Constitution of the Republic of Kazakhstan. The possibility of forcible termination (suspension) of media activities should be excluded from the draft law.

2.1.3. Language requirements in the mass media

The draft law replicates the current law of the Republic of Kazakhstan on the Mass Media in restricting the use of languages other than the state language.

According to Article 6 of the draft law, “the weekly volume of television and radio broadcasts in the mass media ... in the state language shall not be less in terms of time than the volume of broadcasts in other languages. Television and radio broadcasts in the state language shall be distributed evenly in the daily broadcasting grid”. Article 19 restricts the volume of re-transmission in a foreign language to 20 percent of the total weekly volume of domestically produced television and radio programmes transmitted by the broadcaster.

These rules have already been subjected to criticism on the part of the Representative on Freedom of the Media. To repeat, restrictions on the use of non-state languages are incompatible with the right to freedom of expression. The choice of the broadcast language – especially by private broadcasters – constitutes an integral part of freedom of expression of opinion, as protected by Articles 19 and 27 of the International Covenant on Civil and Political Rights (ICCPR); it is also the subject of special instructions

by the OSCE High Commissioner on National Minorities. In conjunction, Articles 19 and 27 signify that the state is not entitled to restrict use of languages other than the state language in any sphere, with the exception of courts and parliament.

Such an approach corresponds with the position of the UN Committee for Human Rights, which in its resolution on the case of *Ballantyne, Davidson, McIntyre v. Canada* (1989), concerning the introduction in Quebec Province of legal restrictions on the use of the English language in outdoor commercial advertising, resolved: “The Committee believes that it is not necessary, in order to protect the vulnerable position in Canada of the francophone group, to prohibit commercial advertising in English. This protection may be achieved in other ways that do not preclude the freedom of expression in a language of their choice”.⁵⁵

Attention should also be paid to the Guidelines on the Use of Minority Languages in the Broadcast Media and the Explanatory Note thereto, adopted under the auspices of the OSCE High Commissioner on National Minorities. These documents were elaborated with the active participation of the OSCE Representative on Freedom of the Media and were approved at a conference in October 2003 in Austria. The Guidelines state:

“In regulating the use of language in the broadcast media, States may promote the use of selected languages. Measures to promote one or more language(s) should not restrict the use of other languages. States may not prohibit the use of any language in the broadcast media.

⁵⁵ *Ballantyne, Davidson, McIntyre v. Canada*. Communications Nos. 359/1989 and 385/1989, UN Doc. CCPR/C/47/D359/1989 and 385/1989/Rev.1 (1993).

Measures to promote any language in broadcast media should not impair the enjoyment of the rights of persons belonging to national minorities”.⁵⁶

It is seen here that the restrictions proposed by the draft law on the Mass Media do not comply with the above principle. The objective of the government of Kazakhstan to promote local media products would be better achieved within the framework of the already successful system of placing state orders for products in the Kazakh language.

Recommendations

The restriction on use in the media of languages other than the state language should be removed. The restriction on re-broadcasting of foreign programmes should be reviewed and replaced by obligations to place state orders for local media products and products in the Kazakh language.

2.1.4. The requirement to provide “truthful information”

The “truthful information” principle for media activities introduced in the draft law (Article 4) leaves much room for doubt. It should not be forgotten that the media system in a modern society consists not only of quality media, but also of mass tabloid and “yellow” publications and programmes inclined towards exaggeration, sensationalism, provocation and shocking of the public. Introduction into the draft law of a mandatory “truthful information” principle for all media constitutes an unjustified restriction on a large segment of the media. Readers and viewers are quite sceptical about scandalous materials in the first place, treating them as an entertainment component of the media.

⁵⁶ See clause 10 of *Guidelines on the Use of Minority Languages in the Broadcast Media* (elaborated and adopted in October 2003 by the international group of experts under the auspices of the OSCE High Commissioner on National Minorities). For the full text in English (including the Explanatory Note), see the website of the Office of the Representative on Freedom of the Media: http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf.

At the same time, scandalous exaggerations can and do promote discussion in society of various socially important issues. In its resolution on the well-known case of *The New York Times v. Sullivan* (1963),⁵⁷ the US Supreme Court resolved that a lie cannot be protected by the Constitution, however important the material might be for exercising the right to freedom of speech. Yet the Court also introduced and distinguished between two concepts – libel in the interest of the public and “libel per se”. It defined libel per se as libel for libel’s sake, which is, indeed, not protected by the Constitution. At the same time, free discussion of socially significant issues is important for the country and should be protected.

Moreover, this innovation might run counter to the generally known requirement (from the resolution of the European Court of Human Rights) for protection of shocking information (see section 2.1.).

Recommendation. The “truthful information” principle mandatory for all media and provided for under the draft law (Article 4) should be abolished.

2.1.5. Other comments on Chapter 1: General provisions

Certain comments on Chapter 1 might appear to be purely stylistic, but they may be of fundamental importance for freedom of the media in the Republic of Kazakhstan.

(1) Notably, the provision of Article 5 of the draft law on the Mass Media, states:

“The legislation of the Republic of Kazakhstan on the mass media is based on the Constitution of the Republic of Kazakhstan and consists of this Law

⁵⁷ See the full text of the ruling in English at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=376&invol=254>.

and other normative-legal acts of the Republic of Kazakhstan regulating relations in the media sphere”.

In order to prevent the updated law on the Mass Media from getting bogged down in contradictions with other laws and other normative-legal acts of the country, the wording should be changed to: “The legislation of the Republic of Kazakhstan on the mass media is based on the Constitution of the Republic of Kazakhstan and consists of this Law and other normative-legal acts of the Republic of Kazakhstan *issued in accordance therewith* and regulating relations in the media sphere”. Otherwise, conflicts will arise that will far from always be resolved in favour of the rules included under the future law on the Mass Media.

- (2) Clause Article 1.22 of the draft law on the Mass Media defines information as information about persons, subjects, facts, phenomena, processes and other events, expressed “in assertive form”. The question arises as to whether details expressed in negative or interrogatory form become information. Possibly, the words “in assertive form” should be replaced by “in the form of an assertion” or “in the form of an unambiguous assertion”.
- (3) Article 2.9 of the draft law on the Mass Media states that images of persons may be used in the media without their consent “without denigration of their honour and dignity, if the depicted person holds a public office, is depicted during public events, at public gatherings or posed for a payment”.

For the purposes of clarity of this new rule in media legislation, its meaning should be specified more precisely. It should evidently be a matter of permission to use images of people without their consent “without intentional denigration of their honour and dignity, if the depicted person holds public office or is depicted during public events, at public gatherings or posed for a

payment”. Otherwise, it would only be possible to depict people during the holding of public events and at public gatherings. The danger would also arise of abuse of the right to protection of honour and dignity in the event of dissemination of any *hard-hitting images*.

Recommendation

The provisions of the draft law concerning the hierarchy of legislative sources of the Republic of Kazakhstan on the mass media (Article 5), the definition of “information” (Article 1), and the use of images of people without their consent (Article 2) should be revised.

2.2. Comments on and proposals to Chapter 2 of the draft law: Mass media

2.2.1. Restrictions on foreign ownership of mass media

As before, the ban on foreign individuals and legal entities and stateless persons directly and (or) indirectly owning, using, disposing of and (or) managing more than 20 percent of the shares (ownership interests, participation shares) in legal entities owning media in the Republic of Kazakhstan or performing activities in this sphere (Article 11.2 of the draft law) still evokes serious doubts.

Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights speak of the right of every *person* to freedom of opinion and freedom of expression (see section 1.1 of this memorandum). It is equally important that Article 2 of the ICCPR (see section 1.3) enjoins every state to ensure respect for the rights guaranteed in it “within its territory and subject to its jurisdiction” without any distinction, including on the basis of national origins. The restriction concerning “citizens” deprives non-citizens, such as refugees or stateless persons, of the right to publish information, which is not affirmed in international law.

Also dubious is the appropriateness of the envisaged 20 percent restriction on the share of foreign ownership of the media. Although restrictions on foreign ownership do sometimes exist in laws on television and radio broadcasting, the given draft applies to all media. Broadcasting is a special form of the media, where stricter rules are sometimes justified, above all in connection with the fact that the frequency spectrum allows for a very limited number of broadcasters, although digital broadcasting will, in the future, permit a substantial increase in the number of available earth-based broadcasting channels. The argument of the limited spectrum of frequencies does not appear valid, however, in relation to print media. Besides, even in the television and radio broadcasting sphere, restricting the share of foreign ownership seems inexpedient from the point of view of the inflow of vital foreign investments and knowledge in the sphere of organization of media operations.

While noting the positive character of the abolishment proposed by the draft law on the Mass Media of the prohibition on foreigners from holding the position of editor-in-chief in the media (Article 7.2-1 of the current law on the Mass Media), the following should be remarked: The processes of economic globalization involve also globalization of the mass media, including co-operation and acquisitions of publishing and broadcasting organizations. The development of new technologies operating “above” national rules and restrictions deprive these prohibitions of any sense – foreign persons can, in any case, affect the Kazakh citizens’ information field. In view of this, it is held here that the given restrictions on freedom of the media are pointless.

In line with this tendency, restrictions on foreigners creating and owning television and radio broadcasting organizations were abolished in 2006 when the legislation of Moldova on television and radio broadcasting was revised and a new version of the law on television and radio broadcasting of Ukraine was adopted.

Recommendations

There should be no restrictions on the right to express one's opinion through the media on the grounds of statelessness or a record of previous convictions. The restriction on the share of foreign ownership might deprive the media sector of essential foreign investments and experience and should be reviewed.

2.2.2. Issues of editorial independence

In order to ensure freedom of the media, the independence of editors' and journalists' creative activities must be guaranteed. Only editorial teams free in their work from interference by owners can satisfy people's requirements for unimpeded receipt and dissemination of information and ideas. Editorial independence does not mean that the editors should not be held judicially liable – above all for violation, in journalistic materials, of various legitimate rights – and primarily in relation to the rights of citizens to private life and respect for their reputation.

The draft law on the Mass Media eliminates from the legislation the reference to the editorial charter of media as the regulator of relations between the owner and the editorial team (Article 7.3 of the current law on the Mass Media). The draft law replaces this with a reference to the right (not obligation!) of a media owner to adopt an internal document “determining the conceptual provisions for the editors' activities, rules of journalistic ethics, staff liability, and demands concerning their cultural level and professionalism”. Relations between the owner and journalists are regulated in the draft law “by an agreement in accordance with the labour or civil legislation of the Republic of Kazakhstan” (Article 14.6). The draft law on the Mass Media also speaks of the owner's charter (Article 14.5), i.e. the charter of the legal entity, in no way related to editorial independence and in the elaboration and adoption of which the editorial staff do not participate.

Yet, the editorial charter and the special procedure for adopting it constitute the main mechanism for ensuring independence of journalistic activities.

The adoption in 1999 of a second-generation media law entailed in Kazakhstan the replacement of traditional founder by media owners with greater powers and responsibility; this was accompanied by elimination of legal guarantees for the main elements of professional editorial independence, above all editorial charters. At the same time, the adoption of collective bargaining agreements has not become the norm in the country and the traditions of respect for the independence of the editor-in-chief and of editorial independence that exist in the West have not arisen.

It is noteworthy that introduction into the relations between journalists and media owners (founders) of agreements guaranteeing independence of editorial policy in Kazakhstan would allow to update the mechanisms for protecting the independence of journalists under the new market conditions, incentives to be established for journalists to fulfil their professional obligations, and an optimal solution to be found for ensuring freedom of the media in the prevailing complex relations between owners and editorial teams in the interests of society as a whole. This would also help implement the wishes expressed in the Message of the President to the people of Kazakhstan, dated 4 April 2003, that a new law on the media be passed “that would take into consideration modern reality with respect to ensuring... protection of journalists against pressure exerted by owners”. After all, greater journalistic freedom promotes greater information pluralism and ideological diversity in journalism.

Recommendation

It would be desirable to provide guarantees of editorial independence either by including provisions on the editorial charter into the law on the Mass Media or by creating a system of agreements between journalists and media owners.

2.3. Comments on and proposals to Chapter 3 of the draft law: Organization of media activities

2.3.1. *The requirement for media registration*

Articles 15-17 of the draft law on the Mass Media regulate issues of media registration and re-registration. In fact, they prolong the registration regime, the need for which has repeatedly raised serious doubts among OSCE experts. Their comments on the media laws of Kazakhstan and other countries of the region proposed that the registration regime be reviewed, since it provides grounds for abuses to political ends.

The UN Committee for Human Rights has also resolved that to demand registration of media with a circulation of only 200 copies is an infringement on freedom of expression.⁵⁸ The registration regime established by the current law on the Mass Media and proposed again in the draft law (Article 17) is applicable to publications with a circulation of merely 100 copies.

The Joint Declaration by 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 states:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.⁵⁹

⁵⁸ *Laptsevich v. Belarus*, 20 March 2000, Communication No. 780/1997.

⁵⁹ Joint Declaration, December 2003. See the text on the website of the Office of the Representative on Freedom of the Media: http://www.osce.org/documents/rfm/2003/12/27439_en.pdf.

In addition, in his Special Report, the OSCE Representative on Freedom of the Media also warns of the danger posed by rules on registration.⁶⁰

Thus, the recommendation that the registration system envisaged by the law on the Mass Media should be abolished is confirmed here. The registration system is objectionable because it creates grounds for abuses and, in practical terms, leads to unlawful restrictions on the right to issue periodical publications (including, for example, for refugees and stateless persons – see also section 2.2.1).

Apart from this fundamental problem, doubts also arise with respect to the need to provide information about the publication's main topics, language and distribution territory and the need for re-registration in the same manner in the event of a change in the name of its owner or language (Article 15.9). The requirement that individual applicants submit a document "confirming their right to engage in entrepreneurial activities", and that companies must submit a certificate of state registration as a legal entity, creates additional bureaucratic barriers for future publishers (Article 16.3). In doing so, the legislator was not concerned with, by using application for registration, ensuring fulfilment of the provisions of clause Article 11.2 (ban on foreign individuals and legal entities and stateless persons directly and/or indirectly possessing, using, disposing of and/or managing over 20 percent of the shares of an entity with media ownership) or the provisions of Article 2.8, prohibiting monopolization of the media. If, as they claim, this were merely a technical procedure, all it would require would be the full name or publication title and contact details. The requirement to provide detailed information about content, including about "the range of topics" covered by the publication, as well as all sorts of bureaucratic barriers, is proof that the registration regime is used for exercising supervision over the media.

60 See "Registration of Print Media in the OSCE Area. Observations and Recommendations". See in English on the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/documents/rfm/2007/03/23735_en.pdf.

The situation is not changed by the fact that, according to the draft law, the media registration procedure is somewhat improved in that, if the relevant authority does not issue a media registration certificate by the legislated deadline or does not deny registration, then on expiry of a specific term a certificate of media registration is deemed to have been received, as it were. This does not make this a mere notification procedure, as might appear at first glance.

Recommendation

Special registration of media outlets should be abolished as superfluous and restricting media freedom.

2.3.2. Suspension and termination of media activities and distribution

The possibility of suspending and terminating media activities, as envisaged by the provisions of Articles 18 and 3 of the draft law on the Mass Media, has already been commented on in section 2.1.2.

Recommendation

The possibility of forcible termination (suspension) of media operations should be excluded from the draft law.

2.4. Comments on and proposals to Chapter 4 of the draft law: Media distribution

2.4.1. Restriction on re-broadcasting of foreign programmes

Article 19.4 of the draft law on the Mass Media repeats the current prohibition in Kazakhstan (under Article 14 of the current law on the Mass Media) on re-broadcasting of foreign media products in a volume of over 20 percent of the total weekly volume of domestically produced television and radio programmes. The comments on these rules are covered by the scope of those already expressed above (see 2.2.1 and 2.1.3).

A restriction on re-broadcasting cannot be justified as necessary in a democratic society. The Kazakh Government's objective to promote domestically produced media products would be achieved more appropriately within the scope of a licensing system, for example, by including a licence provision enjoining a station to broadcast a minimum volume of domestically produced programmes, as well as by providing non-discriminatory subsidies for domestic broadcasting output. Even if the quotas for domestically produced content are introduced as a condition for obtaining a licence, the 20 percent limit on all foreign rebroadcasts may prove to be unrealistically low: such a limit would prevent a station from re-broadcasting foreign media programmes even between midnight and 7:00 am.⁶¹

Recommendations

The restriction on re-broadcasting of foreign television and radio programmes should be reviewed. The intention of the Government of Kazakhstan to promote domestic media products would be better implemented within the scope of the existent successful system for placing state orders for such products.

2.4.2. Other comments on Chapter 4

It would be desirable to specify the meaning of Article 20.2 of the draft law on the Mass Media. Is it possible to distribute radio programmes accompanied by an identification announcement no less than four times a day in a row, or should this programme identification be spread out evenly during airtime? Considering that the radio airtime of a given radio channel may consist of a set of radio programmes (in the sense of the main concepts of the draft law), would it not be better to leave in place the rule stipulating

61 Memorandum to the Republic of Kazakhstan Law on the Mass Media (2006)
<http://www.article19.org/pdfs/analysis/kazakhstan-media-la.pdf>.

announcement of the programme's name (identification) each time it comes on air, as prescribed in Article 15.2 of the current law on the Mass Media?

Recommendation

The provisions of Article 20 "Publisher's imprint" should be specified to add clarity to the provisions of the law and exclude the possibility of their varying interpretations.

2.5. Comments on and proposals to Chapter 5 of the draft law: Organization of television and radio broadcasting

There are no substantive remarks on the articles of Chapter 5 of the draft media law. It is peculiar that the entire chapter and the individual Article 22 have the same title: "Organization of television and radio broadcasting". To facilitate enforcement of the law, one of these titles should probably be changed.

2.6. Comments on and proposals to Chapter 6 of the draft law: Licensing of television and (or) radio broadcasting

2.6.1. Licensing authority

Article 26.2 of the draft law on the Mass Media reads that "licensing of television and (or) radio broadcasting using the radio frequency spectrum shall be performed by an authorized body", which corresponds to the provision of Article 4.3 of the current law on the Mass Media. Currently, this "authorized body" is the Committee for Information and Archives of the Ministry of Culture and Information of the Republic of Kazakhstan. The draft law proposes that tenders for receiving frequencies will be held by a specially created Commission. The Commission is, accordingly, to consist of an equal number of representatives of state bodies, media and public organizations. The procedure for the creation, operation and termination of the Commission shall be established by the Government of the Republic of Kazakhstan (Article 26.3).

Of serious concern is the fact that the main instrument for licensing television and (or) radio broadcasting is and, as the draft law proposes, will remain in the hands of a government department, without any guarantees of its independence. The members of the body determining the winners of tenders to receive licences will, most likely, be appointed by a minister – a member of the Government. The term in office, selection criteria, appointment and dismissal from the relevant positions are not established; the criteria for awarding licences are vague; openness of the work of the licensing authority is not guaranteed; licensing activities are financed out of the state budget; accountability of the licensing authority to parliament and the public is not regulated and, most likely, does not exist. The wording of the draft law on the special commission (Article 26.3 and 26.4) does not specify its status within the system of state bodies, its powers and the procedure for its composition of “an equal number of representatives of state bodies, media and public organizations”.

Proceeding from the letter and spirit of international treaties,⁶² it is considered here that, in a democratic state, licensing does not, in itself, hamper freedom of the media. Moreover, licensing could and should develop media freedom. It is in the public interest to allocate frequencies to those applicants offering the best selection of services. In addition, the granting of licences makes it possible to ensure that the activities of broadcasters comply with certain social objectives, such as protection of the interests of minors and guarantees of political and informational pluralism. This means there is a need to ensure effective regulation of this sector, which would guarantee both freedom of the media and observance of a balance between this freedom and other legitimate rights and interests.

62 See, for example, Recommendation No. Rec (2000) 23 of the Committee of Ministers to the member states of the European Union on the independence and functions of regulatory authorities for the broadcasting sector on the website of the Institute for Problems of Information Law at: http://www.medialaw.ru/laws/other_laws/european/rec2000-23.htm

An important condition for independence of the licensing authority is openness of its activities. Openness of meetings and accessibility of their minutes for the public and (or) journalists comprise a major component of public control over decisions made by such an important body. All resolutions, decisions, orders, notes and other documents of this body must be open for familiarization.

Recommendations

The draft law should clearly specify legal guarantees of the independence of the television and (or) radio broadcasting licensing authority from the institutions of state power and its accountability to civil society, openness of the licensing and control procedure. There should be legal safeguards against any possible conflict of interest between the members of the licensing commission and business and political representatives.

2.6.2. *Licensing procedure and principles*

Article 26.2 of the draft law on the Mass Media states that “the procedure for issuing licences for television and (or) radio broadcasting shall be approved by the Government of the Republic of Kazakhstan”. In connection with this provision, it should be noted that, first of all, it repeats, word for word, the provision of Article 8.3 of the draft law and is therefore superfluous.

Second, without objecting to this authority of the Government of the Republic of Kazakhstan, *the principles and criteria* for licensing television and radio broadcasting in accordance with which the Government is to approve the licensing *procedure* should be introduced into the future law on the Mass Media. The criteria that the licensing authorities use in awarding licences are an important indicator of the licensing procedure serving the public interest and freedom of the media. The criteria must always be clearly and unambiguously spelled out in the law. This will prevent subjectivism and any political or economic pressure being brought to bear on the licensing authority.

In international practice of media licensing, the following criteria are applied for determining tender winners:

- Diversity of media ownership on the given market.
- Consideration of the interests of the audience.
- The proposed programme concept.
- Previous work experience.
- Effective use of the frequency.
- Availability of its own autonomous power generator (for radio stations).
- Maintenance of existing broadcasting.
- Initiative on the part of the applicant.
- Previous broadcasting on the given frequency.

In addition to the criteria for selecting licensees, methods for controlling the use of licences and independence of the licensing authority, the *term* for which licences are issued and the terms and conditions for its extension are of importance.

A short term not only hampers television and radio companies in recovering their initial investment, but also in the event of indeterminacy over extension (prolongation) of their licence for a new term, makes them excessively dependent on the licensing authority. Considering that the licensing authority in Kazakhstan is dependent on the state authorities, the licensing criteria are vague, and advantages of existing broadcasters are not specified in the legislation, a short term of licence validity will make private broadcasters entirely dependent on the political situation and the interests of the ruling circles.

A short licensing term will have an adverse effect not only on the economic interests of the broadcasters, but also, more importantly, on the development of freedom of the media. What is meant here is not only the dependence of broadcasting on the state authorities. Long-term planning of broadcasting

and substantial investments in production and purchase of programmes help to maintain stable relations with the audience. In striving to preserve confidence in these relations, the broadcaster tries to satisfy fully its demand, above all by means of developing informational and ideological diversity and high professional journalistic standards.

As far as known, the licensing term for television and radio broadcasting in Kazakhstan is set for 3 years.

The issue of the term of licence validity would not, of course, be so important if its *extension* were not associated with excessive or indeterminate requirements. By virtue of this, clear and unambiguous rules for prolonging licences set in the law on the Mass Media should be included in the principles of licensing for the sake of media freedom.

Unfortunately, the discussed issues were not reflected in the draft law.

Recommendation

The conditions for licensing of television and radio broadcasting as a factor behind freedom of the media are: impartiality, competence and non-application of political criteria by the national licensing authority, as well as predictability of the rules for obtaining a licence, consideration of the interests of the audience, and extended licence validity. The draft law should provide legal guarantees of these conditions.

2.7. Comments on and proposals to Chapter 7 of the draft law: Relations between the mass media and individuals and organizations

2.7.1. Protection of honour and dignity

Under international law, publication of a refutation or a reply is seen as a major instrument for protecting honour and dignity and as a basic element of the right to full and objective information. According to the United Nations,

“...as a matter of professional ethics, all correspondents and information agencies should, in the case of news dispatches transmitted or published by them and which have been demonstrated to be false or distorted, follow the customary practice of transmitting through the same channels, or of publishing, corrections of such dispatches”.⁶³

Article 31.1 of the draft law on the Mass Media states:

“Everyone shall have the right to demand refutation of information denigrating the honour, dignity or business reputation of an individual and the business reputation of a legal entity, as well as to demand publication of a reply in the event of dissemination of information that is false but does not denigrate the honour, dignity or business reputation of the person”.

Along with the adoption of the new law on the Mass Media, law-makers propose to amend the Civil Code of the Republic of Kazakhstan, in particular the provision of Article 143.1 of the Civil Code corresponding to Article 31.1 of the draft media law.

⁶³ United Nations General Assembly. A/RES/630 (VII). Seventh session 630 (VII). Convention on the International Right of Correction (Adopted at the 403rd plenary session of 16 December 1952). The official text in English can be found on the website of the United Nations: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/079/73/IMG/NR007973.pdf?OpenElement>.

These amendments seem dangerous since, in contrast to the current Civil Code of the Republic of Kazakhstan and the law of the Republic of Kazakhstan on the Mass Media, they create the possibility *for anyone* to demand refutation and reply in relation to information *about anyone*, and not only *about oneself*, as is the case in other countries. In this sense, the current version of Article 143.1 (“Any citizen or legal entity shall have the right to demand in court refutation of information denigrating its honour, dignity or business reputation unless the disseminator of said information proves that it is true”) and the abolished clause Article 143.3 (“Any citizen or legal entity in relation to which the media have published information infringing on its rights or legitimate interests shall have the right to a free publication of reply in the same media”) of the Civil Code of the Republic of Kazakhstan appear preferable.

In contrast to printed publications and television and radio programmes (Article 31.2), the draft law does not determine the procedure for placing a refutation in the so-called online media. Neither are there any instructions provided concerning the procedure for or volume of publication (broadcast) of a reply in the media. This results in the lack of legal clarity into the procedure for applying the provisions of Article 31.

The draft law suggests that courts determine the size of moral damages proceeding from the principles of fairness and sufficiency (Article 31.7). As a result, there is a contradiction with the provision of Article 952.2 of the current Civil Code of the Republic of Kazakhstan, which talks of other grounds not mentioned in the draft law. It is evident that the courts will be inclined to make rulings in accordance with the Civil Code in this matter. For the purpose of introducing clarity into the practice of implementation, ambiguity should be avoided with respect to determining the amount of moral damages. At the same time, in the spirit of the objectives of the draft law on the Mass Media, it should be supplemented with a provision in accordance with which the amount of moral damages to be levied should

not entail restriction of media freedom. Such a provision would be confirmed by the provisions of Article 31.6 of the draft law and the corresponding amendments to the Tax Code (see below).

A major merit of the draft law on the Mass Media is the provision of Article 31.5, which reduces the limitation period for claiming refutation of information denigrating honour, dignity or business reputation, or publication of a reply in the media, to one year from the original publication of such information in the media. This does not run counter to Article 178 of the Civil Code of the Republic of Kazakhstan (“Statutes of limitations”), which, while establishing a general limitation period of three years, also envisages that “for individual types of claims, legislative acts may establish special statutes of limitations that are shorter than the general one”. At the same time, unfortunately, it is not established whether it is possible to file a suit claiming reimbursement for losses and moral damages inflicted by publication of denigrating information within the previous three-year period.

The provision of Article 31.6 and corresponding amendments to the Tax Code of the Republic of Kazakhstan should be recognized as another merit of the draft law on the Mass Media. These provisions determine the amount of the state duty levied on filing statements of claim for moral damages submitted to a court of law as a percentage of the amount of the claim filed.

Finally, the provision of Article 31.1, introduced into the draft law to the effect that “information expressed as personal views, convictions, opinions or critical judgements shall not be subject to refutation”, will have a major positive effect.

The three innovations mentioned above will offer more protection to the media against unjustified suits in protection of honour, dignity and business reputation.

Recommendations

The danger that, in contrast to the current Civil Code of the Republic of Kazakhstan and the law on the Mass Media, a possibility will arise for anyone to demand refutation of and reply to information about anyone, not only about oneself (as is the case in other countries), should be eliminated from the wording of the draft law. The procedure for applying the provisions of Article 31 in relation to the procedure for publication of a reply or refutation should be clarified. A provision should be introduced into the draft law stipulating that the amount of moral damages levied should not entail a restriction of media freedom.

2.7.2. Relations between the mass media and state authorities

An important merit of the draft law on the Mass Media should be seen in the provision of Article 30.10, which demands that state authorities and officials whose activities are criticized in the media provide the media, within a period of ten days, a written explanation on the essence of criticisms. This will help to enhance the media's efficiency and prestige as an institution of civil society.

The shortening of the time allowed to state authorities and other organizations for providing an answer to a request for information on the part of the media from a month (for issues "requiring additional research and verification") in the current law (Article 18.2-1) to 10 days in the draft law (Article 30.5) should be welcomed. This innovation will facilitate the work of the media, strengthen public control and reflect the practice in other former Soviet republics.

2.8. Comments on and proposals to Chapter 8 of the draft law: The rights and obligations of journalists

2.8.1. *The rights of journalists*

Journalists' rights listed in the draft law on the Mass Media for the most part replicate the provisions of the current law. These rights naturally facilitate the work of journalists, but the possibility of improving them further should not be overlooked.

It is recommended that the provision concerning the right to confidentiality of information sources (Article 32.1.12) be brought further into line with international standards. In accordance with the draft law, any court may issue a directive to disclose a source of information on any grounds. This violates the minimum standards established by human rights courts and regional human rights bodies, according to which a court may require journalists to reveal their sources as a measure of last resort, i.e. only if this is necessary to investigate a grave crime or for the defence of a person involved in criminal proceedings.

Finally, it must be noted that the provision included in both the draft law and the current law on the Mass Media concerning the right of the *journalist* to keep his/her information sources secret is not supplemented by a provision on the right of the *editorial board* to keep information sources secret; this matters, as the disclosure demand may be addressed to the editors rather than the journalist.

It is also recommended that a similar right be added, indicating that the police are not entitled to search editorial premises or to seize journalistic materials without a court warrant, and that a court may issue a search or seizure warrant only in a case of absolute necessity during an investigation of a grave crime or for the defence of a person accused of committing a crime

and if no other materials of equal evidential value can be obtained by other means.⁶⁴

It is important to specify the formulations of other rights of journalists. The verb “refuse” in the continuous form should be replaced by a non-continuous form in the provision of Article 32.1.11: “a journalist shall have the right of refusing to publish materials in his/her own name or pseudonym if its content, after editorial corrections have been introduced, runs counter to the personal convictions of the journalist”. It would be desirable to supplement the provision of Article 32.1.10 with the right of the journalist to disseminate information and materials not only in his/her own name or pseudonym, *but also anonymously*.

Recommendations

The provision of the draft law on the right of journalists not to reveal their sources of information should be specified, making this the measure of last resort which a court might apply. The rights of the editorial board to secrecy and to protection of editorial premises from search and seizure of journalistic materials without a court order, issued only in cases of absolute necessity, should be added to the draft law.

2.8.2. The obligations of journalists

Journalists’ obligations listed in the draft law on the Mass Media for the most part replicate the provisions of the current law. From the point of view of international standards, one cannot agree with some of them. The obligations envisaged by Article 33.1.2 of the draft law “not to disseminate false information” seems to impose an absolute legal requirement always to publish “truthful information”. This is simply impossible: even the best

⁶⁴ See resolution of the European Court of Human Rights *Roemen and Schmidt v. Luxembourg*, 25 February 2003, Application No. 51772/99). The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tpk197/view.asp?item=1&portal=hbkm&action=html&highlight=roemen&sessionId=4648759&skin=hudoc-en>.

journalists sometimes make mistakes. The usual practice in democratic countries in this connection is for questions relating to the truthfulness of information to be self-regulated. Serious arguments against this provision are also presented in section 2.1.4 (Requirement to provide “truthful information”), which comments on Article 4 of the draft law.

Article 33.1.5 envisages the obligation not to disseminate information or materials produced using hidden audio or video recorders or cameras, with the exception of cases when this is necessary to protect the public interest and when measures are taken to conceal the identity of individuals and (or) the demonstration of the recording is based on a court order. This obviously and unfortunately leaves no opportunity for the journalist to violate this obligation (1) in the absence of infringement of anyone’s rights in the recordings, (2) in any case when measures are taken to prevent identification of the image (voice) of the recorded person, as well as (3) in the event of consent to this on the part of the persons photographed or filmed by a hidden camera.

While specifying the wording of Article 33.1.5, it is equally important to define the concept of “protection of the public interest”, applied in the draft law. This is particularly important in that Article 39.1.4 relieves from liability if the editor and the journalist acted “in the public interest”. Without a definition of what this interest is and what “protection” of the public interest means, the implementer of the law will be unable to apply these provisions and they will become mere empty phrases.

Recommendations

The obligation of the journalist “not to disseminate false information” should be removed from the draft law. The draft law should define the concept of “protection of the public interest” which is very important in journalistic practice. Other circumstances allowing hidden cameras to be used should be specified.

2.9. Comments on and proposals to Chapter 9 of the draft law: Accreditation of journalists

The right to accreditation is protected by Article 19 of the ICCPR as one of the integral rights to freedom of expression. As in the case of violation of freedom of expression, any accreditation procedure must be checked for legality according to three criteria. In particular, this procedure must pursue a legitimate aim, must be in accordance with the law and must be necessary in a democratic society. While the accreditation system may be necessary for restricting access on the grounds of security or lack of space, as well as for exercising control in the event of open access, in order that the media may fulfil their functions, it should not allow any infringement on freedom for political purposes. Accreditation should be automatic and the number of journalists may be restricted only in the event of real and obvious problems in accommodating them.

In October 2006, the OSCE Representative on Freedom of the Media presented a Special Report on accreditation of journalists in the OSCE region.⁶⁵ The Report contains the following 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 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

⁶⁵ Special Report "Accreditation of journalists in the region of the OSCE: Observations and Recommendations." See in English on the website of the OSCE Representative on Freedom of the Media: http://www.osce.org/documents/rfm/2006/10/21826_en.pdf.

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 and 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 corps.

The provisions of Chapter 9 of the draft law should be edited in order to ensure their unambiguous interpretation in the interests of freedom of the media. For example, Article 35.3 of the draft law, which repeats Article 22.2 of the current law on the Mass Media word for word, states that:

“State authorities and organizations with which a journalist is accredited must notify him/her in advance of meetings, conferences and other events and provide him/her with verbatim records, minutes and other documents”.

It is proposed that it be specified *which specific* documents should be provided to the journalist, wording this part of the provision, for example, thus: “...as well as documents used by participants in these events in their decision-making”. It would also be appropriate to replace the words “in advance” with “in good time”, to ensure that journalists are notified of the holding of the event not simply *before* it, but in time for them to be present.

Article 35.5 of the draft media law, which introduces the important provision that “A journalist may have his/her accreditation revoked by court ruling if he/she violates the accreditation rules”, must be amended. First of all,

the word “only” should be added after “accreditation revoked”. Otherwise, this rule merely gives an example of the situations in which a journalist may have his/her accreditation revoked and does not close the list of such situations. Second, it must be specified whether a journalist’s accreditation can be revoked *by court ruling in connection with his/her violation of the accreditation rules or by court ruling per se* (on what grounds?) and whether it can be revoked *without a court ruling* if a journalist has violated the accreditation rules. It should be noted that Kazakhstan has no unified or model accreditation rules, which allows unjustified restrictions to be introduced into the rules used in practice. Perhaps it would be worthwhile to indicate, additionally, in the draft law that the accreditation rules should not contravene the laws of the Republic of Kazakhstan.

The word “own” should be deleted from the provision of Article 35.2 since the right of ownership does not apply in Kazakhstan to journalists (people), but only to the media themselves.

Recommendations

The accreditation procedure should apply automatically with respect to all applicants. Withdrawal of accreditation should be permitted only for serious and repeated violations of the public order. Measures should be taken to specify the provisions of Article 35 in order to apply the rules governing accreditation for journalists in full, as envisaged by the draft law and in accordance with the objectives of the ICCPR.

2.10. Comments on and proposals to Chapter 10 of the draft law: Liability for violation of legislation on the mass media of the Republic of Kazakhstan

2.10.1. Grounds for liability

Article 38.1 of the draft law on the Mass Media envisages liability for disseminating any “false information”. This provision constitutes an unjustified

restriction on media freedom, as mentioned previously (see sections 2.1.4 and 2.8.2) and should be eliminated.

The same article of the draft law, duplicating Article 20 of the Constitution of the Republic of Kazakhstan and Article 3.1 of the draft law word for word, refers to the legal ban on disseminating information and materials constituting propaganda of cruelty and violence. Violation of this ban entails liability under Article 274 of the Criminal Code of the Republic of Kazakhstan. It is unlikely, however, that the law enforcer will be able to determine what specifically constitutes the subject of propaganda of cruelty and violence. By way of Article 1.17, the draft law for the first time strives, albeit without success, to provide such a definition in Kazakhstan's media legislation. Identification of such materials through their ability to "spread among people violent or cruel behaviour" cannot be proven and does not help to combat violence and cruelty in society. Thus, the provisions of the law (and of the Constitution) remain declarative in nature.

Recommendation

The newly introduced provision on liability for dissemination of any "false information" should be removed from Article 38 of the draft law. Other provisions of this article should be specified.

2.10.2. Grounds for release from liability

The novel provision of the draft law on the Mass Media releasing journalists from liability for quoting people verbatim (Article 39.1.4) cannot but be welcomed. At the same time, it should be specified whether this applies to statements made by *anyone* or only, for example, state officials.

The provision of Article 39.2 on liability of the media owner, editor or journalist for disseminating information constituting state secrets or other secrets protected by law if they receive a written notification from the information source that the information provided includes state secrets and

other secrets protected by law, raises the question as to the extent that such liability complies with the requirements to protect the public interest. How this contradiction might be resolved is discussed in section 2.1.4.

3. COMMENTS ON AND PROPOSALS TO THE DRAFT LAW ON AMENDING CERTAIN LEGISLATIVE ACTS OF THE REPUBLIC OF KAZAKHSTAN ON THE MASS MEDIA

3.1. Decriminalization of libel and insult offences

A major achievement of the draft law consists in decriminalization of libel and insult offences, in line with the global standards for exercise of freedom of speech in a democratic state. Articles 129, 130, 319, 320 and 343 of the Criminal Code of the Republic of Kazakhstan lose their effect. The OSCE Representative on Freedom of the Media and other international organizations insist that libel and insult provisions should be excluded from criminal law. In the former Soviet republics, these provisions have already been completely excluded from the criminal codes of Estonia, Georgia, Moldova and Ukraine.

At the same time, the Criminal Code of the Republic of Kazakhstan retains Article 318 “Infringement upon the honour and dignity of the President of the Republic of Kazakhstan and obstruction of his activities”. The note to this article states that public statements containing criticisms of the policy pursued by the President do not entail criminal liability. In spite of this, law enforcement practice has unjustifiably expanded the elements of this crime. A broad sphere is created for subjective assessments in determining its essence, thereby preventing the journalist from seeing the scope of the ban clearly in advance. Moreover, the difference between acceptable criticism, i.e. criticism directed against political actions on the part of the head of state, and insults worthy of condemnation, i.e. insults directed against the head

of state as an individual, is difficult to prove, since insults with respect to political actions inevitably affect the individual, too.

Recommendation

Alongside exclusion of other articles on criminal liability for libel and insult, Article 318 “Infringement upon the honour and dignity of the President of the Republic of Kazakhstan and obstruction of his activities” should be removed from the Criminal Code of the Republic of Kazakhstan as it creates unjustified restrictions on journalistic activities.

3.2. Amendments to administrative law

Another positive example of the proposed amendments is the introduction of administrative liability for unlawful refusals to provide journalists with information, the dissemination of which is not limited by law, or provision of incomplete or deliberately false information, unlawful violation of the deadlines for providing the requested information, as well as unlawful categorization of information of public significance as information with restricted access (Article 347-1 of the Code of Administrative Offences of the Republic of Kazakhstan).

Another merit of the draft law is elimination of the possibility of confiscating media products when certain administrative offences have been committed (Articles 349 and 350 of the Code of Administrative Offences of the Republic of Kazakhstan) and exclusion of liability of media organizations for violation of the procedure for providing mandatory copies (Article 348 of the Code of Administrative Offences of the Republic of Kazakhstan). At the same time, the possibility remains of suspending publication (broadcasting) of a media outlet for a period of up to three months for violation of Articles 342, 349 and 350 of the Code of Administrative Offences of the Republic of Kazakhstan.

Recommendation

The possibility of suspending the issue (broadcast) of a media outlet should be removed from the Code of Administrative Offences of the Republic of Kazakhstan.

Comments and Suggestions on the Draft Law “On Introducing Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Questions of Defamation in the Mass Media” (drafted by the Ministry of the Interior of the Republic of Kazakhstan)⁶⁶ 2008

The OSCE has extensively and consequently campaigned for full decriminalization of libel and insult. The proposed draft law *does not abolish* criminal responsibility for defamation, but introduces significant changes into the order regulating the offence of defamation.

Under the current draft law, almost all of the articles on criminal responsibility for libel and insult remain in the **Criminal Code of the RK**.

Concurrently, the maximum criminal responsibility under Article 129 (“Libel”) is reduced from three years’ imprisonment to correctional labour of two years. Under Article 130 (“Insult”), criminal responsibility is lowered via the elimination of imprisonment as punishment (while corrective labour of up to one year remains).

Similar changes reducing punishment are offered under Article 343 (“Libel of a judge, prosecutor, investigator, interrogator, court marshal, court executioner”). Here, the form of punishment is lowered from four years’ imprisonment to corrective labour of up to two years. In other articles regulating libel and insult (Articles 319, 320), deprivation of freedom is also replaced with correctional labour of up to one year.

⁶⁶ The author of the memorandum is Andrei Richter, Doctor of Philology (Moscow State University Faculty of Journalism), Director of the Media Law & Policy Institute (Moscow), Member of the International Commission of Jurists (ICJ, Geneva), Co-Chairman of the law section and member of the International Council of the International Association for Media and Communication Research (IAMCR).

Therefore, under all of the articles of the Criminal Code RK on libel and insult (with exception of Article 318 “Infringement on the honour and dignity of the President of the Republic of Kazakhstan and interference with his activities”), *punishment in the form of deprivation or limitation of freedom is repealed* and replaced with corrective labour.

Corrective labour is performed at the convict’s workplace. Article 43 of the CC RK (“Corrective labour”) determines that the state receives a fraction of the convict’s earnings, the amount to be determined by a court decision and within the range of 5 to 20 percent. Corrective labour cannot be assigned to persons who are not employed full-time or who are pursuing an education away from production. Such persons may be assigned a fine instead of corrective works by a court order. A court may also replace corrective works with a fine in case the above circumstances arise while serving punishment.

Under all of the discussed articles on libel and insult, qualifying offences committed via the distribution of materials in the media are repealed. In practice, this will not change much. Under the *criminal law, qualifying offences* merely serve as means of differentiation of responsibility, such as, for example, in case of aggravated circumstances in the commission of crimes through the media, as exists in the current edition of these articles. The abolition of the qualification “the same act committed with the use of the mass media” obviously lowers the level of social danger of libel in the media. However, the offences themselves (such as dissemination of knowingly libellous, slanderous information) continue to apply. Moreover, under articles 129 and 130 the qualifying feature “in publicly demonstrated compositions” remains, leaving room for responsibility of television journalists. Television programmes are an example of publicly demonstrated compositions under current legislation, including legislation on copyright. From this it follows that – along with ordinary citizens – journalists will be held criminally liable for libel and insult as before.

As for draft changes to the **Civil Code of the RK**, they pose a definitive danger to freedom of the media.

The draft law introduces responsibility for dissemination of information “in insulting form touching upon private life and infringing upon honour and dignity” under Article 143 of the Civil Code of the RK.

It should be noted that Article 143 is followed by Article 144, that prescribes a citizen’s right to privacy. Both of these articles are found in Section 3 of the Civil Code (“personal non-property rights”). In accordance with Article 141 of the Civil Code of the RK, “a person whose personal non-property rights have been violated...has a right to compensation of moral damages under rules of the current Code”, thus *already* envisioning responsibility for violating the right to privacy. It is unclear why a violation of this right in an insulting form would be separated from the same offence performed in conventional form, since the level of responsibility remains the same.

As for dissemination of insulting information as such, the abovementioned Article 130 of the Criminal Code of the RK (“Insult”) envisions sufficient punishment for the offender without amendments to the Civil Code RK. Such criminal punishment for the offender, i.e. the very fact of his/her conviction, should serve as the basis for compensation of moral damages for the aggrieved person. Therefore, the offered innovation is redundant as the problem is already resolved by virtue of the Civil Code of the RK.

Along with the noted comments regarding the Civil Code RK, the exclusion of legal persons from Article 951.1 of the Civil Code RK is to be welcomed. Organizations are obviously unable to feel moral suffering (i.e. humiliation, annoyance, melancholy, anger, shame, despair, physical pain, loss, discomfort, etc); therefore, they do not have the right to seek compensation for such suffering in pecuniary form.

Recommendations

The proposed amendments to the articles of the Criminal Code of the Republic of Kazakhstan should be considered as significantly improving the situation of journalists, but at the same time as half-way measures which do not conform to generally accepted OSCE standards.

The elimination of reference to legal persons from Article 951.1 of the Civil Code of the Republic of Kazakhstan (determination of moral harm) should be welcomed. However the suggested formulation of Article 143 of the Civil Code seems redundant.

Comments on the Draft Law of the Republic of Belarus on the Mass Media

2008

The comments have been prepared by Andrei Richter, Doctor of Philology, Director of the Media Law & Policy Institute (Moscow), senior lecturer at the faculty of journalism of the Lomonosov Moscow State University, member of the International Commission of Journalists (ICJ, Geneva) and the International Association for Media and Communication Research (IAMCR).

Having analysed the draft Law of the Republic of Belarus on the Mass Media (hereinafter referred to as the Draft Law) in the context of the Constitution and existing legislation of the Republic of Belarus, as well as international norms on freedom of information, the expert commissioned by the Office of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) has come to the following conclusion.

BRIEF SUMMARY OF COMMENTS AND RECOMMENDATIONS

The Office of the OSCE Representative on Freedom of the Media has consistently come out in support of preparing a more liberal Law on the Press and Other Mass Media, which would envisage participation by non-governmental organizations in its drafting and would facilitate promotion of freedom of expression and freedom of the media in Belarus.

The proposed version of the Draft Law, however, renders the existing law less dangerous for freedom of expression in the country. The view held here is that the serious nature of the shortcomings in the Draft Law considerably outweighs any advantages it might have. Moreover, it is doubtful whether

a law on the Press and Other Mass Media is needed at all in its present form: the majority of its provisions, as the provisions of the Draft Law, are unnecessary for or detrimental to freedom of expression and freedom of the media in Belarus, while others are already reflected in the Civil and other codes of the Republic of Belarus.

The expert notes with satisfaction that the Draft Law makes unambiguous reference to **international treaties** concluded by the Republic of Belarus as the legal basis for the activities of the media. In this connection, it is confirmed that the comments and proposals below are intended to bring this norm closer to actual implementation, to prevent collisions between the future Law on the Mass Media and international treaties concluded by the Republic of Belarus, as well as generally accepted norms of international law.

It is welcome that, according to the Draft Law, it is to apply only to analogues of existing printed and television and radio broadcasting media distributed via the **Internet**. Moreover, even these analogues do not fall under the requirement for state registration of the media. Dissemination of information on the Internet is thus not subject to registration or, apart from the above-mentioned analogues, to regulation by the future Law on the Mass Media.

Another positive aspect is the fact that the concept of impermissible **ensorship** has been expanded to include any legal entities among those prohibited to demand coordination of information communications (materials) and that this prohibition applies not only to making such demands to the editorial board, but also to all other persons operating in the sphere of the media.

At the same time, it is held here that the **registration** system envisaged by the Draft Law should be abolished. It is objectionable in connection with the fact that it creates grounds for abuse and, in practical terms, leads to unlawful restriction of the right to issue printed periodicals. The situation is

in no way changed by the fact that, under the Draft Law, the procedure for media registration is somewhat simplified in that it makes no mention of the currently existing need for coordination of placement of media with the local authorities.

The expert is concerned about the norms of the Draft Law introducing a ban on professional activities of journalists of **foreign** media without a special accreditation from the Ministry of Foreign Affairs of the Republic of Belarus. This will create considerable difficulties for urgent work by foreign journalists.

Of concern is the absence from the Draft Law of the norms of the current Law of the Republic of Belarus on the Press and Other Mass Media (hereinafter referred to as the Law on the Press) that guarantee citizens of Belarus unhindered **access** to communications and materials of foreign media.

The Draft Law also completely changes the legal nature of **accreditation** of journalists with various authorities and organizations. The focus is diverted from the right to accreditation to the right to accredit. The Draft Law relegates the fundamental issues of accreditation to the discretion of the accrediting authorities themselves, which emasculates the meaning of accreditation, consisting in unhampered access to information on the activities of state authorities and public organizations.

Of further concern is the fact that the Draft Law annuls reference in the legislation to the **charter** of a media editorial board as regulator of relations between the founder and the editors, replacing it with the words “decision on the media editorial board.”

A comparison of Article 34.2 of the Draft Law and Article 39 of the Law on the Press testifies to a substantial reduction in the list of **journalists’ rights**. The article “Guarantees of social protection of journalists” in the current

Law on the Press is also deleted. As a result, journalists are deprived of many legal opportunities and social guarantees of their activities to the benefit of society. The provision on the rights of journalists to confidentiality of information sources should be brought into closer alignment with international standards.

A cause for objection is the demand for absolute **compliance with reality** of media materials, which is absurd in that it virtually excludes the possibility of publishing forecasts or various potential scenarios, feuilletons, cartoons and other satirical and comic works, collages and the like.

The Draft Law repeats the provision of the Constitution envisaging a ban on **monopolization** of the media. The aspiration to introduce such a provision into the legislation might be welcomed if it were more detailed and not merely declarative in nature.

Considering the consequences of issued **warnings** and the practice of issuing them, one cannot agree with the system of limitations on freedom of the press proposed in the Draft Law. From the point of view of observance of the norms of international law in relation to freedom of speech, such forms of liability for violation of the legislation as suspension and termination of media activities should be abolished. The existing cases of full **release** of journalists and editorial boards from liability should be reinstated.

The main aspects of the Draft Law constituting cause for concern are discussed in more detail below, following a brief overview of the international and constitutional obligations of Belarus in relation to freedom of expression.

INTRODUCTION

The current memorandum was prepared by Andrei Richter at the request of the Office of the OSCE Representative on Freedom of the Media. A.G. Richter, Doctor of Philology, is Director of the Media Law & Policy Institute (Moscow), senior lecturer at the faculty of journalism of the Lomonosov Moscow State University, and a member of the International Commission of Journalists (ICJ, Geneva) and the International Association for Media and Communication Research (IAMCR).

The memorandum analyzes the Draft Law of the Republic of Belarus on the Mass Media with respect to its compliance with international standards relating to freedom of expression. The Draft Law was submitted by the Council of Ministers of the Republic of Belarus to the Chamber of Representatives of the National Assembly of the Republic of Belarus on 10 June 2008. It is intended to replace the Law of the Republic of Belarus on the Press and Other Mass Media (of 13 January 1995, as amended).

1. INTERNATIONAL AND CONSTITUTIONAL STANDARDS IN THE SPHERE OF FREEDOM OF EXPRESSION

1.1. The significance of freedom of expression

Freedom of expression has long been recognised as one of the most essential human rights. It is of fundamental significance for the functioning of democracy, is a necessary condition for exercising other rights and itself constitutes an integral component of human dignity.

Belarus is one of the founding states of the United Nations. The Universal Declaration of Human Rights (UDHR), the basic document on human rights,

adopted by the General Assembly of the United Nations Organization in 1948, protects freedom of expression in the following wording of Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁶⁷

The International Covenant on Civil and Political Rights (ICCPR)⁶⁸ – a United Nations treaty legally binding on and ratified by the Republic of Belarus in 1973 – guarantees and clarifies the right to freedom of expression in the text of its Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

At its first session, in 1946, the General Assembly of the United Nations adopted resolution 59 (I), which, relating to freedom of information in the broadest sense, states:

67 Resolution 217A (III) of the General Assembly of the United Nations, adopted on 10 December 1948. A/64, page 39-42. See the full official text in English at: <http://www.un.org/Overview/rights.html>.

68 The International Covenant on Civil and Political Rights. Adopted by resolution 2200 A (XXI) of the General Assembly dated 16 December 1966. Came into effect on 23 March 1976. See the full official text in English on the website of the UN Office of the High Commissioner for Human Rights at: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.⁶⁹

Freedom of information in the given and all subsequent resolutions of the UN supreme body is understood as the “right to gather, transmit and publish news anywhere and everywhere without fetters” in the name of peace and world progress. The main principle of freedom of information from the point of view of this UN resolution is “the moral obligation to seek the facts without prejudice and spread knowledge without malicious intent.” As can be seen from resolution 59 (I), freedom of information is of fundamental significance per se and also serves as the basis for the exercise of all other rights.

The Human Rights Committee, meeting in New York and Geneva, exercises control over due observance of the International Covenant on Civil and Political Rights. It consists of experts and is empowered to consider applications from individuals claiming to have suffered violations of the rights set forth in the Covenant, including the rights envisaged by Article 19. This Committee has determined that:

The right to freedom of expression is of paramount importance in any democratic society.⁷⁰

Declarations of this type abound in precedent-setting court rulings on human rights throughout the world. The European Court of Human Rights, for instance, has stressed that “freedom of expression constitutes one of the essential foundations of a [democratic] society, one of the basic conditions

69 United Nations. Sixty-fifth plenary session, 14 December 1946. Official text in English published on the UN website at:

[http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/59\(I\)&Lang=R&Area=RESOLUTION](http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/59(I)&Lang=R&Area=RESOLUTION).

70 Case of Tae-Hoon Park v. Republic of Korea, 20 October 1998, Communication No. 628/1995, para. 10.3.

for its progress and for the development of every man.”⁷¹ As noted in this provision, freedom of expression is of fundamental significance both in itself and as the basis for all other human rights. True democracy is possible only in societies where a free flow of information and ideas is permitted and guaranteed. In addition, freedom of expression is crucial for identifying and disclosing human rights violations and for combating them.

The right to freedom of expression is connected with the right to freedom of the media. Freedom of the media is guaranteed by a variety of documents of the Organization for Security and Co-operation in Europe (OSCE), with which Belarus has expressed its agreement, such as the Helsinki Final Act of the Conference on Security and Co-operation in Europe,⁷² the Final Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe,⁷³ the Charter of Paris agreed in 1990,⁷⁴ the closing document “Towards a Genuine Partnership in a New Era” of the CSCE Summit in Budapest in 1994,⁷⁵ and the Declaration of the OSCE Summit in Istanbul.⁷⁶

71 Case of Handyside v. the United Kingdom, 7 December 1976, Application No. 5493/72, para. 49. The text of the judgement in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionId=4647705&skin=hudoc-en>.

72 The Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August, 1975. See in English parts concerning freedom of expression, free flow of information, freedom of the media on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

73 Copenhagen session of the CSCE Conference on the Human Dimension, June 1990. See, in particular, clauses 9.1 and 10.1 in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

74 Charter of Paris for a New Europe, CSCE Summit, November 1990. See in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

75 Towards a Genuine Partnership in a New Era. OSCE Summit, Budapest, 1994, clauses 36–38. See in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

76 Declaration of the Istanbul OSCE Summit, 1999, clause 27. See in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

The Helsinki Final Act declares that “participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.” The Final Act also states that “participating States will act in conformity with the purposes and principles ... of the Universal Declaration of Human Rights.”⁷⁷

These standards have been developed in detail in subsequent documents of the CSCE/OSCE. The Istanbul Charter for European Security of the OSCE states, in particular:

We reaffirm the importance of independent media and free flow of information as well as the public’s access to information. We commit ourselves 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 we consider to be an essential component of any democratic, free and open society.⁷⁸

The Moscow meeting of the CSCE Conference on the Human Dimension unambiguously agreed that “independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms” and that any restrictions on the right to freedom of expression should be established “in accordance with international standards.”⁷⁹

⁷⁷ Clause VII of the Helsinki Final Act.

⁷⁸ Clause 26 of the Istanbul Summit Declaration.

⁷⁹ The Moscow Meeting of the CSCE Conference on the Human Dimension (October 1991), clause 26. See in English on the website of the OSCE Representative on Freedom of the Media at:http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

A guarantee of freedom of expression is particularly important with respect to the media. This postulate has also been expressed in rulings of human rights courts. In this connection, it should be noted that the three regional human rights protection systems – the American Convention on Human Rights,⁸⁰ the European Convention on Human Rights (ECHR)⁸¹ and the African Charter on Human and People's Rights⁸² – have reflected global recognition of the significance of freedom of the media and of freedom of expression as the vital human rights. Although neither these documents nor decisions of courts and tribunals acting in accordance with them are directly binding on Belarus, they do contain generally recognized principles of international law. By virtue of this, they serve as important comparable examples of the content and application of the right to freedom of the media and of expression and can be used in interpreting, in particular, Article 19 of the ICCPR, which is binding on the Republic of Belarus. In addition, according to Article 8 of the Constitution, “The Republic of Belarus recognizes the priority of the generally accepted principles of international law and ensures the legislation’s compliance with them.”

The European Court of Human Rights always stresses the “pre-eminent role of the press in a State governed by the rule of law.”⁸³ In particular, it has noted:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables

80 Adopted on 22 November 1969, came into effect on 18 July 1978.

81 Adopted on 4 November 1950, came into effect on 3 September 1953.

82 Adopted on 26 June 1981, came into effect on 21 October 1986.

83 Case of *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=thorgeirson&sessionId=4691853&skin=hudoc-en>.

everyone to participate in the free political debate which is at the very core of the concept of a democratic society.⁸⁴

Moreover, free media, as the United Nations Human Rights Committee has stressed, play a substantial role in the political process:

Free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.⁸⁵

In turn, the Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”⁸⁶ The European Court of Human Rights has also stated that it is incumbent on the media to disseminate information and ideas concerning all spheres of public interest:

Although the press should not cross the boundaries set for [protection of the interests defined in Article 10(2)⁸⁷]... it is, nevertheless, assigned the mission of disseminating information and ideas of public interest; if the press is set the task of disseminating such information and ideas, the public, for its part,

84 Case of Castells v. Spain, 24 April 1992, Application No. 11798/85, para. 43. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=castells&sessionid=4648759&skin=hudoc-en>

85 General comment No. 25 of the United Nations Organization Human Rights Committee, 12 July 1996.

86 Recommendation “Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism”, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

87 Article 10 (part 2) reads: “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.”

has the right to receive them. Otherwise, the press would be unable to fulfil its function as society's watchdog."⁸⁸

1.2. Restrictions on freedom of expression

It cannot be disputed that the right to freedom of expression is not absolute: in a few specific circumstances it may be restricted. By virtue of the fundamental nature of this right, however, the restrictions must be precise and specifically determined in accordance with the principles of a rule-of-law state. In addition, the restrictions must pursue legitimate goals; the right may not be restricted merely because a statement or expression is seen as insulting or because it challenges accepted dogmas. The European Court of Human Rights has emphasized that such declarations deserve protection:

[Freedom of expression] 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 that pluralism, tolerance and broadmindedness without which there is no "democratic society".⁸⁹

Besides, the bounds within which legitimate restrictions on freedom of expression may be permitted are established in Article 19.3 of the ICCPR quoted above:

⁸⁸ See the case of *Castells v. Spain*, note 25, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65. The texts of these judgments can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=castells&sessionId=4648759&skin=hudoc-en>, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=observer&sessionId=4648759&skin=hudoc-en> and <http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=sunday%20%7C%20times&sessionId=4648759&skin=hudoc-en>, respectively.

⁸⁹ *Ibid.*

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

This is interpreted as the establishment of a three-tier criterion requiring that any restrictions: (1) be prescribed by law, (2) pursue a legitimate aim and (3) be necessary in a democratic society.⁹⁰ This presupposes not only that the restrictions shall be based only on a law passed by the parliament of the country (and not just any legislative acts!), but also that vague and imprecisely formulated restrictions, or restrictions allowing too much freedom of action, are incompatible with the right to freedom of expression. Interference by the law with the freedom of the media shall pursue one of the goals listed in Article 19(3); this list is exhaustive, so interference not connected with any of the listed goals constitutes a violation of Article 19 of this Covenant. Interference shall also be “necessary” for achieving one of these goals. The word “necessary” in this context has a special meaning. It means that there should exist a “pressing social need”⁹¹ for interference; that the reasons given by the state to justify the interference should “be relevant and sufficient” and that the state should demonstrate that the interference is proportionate to the aim pursued. As the UN Human Rights Committee declared, “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves

⁹⁰ See, for example, the decision of the UN Human Rights Committee on the case *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, 18 April 2005, para. 6.8.

⁹¹ See, for example, the case *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.

to protect.”⁹² Restrictions introduced in observance of the said conditions should be proportional to the legitimate aim pursued.

In this connection, it is worth recalling that Article 23 of the Constitution of the Republic of Belarus reads:

Restriction of human rights and freedoms shall be permitted only in cases provided for by law, in the interests of national security, public order, protection of morality, public health, and the rights and freedoms of others.

Article 33 of the Constitution of Belarus protects the right of freedom of expression and freedom of the media as follows:

- Everyone shall be guaranteed freedom of opinion, conviction and their free expression.
- No one may be compelled to express their convictions or deny them.
- Monopolization of the mass media by the state, public associations or individual citizens, as well as censorship, shall be prohibited.

1.3. Regulation of media activities

For the purpose of protecting the right to freedom of expression, it is of vital importance for the media to be able to carry out their activities independently of state control. This enables them to function as “society’s watchdog” and provides the public with access to a broad range of views, especially on matters affecting public interests. The primary goal of regulating the activities of the media must, therefore, be to promote the development of independent and pluralistic media, thereby ensuring the population’s right to receive information from diverse sources.

⁹² Rafael Marques de Morais v. Angola, note 31, para. 6.8.

Article 2 of the ICCPR makes the state responsible for “adopting such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” This means that it is required of states not only to refrain from violating rights but also to undertake positive measures to ensure respect for the rights, including the right to freedom of expression. In fact, states are obliged to create conditions in which diverse and independent media can develop, thereby satisfying the population’s right to information.

An important aspect of states’ positive obligation to promote freedom of expression and freedom of the media consists in the need to develop pluralism within the media and ensure equal access for all to them. The European Court of Human Rights has noted: “[Dissemination] of information and ideas of general interest... cannot be successfully accomplished unless it is grounded in the principle of pluralism.”⁹³ The Inter-American Court of Human Rights has stated that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”⁹⁴

The United Nations Human Rights Committee has stressed the role of pluralistic media in the process of national construction, noting that attempts to force the media to engage in propaganda of “national unity” infringe on the right to freedom of expression:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved

93 The case of Informationsverein Lentia and Others v. Austria, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=&sessionId=4648759&skin=hudoc-en>.

94 Recommendation “Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion” (note 27, para. 34).

by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.⁹⁵

The obligation to promote the development of pluralism also implies that there should be no legislative restrictions for those who engage in journalism,⁹⁶ and that licensing or registration systems for independent journalists are incompatible with the right to freedom of expression. In their Joint Declaration of December 2003, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression noted:

Individual journalists should not be required to be licensed or to register.

...

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance.⁹⁷

Similarly, the three special representatives on the right to freedom of expression criticized the media registration scheme since it can easily be subject to abuse for the purpose of suppressing media freedom. The same Joint Declaration of 2003 states:

⁹⁵ The case of *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

⁹⁶ See Recommendation "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion", note 27.

⁹⁷ Joint Declaration by 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, 18 December 2003. See in English on the website of the Office of the OSCE Representative on Freedom of the Media at: http://www.osce.org/documents/rfm/2003/12/27439_en.pdf.

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.⁹⁸

In this connection, it is generally accepted today that any state authorities empowered to regulate the media or telecommunications must be completely independent of the government and protected against interference on the part of political and business circles. Otherwise, regulation of the media might easily become subject to abuse for political or commercial purposes. The three special representatives noted that:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members that is transparent, allows for public input and is not controlled by any particular political party.⁹⁹

2. ANALYSIS OF THE DRAFT LAW OF THE REPUBLIC OF BELARUS ON THE MASS MEDIA

The analyzed draft law consists of 10 chapters and 55 articles. Below, comments are given, with appropriate recommendations for aligning the text of the draft law with the international obligations of the Republic of Belarus and generally accepted international standards on the right to freedom of expression.

⁹⁸ Ibid.

⁹⁹ Ibid.

2.1. Scope of the law and its key concepts

The expert notes with satisfaction that the Draft Law unambiguously declares that the legal basis for the activities of the media also consists of the **international treaties of the Republic of Belarus** (Article 2). This norm is absent from the current Law of the Republic of Belarus on the Press and Other Mass Media.

Also welcome is the fact that, according to Article 3.2 of the Draft Law, it applies only to analogues of existing printed and television and radio media distributed via the **Internet**. Moreover, even these analogues do not fall under the requirement of state registration of the media. Dissemination of information on the Internet is thus not subject to registration or, apart from the above-mentioned analogues, to regulation by the future Law on the Mass Media. At the same time, the norm of the Draft Law that comes into collision with this by establishing the possibility and procedure for registration of media disseminated via the Internet by the Government of the Republic of Belarus (Article 11.1.2) is, indeed, cause for concern.

One cannot but note that the Draft Law mentions, among the key principles of the activities of the media, maintenance of a **diversity of opinions** (Article 4), which is missing from the current Law on the Press. At the same time, the provision of the Law on the Press that “the state considers the system of the mass media as the basis for implementation of the constitutional right of the citizens of the Republic of Belarus to freedom of speech and information” (Article 3.4) is unjustifiably excluded.

This deletion is evidently responsible for the fact that the Draft Law unjustifiably reduces the **opportunities of citizens** to exercise their right to freedom of opinion, of conviction and freedom of expression, as secured in the international obligations and the Constitution of the Republic of Belarus. The current Law on the Press envisages the possibility that “individual citizens producing and issuing mass information” may act as editors of

media (Article 2.2), whereas the Draft Law defines the concept of “editor” only through its definition as a “legal entity entrusted with the functions of editing media,” thus excluding the possibility of private individuals producing and issuing mass information. The Draft Law lacks any definition of the concept of “editor.”

It is noted with satisfaction that the concept of impermissible **censorship** has been expanded to include any legal entities (Article 7.2) among the subjects not entitled to demand coordination of information communications (materials) and applying the prohibition on making such demands not only to editors but also to any other persons involved in the media sphere. At the same time, it is noteworthy that the norm of the Law on the Press prohibiting “creation and financing of organizations, institutions and bodies or positions whose tasks or functions include censorship of mass information” (Article 4.2) has been unjustifiably deleted from the Draft Law.

The definition of “**accuracy**” as “compliance with reality” (Article 1.12) is unfortunate. Accuracy is, at the same time, identified as one of the basic principles of media activities (Article 4.2). By virtue of the nature of their profession, journalists are unable to check thoroughly the accuracy of facts, in contrast to officers of investigatory bodies, the public prosecutor’s office and courts. They cannot conduct handwriting or other tests, organize identification parades or other investigation measures to determine the authenticity of documents and the veracity of what people say. This means that the results of checks performed by journalists cannot, in many cases, confirm 100% that what is, at the same time, reliable information they intend to disclose actually complies with reality. The requirement for absolute accuracy of media materials is absurd in that it virtually excludes the possibility of publishing forecasts or various potential scenarios, feuilletons, cartoons and other satirical and comic works, collages and the like.

Nor should it be forgotten that the media system in Belarusian society today consists not only in quality media, but also tabloid, mass, “yellow” publications and programmes that are inclined towards exaggeration, sensationalism, provocation and shocking of the public. The inclusion in the Draft Law of the principle of information accuracy binding on all media imposes an unjustified restriction on a major media segment. Readers and viewers are already somewhat sceptical about scandalous materials and treat them as an entertaining component in the media.

At the same time, scandalous, exaggerated materials can promote and, in practice, do promote discussion in society of various important social problems. In its judgement on the famous case *New York Times Co. v. Sullivan* (1963), the US Supreme Court established that a lie cannot be protected by the Constitution, however important the content of the material might be for exercise of the right to freedom of speech. Even so, the court introduced and distinguished between two concepts – malicious libel and non-malicious libel, determining that the latter, being “libel per se,” is, indeed, not protected by the Constitution. At the same time, free discussion of socially significant issues is very important for a country and should be protected.

In addition, the above innovation may run counter to the well-known requirement (from the resolution of the European Court of Human Rights) for protection of shocking information (see section 2.1.).

The Draft Law (Article 6) reiterates the provision of the Constitution (Article 33) envisaging a ban on **monopolization** of the media. The aspiration to include in the legislation provisions prohibiting monopolization of the media should be welcomed, but these provisions should not be merely declarative in nature.

In a democratic state, the media should not, indeed, serve, as their priority, promotion of anyone's political, economic and personal interests. Ultimately, such "promotion" restricts the people's access to information that is contrary to or does not comply with these interests, leads to the suppression of socially important information, to so-called "information wars" and, as a consequence, is detrimental to development of freedom of the media and democracy as a whole. It is generally accepted that, for the sake of strengthening the diversity of the media, in a democratic society there must be guarantees of both absolute transparency on matters of ownership and support for a climate of healthy economic competition. The latter should include not only legal measures to restrict concentration and unfair competition but also organizational measures to promote decentralization of the market.¹⁰⁰

Recommendations:

- Confirm, as the goal of the Law on the Mass Media, implementation of the right of citizens of the Republic of Belarus to freedom of speech and information.
- Define a media editor in view of the right of individual citizens to produce and issue mass information.
- Exclude the principle of accuracy, understood as compliance with reality, from among those binding on the media with respect to all their materials.
- The Draft Law needs revision so that it would, not only in word but also in practice, restrict monopolization of the media and ensure the requisite transparency of media organizations for this purpose.

¹⁰⁰ See, for example, the corresponding resolution of the European Parliament: "Resolution on Media Takeovers and Mergers," OJ C68/137-138. 15 February 1990.

2.2. The need for registration of the media

Articles 11-16 of the Draft Law regulate questions of registration and re-registration of media, the need for which has repeatedly aroused serious doubts on the part of international organizations (see clause 1.3. of the first part of the Comments). In their remarks on media laws of Belarus and other countries of the region, OSCE experts have already proposed reviewing the registration scheme, since it creates room for abuse for political purposes. In addition, in his Special Report "Registration of Print Media in the OSCE area", published in 2006, the OSCE Representative on Freedom of the Media also warned of the danger posed by rules on media registration.¹⁰¹

In relation to Belarus, the UN Human Rights Committee established specifically that the requirement for registration of a media outlet with a print run of only 200 copies constituted a violation of freedom of expression.¹⁰²

The registration scheme established in the existing Law on the Press (Article 1) and proposed once more in the Draft Law (Article 13.7.4) is applied to publications with a print run of only 300 copies.

Therefore, the conviction that the registration system envisaged by the Draft Law should be abolished is confirmed here. It is objectionable in connection with the fact that it creates grounds for abuse and, in a practical sense, will entail unlawful restriction on the right to publish printed periodicals.

Besides this fundamental problem, the need to submit information about the subject, language, proposed print run and distribution territory is also dubious. It is not clear what is behind the requirement included in the Draft Law for repeat registration in the same way in the event of a change

¹⁰¹ See "Registration of print media in the OSCE area. Observations and recommendations." The English text is available on website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/documents/rfm/2007/03/23735_en.pdf.

¹⁰² The case of *Laptsevich v. Belarus*, 20 March 2000, Communication No. 780/1997.

of address of the editorial board or a six-month (currently – a year-long) suspension of a publication (Article 14.2.1). The requirement for companies to submit a certain document – a certificate of state registration specifically as the “legal entity entrusted with the functions of the editorial board” – creates additional bureaucratic barriers and, apparently, the possibility of a special form and procedure for registration of legal entities seeking to engage in media publication.

If registration, as asserted, is a purely technical statistical procedure, then virtually all that is needed for registration purposes is the full name or company name and contact details. The demand that detailed information be submitted on the content, as well as on the subject of the publication, plus a multitude of bureaucratic barriers, all testify that the registration scheme will be used to exercise supervision over the media.

The situation is in no way changed by the fact that, in accordance with the Draft Law, the procedure for registering media is somewhat simplified in that it makes no mention of the notorious agreement on placing a media outlet with local authorities (Article 10 of the Law on the Press). Yet such a demand for agreement on the part of an executive authority could be introduced into subordinate legislation, as this is not prohibited by the Draft Law (Article 12).

Recommendation

- The media registration scheme is superfluous, restricting freedom of mass information, and should be abolished.

2.3. Rights of foreign journalists and access to foreign media

The expert of the Office of the OSCE Representative on Freedom of the Media expresses concern over the norms of the Draft Law (Article 35.4, and Article 1.1) introducing a ban on the professional activities of journalists of foreign media without special accreditation with the Ministry of Foreign Affairs

of the Republic of Belarus. This will create considerable difficulties for urgent work by foreign journalists coming to Belarus to cover short-term events, such as a state visit. At the same time, this norm is complicated by the need for Belorussian journalists fulfilling editorial tasks for foreign media also to obtain Ministry of Foreign Affairs accreditation.

The expert expresses concern about the absence from the Draft Law of the norms of the current Law on the Press (Article 44) guaranteeing citizens of the Republic of Belarus unhindered access to communications and materials of foreign media. The norm of the same article of the Law on the Press to the effect that “restriction on receipt of direct television broadcast programmes shall be permitted only in cases envisaged by international treaties concluded by the Republic of Belarus” has also been deleted.

It should be recalled that, under the Final Act of the Conference on Security and Co-operation in Europe, the Republic of Belarus assumed the obligation “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 exercise their profession in another participating State.”¹⁰³ It is doubtful that the given norms of the Draft Law further the goals secured in the international agreement of the Republic of Belarus. Section 2 of the Final Act – “Information” (clause c) envisages the rights of both accredited (temporarily and permanently) foreign journalists and journalists of other states irrespective of whether they have special accreditation. In particular, participating States, of which Belarus is one, undertook “to increase the opportunities for journalists of the participating States to communicate personally with their sources, including organizations and official institutions.”¹⁰⁴

103 Final Act of the Conference on Security and Co-operation in Europe.
http://www.osce.org/documents/mcs/1975/08/4044_en.pdf.

104 Ibid.

Recommendations

- Abolish the requirement for accreditation with the Ministry of Foreign Affairs for foreign journalists visiting the country for short periods and for Belarusian journalists working for foreign media.
- Reinstate the right of citizens to unhindered access to communications of foreign media.

2.4. Rights of media editorial boards

For the purpose of ensuring freedom of mass information, guarantees are required for the independence of the creative activities of editorial boards and journalists. Only editorial teams whose work is free from interference by owners can satisfy people's demands for unhindered receipt and distribution of information and ideas. Editorial independence does not mean that the editors should not be held judicially liable, above all for violating various legitimate rights in journalistic materials, especially the right of citizens to privacy and respect for their reputation.

The Draft Law annuls all reference in the legislation to the **charter** of media editorial boards as regulator of the relations between the founders and the editors, replacing it with “a decision on the media editorial board”, without even disclosing the legal nature thereof. The editorial charter and the special procedure for adopting it constitute, however, virtually the ultimate mechanism for protecting the independence of journalists against pressure from founders (owners).

Substantial amendments are introduced by the Draft Law into the institution of **accreditation**. Already in Article 1 of the Draft Law, accreditation is regarded as “granting to a media journalist the right to cover events organized by state authorities, as well as other events occurring on the territory of the Republic of Belarus.” Taking this norm literally, it is both absurd and inapplicable. No one can deprive a journalist of the right to cover

events in the world if he or she has no accreditation from a state authority of the Republic of Belarus.

Accreditation of journalists is envisaged in cases when access by journalists needs to be organized (not prevented) to given events and to meetings of state authorities, particularly if the media interest exceeds the physical possibilities of satisfying it (that is, in the absence of proper conditions for a large number of members of the press to work simultaneously). Accreditation makes it possible to define those media and journalists which specialize in covering the activities of the state authorities, for the purpose of granting them the priority right to receive the relevant information.

Under the current Law on the Press (Article 42.2), issuance of accreditation imposes certain obligations on an accrediting body before an accredited journalist. These include the obligations to notify accredited journalists of its sessions, meetings and other events, to allow them access to these events (unless they are declared to be closed to the press), to provide relevant records and minutes (if kept) and the documents discussed at these sessions, to create favourable conditions for making audio and video recordings and photography. The Draft Law contains nothing of the sort. Nor does it contain a closed list of cases when a correspondent might be deprived of accreditation (Article 42.4). All this relegates fundamental questions of accreditation to the discretion of the accrediting bodies, which emasculates the very meaning of accreditation, consisting in unhindered receipt of information on the activities of state authorities and public organizations.

The analyzed Draft Law also completely changes the legal nature of accreditation of journalists with different state authorities and organizations. For instance, the current Law on the Press states: “Media editorial boards shall be entitled to accreditation of their correspondents with state authorities, organizations, institutions and public associations” (Article

42). The Draft Law reads: “State authorities, political parties, other public associations, and other legal entities may accredit journalists of the media for covering sessions, meetings and other events organized by these legal entities” (Article 35.1). The focus is thus transferred from the right to accreditation to the right to accredit, from the right of editorial boards to the right of state authorities, from the right of citizens to receive, via the media, information about the activities of state authorities to the right of administrative bodies to function in peace.

The Office of the OSCE Representative on Freedom of the Media published a special report on accreditation of journalists in the OSCE area.¹⁰⁵ It is advisable to take into consideration the recommendations made in this report for developing the rules for accreditation of journalists.

It is also recommended to align the provision relating to the right to **confidentiality of information sources** (Article 34.4.5 and Article 39) more closely with international standards. In accordance with the Draft Law, a criminal prosecuting body or a court may issue a directive to disclose a source on any grounds in connection with preliminary investigations or judicial proceedings conducted by them. This violates the minimal standards established by human rights courts and regional human rights agencies, according to which a court may require journalists to disclose their source as an extreme measure, that is, only if necessary for investigation of a serious crime or for protection of a person in criminal proceedings.

For instance, Recommendation No. R (2000) 7 of the Committee of Ministers to the member states of the Council of Europe regarding the right of journalists not to reveal their sources of information establishes the need for national legislation to include clearly expressed protection of the right of

¹⁰⁵ See the text in English on the website of the Office of the OSCE Representative on Freedom of the Media at: http://www.osce.org/documents/rfm/2006/10/21826_en.pdf.

journalists not to disclose information allowing its source to be identified, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It recommends that competent authorities indicate the specific reasons for which the interest in revealing a source exceeds that in not revealing it. This concerns, in particular, cases when a source needs to be revealed in order to protect human life, prevent a serious crime or ensure protection, in a criminal case, of a person accused or found guilty of a serious crime, provided certain conditions are observed. The latter includes a source being disclosed only if and after other means and sources have been exhausted by the parties to the disclosure case. Such measures may, for instance, include internal investigation in the event that secret internal information about an enterprise or its administration has been disseminated; increased restrictions on access to a certain secret and a general investigation by investigation agencies or distribution of information refuting the original information.¹⁰⁶

The importance of protection of journalists' sources for freedom of the press in a democratic society and the dangerous impact a court ruling to reveal a source might have on exercise of freedom of the press were already established in the resolution of the European Court of Human Rights in the case of *Goodwin v. the United Kingdom* of 27 March 1996. In another resolution (*Roemen and Schmit v. Luxembourg*), the European Court recognized searches conducted for the purpose of establishing a journalist's source of information as an even more dangerous act in relation to freedom of expression.

An important example of the national legal regulation of these issues was the Law passed in Belgium in 2005 on protection of journalistic sources. According to the Law, protection of sources is guaranteed for both

¹⁰⁶ See the text in English on the website of the Council of Europe at: [http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec\(2000\)007&ExpMem_en.asp#TopOfPage](http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec(2000)007&ExpMem_en.asp#TopOfPage).

journalists and editorial workers, by which are understood all persons that, in fulfillment of their official duties, might gain access to or discover information capable of leading to revelation of a source. The Law states that journalists and editorial workers shall have the right to refuse revealing to judicial authorities information that might disclose the source or the nature or the origin of the information itself, to disclose the author of a text or audiovisual work, and also if this will lead to revelation of the content of information and documents that, in turn, might help to establish who the informant is. At the same time, judges may require that information be disclosed about a confidential source on the following three conditions: (1) the information concerns crimes constituting a serious threat to the physical safety of one or several persons; (2) the information is of key significance for preventing such crimes; (3) it cannot be obtained in any other way. Operational and investigatory measures, such as searches and seizures of documents and information belonging to journalists and editorial staff, and telephone tapping, may not be carried out in relation to data on sources of information of journalists and editorial staff, except for cases when such methods are capable of preventing the crimes indicated above and the investigatory measures themselves satisfy the other conditions established there.

In another European country, the former Yugoslav Republic of Macedonia, the right to protect the secret of journalists' information sources is specifically envisaged in the state's Constitution.

A comparison of Article 34.2 of the Draft Law and Article 39 of the Law on the Press testifies to a considerable shortening of the list of journalists' rights. Also, Article 41, "Guarantees of social protection of the journalist," of the current Law on the Press is removed. As a result, the journalist is deprived of many legal and social guarantees of his or her activities to the benefit of society.

Recommendations

- Either by introducing norms on the charter into the Law on the Mass Media or by creating a system of transparent and honest relations between journalists and founders, envisage guarantees for the independence of editorial policy.
- Establish norms on accreditation of journalists allowing citizens to receive, via the media, full information about the activities of state authorities and organizations.
- Bring the provision on the right of journalists to maintain the secrecy of their information sources into line with international standards.
- Expand the rights and guarantees with respect to the activities of journalists as of those fulfilling an important public duty.

2.5. Liability of editorial boards

Chapter 9 of the Draft Law envisages liability for violating the legislation on the media. In accordance with this, the initial form of liability is a written **warning** to media editors, which may be made on a variety of grounds, including for “disseminating inaccurate information that might cause harm to state and public interests”, “distribution of information not complying with reality and defaming the honour or business reputation of individuals or the business reputation of legal entities or individual entrepreneurs” (Article 49). Progress may be seen here; after all, under the Law on the Press, a warning may be issued for any violation of any legislative act of the Republic of Belarus. A written warning is issued either by the Ministry of Information or a prosecutor’s office at any level.

The OSCE Representative on Freedom of the Media has already noted at meetings with the Minister of Information of the government of the Republic of Belarus that, according to data received from both government and independent sources, the Ministry of Information has used its powers to issue warnings/suspend activities primarily in relation to non-governmental

media. The Office of the OSCE Representative was unable to identify any single case of a warning regarding the content of published materials being issued to a state media outlet.¹⁰⁷

The next sanction is **suspension** of media activities for a period of up to three months by resolution of the Ministry of Information on a variety of grounds, including for failing to provide, in due time, information on remedying offences with the necessary evidence (Article 50). Suspension of media activities should not be imposed by decision of the controlling authority (especially considering that it is not independent, but is part of the system of executive power). In a case of acute public need for urgent suspension of the activities of some “dangerous” medium, immediate and final consideration of the conflict in a court of law should be envisaged. The court that hears the case should study the existence of guilt and malicious intent on the part of the media editorial board.

Finally, the harshest sanction consists in **termination** of the issue of a media outlet. A decision on this should be taken by a court at the demand of the Ministry of Information or prosecutor’s office on the condition that, during a year, the media outlet or its founder (founders) have been issued two or more written warnings. Such termination of activities is accompanied by a prohibition on the founders of the given media outlet to establish new ones for a period of three years (currently, two years).

As for other violations, for instance, violation of the civil or administrative legislation, the proposed system for suspension or termination of media activities includes excessive liability that is both unjustified in terms of its purpose and inappropriate to the degree of the violation. To the extent to which restrictions on freedom of the media are both lawful and necessary,

¹⁰⁷ See *Visit to Belarus: Observations and Recommendations* of the OSCE Representative on Freedom of the Media Miklós Haraszti, accompanied by Advisers Alexander Ivanko and Ana Karlsreiter, from 9 to 11 February 2005. http://www.osce.org/documents/rfm/2005/03/4390_en.pdf.

they should be stipulated in the general legislation, such as the civil or criminal codes. Some degree of liability for legal offences is and may be borne by journalists, the editor-in-chief, the owner or the media organization, but this liability should be both fair and proportional to the offence.

To close down a media outlet is an excessive form of liability. Forced termination (suspension) of media activities, even by court ruling, is an inadmissible procedure in a democratic society.

The article in the current Law on the Press envisaging **release of the media from liability** in the event of reprinting information and in other cases has been substantially revised. The current release of the editors from liability for information contained in copyright works aired without pre-recording (Article 47) is abolished. This limits the opportunities for live television and radio broadcasts. The Draft Law (Article 52) deprives the media and journalists of this “privilege” in cases when information is distributed that discredits the Republic of Belarus, as well as information that does not comply with reality and defames the honour, dignity or business reputation of private individuals or the business reputation of legal entities or individual entrepreneurs. The possibilities of criticism in the media are thus limited, for journalists are forced to recheck information received from competent sources, including in response to a request for information. This also restricts freedom of mass information, since it halts the media from using information provided by agencies and reprinting communications from other media.

A major innovation of the Draft Law is institution of a Public Coordination Council which would make recommendations in the sphere of the media (Article 28). Its composition and activities are to be determined by the Ministry of Information. One might hope that the purpose of the Public Council will be to monitor observance of ethical standards in journalism, and not to exercise political control over the media. In setting it up, it is recommended that use be made of the existing experience in European

countries of the functioning of such co-regulation bodies. Media co-regulation and self-regulation systems are described in detail in the Media Self-Regulation Guidebook published by the Office of the OSCE Representative on Freedom of the Media.¹⁰⁸

Recommendations

- Reconsider all the restrictions contained in the Draft Law from the point of view of observance of the norms of international law in relation to freedom of speech.
- Abolish such forms of media liability for legal offences as suspension and termination of activities.
- Restore the current cases of release of journalists and editors from liability in full.
- Take into account the experience of European countries in setting up a media co-regulation body – the Public Coordination Council.

108 The Media Self-Regulation Guidebook, Office of the OSCE Representative on Freedom of the Media.
http://www.osce.org/publications/rfm/2008/04/30697_1117_en.pdf.

Comments on Draft Law on State Secret of the Republic of Moldova

2008

Commissioned by the Office of the OSCE Representative on Freedom of the Media from Mr. David Banisar, Director, FOI Project, Privacy International

Overview

The protection of state secrets needs to be balanced against access to information, freedom of expression and other society rights. Across the region, many nations have taken the opportunity in the past few years when revising their old secrets laws to limit excessive secrecy.

Currently, the Law on State Secret of the Republic of Moldova is excessively broad when compared to international and regional standards. The bill shows little improvement over the existing Law. In many areas, it expands secrecy including in the definition of state secrets; the types of information that can be classified; it also includes a new undefined category of “restricted” secrets which does not require harm to be shown; the extension of classification; and the reductions in parliamentary oversight. It does introduce some modest improvements including better defining the categories of secrets and the inclusion of the public interest test. But overall, the adoption of the bill would represent a step backwards rather than making the system of secrets more open, efficient and accountable.

National Security and Its Costs

Every country has highly sensitive information relating to national security that needs protection and rules governing its protection. A significant number of OSCE participating States have adopted laws that set out

detailed procedures for the classification, protection and declassification of information that could affect national security.¹⁰⁹ These laws regulate the types of information that can be classified, limitations, the duration of the classification and procedures for vetting employees.

There is often a conflict between these procedures and the public and journalists attempting to obtain and publish information of interest to the public. Broad exemptions to access imposed by security protections frequently raise serious concerns about national security being used to undermine basic rights, a situation that occurs even in some long-standing democracies.

The protection of classified information should not be used as a trump card that can be issued to stop discussion of important issues. It must be balanced against other important societal interests, including the free flow of information, democratic accountability, fair trials and fighting against corruption.

It has long been recognized that excessive secrecy by government bodies is ultimately counterproductive. The most important consequence is that it undermines public trust, especially when used in abusive ways, such as to support political agendas or hide abuses, corruption and mismanagement. If, because of excessive secrecy, the public believes that the government is only doing something for its own benefit, the credibility and legitimacy of that government is seriously undermined and it will have grave difficulties in gaining public support for any of its activities.

As US Supreme Court Justice Potter Stewart noted in the *Pentagon Papers* case in 1971, “For when everything is classified, then nothing is

¹⁰⁹ See OSCE Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, 30 April 2007.

classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained.”¹¹⁰

Some of the other harms of excessive secrecy are:

- *A weakening of the protections for important information.* Even the most secret of files can be leaked when the classification system is not carefully organized. In April 2003, many of the security files of the UDBA, the former Yugoslavian secret police, were published on a web site in Thailand.¹¹¹
- *Preventing government agencies and those outside from learning important information and lessons.* The September 11 Commission in the United States found many examples of excessive classification preventing information sharing between government bodies which might have prevented the attacks from occurring.¹¹²
- *Direct monetary costs.* The creation and protection of classified information imposes significant burdens on public authorities. These include personnel security, physical security, information security, training, management and planning. In the US, the estimated cost of creating and protecting classified information was over \$9.9 billion in 2007.¹¹³

In recent years, many countries in the region have revised their national laws to better reflect the modern views that excessive secrecy is harmful

110 NY Times v. US, 403 US 713 (1971). For more details, see National Security Archive, The Pentagon Papers Case. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB48/>

111 REF/RL Balkan Report, 25 April 2003.

112 National Commission on Terrorist Attacks Upon the United States, Final Report. <http://www.9-11commission.gov/report/index.htm>

113 Informational Security Oversight Office, Report to the President for Fiscal Year 2007, 30 May 2008. <http://www.archives.gov/isoo/reports/2007-annual-report.pdf>

to a nation's overall interest. The 2007 OSCE review found that many had changed their laws in the past five years to allow for greater openness while adopting freedom of information laws.¹¹⁴

Defining State Secrets

Of primary importance for all laws on state secrets is to ensure that they are not overly broad and only protect information that is necessary for ensuring the national security of the nation. This concept is widely recognised by a variety of international and regional organisations including the UN, OSCE and CoE.

The OSCE Representative on Freedom of Media has recommended that participating States limit their secrets laws to only national security related measures:

The definition of state secrets should be limited only to data that directly relate to the national security of the state and where their unauthorized release would have identifiable and serious consequences.¹¹⁵

This has also been recommended by the CoE Parliamentary Assembly which in 2007 called on member states to:

[E]xamine existing legislation on official secrecy and amend it in such a way as to replace vague and overly broad provisions with specific and clear provisions, thus eliminating any risks of abuse or unwarranted prosecutions.¹¹⁶

¹¹⁴ See OSCE Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, 30 April 2007; Access to information by the media in the OSCE region: Country Reports, 21 June 2007.

¹¹⁵ See OSCE Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, 30 April 2007.

¹¹⁶ Recommendation 1792 (2007) Fair trial issues in criminal cases concerning espionage or divulging state secrets, §1.1.1

Unfortunately, the bill at hand takes the opposite approach and expands the definition of what type of information is intended to be protected. These changes substantially extend the rationale of the law to cover a wide variety of other issues that are not related to national security that should be dealt with in other specific civil laws.

Under the current 1994 Law on State Secret, Article 2 limits classification to only information which “may infringe the security of the Republic of Moldova”. Under Article 1 of the bill, the harm to be prevented is no longer only related to the security of the Republic but the broader and undefined “harm [to] the interests and/or the security of the Republic”. In addition, the section extends application of state secrets to all public authorities rather than just those involved in counterintelligence and operative investigation.

Under Article 6(3) of the current law, the rationale for classification is for “preventing the gross infringement of the security of Moldova”. Again, the revised Article 6(3) of the bill no longer limits the application of the law to serious infringements on the security of the state, but now extends it to protect the “eventual economic consequence, as well as of other nature, on the basis of the interests of the state, society and person.”

Recommendations

- Reduce the application of the law to only information the release of which would harm national security.

Expanded Categories of Classified Information

Article 5 of the current Law of State Secret sets out four broad categories of information that can be classified as state secrets: military; economy, science and technology; foreign policy; and state security. Under each category, there are a number of sub-categories and most of the sub-categories

themselves apply to multiple areas. In total, over one hundred different categories of information are covered. The government has developed a detailed list of information to be kept secret. This list is published. The heads of public bodies create detailed lists of information in their possession which are not published.

As noted before, the extensive list of information to be classified is overly sweeping.¹¹⁷ The list of information should be shortened and simplified to only apply to information that is directly relating to national security. For instance, the US Executive Order on Classified National Security Information sets out eight areas that are eligible for classification:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;
- (f) United States Government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (h) weapons of mass destruction.¹¹⁸

¹¹⁷ See 2004 OSCE review; CoE Venice Commission, Opinion on the Law on State Secret of the Republic of Moldova CDL-AD(2008)008, 20 March 2008.

¹¹⁸ Executive Order 13,292 on Classified National Security Information, March 28, 2003.

Other countries have taken an even more specific method to ensure oversight. In Estonia, the State Secrets Act sets out specifically each of the types of information that can be classified, under which category they can be classified, and for how long they can be classified.¹¹⁹ In Sweden, all exemptions to the Freedom of the Press Act are specifically adopted by Parliament as amendments to the Act on Secrecy.¹²⁰

In comparison, the bill extends the categories of secrecy. Article 7 of the bill sets out the categories of information that can be classified. This section now includes over a dozen new categories of information that can be classified compared with Article 5 of the existing law. These include information relating to civil protection measures (1(c)), border guards 4(c), geographic data (1(e)), telecommunications networks of public authorities 4(e), and scientific or research that would affect external economic activities (2)(f).

Many of these new categories are overly broad and are not limited to the national security area and may lead to substantial restrictions on information. Of particular concern is the catch-all sections under Article 7(5) on anything that may lead to the disclosure of state secrets. This seems unnecessary since the actual disclosure of particular state secrets should be covered by the specific categories that are already set out and would give broad authority for officials to limit access to unclassified information under the vague justification that it may at some future point be combined with some other unknown information to cause the release of classified information.

Recommendations

- Reduce the categories of information to only information that would directly and negatively affect national security.
- Eliminate catch-all category under 7(5).

¹¹⁹ State Secrets Act. RT I 1999, 16, 271 §§ 4 -8.

¹²⁰ Act on Secrecy of March 20, 1980 as amended.

Levels of State Secrets Expanded

Under Article 7 of the 1994 law, three levels of classification are authorised: Special Compartment, Top Secret and Secret. Article 11 of the bill replaces this with four categories, Top Secret, Secret, Confidential and Restricted.

For the first three categories, the bill requires showing that a harm will occur if the information is released. The inclusion of levels of harm – “exceptionally grave” for Top Secret, “seriously harm” for Secret and “harm” for Confidential – is an improvement over the existing law which sets out no standards.

The final category, Restricted, however, is overly broad and unnecessary. It allows for the classification of information when an official determines that its disclosure “cannot be in the favour of the interests and/or security” of the country or if it may lead to the disclosure of information in the above categories. The article is problematic because of both its broad scope and its lack of limits in what is “cannot be in the favour of the interests” which could include exposure of corruption, misdealings, politically embarrassing materials and other non-national security related information. The adoption of this standard would seriously undermine the public’s right of access to information. It is also unnecessary because information that may disclose classified information should already be protected under the other regimes, and should not be solved by creating a new one.

The new category is also inconsistent with recommendations of the OSCE Representative on Freedom of the Media:

Information designated as “Official” or “work secrets” should not be considered for classification as state secrets. Limits on their disclosure should be found in the access to information law.¹²¹

¹²¹ See OSCE Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, 30 April 2007.

In comparison, other laws in the CEE region that include a fourth category better define what is to be covered. In the Czech Republic, the Act on the Protection of Classified Information adopted in 2005 sets out strict definitions for harm and different levels of “disadvantageous”. The lowest category, “disadvantageous to the interests of the Czech Republic” is defined as “the divulgence of classified information to any authorized person or misuse of classified information, which can result in a breach of activities of the Armed Forces of the Czech Republic; obstructing impeding or endangering the vetting or investigation of offenses; damage to important economic interests of the Republic, EU or other member states; breach of important commercial or political negotiations of the Czech Republic with a foreign power; or a breach of security or intelligence operations.”¹²²

Recommendations

- Greater detail about harms should be included in the definitions.
- The category of “Restricted” should be eliminated from the bill.

Duration of State Secrets

Nearly all state secrets acts set limits on the length of time that information should be classified. Classified information is best thought of as having a “lifecycle”.¹²³ At different times, the need for protection will change. The older the information, the less likely that the harm envisaged will be realized, and the higher the public interest in releasing this information.

The OSCE Representative has recommended that information should only be classified for a limited duration:

¹²² Act N. 412 of 21 September 2005 on the Protection of Classified Information, § 3 (5).

¹²³ See Background on the Principles and Process of “Life Cycle Risk Assessment”, <http://www.opsec.org/opsnews/Sep97/protected/Secrecy.html>

Information should only be classified as a state secret for a limited period of time where the release of the information would cause a serious harm to the interests of the nation. Information that is classified should be regularly reviewed and have a date after which it will be declassified and released. It should be presumed that no information should be classified for more than 15 years, unless compelling reasons can be shown for withholding it¹²⁴.

The current Law on State Secret sets a maximum classification period for the “Of Special Importance” and “Strictly Confidential” categories at twenty-five years and ten years for Secret information. These time frames are too long. Typically, government officials in most countries apply the maximum length as a default under the perception that it is better to be overly careful. The end result is the over-classification of information, and the monetary and social costs of unnecessary protection are significant.

The bill does not substantially improve the situation. It requires that information that is Top Secret to be classified for 25 years, Secret for 15 years, Confidential for 10 years and the controversial category Restricted for 5 years.

Many other countries in the region that have recently enacted laws that adopt shorter durations because of the recognition of the problems of excessive secrecy. For instance, in the former Yugoslav Republic of 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. In Albania, the default for information to be classified is set at ten years unless the person who issues the classification can identify an earlier date or event that would cause it to be available earlier or makes a specific determination that it is sensitive to near a later date.

124 See OSCE Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, 30 April 2007.

Also lacking is a provision to allow for the automatic declassification and release of formerly secret information of public interest. In Poland, the Classified Information Protection Act required that all pre-1990 records be reviewed and those found to be not necessary to continue to keep secret were automatically released within 36 months. In Hungary, the Act on State and Official Secrets required the review and declassification of all records from before 1980 within one year of its enactment.

The OSCE Representative has also recommended that information should be reviewed and declassified:

Governments should institute a review of all secret information over 15 years old and automatically declassify and release it. All information that was designated as secret by a previous non-democratic government should be declassified and presumptively released unless it is shown that its release would endanger the national security or be an unwarranted invasion of privacy.¹²⁵

In addition, nearly all of countries in the CEE have now adopted laws on the disclosure of secret police files and other records.¹²⁶ This allows for citizens who were victimized by intelligence services to better understand what was done and who was responsible.

¹²⁵ OSCE Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, 30 April 2007.

¹²⁶ See e.g. Act for Access and Disclosure of Documents and for Revealing Affiliation of Bulgarian Citizens with the State Security and Intelligence Services of the Bulgarian Army (Bulgaria); Act N. 140/1996 Coll. of 26 April 1996 on Disclosure of Files Established by Activities of the Former State Security Force (Czech Rep.) Act Regarding the Records of the State Security Service of the Former German Democratic Republic (Stasi Records Act) of 20 December 1991 (Germany); Act III of 2003 on the Disclosure of the Secret Service Activities of the Past Regime and the Historic Archive of the National Security Services, 14 January 2003 (Hungary); Law on preserving and application of the documents of former KGB and establishment of the fact of cooperation with former KGB, 17 November 2003 (Latvia); ACT of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (Poland); Law No. 189 of 7 December 1999 on the access to the personal file and the disclosure of the Securitate as a political police (Romania).

In contrast, Article 13(2) of the bill allows for many of these records to be protected from disclosure for up to 75 years “regardless of secrecy level”.

A legal obligation to provide these files has been found in Article 8 of the European Convention of Human Rights by the European Court of Human Rights in a number of cases.¹²⁷ As noted by the Court:

[U]nless the contrary is shown on the facts of a specific case, it cannot be assumed that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes... [T]here may be a situation in which there is a compelling State interest in maintaining the secrecy of some documents, even those produced under the former regime. Nevertheless, such a situation will only arise exceptionally given the considerable time which has elapsed since the documents were created. It is for the Government to prove the existence of such an interest in the particular case, because what is accepted as an exception must not become the norm.¹²⁸

This has also been recommended by the CoE Parliamentary Assembly as far back as 1996 which recommended:

The Assembly welcomes the opening of secret service files for public examination in some former communist totalitarian countries. It advises all countries concerned to enable the persons affected to examine, upon their request, the files kept on them by the former secret services.¹²⁹

127 *Leander v. Sweden* judgment of 26 March 1987, Series A no. 116; *Rotaru v. Romania*, Application no. 28341/95, 4 May 2000; *Segerstedt-Wiberg and Others v. Sweden*, Application no. 62332/00; *Turek v. Slovakia*, Application 57986/00, [2006] ECHR 138 (14 February 2006); *Bobek v. Poland*, Application no. 68761/01, 17 July 2007.

128 *Bobek v. Poland*, Application no. 68761/01, 17 July 2007.

129 Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems

Recommendations

- The durations of classifications should be sharply reduced in line with other laws in the regions to ensure that information is not classified beyond the time that is necessary to protect national security. The durations should be 10 years for Top Secret, 5 years for Secret and 2 years for Confidential, with the possibility of renewing that period if it is shown that harm will result from declassification.
- A system should be put in place to ensure the effective review of classified information and its declassification when it is no longer sensitive.
- Information relating to the intelligence services of Moldova prior to 1991 should be automatically declassified and a process to allow access to those files, especially to those who were the victims of the intelligence services, should be implemented.

Prohibitions on Classification for Public Interest Reasons

Most secrets acts typically provide that certain categories of information cannot be classified. These usually include human rights violations, violations of other laws and information relating to environmental hazards.

Some of these requirements are based on international law. Information relating to human rights violations cannot be classified as a state secret under the International Covenant on Civil and Political Rights.¹³⁰ The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters requires the disclosure of possible hazards to public health or the environment.¹³¹

¹³⁰ The UN Working Group on Arbitrary Detention, Recommendation: Human Rights and State Secrets, E/CN.4/2001/14, 20 December 2000.

¹³¹ See e.g. §5(1)(c).

The OSCE Representative on Freedom of the Media has recommended that a wide variety of information of public interest should not be classified:

Information relating to violations of the law or human rights, maladministration or administrative errors, threats to public health or the environment, the health of senior elected officials, statistical, social, economic or cultural information, basic scientific information, or that which is merely embarrassing to individuals or organisations should not be classified as a state or official secret.¹³²

Article 8 of the bill on “information that is not defined as a state secret” offers some small improvements on the existing law. It now includes a number of additional categories of information that cannot be classified including the quality of food products and appliances and the health status of persons who hold a public function.

However 8(f) represents a weakening from the current law in that it only applies to “cases of law infringement” of authorities and high officials rather than the previous application to “cases of infringement, inactivity, and illegal actions of officials”. In comparison, the Romanian Law on Protection of Information prohibits the classification of information “for the purpose of hiding law infringements, administrative errors, limitation of access to information of public interest, illegal restriction of exercising the rights of any person or harming other legitimate interests.”¹³³ The US Executive Order on Classified National Security Information prohibits the classification of information to “conceal violations of law, inefficiency, or administrative error, prevent embarrassment to a person, organization or agency, retain

132 OSCE Representative on Freedom of the Media, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, 30 April 2007.

133 Law no. 182 of April 12th, 2002 on the protection of classified information. Published in the Official Gazette, Part I no. 248 of April 12th 2002.

competition, or prevent or delay the release of information that does not require protection in the interest of national security information.”

To make the section more effective, additional categories should be included. This should include basic scientific information, maps and the state of gold and foreign currency reserves.

Recommendations

- The categories of information that cannot be classified as a State Secret should be expanded. This should specifically include information on all violations of law, administrative practice and ethics.

Whistleblower Protections

It is a welcome addition in Article 8(2) that classification is prohibited in cases of access to information of a public interest. However, this should also be extended to allow for the protection of whistleblowers who release information that has been already classified but is of a significant public interest. This would make it more consistent with Article 7(5) the Law on Access to Information which protects the unauthorized release of even national security information when there is a public interest and the recent European Court of Human Rights case of *Guja v. Moldova* which recognized a fundamental right of whistle-blowing for public officials:

[T]he Court notes that a civil servant, in the course of his work, may become aware of in-house information, including secret information, whose divulgence or publication corresponds to a strong public interest. The Court thus considers that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection... The interest which the public may have in particular information can

sometimes be so strong as to override even a legally imposed duty of confidence...¹³⁴

The OSCE Representative on Freedom of the Media has recommended that whistleblowers of all forms should not be prosecuted:

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

The CoE Parliamentary Assembly has also recommended that secrets laws ensure that whistleblowers are protected. The 2007 PA Resolution states that member states should:

[L]ook into ways and means of enhancing the protection of whistleblowers and journalists, who expose corruption, human rights violations, environmental destruction or other abuses of public authority, in all Council of Europe member states;¹³⁵

More generally, a comprehensive system to protect whistleblowers based on the requirements of the Guja decision should be implemented.¹³⁶

Recommendations

- Whistle-blowing protections should be included to ensure the release of information of strong public interest to the public.
- A free-standing whistleblower protection law as set out by the European Court of Human Rights should be adopted.

¹³⁴ Guja v Moldova, App 14277/04, 12 February 2008.

¹³⁵ Recommendation 1792 (2007) Fair trial issues in criminal cases concerning espionage or divulging state secrets, §1.2

¹³⁶ See e.g. Legea nr. 571/2004 privind protectia personalului din autoritatile publice, institutiile publice si din alte unitati care semnaleaza a incalcarii ale legii (Romania Law 571/2004 Act on the Protection of Whistleblowers). Available at http://legislatie.resurse-pentru-democratie.org/571_2004.php

Classifying Privately Held Information

Article 16 of the bill retains provisions in the 1994 law that allow public authorities at their own initiative to classify as state secrets information in the possession of companies and citizens. Under the bill, the information can be appropriated by the state if the private party refuses to sign a contract placing limits on its use.

Given the broad definitions under Article 6 (3) of information that can be classified, this provision is of grave concern for freedom of expression and should be strictly limited or dropped. As it stands, it gives authorities the power to restrict and punish journalists and civil society from gathering and publishing information of a public interest.

Recommendation

- Information created and held by private parties should not be classified as secret except in cases where there is a prior legal relationship between the party and the government relating to the information.

Use of Secrets in Court Cases

Article 34 of the bill allows for closed hearings for using state secrets in criminal, civil and administrative cases. This provision raises serious concerns for fair trials and other proceedings as required under Article 6 of the European Convention on Human Rights. The COE Parliamentary Assembly has expressed concern over these types of cases and made the following recommendations:

- 10.5. courts should be vigilant in ensuring a fair trial, with particular attention to the principle of equality of arms between the prosecution and the defence, in particular:

- 10.5.1. the defence should be adequately represented in the selection of experts advising the court on the secret nature of relevant information;
- 10.5.2. experts should have a high level of professional competence and should be independent from the secret services;
- 10.5.3. the defence should be allowed to question the experts before the jury and challenge their testimony through experts named by the defence, including experts from other jurisdictions;
- 10.6. proceedings should be as open and transparent as possible, in order to boost public confidence in their fairness; at the very least, the judgments must be made public.¹³⁷

Recommendations

- Limits on access to secret information should be proportional and should not limit access by elected officials, judges and others who have a need to access information to provide oversight or handle cases.
- Litigants and/or their legal representatives should be guaranteed access to all information that is relevant or used in a court or administrative hearings that affects a person's civil, political or socio-economic rights.
- Proceedings should be open and transparent to the media and public to ensure public confidence.

Reduced Oversight

Elected representatives play an important role in ensuring that the secrecy system is balanced and fair. Access is also necessary for parliamentary functions. Without full access to information, adequate oversight of important military and intelligence services cannot be conducted. Investigations into important areas, such as possible abuses and corruption are limited. More

¹³⁷ See Resolution 155 1 (2007) Fair trial issues in criminal cases concerning espionage or divulging state secrets; Recommendation 1792 (2007) Fair trial issues in criminal cases concerning espionage or divulging state secrets.

fundamentally, the bodies are less accountable to the elected representatives of the people.

The important role of the Parliament in overseeing the effective and non-abusing conduct of the secrecy system is limited in the bill. Article 28 of the 1994 law gives the Parliament control over the legislation and expenditures and obliges state bodies to provide information.

Under the bill, this has been eliminated by Article 5 which removes specific obligations for officials to provide information. In addition, control of the budget and approval of the budget relating to secrets has been removed from Article 4.

Currently, there is no general oversight body for freedom of information such as is found in many other nations in the region including Hungary, Serbia and Slovenia. This body can play an important role in ensuring that there is no excessive secrecy. In Hungary, under the Secrecy Act of 1995, the Parliamentary Commissioner for Data Protection and Freedom of Information is entitled to change the classification of state and official secrets.¹³⁸ In Slovenia, the Information Commissioner can check the accuracy of the classification. In the US, the Information Security Oversight Office (ISOO), a part of the national archives, is given independent authority to review classification.

The OSCE Representative has recommended that an independent body that is familiar with openness should have oversight power including the right to oversee and order disclosure:

An independent body that is not part of the intelligence, military or security services should have oversight over classified information and

¹³⁸ Hungary, Act LXV of 1995 on State Secrets and Official Secrets.

ensure that the system is operating properly, receive complaints about improperly classified information and review and order the declassification of information.

Recommendations

- The role of the Parliament in overseeing secrecy policy should be expanded rather than reduced.
- An independent body should be created to enforce freedom of information legislation with the power to review state secrets decisions to ensure access to information.

Conclusions and Recommendations

The bill differs little from the current Law on State Secret. In many areas the bill is more restrictive than the existing law and violates significant obligations under international and regional agreements.

Recommendations

- Reduce the application of the law to only information the release of which would harm national security.
- Reduce the categories of information to only information that would directly and negatively affect national security.
- Eliminate catch-all category under 7(5).
- Greater detail about harms should be included in the definitions.
- The category of “Restricted” should be eliminated from the bill.
- The durations of classifications should be sharply reduced in line with other laws in the regions to ensure that information is not classified beyond the time that is necessary to protect national security. The durations should be 10 years for Top Secret, 5 years for Secret and 2 years for Confidential, with the possibility of renewing that period if it is shown that harm will result from declassification.

- A system should be put in place to ensure the effective review of classified information and its declassification when it is no longer sensitive.
- Information relating to the intelligence services of Moldova prior to 1991 should be automatically declassified and a process to allow access to those files, especially to those who were the victims of the intelligence services, should be implemented.
- The categories of information that cannot be classified as a State Secret should be expanded. This should specifically include information on all violations of law, administrative practice and ethics.
- Whistle-blowing protections should be included to ensure the release of information of strong public interest to the public.
- A free-standing whistleblower protection law as set out by the European Court of Human Rights should be adopted.
- Information created and held by private parties should not be classified as secret except in cases where there is a prior legal relationship between the party and the government relating to the information.
- Limits on access to secret information should be proportional and should not limit access by elected officials, judges and others who have a need to access information to provide oversight or handle cases.
- Litigants and/or their legal representatives should be guaranteed access to all information that is relevant or used in a court or administrative hearings that affects a person's civil, political or socio-economic rights.
- Proceedings should be open and transparent to the media and public to ensure public confidence.
- The role of the Parliament in overseeing secrecy policy should be expanded rather than reduced.
- An independent body should be created to enforce freedom of information legislation with the power to review state secrets decisions to ensure access to information.

Projects 2008

Training project

In 2008, the Office continued to conduct training seminars on “Effective interaction between press services and journalists in a democratic society”.

The training seminars were held in:

- Tbilisi, Georgia, on 18–19 March 2008, sponsored by the Government of Switzerland
- Osh, Kyrgyzstan, on 26–27 March 2008, sponsored by the Government of Switzerland
- Khujand, Tajikistan, on 19–20 June 2008
- Chisinau, Moldova, on 16–17 September 2008, sponsored by the Government of the Czech Republic
- Yerevan, Armenia, on 27–28 October 2008
- Belgrade, Serbia, on 6–7 November 2008

“Visibility vests” for Azerbaijani journalists covering street demonstrations and other public events

(July–September 2008)

Project Objectives:

The project aimed to provide journalists and other media workers (photographers, cameramen and technicians) with unmistakable identification, in order to help ensure their personal safety and ability to report about public events without hindrances. The visible identification by vests was termed as the “best practice” in the special report “Handling of Media during Political Demonstrations” released by the Office of the OSCE RFOM on 21 June 2007 (English: <http://www.osce.org/item/25176.html>, Russian: <http://www.osce.org/item/25176.html?lc=RU>).

Bright-coloured fluorescent cloth vests carrying the words PRESS and the OSCE “best practice” logo were manufactured and presented to the Azerbaijani press corps (see also the press release of 3 September 2008 “OSCE Office presents press vests to Azerbaijani journalists” in the Press Releases section of this book).

Interventions 2008

Albania

Intervention

1 October 2008: Letter to high officials, including the Speaker of the Assembly of Albania and the Minister of Foreign Affairs on the Draft Law on Radio and Television, indicating need for improvement and offering assistance. See also press release of 8 October 2008.

Press Release

8 October 2008: OSCE media freedom representative calls for broad public consultations on Albania's draft media law.

Armenia

Interventions

21 August 2008: Letter to the Minister of Foreign Affairs and the Prosecutor General about several acts of violence committed against journalists in Armenia.

19 September 2008: Letter to the President expressing concern at the adoption by Parliament of the law on *Making a Supplement to the Republic of Armenia Law on Television and Radio*, which introduced a moratorium on the issuance of new broadcasting licences until 20 July 2010. See also press release of 26 September 2008.

19 November 2008: Letter to Minister of Foreign Affairs expressing concern about a violent attack against an independent journalist in Armenia, the third reported severe attack against media workers within several months. See also press release of 19 November 2008.

Press Releases

4 March 2008: Ban on independent news coverage in Armenia is contrary to OSCE commitments, says OSCE media freedom representative

26 September 2008: Armenia should lift moratorium on licensing broadcasters to ensure media pluralism, says OSCE media freedom representative

19 November 2008: Recent assaults on journalists in Armenia threaten free press, says OSCE representative

Azerbaijan**Interventions**

29 January 2008: Letter to Head of the Permanent Mission of Azerbaijan to the OSCE expressing concern at:

- The sentence of Mushfig Huseynov, a correspondent of *Bizim Yol* newspaper, to six years of imprisonment under Article 311 of the Criminal Court for accepting a bribe;
- A criminal investigation under way against Nusrat Rahimov, the founder of the newspaper *Azerbaijan Jumhuriyyati*. He was also arrested for allegedly receiving a bribe from member of parliament Ahad Ahmadov;
- The sentence of Avaz Zeynalli, editor of the weekly *Khural*, and Vugar Gurdganli, a journalist of the same publication, to forced labour for libelling Elmar Valiyev, head of the Yevlakh regional administration.

13 February 2008: Letter to the head of the Socio-Political Department of the Presidential Administration expressing concern about the recommendation he sent to all publishing companies in Azerbaijan on 23 January 2008. It suggested that all publications about the late President Heydar Aliyev, current President Ilham Aliyev, and his wife, the MP Mehriban Aliyeva, should be submitted to his office for pre-approval.

16 May 2008: Letter to the Minister of Foreign Affairs expressing concern about the worrying attitude of Azerbaijan's prosecutorial authorities to threats to the safety of Agil Khalil, a young reporter from the newspaper *Azadlyq*.

Press Releases

2 January 2008: OSCE welcomes pardoning of journalists in Azerbaijan but urges legal reform

10 March 2008: New prison sentence sign of continued persecution of non-governmental media in Azerbaijan, says OSCE media freedom representative

17 March 2008: OSCE media freedom representative calls on Azerbaijan to investigate latest attack against journalist

11 April 2008: OSCE representative calls on Azerbaijani law enforcement to stop harassing and discrediting investigative journalists

17 July 2008: OSCE media freedom watchdog calls Baku trial "fake", aimed to discredit opposition journalist and protect his real attackers

30 December 2008: Azerbaijan's ban on foreign FM radio broadcasting is serious step backwards, says OSCE media freedom representative

Visit

6–10 April 2008: Presentation of the *Media Self-Regulation Guidebook*; meetings with high-level officials; visit to the three imprisoned media workers in Baku

Belarus

Interventions

15 January 2008: Letter to the Minister of Foreign Affairs about the prosecution of Alexander Zdvizhkov, the ex-Deputy Editor-in-Chief of the closed newspaper *Zhoda*, for reprinting the Dutch cartoons of the prophet Mohammad. See also press release of 18 January 2008.

18 March 2008: Letter to the Chair of the Commission on the Industry, Fuel and Energy Complex, Transportation, Communications and Enterprise of the Chamber of Representatives of the National Assembly presenting a legal analysis commissioned by the Office of the second draft law "On Information, Informatization and Protection of Information"

21 October 2008: Letter to the Minister of Foreign Affairs regarding the precedents set by Belarusian courts, which for the first time applied the 2007 law "On countering extremism" against media materials and found several publications "extremist"

Press Releases

18 January 2008: OSCE media freedom representative protests against jailing of editor in Belarus for reprinting cartoons

28 March 2008: OSCE media freedom representative protests against onslaught on independent media in Belarus

27 June 2008: OSCE media freedom representative urges Belarus not to adopt restrictive media law

Bosnia and Herzegovina

Intervention

29 April 2008: Request sent to the Minister of Foreign Affairs for additional information regarding the incident involving Sadik Bahtić. On 18 April, in Bihac, the MP Mr. Bahtić used physical force against the *FTV* journalist and Avdo Avdić and cameraman Refik Vejsilagić, in order to prevent them from attending a press conference organized by the Party for Bosnia and Herzegovina (SBiH), one of the leading political parties in BiH.

Press Release

9 May 2008: Public broadcasting in Bosnia and Herzegovina faces multiple threats, warns OSCE media freedom representative

Visit

8 May 2008: The RFOM participated in a conference on media freedom held under the auspices of the OSCE Mission to Bosnia and Herzegovina. He voiced concern that the future of public broadcasting in Bosnia and Herzegovina was under threat and required urgent action.

Bulgaria

Intervention

14 April 2008: Letter to the Foreign Minister expressing concern at the 8 April murder of Georgi Stoev, a best-selling author who had written about organized crime in Bulgaria. Before he was shot, the writer was planning to testify in court against a mafia leader.

Press Release

26 September 2008: OSCE media freedom representative urges Bulgarian authorities to carry out swift prosecutions after violent attacks on journalists

Croatia

Intervention

15 April 2008: Letter to the Minister of Foreign Affairs and European integration requesting additional information on the attempted murder of Ivo Pukanic, director of the weekly news magazine *Nacional*

Press Release

24 October 2008: OSCE media freedom watchdog condemns killing of two journalists in Croatia

Czech Republic

Intervention

22 April 2008: Letter to members of the Czech parliament encouraging them to use the then ongoing reform of the Criminal Code to decriminalize speech offences and have them referred to the civil courts. See also press release of 22 April 2008.

Press Release

22 April 2008: OSCE media freedom representative urges Czech parliament to use penal code reform to decriminalize speech offences

France

Intervention

21 February 2008: Letter to the President expressing concern about his criminal lawsuit against the website of *Le Nouvel Observateur* following a piece that made allegations about his marriage. Even though the article might have been irresponsible journalism, the RFOM asked the President to pursue the matter in a civil law procedure.

Press Release

14 January 2008: OSCE media freedom representative welcomes President Sarkozy's plan to de-commercialize public television in France

Visit

16 – 17 April 2008: Meeting with members of the French Broadcasting Regulatory Authority, the Commission for new public television, and the head of the Europe department at the Foreign Ministry to discuss the French broadcasting reform

Georgia***Press Release***

22 September 2008: OSCE media freedom representative says journalists need free and safe access to Georgia's South Ossetia and Abkhazia regions

Hungary***Intervention***

25 May 2008: Letter to the State Secretary of the Ministry of Justice in support of decriminalizing speech offences and on publication of classified information by media workers

Press Release

1 October 2008: OSCE media freedom representative welcomes acquittal of Hungarian journalist in secrecy case and urges legislative reforms

Visit

26 May 2008: Meeting with Katalin Gönczöl, Ministerial Commissioner in charge of co-ordinating the ongoing reform of the Hungarian Criminal Code, regarding decriminalizing speech offences and breaches of secrecy by journalists, in Budapest

Ireland

Press Release

19 March 2008: OSCE media freedom representative welcomes Irish government move to decriminalize libel

Kazakhstan

Interventions

21 May 2008: Letter to the Minister of Foreign Affairs regarding the interruption of RFE/RL internet services. They appeared to be blocked by the State Internet service providers *Kaztelecom* and *Nursat*.

29 July 2008: Letter to the Minister of Foreign Affairs and Minister of the Interior presenting legal review of draft media legislation and criticizing failure to decriminalize defamation

Press Release

25 February 2008: OSCE promotes public discussion on media legislation in Kazakhstan

Kyrgyzstan

Interventions

26 March 2008: Letter to the Head of the Permanent Delegation of the Kyrgyz Republic to the OSCE requesting information about the murder of journalist Yuri Alexandrov and information on progress in the investigation of the murder of journalist Alisher Saipov

9 May 2008: Letter to the President requesting him to veto the 24 April 2008 amendments to the law “On Television and Radio Broadcasting” and return them to Zhogorku Kenesh (Parliament) for revision. The draft law de facto nullified the transformation of the *National Television and Radio Company*

(*NTRC*) of Kyrgyzstan into an autonomous public service broadcaster. See also press release of 13 May 2008.

19 June 2008: Letter to the President expressing concern about the campaign against *De Facto* and *Alibi*, two of the few independent newspapers

Press Releases

12 February 2008: OSCE media freedom representative welcomes Kyrgyzstan's media self-regulatory body, the first in Central Asia.

13 May 2008: OSCE media freedom representative urges Kyrgyz President to veto amendments that curb new public-service broadcaster's independence.

The former Yugoslav Republic of Macedonia

Interventions

13 March 2008 (PC report): The RFOM joined the call of the OSCE Spillover Monitor Mission to Skopje asking the authorities to react urgently to a series of violent acts against journalists that had occurred in January.

13 March 2008 (PC report): The case of the owner of *Kanal 77 Radio*, Goran Gavrilov, was raised. He was attacked and brutally beaten in front of his house in Stip on 25 January.

Moldova

Intervention

22 September 2008: Letter to the Chairman of the Parliament and the Prime Minister presenting preliminary comments prepared by the RFOM on the Draft Law on State Secrets. See also press release of 26 November 2008.

Press Release

26 November 2008: OSCE media freedom representative asks Moldovan Parliament to improve draft state secrecy law

Montenegro

Interventions

6 March 2008: Letter to the Prime Minister asking him to drop the one million Euro lawsuit that he filed against Zeljko Ivanovic, director of the daily *Vijesti*, Ljubisa Mitrovic, its editor-in-chief, and the publishing house *Daily Press*.

Press Release

13 November 2008: OSCE representative commends media situation in Montenegro, outlines areas for improvement

Visit

15 – 18 July 2008: Assessment visit to Montenegro

Poland

Interventions

15 January 2008: Letter to the Minister of Foreign Affairs inviting the new Government of Poland to consider decriminalizing defamation and to use the opportunity to liberate the media from fear of imprisonment for possible professional mistakes by letting defamation cases be solved in civil courts.

Press Release

3 June 2008: Polish reform of public service broadcasting should avoid politicized solutions, OSCE representative warns

Romania

Press Releases

8 July 2008: OSCE media freedom representative urges Romanian President to veto bill on mandatory percentage of “good news”

11 July 2008: OSCE media freedom representative welcomes Romanian Constitutional Court’s ruling against “good news” bill

31 October 2008: OSCE promotes media self-regulation in Romania

Russian Federation

Interventions

21 January 2008: Letter to the Head of the Permanent Mission of the Russian Federation to the OSCE asking for information about the case of Natalia Morar, a well-known investigative journalist of the Moscow-based magazine *Novoye Vremya*, who was denied re-entry to the Russian Federation and had to return to Moldova, her home country

29 April 2008: Letter to the Chairman of the Federation Council, Chairman of the State Duma and the Minister of Foreign Affairs asking them to halt the adoption of an amendment to the media law that would allow the Government to warn and then even close media outlets for alleged libel. See also press release of 30 April 2008.

6 May 2008: Letter to the President congratulating him on assuming his duties and providing him with the summary of outstanding concerns in the area of media freedom in the Russian Federation. See also press release of 7 May 2008.

10 June 2008: Letter to the Minister of Justice expressing concern about two decisions of Russian courts to close Internet-based media and to give

a criminal sentence to a user of such media under the law on anti-extremist activities.

3 July 2008 (PC report): The RFOM welcomed the decision of the Constitutional Court annulling the provision under which a criminal case had been opened against Manana Aslamazian, the head of the media education foundation *Obrazovannye Media* (Educated Media). The court found it unconstitutional that the customs and law-enforcement authorities regarded the small amount of foreign currency carried by Aslamazian when returning to Russia in January 2007 as a crime of “smuggling”. The RFOM was glad to hear that Ms. Aslamazian’s criminal case had been annulled.

21 October 2008: Letter to the Chairman of the State Duma and the Prosecutor General expressing concern regarding a package of legislative initiatives on anti-extremism recommended by the Office of the Prosecutor General to the State Duma Committee on Security on 30 September 2008

20 November 2008: Letter to the Head of the Permanent Mission of the Russian Federation to the OSCE expressing concern about the brutal assault on Mikhail Beketov, editor-in-chief of the independent newspaper *Khimkinskaya Pravda*, who was beaten up on 12 November and found unconscious the next day. The journalist suffered multiple life-threatening injuries.

Press Releases

27 March 2008: OSCE media freedom representative urges Russia to vigorously investigate murders of Dagestani journalists

30 April 2008: OSCE media freedom representative asks Russian legislators to halt move to allow closure of media outlets for defamation

7 May 2008: OSCE media freedom representative asks new Russian president to address media freedom challenges

2 September 2008: OSCE media freedom representative protests against killing during police custody of web publisher in Russia's Ingushetia region

Serbia

Press Release

25 February 2008: OSCE condemns attacks on journalists

Slovakia

Intervention

18 January 2008: Letter to the Foreign Minister asking for review of the restrictive draft Press Act. See also press release of 22 January 2008.

Press Releases

22 January 2008: OSCE media freedom representative says Slovakian draft Press Act curbs editorial autonomy, asks authorities to withdraw it

14 February 2008: OSCE media freedom representative reviews Slovakia's draft Press Act, urges Government to implement recommendations

25 March 2008: Latest amendments to Slovakia's draft Press Act an improvement but still fall short, says OSCE media freedom representative

10 April 2008: Slovakia's new Press Act curbs editorial freedom, grants politicians unlimited right of reply, warns OSCE media freedom representative

Slovenia

Intervention

22 May 2008: Letter to the President expressing concern about the adopted Criminal Code toughening the defamation provisions

Turkey

Press Release

19 June 2008: OSCE media freedom representative protests against prison sentence given to publisher of book on Turkish history.

Turkmenistan

Press Release

5 September 2008: OSCE media freedom representative visits Turkmenistan

Ukraine

Interventions

27 June 2008: Letter to the Head of the Permanent Mission of Ukraine to the OSCE regarding the confiscation of five videotapes with television footage from Artyom Shirokov, a journalist of the Russian *TVC* channel, when he was passing the customs control at the Kiev Borispol airport

20 November 2008: Letter to the Minister for Foreign Affairs of Ukraine asking for additional information about the six-year prison sentence given to Igor Yakovlev, a journalist with the *STV* television company, the former Director General of television and radio company *Akademia*; and about the 1 November 2008 order by the National Council for Television and Radio Broadcasting (NCTRB) to interrupt broadcasting of certain foreign television channels through cable networks

Visit

17 March 2008: High-Level Policy Planning Meeting on media issues in Kiev

United States of America***Interventions***

20 March 2008: Letter to the Head of the U.S. Mission to the OSCE regarding the case of Toni Locy, a former *USA Today* journalist, who was held in contempt of court for defying court orders to reveal her confidential sources

11 September 2008: Letter to the Head of the U.S. Mission to the OSCE regarding several cases of forceful arrests of journalists during the Democratic and the Republican National Conventions in August and September 2008

Uzbekistan***Intervention***

13 October 2008: Letter to the Minister of Foreign Affairs expressing concern over the ten-year prison sentence given to journalist Salidzhon Abdurakhmanov. See also press release of 15 October 2008.

Press Releases

17 June 2008: OSCE media freedom official expresses concern about campaign against Radio Free Europe, detention of journalist in Uzbekistan

15 October 2008: OSCE media freedom representative urges Uzbek government to revoke journalist's 10-year prison sentence

Meetings and Conferences 2008

The Representative on Freedom of the Media (RFOM) and/or his staff participated in the following events in 2008:

- 23 – 24 January 2008: The RFOM conducted meetings with high-ranking Council of Europe officials in Strasbourg, France
- 29 – 30 January 2008: Stability Pact meeting in Brussels, Belgium
- 25 January 2008: Round table meeting on media legislation in Astana, Kazakhstan
- 29 February 2008: “Present and Future Challenges to Media Freedom and Free Expression in the OSCE Region”, event celebrating the 10th anniversary of the OSCE Representative on Freedom on the Media, in Vienna, Austria
- 17 March 2008: The RFOM attended the High-Level Policy Planning Meeting on media issues organized by the OSCE Project Co-ordinator in Ukraine together with the Council of Europe and the European Commission in Kiev, Ukraine
- 18 – 19 March 2008: “Effective interaction between press services and journalists in a democratic society”, training seminar for press officers of public bodies and journalists held in Tbilisi, Georgia
- 26 – 27 March 2008: “Effective interaction between press services and journalists in a democratic society”, training seminar for press officers of public bodies and journalists of southern Kyrgyzstan held in Osh, Kyrgyzstan

- 6 – 10 April 2008: The RFOM presented the *Media Self-Regulation Guidebook*, conducted meetings with high-level officials, and visited three imprisoned media workers in Baku, Azerbaijan
- 16 April 2008: The RFOM visited the French Broadcasting Regulatory Authority, the commission for new public television, and the head of the Europe department at the French Foreign Ministry in Paris, France
- 17 – 18 April 2008: The RFOM participated in the Eurasia Media Development Regional Forum in Paris, France
- 24 – 26 April 2008: The RFOM participated in the conference “Creativity under Censorship” organized by the UK-based Czech, Hungarian and Polish Cultural Institutes in London, United Kingdom
- 7 – 8 May 2008: The RFOM took part in the conference on media freedom organized by the OSCE Mission to Bosnia and Herzegovina in Sarajevo, Bosnia and Herzegovina
- 19 – 20 May 2008: The RFOM participated in the First European Union Black Sea Synergy Seminar on Freedom of Expression in Chisinau, Moldova
- 26 May 2008: The RFOM met with Katalin Gönczöl, Ministerial Commissioner in charge of co-ordinating the ongoing reform of the Hungarian Criminal Code, in Budapest, Hungary
- 29 May 2008: “A New Europe Facing Global and Local Challenges”, meeting of the Association of European Journalists held in Lodz, Poland

- 1 June 2008: The RFOM participated in the annual press freedom round table of the World Association of Newspapers (WAN) in Goteborg, Sweden
- 9 – 11 June 2008: The RFOM participated in the seminar on media issues organized by the Government of Uzbekistan in Tashkent, Uzbekistan
- 15 – 16 June 2008: World Congress of the International Press Institute (IPI) in Belgrade
- 19 – 20 June 2008: “Effective interaction between press services and journalists in a democratic society”, training seminar for press officers of public bodies and journalists of northern Tajikistan held in Khujand, Tajikistan
- 20 June 2008: Regular informal consultations on EU enlargement organized by the European Commission for various international organizations in Brussels, Belgium. The consultations focused on democracy-related topics including freedom of the media.
- 26 June 2008: “Investigative Reporting and Law Enforcement in the Areas of Terrorism, Organized Crime and Corruption”, high-level conference sponsored by the OSCE Action against Terrorism Unit, in Istanbul, Turkey
- 1 July 2008: Annual OSCE Summer Academy in Burg Schleinig, Austria
- 7 – 8 July 2008: The RFOM participated in the round table discussion “Broadcasting Parliament Sessions – International Practices and Experiences” organized by the Parliament of Montenegro and the OSCE Mission to Montenegro, in Podgorica, Montenegro

- 8 July 2008: “Media Diversity in Armenia”, conference organized by the Council of Europe and the Yerevan Press Club, in Yerevan, Armenia.
- 15 – 18 July 2008: The RFOM paid an assessment visit to Montenegro
- 2 – 5 September 2008: The RFOM visited Turkmenistan
- 16 – 17 September 2008: “Effective interaction between press services and journalists in a democratic society”, training seminar for press officers of public bodies and journalists held in Chisinau, Moldova
- 29 – 30 September, 7–10 October 2008: The RFOM attended the Human Dimension Implementation Meeting (HDIM) in Warsaw, Poland
- 7 – 8 October 2008: Seminar for journalists from Central Asia in Helsinki, Finland
- 16 – 17 October 2008: The RFOM attended the 10th OSCE Central Asian Media Conference in Almaty, Kazakhstan
- 20 – 22 October 2008: The 4th International Conference on Terrorism and Electronic Media in Paphos, Cyprus
- 23 – 24 October 2008: “Law & Internet”, international conference in Moscow, Russia
- 25 – 27 October 2008: The RFOM participated in the seminar of the OSCE Mediterranean Partners for Co-operation in Amman, Jordan
- 23 – 24 October 2008: 10th Annual Conference of the Alliance of International Press Councils in Europe, in Berlin, Germany

- 27 – 28 October 2008: “Effective interaction between press services and journalists in a democratic society”, training seminar for press officers of public bodies and journalists held in Yerevan, Armenia
- 29 October 2008: Commemoration of the 60th anniversary of Article 19 of the Universal Declaration of Human Rights, sponsored by UNESCO in Paris, France
- 5 – 6 November 2008: Conference on media and democracy in South-Eastern Europe, organized by the South East Europe Media Organisation (SEEMO) in Sofia, Bulgaria
- 6 – 7 November 2008: “Effective interaction between press services and journalists in a democratic society”, training seminar for press officers of public bodies and journalists of southern Serbia held in Belgrade, Serbia
- 13 – 14 November 2008: The RFOM participated in the 5th OSCE South Caucasus Media Conference in Tbilisi, Georgia
- 21 November 2008: Conference on media self-regulation and digitalization of broadcasting held in Tirana, Albania
- 1 December 2008: “Journalists’ Ethics: the Way towards Independent and Responsible Media”, round table meeting held in Karaganda, Kazakhstan
- 2 December 2008: The RFOM attended the Swedish-Finnish Freedom of Information Day round table event “Access to Information in the OSCE Region” in Helsinki, Finland
- 4 – 5 December 2008: The RFOM participated in the OSCE Ministerial Council in Helsinki, Finland

- 7 – 10 December 2008: The RFOM attended the 2nd Global Forum for Media Development “Building enabling environments – The role of international organisations”, the annual meeting of the four global mandates on freedom of expression, in Athens, Greece

Press Releases 2008

Press Releases 2008

OSCE welcomes pardoning of journalists in Azerbaijan but urges legal reform

BAKU, 2 January 2008 – The OSCE Representative on Freedom of the Media and the OSCE Office in Baku today welcomed Azerbaijani President İlham Aliyev's pardon of five imprisoned journalists but warned that the repeated criminalization of journalism can only be prevented by abolishing the underlying laws.

Rovshan Kabirli and Yashar Aghazade, editor-in-chief and editor from the newspaper Mukhalifat; Faramaz Novruzoglu, correspondent from the newspaper Nota Bene; and Samir Sadagatoglu and Rafiq Tagi, editor-in-chief and correspondent of the newspaper Senet, were released from prison following a Presidential decree that was issued on 28 December 2007.

"I am relieved to hear that some of the journalists are free, but we should not forget that three journalists remain in detention. They should be also released," said Miklos Haraszti, the OSCE Representative on Freedom of the Media, referring to Eynulla Fatullayev, the editor-in-chief of Realniy Azerbaijan and Gundelik Azerbaycan, and the brothers Genimet and Sakit Zahidov from the newspaper Azadliq, who are still in prison.

Haraszti urged the Azerbaijani authorities to start the long-due reform required by both the country's OSCE commitments and by Council of Europe standards: "Freedom of the media could only be guaranteed by law and not by gestures of goodwill. Quality in journalism can develop only when speech offences are handled by civil courts. As long as defamation remains a criminal offence in the country, journalists cannot work without fear of prosecution."

Ambassador Jose Luis Herrero, Head of the OSCE Office in Baku, said: “I hope that the pardoning of these journalists will help the very needed normalization of the situation of the media in Azerbaijan. Efforts to consolidate democratic mechanisms of interaction between the media, the Government and society at large should continue in a spirit of cooperation among all the actors involved.”

“The OSCE remains ready to support the Government of Azerbaijan, media professionals and civil society to preserve, consolidate and reinforce the freedom of the press,” Ambassador Herrero concluded.

The Presidential decree of 28 December pardoned 119 prisoners. 114 were discharged from serving the remainder of their sentences and were released from prison. Three prisoners have been released from other sanctions, while two convicted individuals had their sentences halved.

http://www.osce.org/fom/item_1_29173.html

OSCE media freedom representative welcomes President Sarkozy’s plan to de-commercialize public television in France

VIENNA, 14 January 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today welcomed two recent proposals related to media legislation made by France’s President, Nicolas Sarkozy: the reform of the co-habitation regime of public and commercial broadcasters, and the introduction of a long-awaited measure to protect journalists’ confidential sources.

The reform of the broadcasting sector aims to eliminate advertising on public channels, while allowing these channels to benefit from the advertising revenues collected by commercial channels broadcast on platforms including surface transmission, internet and mobile phones.

“The reform would enhance media freedom, because it would increase the political independence of public-service broadcasting both from commercial interests and from government,” wrote Haraszti in a letter to President Sarkozy.

Haraszti added: “This is a proposal that can have enormous importance internationally as well, especially in the less wealthy new democracies where competition from commercial broadcasting has sent public broadcasting into a downward spiral.”

“Today, any success by commercial channels is taking potential viewers away from public-service channels. Following the reform, the success of commercial broadcasting would feed, rather than starve, public-service broadcasting, thanks to the proposed revenue sharing.”

Whether all these benefits would materialize, however, will depend on the legal and financial details, which still have to be worked out after consultations with all stakeholders, he said.

The OSCE Representative on Freedom of the Media also welcomed the President’s pledge to introduce in 2008 a long-awaited measure to protect journalists’ confidential sources, as well as protect their offices and homes from searches aimed at identifying sources.

“Maintaining confidentiality of anonymous suppliers of information is a main pre-requisite for strong investigative journalism in service of democracy,” Haraszti said.

http://www.osce.org/fom/item_1_29270.html

OSCE media freedom representative protests jailing of editor in Belarus for reprinting cartoons

VIENNA, 18 January 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today condemned the three-year high-security prison sentence handed down to Alexander Zdvizhkov, ex-deputy editor of the Zhoda newspaper, for reprinting controversial cartoons featuring the Prophet Mohammad originally published in a Danish newspaper.

“In 21st century Europe, it is shocking to see an editor arrested, tried behind closed doors and punished beyond any acceptable limits only for reprinting cartoons produced elsewhere and that have been published everywhere,” said Haraszti.

“Persecution of journalists for trying to inform the public on important issues is a misuse of hate speech laws. In fact, the Belarus government has used the international controversy around the cartoons as a pretext to eliminate a critical voice from public life.”

Zhoda was closed down by a court in March 2006 following the reprint of the caricatures, which originally appeared in Danish newspaper Jyllands-Posten. The criminal case – for ‘incitement of religious hatred’ – was reopened following Zdvizhkov’s arrest in November 2007 after he returned to Belarus. He had lived in Russia and Ukraine for the past two years.

The leader of the Belarusian Muslim community, Ismail Voronovich, said prior to the verdict, announced on 18 January, that he had not been in favour of closing down Zhoda in 2006, and that he did not want the journalist to be punished.

Haraszti also condemned a 20 December 2007 sentence against Novy Chas, a small newspaper that has been created and produced by Zhoda’s former editorial staff. The paper was ordered to pay 16,000 euros in

damages to Nikolay Cherginets, the Chair of the Foreign Affairs Committee of the upper chamber of parliament who is also the head of the Writers' Union, for critical comments about his political and literary activities. The paper is unable to pay the fine and will have to close.

"I see the imprisonment of Zdvizhkov, the closing of Zhoda, and the crushing fine against Novy Chas as part of a campaign against a team of independent journalists, one of the few that are still working in Belarus," Haraszti said.

"I call on the authorities of Belarus to review this harsh sentence and release Mr. Zdvizhkov."

http://www.osce.org/fom/item_1_29340.html

OSCE media freedom representative says Slovakian draft Press Act curbs editorial autonomy, asks authorities to withdraw it

VIENNA, 22 January 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, has asked the Slovak Government to withdraw its draft Press Act from Parliament in its current version, saying that his office was ready to prepare a legal review of the Act and provide recommendations.

"The present draft contains sections that would severely restrict editorial autonomy, and would thereby go against Slovakia's international commitments to protect media freedom," wrote Haraszti in a letter to Foreign Minister Jan Kubis.

Haraszti said that under the draft Press Act, the Ministry of Culture would decide if 'information was published in ways that belittle, excuse, or approve' the promotion of a long list of socially harmful behaviour. The list includes

wars, inhuman actions, the use of narcotics, and also 16 types of 'hate', including hate 'based on political or other way of thinking'.

"Given the utter subjectivity and vagueness of these key concepts, the law could be arbitrarily used to restrict and punish even mere reporting on events or opinions. That would seriously damage society's right to obtain information on issues of public importance," said Haraszti.

"I find it especially objectionable that the draft would authorize the executive branch to determine speech infringements, and fine them up to 200 000 SKK. This clearly goes beyond the speech limitations accepted by democracies."

Haraszti also objected to the provision under which publishers would be obliged to carry a response from any person or legal entity if they were to find that a published 'fact statement' impacted on their honour or dignity, regardless of whether the 'fact statement' was true or not.

"As all opinions have a factual component, this provision in reality introduces an obligation to publish responses to opinions. That would grant politicians limitless and arbitrary access to publicity over the heads of editors," said Haraszti.

"In a pluralistic democracy, laws can not be used to boost 'objectivity' in private media outlets. The Government must not aim to homogenize opinion content or enforce editorial impartiality."

http://www.osce.org/fom/item_1_29364.html

OSCE media freedom representative visits Council of Europe, discusses joint concerns, co-operation

STRASBOURG, 24 January 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that legal standards established by the Council of Europe (CoE) played an important role in his every day work and helped the Organization's participating States comply with media freedom commitments.

"The Council of Europe's legal standards are a solid base in my work to promote compliance with OSCE's far-reaching media freedom commitments," said Haraszti at the end of his two-day visit to Strasbourg.

"The CoE standards codify the minimum that is expected from a European democracy. Working together is key for the success of both the Council of Europe standards and the OSCE commitments."

Haraszti met with CoE's Secretary General, Terry Davis, the Commissioner for Human Rights, Thomas Hammarberg, the standing rapporteur and member of the Parliamentary Assembly of the Council of Europe (PACE), Lord Andrew McIntosh, the Director General of Human Rights and Legal Affairs, Philippe Boillat, and other officials.

During talks with Secretary General Davis and human rights commissioner Hammarberg, Haraszti expressed satisfaction with their public statements supporting the decriminalization of defamation. "I have long campaigned for decriminalizing defamation," said Haraszti. "These Council of Europe statements help save journalists from prison."

The topics discussed with PACE rapporteur Lord McIntosh included violence against journalists in countries which are members of both organizations.

Other issues raised during the visit were access to information, abolishing the increased protection of public officials against verbal insult, the right of journalists to protect their confidential sources, and good governance of the Internet.

http://www.osce.org/fom/item_1_29402.html

OSCE media freedom representative welcomes Kyrgyzstan's media self-regulatory body, the first in Central Asia

VIENNA, 12 February 2008 – The OSCE Representative on Freedom of the Media (RFOM), Miklos Haraszti, congratulated today journalists in Kyrgyzstan on the launch of an independent media self-regulatory body, calling it an act of engagement for ethical standards and professionalism.

“I see the creation of Central Asia's first voluntary media complaint commission in Kyrgyzstan as an additional safeguard for freedom of the press. It will prove journalists' commitment to quality and responsibility, and will boost the social acceptance of independent reporting and opinion,” said Haraszti.

The new body, called the Media Complaints Commission, will handle complaints about alleged breaches of the code of ethics by any media outlet in the country. Composed of nine board members representing the media and the civil society, the body was set up to provide an alternative to court procedures and give moral redress in case of non-respect for ethics guidelines.

“I hope this initiative will encourage media professionals in other countries of Central Asia to create similar accountability systems,” Haraszti said, adding: “The governments of the region can assist similar developments only by

exercising self-restraint in regulating the press. Responsibility can develop only in freedom.”

The Media Complaints Commission was launched officially today with a press conference, which concludes a series of discussions bringing together media professions in support of self-regulation. The Commission’s board members were elected and a joint code of ethics was adopted last December. Self-regulation was also the topic of the ninth Central Asia Media Conference, organized by the RFOM in Dushanbe in November 2007.

http://www.osce.org/fom/item_1_29662.html

OSCE media freedom representative reviews Slovakia’s draft Press Act, urges Government to implement recommendations

VIENNA, 14 February 2008 – The OSCE Representative on Freedom of the Media (RFOM), Miklos Haraszti, issued an analysis of Slovakia’s draft Press Act today, with recommendations on bringing the draft into line with the country’s international commitments to protect media freedom.

“As the Slovak Government put the draft on the Parliament’s agenda in its present, highly controversial form, the only way to improve it now is through amendments,” said Haraszti. “The OSCE Representative on Freedom of the Media office stands ready to support the Government, should it wish to implement the recommendations.”

Summarizing the RFOM recommendations, Haraszti said: “We continue to ask the Slovak Government to remove Section 6(1) on content restrictions imposed by the Culture Ministry. As our review shows, this provision would turn government officials into judges of media content, and could lead to arbitrary abuse for political ends.”

He also urged the Government to cut the three new mandatory remedial duties that the draft imposes on editors: a 'right of correction' for inaccuracies, a 'right of reply' for critical opinions, and a 'right to supplementary information', when a trial's outcome was not sufficiently reported.

"A right of reply can be justified, but this flood of measures would destroy editorial autonomy. A right of reply should apply only where the claimant has a justified interest in correcting untrue or misleading information," said Haraszti. "We also strongly urge extending the conditions under which a reply can be refused by the editors, and ensure that editors are free to take into account the public's right to information."

The review was commissioned by the OSCE from ARTICLE 19, a leading global freedom of expression and freedom of information organization.

The document is downloadable in Slovak and English at www.osce.org/fom.

http://www.osce.org/fom/item_1_29685.html

OSCE promotes public discussion on media legislation in Kazakhstan

ASTANA, 25 February 2008 – Media legislation reform in Kazakhstan was the topic of a roundtable today organized by the OSCE Centre in Astana and Office of the OSCE Representative on Freedom of the Media.

The event, supported by the Culture and Information Ministry and leading media non-governmental organizations, brought together parliament deputies, government officials, representatives of the non-governmental sector, media lawyers, journalists and experts involved with media legislation. Participants discussed the latest draft amendments and changes to

legislative acts related to media, including the issues of libel and defamation in Kazakhstan.

“The position of the Government on further liberalization of the information sphere fully corresponds to the statement made by the Foreign Minister, Marat Tazhin, during the OSCE Ministerial Council in Madrid,” said Yermukhamet Yertysbayev, Culture and Information Minister. “In 2008, we will be focusing on media legislation to reach compliance with international standards. In this regard, we will actively cooperate with OSCE, representatives of civil society, and media.”

“I welcomed Minister Yertysbayev’s plan presented to the Permanent Council in July 2007 envisaging, among other things, decriminalization, demonopolization of the media, and the protection of journalists’ confidential sources. I hope that the reform will continue involving all the stakeholders,” the OSCE Representative on Freedom of the Media, Miklos Haraszti, said in a message from Vienna.

The roundtable followed similar events organized by the Centre to promote media reform in Kazakhstan, and support the development of Kazakhstani legislation in line with international standards. Legal analyses were commissioned by OSCE Representative on Freedom of the Media and can be downloaded at: www.osce.org/fom

http://www.osce.org/fom/item_1_29825.html

OSCE condemns attacks on journalists

BELGRADE, 25 February 2008 – The Head of the OSCE Mission to Serbia, Ambassador Hans Ola Urstad, criticized violent attacks aimed at journalists following last week’s “Kosovo is Serbia” rally in Belgrade.

He said: “Targeted or indiscriminate violence or threats against those who cover news stories is a serious violation of journalists’ rights to carry out their work freely and objectively report on the current events in the country.”

“Serbian citizens as well as others are thus denied their right to a free and open flow of information. Freedom of expression is enshrined in numerous international agreements and in the constitutions of most countries, including Serbia.”

Ambassador Urstad condemned the ongoing direct threats against B92 and other media and called for better protection of all national and international journalists.

The OSCE Representative on Freedom of the Media, Miklos Haraszti, also decried the violence and both explicit and indirect threats against media, and emphasized that “also during times of tension or unauthorized demonstrations, journalists must be allowed to carry out their duty to report.”

http://www.osce.org/fom/item_1_29841.html

OSCE media watchdog to hold anniversary roundtable on challenges to media freedom

VIENNA, 27 February 2008 – The Representative on Freedom of the Media (RFOM), Miklos Haraszti, is hosting an experts’ panel on Friday to discuss the future challenges to freedom of the media and freedom of expression in the OSCE area.

The event, which is supported by the Finnish OSCE Chairmanship, marks the tenth anniversary of the RFOM Office.

Plantu, the editorial cartoonist of French daily newspaper Le Monde, will present a cartoon show and discuss the role and responsibility of cartoonists in societies.

Noted media freedom experts taking part include: Karin Clark, Chair of Writers in Prison Committee, London; Thomas Hammarberg, Human Rights Commissioner, Council of Europe; Gus Hosein, Senior Fellow, Privacy International, London; Oleg Panfilov, Head of the Centre for Journalism in Extreme Situation, Moscow; Alexey Simonov, Chairman of the Glasnost Defence Foundation, Moscow.

Haraszi will lead the discussions, with Freimut Duve, the former OSCE Representative on Freedom of the Media, Pertti Torstila, Secretary of State of the Finnish Foreign Ministry and Reino Paasilinna, a Finnish member of the European Parliament, also participating.

Journalists on the panel include Konstanty Gebert, Columnist and Foreign Correspondent, Gazeta Wyborcza, Warsaw and Firdevs Robinson, Editor of the BBC World Service's Central Asia & Caucasus Service.

Journalists are invited to attend the event from 10.00 to 16.00 on Friday, 29 February, in the Neuer Saal at the Hofburg Congress Centre. Journalists will have the opportunity to interview the speakers during the lunch break from 12.30 to 13.30.

For admittance to the Hofburg Conference Centre, please bring your OSCE badge or a valid press card to the security desk (main entrance from the Heldenplatz). Parking is available for the press during the event in the OSCE-reserved parking area on Heldenplatz. Temporary parking permits must be collected from the security desk.

Background documents can be found at: <http://www.osce.org/item/29850.html>

http://www.osce.org/fom/item_1_29881.html

OSCE media watchdog, Finnish OSCE Chairmanship host forum on challenges to media freedom

VIENNA, 29 February 2008 – OSCE Representative on Freedom of the Media (RFOM), Miklos Haraszti, and Secretary of State of the Finnish Foreign Ministry, Pertti Torstila, called on participating States to comply with their OSCE media commitments at a roundtable discussion that started today in Vienna.

The one-day event on the future challenges to freedom of the media and freedom of expression in the OSCE area marks the tenth anniversary of the RFOM Office. The forum is supported by the Finnish OSCE Chairmanship.

“The Finnish OSCE Chairmanship gives its full support to the activities of the Media Representative Mr. Miklos Haraszti and his Office in providing early warning on violations on freedom of expression and in assisting participating States from Vancouver to Vladivostok to fulfil their commitments,” said Secretary of State Pertti Torstila.

Haraszti said: “The 56 OSCE nations committed themselves to the highest standards of human rights, freedom of expression included. Today, we sometimes have to defend not only press freedom standards but also the very notion of international co-operation on human rights. Still, the journalists can count on the dedication of my office to keep the OSCE media freedom commitments alive and to advocate for compliance.”

Haraszi also honoured Freimut Duve, the first OSCE Representative on Freedom of the Media, for his work.

Noted journalists and media freedom experts are taking part in today's discussion. Plantu, the editorial cartoonist of French daily newspaper Le Monde, will also present a cartoon show and discuss the role and responsibility of cartoonists in societies.

For additional information, including the programme of the event, please visit:
<http://www.osce.org/item/29850.html>

http://www.osce.org/fom/item_1_29929.html

Ban on independent news coverage in Armenia is contrary to OSCE commitments, says OSCE media freedom representative

VIENNA, 4 March 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, called on Armenian authorities today to lift restrictions on independent news reporting that have been in place since the state of emergency was declared on 1 March.

“The state of emergency should not be used by the government to take away the public's right to news from diverse sources. Pluralistic reporting helps ensure transparency of governmental action even in dire times,” said Haraszi.

He was referring to Armenian President Robert Kocharian's state of emergency decree of 1 March, under which the media may cite only official sources when reporting on national politics. As a result, the public is presented with one view of events only.

The non-state broadcast media has been limited to re-airing official news and programmes. Several independent and opposition websites have been blocked, and foreign radio and television coverage on Armenia has been restricted.

In protest against the restrictions, some major Armenian newspapers did not publish editions today.

“Notwithstanding the wave of unsanctioned demonstrations and even violence, independent reporting on the events is the legitimate right of the media, to which Armenia has committed itself in the OSCE,” said Haraszti.

“The existing legal provisions against incitement to violence should be sufficient to tackle any potential misuse of speech rights, and should not be replaced by pre-emptive censorship.”

http://www.osce.org/fom/item_1_29995.html

New prison sentence sign of continued persecution of non-governmental media in Azerbaijan, says OSCE media freedom representative

VIENNA, 10 March 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that a four-year prison sentence handed down to the editor-in-chief of the opposition newspaper Azadliq was part of an ongoing campaign suppressing critical voices in Azerbaijan.

“The harsh sentence against Ganimat Zahidov silences the editor of one of the few remaining newspapers critical of the government in the country,” Haraszti said.

Zahidov was convicted on Friday for “deliberately causing light injuries” and “hooliganism” in a trial in which the court did not allow key defence witnesses to testify. The charges were brought against him after a street skirmish on 7 November 2007.

“By using charges not related to journalism to send Zahidov to prison, a pattern of repression as damaging as actual criminalization of journalism continues,” Haraszti said.

Recent cases of imprisonment of non-governmental journalists on charges not related to their profession were part of this pattern, he said.

“Ganimat’s brother, journalist Zahid Zahidov, is serving a three-year prison term for alleged drug possession. Eynulla Fatullayev, who founded several popular political newspapers, is serving a combined 12 years on three different charges,” he added.

“Fatullayev’s newspapers had to close down after his conviction. The persecution of the Zahidov brothers now endangers the publication of Azadliq.”

Haraszti said he hoped that the government would start reforming its handling of the media despite recent negative developments.

“Targeted imprisonment of journalists must stop as a first step towards compliance with international standards,” he said.

http://www.osce.org/fom/item_1_30104.html

OSCE media freedom representative calls on Azerbaijan to investigate latest attack against journalist

VIENNA, 17 March 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, condemned today the stabbing of Agil Khalil, a reporter of the Azerbaijani opposition newspaper Azadliq, and urged the government to investigate.

“I welcome the Presidential Administration’s pledge to bring the attackers to justice,” Haraszti said. “Action is necessary not only for the sake of justice in this case but also in order to investigate whether the attack was part of a campaign against Azadliq, which is one of the few remaining independent newspapers in Azerbaijan.”

Khalil remained in serious condition on Monday. He was stabbed in the back on Thursday as he was leaving the editorial offices of Azadliq.

“The recent imprisonment on various charges of Azadliq journalists Ganimat Zahidov and his brother Zahid Zahidov, has added to an atmosphere of intimidation as much as an earlier assault against Khalil.”

Khalil was beaten by two men on 22 February while working. Suspects identified by him remain at large.

“Lack of successful governmental investigation in cases of violence against journalists encourages the repetition of such crimes,” Haraszti said. “The international community and journalists in Azerbaijan are still waiting for concrete results of the investigation of the 2005 murder of prominent journalist Elmar Huseynov, and of the numerous, so far unpunished, attacks against journalists that took place in recent years.”

Haraszti said his Office was closely following the investigation into the attack on Khalil.

http://www.osce.org/fom/item_1_30252.html

OSCE media freedom representative and partners call on Ukraine to further development of free media

KYIV, 17 March 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, and representatives for the Council of Europe and the European Commission, called on Ukraine today to continue efforts to create a free press and a media law in line with OSCE principles and Council of Europe standards.

In a statement issued after an OSCE-organized High Level Policy Meeting on media legislation reform, the representatives said that state regulatory bodies tasked with creating a free and transparent media environment needed to be strengthened, and that an independent public service broadcaster needed to be created. Other recommendations included promoting transparency in media ownership, better access to public information and de-nationalizing mass media.

Representatives of governmental institutions regulating media policy and responsible for media legislation reform in Ukraine, and representatives of the country's NGO sector also participated in the meeting, which aimed to analyze the progress made by Ukraine in bringing its legislation into line with European standards and co-ordinate future efforts.

“Ukraine has played an avant-garde role among the OSCE participating States with its early reform to decriminalise defamation. I hope that the country will continue to fulfil this pioneering role and carry out the reform process in media legislation areas as well. The OSCE is ready to support Ukraine in this important endeavour,” Haraszti said.

For the OSCE Project Co-ordinator in Ukraine, the meeting marks the conclusion of a project that aimed to improve mass media legislation. The Denmark-based NGO “International Media Support” helped implement the project, which was financed by the Danish government.

Todd Becker, a Senior Project Manager at the OSCE Project Co-ordinator in Ukraine, added that the topics discussed at the meeting had been on the agenda for several years.

“Indeed, local as well as international experts have largely done their job. However, the real results have been delayed due to lack of political will in the country,” he said.

For a full text of the statement from the meeting, please see this link:
http://www.osce.org/documents/pcu/2008/03/30283_en.pdf
http://www.osce.org/fom/item_1_30285.html

OSCE trains Georgian government officials, journalists with focus on facilitating access to information

TBILISI, 18 March 2008 – Fostering effective ties between government bodies and journalists and increasing access to official information are the focus of a two-day OSCE training seminar that started in Tbilisi today.

“We hope that this event will encourage professional dialogue between state authorities and journalists to achieve good co-operation between them. Such co-operation will enable the media to convey information on the matters of public interest to enhance citizens’ participation in the decision-making processes,” said Alexander Boldyrev, the Senior Adviser of the OSCE media freedom representative.

The event, jointly organized by the Office of the OSCE Representative on Freedom of the Media and the OSCE Mission to Georgia, brought together 20 participants from Tbilisi and other regions of the country. International and local experts will conduct sessions on the legal and ethical principles of interaction between state officials and journalists, as well as global standards related to access to information.

Guillaume Siemenski, Head of the Human Dimension Office of the OSCE Mission, said: "It is necessary not only to adopt progressive legislation but also to train competent and informed journalists. Officials also need to understand the importance of the free flow of information for countries which are seeking to establish their democratic credentials."

The event, sponsored by the Government of Switzerland, continues the series of over a dozen training seminars conducted by the Office of the OSCE Representative on Freedom of the Media since 2005.

http://www.osce.org/fom/item_1_30289.html

OSCE media freedom representative welcomes Irish government move to decriminalize libel

VIENNA, 19 March 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, welcomed today a decision by the Irish Justice Minister, Brian Lenihan, to fully abolish criminal libel.

"This development is of utmost importance not only for Ireland, but also for the entire OSCE community, which includes many countries where journalists are regularly put in jail as a result of the criminalization of defamation," said Haraszti.

Earlier this month Minister Brian Lenihan proposed deleting the sections on criminal libel contained in a Bill that was being discussed in the Irish Senate, calling it ‘a substantial intrusion on freedom of speech’.

“I congratulate the Minister and the unanimous support of his proposal by the Senate”, said Haraszti. “This is a very important move, and could be a model for many emerging democracies.”

The Seanad Bill, after approval by the Dáil (lower chamber), is likely to be voted into law before summer. After its passage, libel and defamation will only be handled in civil courts.

Haraszti said: “The case law of the European Court of Human Rights rejects imprisonment for defamation as damaging to free debate in society. This is why seven OSCE participating States – Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Moldova, Ukraine and the United States – have already decriminalized libel, while Western European participating States refrain from using criminal legislation to punish defamation offences.

“However, Ireland is the first Western European country to initiate the complete abolition of these obsolete and impractical provisions. I encourage Ireland to carry through this much-needed reform as soon as it is legally possible.”

http://www.osce.org/fom/item_1_30323.html

Latest amendments to Slovakia’s draft Press Act an improvement but still fall short, says OSCE media freedom representative

VIENNA, 25 March 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, welcomed today the Slovak Government’s

acceptance of one of his key proposals for the country's draft Press Act, but regretted that other recommendations have not been implemented.

"It is an improvement that the amendment deletes Chapter 6.1. on content restrictions. I had proposed its removal because it would have entitled government officials to judge and punish media content, a role which in a democracy should be confined to the judiciary," he said.

"However, it is disappointing that recommendations regarding the right of reply were not implemented. As it stands now, the law would still fail to comply with Slovakia's OSCE commitments to protect media freedom," Haraszti added.

The Representative's comments concerned the amendments authored by a member of the Slovak Parliament on behalf of the governing coalition. The amendments were presented on 18 March, ahead of the second reading of the Act.

"The excessive remedial obligations prescribed in Sections 7, 8, and 9 would grant politicians limitless access to publicity over the heads of editors. They would seriously restrict editorial autonomy and go against the Council of Europe's legal requirements," said Haraszti.

"The standards are clear: a right to either a correction or a reply should qualify only where the claimant has a justified interest in correcting untrue or misleading information."

"With the help of Slovakia's parliamentarians the draft can still be improved," Haraszti said. He added that his Office stood ready to assist the Government and the Parliamentary Committees during the second or third reading of the draft Act.

The legal review, commissioned by RFOM and prepared by international freedom of expression organization Article 19 in February 2008, can be accessed in Slovak at http://www.osce.org/documents/rfm/2008/02/29687_sl.pdf , and in English at http://www.osce.org/documents/rfm/2008/02/29687_en.pdf.

http://www.osce.org/fom/item_1_30410.html

OSCE helps Kyrgyz state press officers and journalists work more closely, share information

OSH, Kyrgyzstan, 26 March 2008 – Promoting effective communication between public bodies and the media is the aim of a two-day training course that started in Osh today.

Organized by the Office of the OSCE Representative on Freedom of the Media and supported by the OSCE Field Office in Osh, the event brought together around 20 participants from Batken, Jalalabat and Osh regions of the country.

“Effective communication between press officers of state bodies and journalists is a key element in securing citizens’ access to information of public interest in a timely and accurate manner. We are glad to be able to promote the skills needed for this in southern Kyrgyzstan,” said Alexander Boldyrev, Senior Adviser, Office of the OSCE Representative on Freedom of the Media.

Funded by the Government of Switzerland, the event is part of a series of over a dozen training seminars that the Office of the OSCE Representative has held in different OSCE participating States.

In 2005, it organized the first training seminar in Kyrgyzstan for state press officers and journalists from the capital Bishkek.

http://www.osce.org/fom/item_1_30424.html

OSCE media freedom representative urges Russia to vigorously investigate murders of Dagestani journalists

VIENNA, 27 March 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today he was shocked by the recent murders of Dagestani television journalists, and appealed to the Russian authorities to calm fears about a targeted wave of terror by carrying out vigorous and transparent investigations.

On 21 March, Ilyas Shurpayev, a 32-year-old Dagestani correspondent for State Television's Channel One, was found murdered in his Moscow apartment. He had been stabbed and strangled. On the same day, Gadzhi Abashilov, the Head of the State Radio and Television Company of Dagestan, was shot dead in his car in the Dagestani capital Makhachkala.

In a letter addressed to the Russian authorities, Haraszti welcomed the fact that the authorities immediately opened criminal cases into both murders, and that Prosecutor General Yuri Chaika had taken personal charge of the Abashilov case.

"For the sake of securing the safety of journalism, the investigation needs to determine with clarity whether the killings were interrelated, or related to the journalists' coverage of the North Caucasus region," said Haraszti.

"The understandable fear that the cases may be part of organized terror against journalists in the Dagestan region has to be met by a vigorous and

successful tracking down of those who carried out the murders and the forces behind them.”

Haraszti asked the Russian authorities to provide information on both investigations.

http://www.osce.org/fom/item_1_30432.html

OSCE media freedom representative protests against onslaught on independent media in Belarus

VIENNA, 28 March 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, sharply criticised today a crackdown on independent journalists and media outlets throughout the Republic of Belarus.

“I condemn this targeted assault on the independent media as an unconcealed violation of OSCE commitments signed by the Government of Belarus to protect the freedom of the press,” said Haraszti.

According to reports, on 27 March, the homes of up to 13 independent journalists were searched. Some of the journalists had their computer hard drives seized and were taken to KGB premises. The concerned journalists work, among others, with the media outlets Euroradio, Radio Racia and the satellite TV channel Belsat. The premises of these outlets were also raided and searched.

The warrants for the actions were issued by the Deputy Prosecutor of Minsk, and some of them linked to a 2005 criminal libel case involving cartoons which depicted the Head of State.

“The attempt to suppress the independent media is unacceptable in a 21st century European society,” Haraszti said.

The crackdown followed the violent dispersal by police of a 25 March rally marking Freedom Day (Dzen' Voli), when Andrei Lyankevich, a correspondent with Nasha Niva newspaper was brutally beaten by police. He awaits a court sentence for "participating in an unsanctioned rally". Syamion Piachenko, a reporter with Nasha Niva, was sentenced to 15 days of administrative detention under the same charges.

http://www.osce.org/fom/item_1_30442.html

Slovakia's new Press Act curbs editorial freedom, grants politicians unlimited right of reply, warns OSCE media freedom representative

VIENNA, 10 April 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that he regretted the Slovak Parliament's decision to adopt a controversial Press Act that goes against the country's international commitments.

"I deeply regret the situation that the new Press Act will create for the Slovak media. While the abolishment of chapter 6.1 on content restrictions was a welcome development last month, yesterday's vote offers politicians undue influence over the opinion content of all newspapers," he said.

The Representative's comments followed yesterday's vote in the Slovak Parliament, where the governing coalition approved the law in the face of unanimous protest from the opposition parties, the strong resistance of the Slovak media, and the previous recommendations issued by Haraszti's office and other international organizations.

"The vote means that starting in June, anyone will be able to reply – even in an untrue manner – to any opinion piece, even if it contained nothing untrue. The editors will be obliged to print the reply without having the option to respond in turn, or they will face financial retribution," said Haraszti.

“It is not difficult to imagine where this will lead – newspapers getting flooded with replies from individuals or political forces unable to accept criticism, even when the criticism is well founded.”

He added: “Just the fact that the law exists is already a serious limitation on editorial freedom, because it will make it mandatory to publish unsolicited material. Moreover, each time the law is applied, it will represent an actual restriction of editorial freedom, potentially making the country liable under the case law of the European Court of Human Rights.”

“Instead of handling the right to correction or reply in compliance with the standards, Slovakia is forcing its media to become subject to political give and take. This goes against the country’s international commitments to protect the freedom of its media” said Haraszti.

The legal review of the Slovak draft Press Act, as well as the earlier press releases on this issue can be found at [osce.org/fom](http://www.osce.org/fom)

http://www.osce.org/fom/item_1_30623.html

OSCE representative calls on Azerbaijani law enforcement to stop harassing and discrediting investigative journalists

VIENNA, 11 April 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, expressed his concern today over the continuing persecution of investigative journalists in Azerbaijan.

“Azerbaijani law enforcement agencies have recently fabricated accusations against several independent investigative journalists. This is especially regrettable in a democracy that has overcome the era when prosecutors faked cases against those with ideas that the government did not like,” said Haraszti at the end of his visit to Baku.

He was referring to the cases of Eynulla Fatullayev, the editor-in-chief of the dailies Realniy Azerbaijan and Gundelik Azerbaycan, and Ganimat Zahidov and Sakit Zahidov of the opposition Azadliq newspaper. Haraszti visited them in prison on 7 and 8 April.

“All three journalists are serving sentences based on made-up charges, such as terrorism, tax evasion, drug possession and hooliganism,” said Haraszti. “The most recent case of Agil Khalil, in addition to three other journalists currently in prison, further demonstrates the dangerous trend of improper involvement of law enforcement in fighting critical voices.”

On 17 March, Haraszti demanded investigations into the assaults against Azadliq correspondent Agil Khalil, who was beaten up by senior national security officers while covering the illegal cutting down of olive trees on a Baku municipal estate. He was later followed, threatened, and stabbed. The officers who beat him have been identified, but continue to remain at large.

“Instead of investigating the connection between the beating and the stabbing of Agil Khalil, the prosecution has started a campaign to discredit him,” said Haraszti.

Khalil’s family has named the investigator, who they said threatened to give the media a video compilation dishonouring the reporter unless Khalil would blame the stabbing on another Azadliq reporter or himself. As the family and Khalil refused to comply, a half-hour video stating that the stabbing of Khalil was related to an alleged homosexual relationship went on air on 7 April.

“I call on the TV channels which disgracefully aired this smear campaign to stop being a tool in a propaganda drive against one of their colleagues. I also call on law enforcement bodies to stop the wave of smear campaigns and bring to justice the perpetrators of violence against journalists like Agil

Khalil, and those responsible for the 2005 murder of Monitor editor Elmar Huseynov,” said Haraszti.

The OSCE Representative asked the Azerbaijani government to release the imprisoned journalists, regardless of whether they have signed pardoning petitions, and to stop the persecution of the few remaining critical media in the country, adding that it was time “to start the long due reform on decriminalization of speech offences”.

While in Baku, Haraszti met Azerbaijani officials, including the Head of the Presidential Administration Ramiz Mehtiev, Foreign Minister Elmar Mammadyarov, and the General Prosecutor Zakir Qaralov.

http://www.osce.org/fom/item_1_30628.html

OSCE media freedom representative launches guidebook on media self-regulation at Paris forum

PARIS, 17 April 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, presented a new OSCE publication on media self-regulation today at the Eurasia Regional Forum for Media Development.

Organized by Internews Europe in Paris, the event brought together some 130 representatives from inter-governmental and non-governmental organizations to reinforce and strengthen their co-operation in the field of media development.

“I hope that our guidebook will encourage the further development of media self-regulation, boost the quality segment of journalism and, thus, help improve social support for media freedom in the OSCE area,” Haraszti said in his address to forum participants.

“Media quality should never be a prerequisite to media freedom. On the contrary, ethical journalism can only develop in an atmosphere of guaranteed freedom. Journalists’ self-restraint must be preceded and accompanied by governmental self-restraint in handling of media,” added Haraszti.

The guidebook is a compilation of questions and answers on the topic of media self-regulation, with renowned international experts and practitioners contributing. The publication has been financed by the Governments of France, Germany and Ireland.

The Media Self-Regulation Guidebook is available in English, French and Russian from the Office of the OSCE Representative on Freedom of the Media and is online at: www.osce.org/fom/publications.html.

During his visit, Haraszti also discussed the ongoing French reform to de-commercialize public-service broadcasters and re-finance them using a part of the commercial channels’ revenues. He met with the French Broadcasting Regulatory Authority, the Commission for new public television and the head of the Europe department at the Foreign Ministry.

“If implemented correctly, the planned model could play a pioneering role in the new democracies of the OSCE, where the co-existence of public-service and commercial channels is in a deepening crisis,” said Haraszti.

http://www.osce.org/fom/item_1_30735.html

OSCE media freedom representative urges Czech Parliament to use penal code reform to decriminalize speech offences

VIENNA, 22 April 2008 – Miklos Haraszti, OSCE’s media freedom representative, urged members of the Czech Parliament to use the ongoing

reform of the Criminal Code to decriminalize speech offences so that they would be exclusively handled in civil courts.

“I encourage you as members of the Czech Parliament to take this unique opportunity to follow international standards in balancing personality rights with free speech rights, and decriminalize speech offences,” said Haraszti in a letter to Czech parliamentarians.

“Not allowing any criminal defamation provision in a newly adopted criminal code of the 21st century is a matter of free speech, democracy, rule of law, and also practicality.”

The Strasbourg-based European Court of Human Rights rules against imprisonment for press offences, regarding it as a disproportionate sanction that damages free discussion in society.

“In light of these clear norms, no European parliament should miss the opportunity to remove the old defamation regime, especially as it allows for convictions that are consistently overruled in the European Court of Human Rights,” added Haraszti.

http://www.osce.org/fom/item_1_30803.html

OSCE media freedom representative asks Russian legislators to halt move to allow closure of media outlets for defamation

VIENNA, 30 April 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, has appealed to the heads of both houses of Russia’s Parliament to stop the adoption of an amendment to a media law which would allow the Government to warn and then close media outlets for alleged libel.

In a letter sent yesterday to the chairmen of the State Duma (lower house) and the Federation Council (upper house), as well as to Foreign Minister Sergey Lavrov, Haraszti pointed out that the legislative initiative, which adds libel to the list of grounds for closure of media outlets, is unacceptable from the point of view of international press freedom standards.

“If passed into law, this change would further diminish independent reporting on publicly important issues. Recent similar amendments, like the ones in the so-called ‘extremism’ package, have already had such a restricting effect,” said Haraszti.

The draft, accepted on its first reading by the State Duma, amends Article 4 of the Federal Law on the Mass Media. It adds “distribution of knowingly false information insulting the honour and dignity of other persons or denigrating their reputation” to the list of activities representing a “misuse of media freedom”. This new offence, just as the others listed in Article 4, would serve as grounds for closure by the Government of media outlets under Article 16.

“Instead of decriminalizing defamation and libel and letting them be handled by the civil courts, the planned change goes further, and allows the Government to select media outlets for closure. This would be a clearly oppressive measure, open for arbitrary political misuse,” said Haraszti.

http://www.osce.org/fom/item_1_30922.html

Ahead of World Press Freedom Day, OSCE official calls on governments to lift restrictions, protect journalists from violence

VIENNA, 2 May 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, called on the OSCE participating States today to

protect press freedom by curbing violence against journalists and abolishing undue restrictions on free speech and reporting.

“In the past year, we saw a deterioration in two crucial dimensions of press freedom – the physical security of journalists, and the legal protections of critical speech,” Haraszti said ahead of World Press Freedom Day on 3 May.

Haraszti said he was alarmed that violence targeting journalists in several OSCE countries was rising, and that such actions were conducted with impunity which he said had resulted in “censorship by violence”. He called on governments to get tougher on those who intimidate journalists.

“In revenge for critical coverage, or because of attempts to prevent it, journalists have suffered physical violence ranging from beatings to murders in Armenia, Azerbaijan, Belarus, Bulgaria, Croatia, Georgia, Hungary, Kyrgyzstan, Montenegro, Russia, Serbia and the former Yugoslav Republic of Macedonia,” he said.

“Violence against journalists is not ‘crime as usual’ because it is meant to undermine a basic institution of democracy – the free press.

“Those who issue fatwas calling for murder of journalists and artists, and those who contract murders of reporters should belong to the same category of offenders. Both pursue the same goal: silencing the press by violence.”

He also called on governments to protect the safety of journalists by effectively assisting them as they cover demonstrations, including unsanctioned ones.

Arbitrary, politically motivated restrictions on dissenting or offensive speech also endanger media freedom, Haraszti said.

“They range from labelling as ‘extremist’ the reporting, debates, or criticism on controversial issues – which we have seen in Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia and Tajikistan – to criminalization of historical or religious disputes, which we have witnessed in Azerbaijan, Switzerland and Turkey.”

“This is in addition to the criminalization of ‘defamation’ and ‘breach of secrecy’, which still continues to harm professional journalism in many countries,” he said.

Haraszti urged governments to abstain from arbitrary restrictions on discourse in society.

“All tailor-made criminalization of speech content must be abolished. This includes the special bans on historical debates, as well as blasphemy. Anti-terrorism and extremism laws must not be used to punish offensive or critical speech,” said Haraszti.

“Actual incitement to criminal actions should be punished, but broad protection must be granted to political speech, to the right to discuss, dissent, and even deride, all of which are crucial in democratic societies.”

http://www.osce.org/fom/item_1_30943.html

OSCE media freedom representative asks new Russian President to address media freedom challenges

VIENNA, 7 May 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, congratulated Dmitry Medvedev on his assuming the Presidency of the Russian Federation today, and asked him to undertake a series of measures to improve the media freedom situation in his country.

“With your political guidance, support and personal engagement, the Russian authorities could greatly contribute to a much-needed improvement in your country’s compliance with the OSCE’s press freedom commitments,” Haraszti said in a letter addressed to President Medvedev that was also sent to Foreign Minister Sergey Lavrov yesterday.

The Representative provided the new Presidency a summary of the outstanding concerns which he has raised with Russia in recent years, with recommendations for addressing them:

- Carry out full, independent and transparent investigations into the unresolved murders and deaths of journalists;
- Work to prevent administrative harassment of journalists and media outlets, especially by the regional authorities;
- De-monopolize media ownership, with reforms disallowing state companies to own media outlets;
- Enhance pluralism in the broadcast media by establishing an independent licensing mechanism;
- Revise the recent legal amendments that use a vaguely-defined concept of ‘extremism’ that in practice may prevent the media from tackling sensitive topics;
- Take back the power given to government bodies to issue warnings to media outlets for ‘misuse of media freedom’, based on which the courts can be asked to close media outlets;
- De-criminalize defamation to bring Russian legislation in line with the jurisprudence of the European Court of Human Rights;
- Facilitate journalists’ unhindered media coverage of demonstrations, even if unsanctioned;
- Assist media workers who have been forced to live and work outside of the country to return to Russia to pursue their journalistic activities.

“I acknowledge the tremendous responsibility coming with your high assignment, and assure you of the continuing willingness of my Office to co-operate with the Government of the Russian Federation, to assist it to maintain and augment media freedoms,” said Haraszti.

http://www.osce.org/fom/item_1_30989.html

Public broadcasting in Bosnia and Herzegovina faces multiple threats, warns OSCE media freedom representative

SARAJEVO, 9 May 2008 – The future of public broadcasting in Bosnia and Herzegovina is under threat and urgent action is needed, said Miklos Haraszti, the OSCE Representative on Freedom of the Media, at a conference in Sarajevo which ended yesterday.

“The reform of the institutional framework of public broadcasting in Bosnia and Herzegovina is in great danger,” said Haraszti.

The conference on media freedom was held under the auspices of the OSCE Mission to Bosnia and Herzegovina.

Haraszti said that public broadcaster BHT1 was under political and financial attack, the work of the Communications Regulatory Agency was being hindered because the lawfully appointed director had been blocked from taking office, the public broadcasting system law in the Federation had been legally challenged, and there were cases of physical and verbal attacks against journalists.

He also noted the importance for public broadcasters to strive for balance and objectivity in reporting, and refrain from the use of inflammatory language.

Haraszi reiterated his call, made during a visit last year, for establishing a joint newsroom by all three public broadcasters.

“Efforts made by the political establishment, by the international community, and by journalists themselves should be intensified in order to remove the obstacles to further integration of the public broadcasting system,” said Haraszi.

http://www.osce.org/fom/item_1_31026.html

OSCE media freedom representative urges Kyrgyz President to veto amendments that curb new public-service broadcaster’s independence

VIENNA, 13 May 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, today asked Kyrgyz President Kurmanbek Bakiev to veto recent amendments to the country’s broadcasting law, saying they would eliminate the independence of the public-service broadcaster.

“The independence and autonomy of a public-service broadcaster are its most important features, without which it cannot offer a pluralistic range of voices and opinions,” wrote Haraszi in a 9 May letter to President Bakiev.

The amendments, passed on 24 April by Parliament to the Law on Television and Radio Broadcasting, give the President the authority to appoint the Chief Executive of the National Television and Radio Company (NTRC) of Kyrgyzstan. The President would also nominate the entire membership of the supervisory board for approval by Parliament.

“These amendments to the law run contrary to its stated goal, the foundation of a truly pluralistic and independent public-service broadcaster,” said Haraszi.

He asked the President to veto the changes, and return the law for revision to Parliament.

“The welcome fact that Kyrgyzstan was the first state in Central Asia to pass a law on public-service broadcasting makes it especially important that the necessary improvements are made,” Haraszti said.

http://www.osce.org/fom/item_1_31063.html

Polish reform of public-service broadcasting should avoid politicized solutions, OSCE representative warns

VIENNA, 3 June 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that a rushed reform of the financing of Polish public-service broadcasting could menace its independence, and called for a de-politicized reform process.

“What could be at stake here is the survival of public-service broadcasting in Poland,” said Haraszti. “The Polish Senate must make sure that if revenues are eliminated, they are replaced with another form of adequate funding.”

The Senate plans to discuss the amendments to the Licence Fees Act on 4 and 5 June. If accepted, the amendments would reduce the licence fee revenue by exempting from payment certain social categories, such as people unfit to work, old-age pensioners, people on social benefits, those living below the poverty line, unemployed, or those entitled to pre-retirement benefits. However, the amendment does not propose anything to replace this loss of funding.

“The reform is unquestionably needed after years of being battled by competition from commercial channels, and on the eve of the arrival of

a multitude of digital channels. Public-service broadcasting needs to be reinforced,” said Haraszti.

He added that one viable way out of the crisis was a reform that would de-commercialize certain public channels, making them purely remit-oriented, while re-financing them through commercial broadcasters who will gain the public-service broadcasters’ advertising share in the process.

The fee system can also be replaced by more automated methods of payment that exempt those who can not pay taxes.

“However, any reform must be conducive to financial and editorial independence of public-service broadcasting. For that purpose, the debate must be well planned, it must involve all stakeholders, and be free of any political context. By no means should the reform be aimed at replacing one politically biased editorial line with another. Such a mistake would undermine the guarantees of a truly independent public-service broadcaster in the service of Poland’s democracy,” said Haraszti.

http://www.osce.org/fom/item_1_31474.html

OSCE media freedom official expresses concern about campaign against Radio Free Europe, detention of journalist in Uzbekistan

VIENNA, 17 June 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, expressed today concern about recent cases of intimidation and harassment of non-governmental journalists in Uzbekistan.

Independent journalist Solidzon Abdurakhmonov was recently detained on drug charges, and reporters working for Radio Free Europe/Radio Liberty (RFE/RL) were accused of carrying out anti-state activities in an hour-long programme broadcast repeatedly since 9 June by Uzbek state television.

“These assaults on free reporting are especially regrettable as Uzbek authorities told me during my visit last week that they were ready to start the much-needed reforms of the media governance in the country,” Haraszi said.

The Uzbek authorities had invited Haraszi from 9 to 12 June for the first time. During the visit, Haraszi addressed a seminar on media issues organized by the Uzbek government. He also met officials and talked with journalists from state-owned and non-governmental media.

“In Tashkent last week, I welcomed the release of human rights defender and independent journalist Mutabar Tajibayeva from prison and called for more releases. I also raised the lack of accreditation for BBC, RFL/RL and Deutsche Welle,” Haraszi said.

“The immediate freeing of all imprisoned for expressing critical views and the return of foreign media outlets to Uzbekistan would be important first steps toward compliance with OSCE commitments, as well as a signal of stability.”

In addition, Haraszi asked his counterparts in meetings to liberalize media regulations and to allow for pluralism and political debate in the press. He also called for privatization in the print media, the creation of a public-service broadcaster, easy registration and licensing of media outlets, and decriminalization of libel.

http://www.osce.org/fom/item_1_31734.html

OSCE trains state press officers, journalists in northern Tajikistan to promote public access to information

KHUUJAND, Tajikistan, 19 June 2008 – Fostering effective communication between public bodies and the media is the aim of a two-day OSCE training course that started in Khujand today.

Organized by the Office of the OSCE Representative on Freedom of the Media and the Office of the President of Tajikistan, and supported by the OSCE Centre in Dushanbe and the Field Office in Khujand, the event brings together over 30 participants from the Sughd region in northern Tajikistan.

“Effective communication between state press officers and journalists is critical to securing citizens’ access to information of public interest in a timely and accurate manner. We are glad to be able to promote the skills needed for this in Tajikistan,” said Alexander Boldyrev, a senior adviser to the Representative on Freedom of the Media.

Saidali Siddikov, the Head of the Information and Analytical Department of the President’s Executive Office, said: “A comprehensive media legal framework has been developed in Tajikistan. Recently, public bodies of Tajikistan have increased the amount of information available on the Internet, and press conferences by each public body are required to be held by law four times a year. I hope this event will help us to do even more to increase access to information.”

The event is one of over a dozen training seminars that the Office of the OSCE Representative has held in different OSCE participating States. The first training seminar for state press officers and journalists in Tajikistan was held in the capital Dushanbe last December.

http://www.osce.org/fom/item_1_31775.html

OSCE media freedom representative protests prison sentence handed to publisher of book on Turkish history

VIENNA, 19 June 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, today condemned the five-month prison sentence handed down to Turkish publisher Ragip Zarakolu for “insulting the institutions of the Turkish Republic” despite the fact that Article 301 of Turkey’s Penal Code was recently reformed.

“It is disappointing that despite recent changes in the law, serious obstacles to free speech in Turkey remain. People are still jailed for publishing peaceful ideas,” said Haraszti. “Freedom of debate in Turkey will increase only if the government stops trying to control the debate in the first place. Article 301 must be abolished altogether.”

Following a reform of Article 301 in April, the maximum prison sentence was reduced from three years to two, and the crime of “insulting Turkishness” was changed to “insulting the Turkish nation”.

On 17 June, an Istanbul court found Zarakolu guilty of “insulting the institutions of the Turkish Republic” for publishing a Turkish translation of “The Truth Will Set Us Free” by British author George Jerjian. The book covers the killings of Armenians in 1915.

The sentence is commutable to a monetary fine, but Zarakolu has said he opposes paying the fine on principle and will appeal the verdict. Following the amendments, cases under Article 301 must be referred to the Justice Ministry. However, the judge decided not to refer Zarakolu’s case on the basis that it was launched under Article 159, an earlier version of the current Article 301 of the Penal Code.

“Regardless of the legal dispute over this particular case, publishing a book critical about a country’s history should not be criminalized in a democracy.

The Helsinki principles, to which OSCE participating States including Turkey have committed, provide for the free flow of information and ideas,” said Haraszti.

In May 2008, Zarakolu was the recipient of the International Publishers Association’s Freedom to Publish Prize.

http://www.osce.org/fom/item_1_31795.html

OSCE media freedom representative urges Belarus not to adopt restrictive media law

VIENNA, 27 June 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today called on the upper chamber of Belarus’s parliament not to adopt a draft law that would further restrict media freedom in the country.

“Unfortunately, against expectations in and outside Belarus, this draft establishes further obstacles to the development of free media in the country,” said Haraszti.

On 17 June, the draft Law on the Mass Media was adopted by the Chamber of Representatives, the Parliament’s lower chamber, without prior consultations with civil society. On 24 June, the draft law passed the second reading in the lower chamber with only insignificant changes. It now awaits approval by the Council of the Republic on 28 June and the President’s signature.

On 18 June, the Representative on Freedom of the Media submitted a review of the draft law, detailing the shortcomings of the draft and offering ways of correction. Haraszti referred to several media freedom concerns regarding the draft.

“The draft further extends the government’s right to warn, suspend and close down media outlets,” he said. “A fuzzy requirement of ‘compliance with reality’ for media materials was also introduced. We found in the draft complicated, burdensome systems of media registration and journalist accreditation. The draft law does not offer sufficient measures to prevent monopolization of the media. It does not protect in practice journalists’ confidential sources. It opens the possibility for restrictive future regulations on Internet-based media.”

“I urge the Council of the Republic to return the draft media law to the Chamber of Representatives for further deliberation. I also propose that any upcoming media legislation is carried out with the involvement of non-governmental organizations and the journalistic community of Belarus,” said Haraszti.

“I regret that almost none of the recommendations made by my Office were included in the second draft of the law. I hope that my concerns will be incorporated in an upcoming draft, and that this version of the law will go substantially further in meeting Belarus’s international obligations on freedom of the media.”

Haraszti’s Office has prepared a review of the draft law which can be found at:

http://www.osce.org/documents/rfm/2008/06/31899_en.pdf

http://www.osce.org/fom/item_1_31898.html

OSCE media freedom representative urges Romanian President to veto bill on mandatory percentage of ‘good news’

VIENNA, 8 July 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, asked Romanian President Traian Basescu today to veto a

proposed amendment to the broadcasting law that would oblige television and radio stations to ensure that half their news coverage consists of “positive news”.

“Prescribing, or even defining good versus bad news is a severe political intrusion into editorial freedom, and is fully out of touch with the rights of the audiences as well,” said Haraszti.

“I do not see how ordering editors to carry 50 % good news could ‘help improve the general climate and give people a balanced view of everyday life’, as argued by the sponsors of the amendment,” he added. “It is the diversity of unrestricted news reporting that makes a well-informed public, and this rule would only diminish such pluralism.”

“I ask the President to stop this draft from becoming law, and to ensure that freedom of expression enjoys governmental protection in the country.”

The draft law, initiated by Senator Gheorghe Funar of the Greater Romania Party and National Liberal Party Deputy Ioan Ghise, is currently awaiting presidential signature. The Senate (upper house) unanimously adopted the amendment on 25 June, despite that the Chamber of Deputies (lower house) and the Senate’s human rights commission had both rejected the amendment. The National Audiovisual Council of Romania and the Union of Professional Journalists also oppose the proposed law.

http://www.osce.org/fom/item_1_32124.html

OSCE media freedom representative welcomes Romanian Constitutional Court’s ruling against ‘good news’ bill

VIENNA, 11 July 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, welcomed today the Constitutional Court of

Romania's ruling that a draft amendment obliging broadcasters to air "good news" was unconstitutional.

"It is especially valuable that the Constitutional Court based its ruling on freedom of expression considerations, thereby setting standards that will help guard against future attempts by politicians to interfere with editorial autonomy," said Haraszi.

"I hope the decision will serve as a guideline for the Constitutional Court in future deliberations on matters related to media freedom," he added.

The draft law requiring television and radio stations to ensure 50 percent of their coverage consists of "good news" was unanimously adopted by Romania's Senate (upper house) on 25 June, although both the Chamber of Deputies (lower house) and the Senate's human rights commission had rejected the amendment. The National Audiovisual Council of Romania and the Union of Professional Journalists had also opposed the proposal.

http://www.osce.org/fom/item_1_32167.html

OSCE media freedom watchdog calls Baku trial 'fake', aimed to discredit opposition journalist and protect his real attackers

VIENNA, 17 July 2008 – Miklos Haraszi, the OSCE Representative on Freedom of the Media, condemned today the trial against Sergey Strelkin, who was sentenced on 15 July to one and a half years in prison for his self-confessed stabbing of journalist Agil Khalil of Azadliq newspaper in March 2008.

"This is the climax of a smear campaign orchestrated by law-enforcers against Khalil, his newspaper, and the remnants of critical journalism in Azerbaijan," said Haraszi.

Haraszti has observed the fate of young reporter Agil Khalil since he was beaten up by two top security officers in February 2008 while investigating illegal cutting of olive trees in a Baku public garden. Khalil was then followed, threatened, and on 13 March stabbed as he left the editorial office of Azadliq.

“I view the show trial against Strekalin as an attempt to protect the real stabbers,” Haraszti said.

“To illustrate how far these allegations are, let me remind you, that after the prosecution stopped the case against the two officers who attacked Khalil in February, it waged a large-scale public campaign to discredit the journalist. To support their scenario, the prosecution ordered the major television channels to broadcast videos where Strekalin confessed to the stabbing of the journalist by posing as a jealous ex-lover,” he said.

“The made-up charges against a self-confessing perpetrator are especially regrettable in a country that has overcome the era when prosecutors staged propaganda campaigns to discredit people critical of the government,” said Haraszti.

In numerous addresses to the authorities of Azerbaijan, the Representative has criticised the harassment and slandering of journalists and asked for the release of imprisoned journalists.

http://www.osce.org/fom/item_1_32232.html

OSCE press freedom office trains media professionals to foster ethical standards and boost self-regulation

ODESA, Ukraine, 29 July 2008 – Promoting media self-regulation as a credible mechanism for upholding journalistic ethics and professionalism is the aim of a two-day OSCE training course that started in Odesa today.

The event, organized by the Office of the OSCE Representative on Freedom of the Media, brings together 30 participants from the Odesa region. International and local experts will conduct sessions on journalists' responsibilities and on self-regulation mechanisms.

"Self-regulation is the right way to enhance professionalism and accountability. No governmental regulations will make the press more ethical or professional. We hope that this seminar will help journalists understand the benefits of respecting ethical guidelines. Self-regulation is not self-censorship but the right alternative to state interference and legal action against the media," said Alexander Boldyrev, the Senior Adviser of the OSCE media freedom representative.

The training course is part of a broader campaign by the OSCE Representative to promote mechanisms of media self-regulation in the OSCE participating States. It follows the publication of a practical guidebook on the topic, which will be used in the training course.

The Media Self-Regulation Guidebook is available in English, French and Russian from the Office of the OSCE Representative on Freedom of the Media and online at: www.osce.org/fom/publications.html

http://www.osce.org/fom/item_1_32438.html

OSCE media freedom representative protests against killing during police custody of web publisher in Russia's Ingushetia region

VIENNA, 2 September 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, today called outrageous the killing of Magomed Evloyev, the publisher of the independent news website Ingushetiya.ru, who was shot while he was in police custody.

“Evloyev’s death is the culmination of an orchestrated campaign by the authorities of Ingushetia to silence the only critical voice in the region. Similarly to the 2006 murder of Anna Politkovskaya, this assassination represents a further deterioration of media freedom in Russia,” Haraszti said.

Evloyev was detained Sunday by local Interior Ministry officials at Magas airport as he was returning to Ingushetia from Moscow. The President of Ingushetia, Murat Zyazikov, was reported to have been on the same airplane as Evloyev, and having a heated discussion with him during the flight. According to the police, Evloyev was “by accident” shot in the temple while being driven in a police car. Evloyev died in a hospital in Nazran, Ingushetia.

“Evloyev’s website – the last remaining independent news source in the region – has repeatedly faced pressure from the authorities. Only two months ago, I protested against the legal harassment of Ingushetiya.ru and warned that official persecution of free journalism could result in violence,” Haraszti added.

In June 2008, the Kuntsevo district court in Moscow ordered the closure of Ingushetiya.ru for alleged distribution of extremist materials. In August 2008, the chief editor of Ingushetiya.ru, Roza Malsagova, left Russia seeking political asylum.

“The Russian authorities must promptly and thoroughly investigate Evloyev’s death and all those responsible must be punished,” Haraszti said. “Russia should live up to its OSCE commitments and support, rather than repress, free debate, free reporting and media pluralism.”

http://www.osce.org/fom/item_1_32782.html

OSCE Office presents press vests to Azerbaijani journalists

BAKU, 3 September 2008 – Two hundred vests that will clearly identify journalists during public events and demonstrations were presented to members of the Azerbaijani press corps by the OSCE Office in Baku today.

The vests were sponsored by the Office of the OSCE Representative on Freedom of the Media. They will be further distributed by the Press Council of Azerbaijan.

“It is very important to provide a safe working environment for journalists during public events, especially in the run-up to elections, and I am sure that these press vests will contribute to the safety of journalists,” said Ambassador Jose Luis Herrero, the head of the OSCE Office.

Miklos Haraszti, the OSCE media freedom representative, added: “Police have to help members of the press to cover any type of demonstration, even unsanctioned ones. On the other hand, journalists have to help the police by visibly identifying themselves, and these vests will help do this.”

During the 2005 parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights and the Office of the Representative on Freedom of the Media noted several cases of assaults on or detention of journalists.

Haraszti's office prepared a report on how to handle the media during demonstrations in order to help Azerbaijan implement the principles of media freedom. The report is available here: <http://www.osce.org/item/25176.html>

OSCE media freedom representative visits Turkmenistan

ASHGABAD, 5 September 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, visited Ashgabad from 2 to 4 September to

meet the stakeholders in Turkmenistan's media governance and explore the potential for reform toward compliance with OSCE commitments in the media field.

"I was glad to accept the invitation by the government and visit the country at a time of reforms intended to open up Turkmenistan to the challenges of the modern world. My interlocutors showed interest in bringing Turkmenistan's presently state-owned media closer to international standards," Haraszti said.

During the visit, the OSCE Representative met Rashid Meredov, Deputy Chairman of the Cabinet of Ministers and Foreign Minister; Maysa Yazmuhammedova, Deputy Chairperson of the Cabinet of Ministers; Akdja Nurberdiyeva, the Chairperson of the Mejlis (parliament); Gulmyrat Myradov, Minister of Culture, TV, and Radiobroadcasting; and Djeren Taimova, the Chairperson of the State News Agency.

Haraszti also met accredited and non-accredited journalists contributing to international media, as well as media NGOs.

During his meetings with the officials involved in administration of the media, Haraszti offered the assistance of his office in legal reviews and training projects and discussed other ways they could co-operate.

"I hope that as a result of my meetings in Ashgabad, journalists from Turkmenistan will join us this year for our annual Central Asian Media Conference that will take place on 16 and 17 October in Almaty, Kazakhstan," said Haraszti.

"During the talks, the need for a transparent and uncomplicated system of accreditation was also discussed so that journalists could safely provide reliable information on the country for foreign media."

The visit of the OSCE Representative was prepared jointly by the Turkmenistan Foreign Ministry and the OSCE Centre in Ashgabat, headed by Ambassador Ibrahim Djikic, who participated in the official meetings.

http://www.osce.org/fom/item_1_32869.html

OSCE media freedom representative presents anniversary publication

VIENNA, 15 September 2008 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, today presented his Office's latest publication, *Ten Years for Media Freedom – An OSCE Anniversary*.

The publication features a wide array of contributors who outline the challenges that journalists and free thinkers face every day across the whole OSCE region: threats, physical attacks and even murder, censorship, criminal proceedings in response to “critical” comments or the denial of their right to discuss questions of public interest.

“Instead of dwelling on the past, the authors have addressed present and future challenges to media freedom and free expression. This forward-looking focus is an appropriate one to commemorate our first decade of work,” Miklos Haraszti commented.

The publication also displays a number of drawings by two world-renowned editorial cartoonists, Plantu and Chappatte, who work respectively for *Le Monde* and the *International Herald Tribune*.

The publication gathers the main findings of a roundtable, “Present and future challenges to media freedom and free expression in the OSCE region”, which was held in Vienna on 29 February 2008.

Ten Years for Media Freedom – An OSCE Anniversary is available in English and will also be translated into Russian by the end of 2008. Both the roundtable and the publication were made possible by contributions from the governments of Finland, Germany and the Netherlands.

The 176-page publication can be downloaded at: www.osce.org/fom/item_11_32993.html or ordered from the Office of the Representative on Freedom of the Media.

http://www.osce.org/fom/item_1_32997.html

Improving access to information purpose of OSCE media seminar in Moldova

CHISINAU, 16 September 2008 – Fostering effective interaction between public bodies and journalists to increase access to official information is the aim of a two-day OSCE training seminar that started in the Moldovan capital today.

The seminar is organized jointly by the Office of the OSCE Representative on Freedom of the Media and the OSCE Mission to Moldova.

“Promoting effective interaction between state bodies and journalists helps improve the transparency of the government and increases public trust in both the authorities and the media,” said Alexander Boldyrev, Senior Adviser at the Representative’s office.

The event brings together around 20 spokesmen and spokeswoman from public bodies and journalists. International and local experts conduct sessions on the legal and ethical principles of interaction between state officials and journalists, as well as global standards related to access to information. The seminar also involves discussions on how to overcome the

main challenges encountered in the communication between two target groups.

Claus Neukirch, Deputy Head of the OSCE Mission to Moldova, added: “We hope that this event, shaped to encourage professional dialogue between Moldova’s authorities and journalists, will help to achieve better co-operation between them. This will enable the media to swiftly report on the issues of public interest, which is key to promote public participation in the decision-making process.”

The seminar, sponsored by the Czech Government, is part of a series of training courses in the OSCE region conducted by the OSCE Representative on Freedom of the Media to improve access to information.

http://www.osce.org/fom/item_1_33014.html

OSCE media freedom representative says journalists need free and safe access to Georgia’s South Ossetia and Abkhazia regions

VIENNA, 22 September 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszi, called today for journalists’ safe access to the crisis regions of South Ossetia and Abkhazia, now controlled by Russian forces, and urged unbiased reporting on all sides.

“The war in Georgia has claimed the lives of professionals dedicated to inform the public, in addition to those of innocent civilian victims. I would like to express my condolences to the families of the journalists who were killed and wounded during the conflict,” said Haraszi.

Grigol Chikhladze, the head of Alania TV, Alexander Klimchuk, the head of the Causasus Images Agency and correspondent for Itar-Tass, were killed on 10 August in Tskhinvali, and Stan Storimans, a cameraman with the Dutch

RTL Nieuws died in Gori on 12 August. The journalists injured included at least five Russians, two Georgians, two Turkish, a Dutch, an Israeli, and an American.

“Now that the armed conflict is over, it is time to grant full access for journalists to the crisis regions of South Ossetia and Abkhazia. All undue limitations on entry for the media should be lifted,” added Haraszti.

Haraszti referred to reports that access to South Ossetia and Abkhazia remains selectively restricted for the media. Georgian and international journalists are still not able to enter the crisis regions. The only reported exception was made for the Georgian journalists who accompanied Russian Foreign Minister Sergey Lavrov on his visit to Sukhumi and Tskhinvali on 14 and 15 September.

Commenting on mutual blockage of Georgian and Russian Internet sites and television channels during the conflict, Haraszti said: “The blockage has naturally stopped now that the conflict is over. More problematic is that television on all sides seems to still be imbued with guided or biased information.”

Haraszti emphasized the need for unbiased, independent reporting on the situation, saying: “The post-Yugoslav wars have demonstrated what devastation propagandistic coverage and hateful comments can cause between nations. Investigating claims of genocide, reporting on the plight of civilian victims, documenting demolished villages and visiting refugees are best done by independent reporters, and what they need is not guided tours but free and safe access.”

http://www.osce.org/fom/item_1_33089.html

Armenia should lift moratorium on licensing broadcasters to ensure media pluralism, says OSCE media freedom representative

VIENNA, 26 September 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today asked the Government of Armenia to review the recently adopted amendments to the TV and radio law that introduce a moratorium on issuing new broadcasting licenses until the planned digital switchover, scheduled to start in 2010.

In a letter to Armenian President Serzh Sargsyan, Haraszti wrote: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia’s broadcasting sector will be further diminished.”

“A moratorium on new licences for analogue transmission should not be the first step in the transition to digital broadcasting. Digitalization should not be allowed to reduce diversity and plurality or preserve a lack thereof. If the broadcasting landscape in a country is not sufficiently pluralistic and diverse, it would be appropriate to delay digitalization and undertake other reforms first,” added Haraszti.

He said that the moratorium meant that Armenia will not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of television station A1+. The Parliamentary Assembly of the Council of Europe also urged Armenia to “ensure an open, fair and transparent licensing procedure” and allow A1+ to apply for a new licence.

Since the broadcasting licence of A1+ was revoked in March 2002, the OSCE Representative on Freedom of the Media has repeatedly intervened with the Government of Armenia in support of the television station.

Haraszti offered his Office’s legal analysis of the amendments and recommendations, adding: “I hope that, for the sake of pluralism, the

Government of Armenia will review the amendments with the active participation of all relevant civil society and media stakeholders.”

The “Law on Making a Supplement to the Republic of Armenia Law on Television and Radio” will enter into force on 27 September.

http://www.osce.org/fom/item_1_33196.html

OSCE media freedom representative urges Bulgarian authorities to swiftly prosecute violent attacks against journalists

VIENNA, 26 September 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today asked the Bulgarian authorities to accelerate the bringing to justice of perpetrators of recent violent attacks against journalists.

“I am concerned about the latest brutal attack against investigative journalist Ognian Stefanov, and alarmed by the frequency that similar, violent acts have been carried out against journalists in Bulgaria in the last years,” wrote Haraszti in a letter to Bulgarian Foreign Minister Ivailo Kalfin.

Stefanov, the editor of investigative website Frognews, remains in hospital in critical condition after four men beat him with hammers on 22 September. Frognews focuses on the activities of public officials, among them state security services. Before the attack, Stefanov had reportedly received anonymous phone calls telling him to stop writing or bear the consequences.

In April 2008, Georgi Stoev, the author of several books on organized crime in Bulgaria, was murdered, and in April 2006, there was an explosion at the apartment of well-known Nova Television investigative journalist Vasil Ivanov.

“In all three cases, the perpetrators have not been identified and brought to justice,” said Haraszti. He asked the Bulgarian authorities to accelerate the investigations of the attacks, and to keep the public informed about these efforts.

“Such attacks can intimidate journalists in Bulgaria and keep them from doing their job – to inform about issues of public interest. Law enforcement should not handle attempts at violently silencing critical voices as ordinary crimes, but as acts aimed to undermine the basic democratic value of free speech,” he added.

http://www.osce.org/fom/item_1_33198.html

OSCE media freedom representative welcomes acquittal of Hungarian journalist in secrecy case, urges legislative reforms

BUDAPEST, 1 October 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, welcomed today’s acquittal of Hungarian journalist Antonia Radi, and called on the country’s authorities to carry out long-awaited legislative reforms on disclosing official secrets.

“I welcome the acquittal, which puts an end to the five-year-long trial of Antonia Radi, a distinguished Hungarian investigative reporter,” said Haraszti.

Radi was indicted on breach of secrecy charges, based on her reporting on a criminal case in the HVG weekly in 2003. Her final acquittal was because the information published by her was not classified.

“While it is good news that one of the country’s best journalists and her editors are off the hook, it is worrying that a journalist in Hungary can only be acquitted if the published information turns out to be unclassified,” said Haraszti.

“In the reform of the law on official secrets and of the Penal Code, the legislation should make clear that breach of secrecy is a crime that can be committed by officials who were obliged to guard those secrets, and only in case the information was of no legitimate public interest.”

The debate on the reform of the law on classified data and the related punitive chapters of the Penal Code began in the Hungarian Parliament on Monday.

Haraszti called the punishing of civilians for airing governmental information “a remnant of Communist-era regulations”, and said that for the sake of the fight against corruption, and the free flow of information, it was time to assure journalists that they can report on matters of public importance without fear of being prosecuted.

“Mandatory scrutiny in court of the public-interest value of each publication of classified data should figure in the law,” Haraszti added.

The OSCE Representative said he hoped Hungary’s international commitments on the public’s right to receive information will make the authorities remove liability from civilians, among them journalists, for disclosing official information, except when they commit a crime to obtain it.

http://www.osce.org/fom/item_1_33435.html

OSCE media freedom representative calls for broad public consultations on Albania’s draft media law

VIENNA, 8 October 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, welcomed the decision of the Albanian authorities to postpone the adoption of a new Law on Radio and Television, and asked

the Government to ensure broad and transparent consultations with all key stakeholders.

“International experience shows that new media freedom regimes serve their goal best if they are first thoroughly discussed, and ideally, fully accepted by all relevant political and civil society partners,” he wrote in a letter to the Albanian decision-making authorities.

The new draft law was produced by the Parliamentary Committee on Media and Education in July. It aims to merge the existing Laws on Public and Private Radio and Television and on Digital Broadcasting.

“I welcome the fact that the Speaker of the Assembly and the Education and Public Information Means Committee have postponed the law’s adoption and called for further consultations,” said Haraszti.

“The draft fails to guarantee the independence of the National Council on Radio and Television and the Albanian Radio and Television. It also does not solve the problems with the current law, which have been identified in previous recommendations from my Office as well as by other international organizations, and which remain unchanged in the new draft. As a consequence, the current draft law does not comply with relevant OSCE recommendations.”

Haraszti also asked the responsible stakeholders to resume drafting a comprehensive strategy for digital television in a consultative and co-operative manner, involving the media as well as media NGOs in the entire process.

“Albania now has a chance to address deficiencies in media regulation and not carry them over into the new digital media landscape,” Haraszti added.

He also offered his office's expertise to assist Albanian authorities in finalizing the new law.

http://www.osce.org/fom/item_1_34135.html

OSCE media freedom representative urges Uzbek government to dismiss journalist's 10-year prison sentence

VIENNA, 15 October 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, today asked the Uzbek government to review on appeal the 10-year prison sentence handed to well-known journalist Salidzhon Abdurakhmanov, who was convicted on narcotics possession charges.

“The charges against Abdurakhmanov were made-up, and his trial did not stand the scrutiny of a fair procedure,” Haraszti wrote in a letter to Uzbek Foreign Minister Vladimir Norov.

Abdurakhmanov, a contributing journalist for Radio Free Europe/Radio Liberty, Voice of America and Uznews.net, was arrested on 7 June, reportedly on his way to Tashkent to participate in an international seminar on media freedom that Haraszti was attending. The police had brought a film crew to document the finding of a package of narcotics in the trunk of Abdurakhmanov's car.

Abdurakhmanov, who maintained he was innocent and that the drugs had been planted in his car, was convicted on 10 October in a Nukus district court on charges of possession of narcotics with the intent to distribute.

In his letter to Norov, Haraszti detailed aspects of the sentencing that he said indicated the need for review. He noted that no reliable evidence had implicated the 58-year-old Abdurakhmanov, a father of six, in use or sale

of narcotics. Abdurakhmanov had never been accused of a similar offence. After a blood test found no traces of drugs in his system, the charge of narcotics use was changed to possession with the intent to distribute. Moreover, his fingerprints were not found on the package containing the drugs.

Law enforcement officials did not establish where he could have obtained the narcotics, but instead focused their questions on Abdurakhmanov's journalistic activities, added Haraszti.

"Punishing a journalist for his work with the help of fictitious criminal charges is a practice that should belong to the times before the OSCE's foundation. I hope that the authorities of Uzbekistan will dismiss Abdurakhmanov's sentence. Doing so would forcefully prove Uzbekistan's adherence to its OSCE commitments," Haraszti wrote.

http://www.osce.org/fom/item_1_34363.html

Central Asia journalists discuss public-service broadcasting, digitalization at OSCE media conference

ALMATY, 17 October 2008 – The future of public-service broadcasting and how the digital switchover can support media freedom and pluralism was the focus of the 10th OSCE Central Asia Media Conference, which concluded in Almaty today.

Organized by the office of the Representative on Freedom of the Media, with the help of the OSCE Centre in Astana, the conference brought together media professionals and government officials dealing with media governance from Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, as well as prominent international and regional experts, to discuss the latest media developments in their countries.

“The existence of public-service broadcasting in Central Asia will further foster the process of democratization and ensure the effective implementation of civil, political and other rights and freedoms,” said Ambassador Alexandre Keltchewsky, Head of the OSCE Centre in Astana. “It will also strengthen the free flow of pluralistic and transparent information, the necessity of which is highlighted in numerous international documents and commitments of OSCE participating States.”

“Public-service broadcasting is one of the basic tools of democracies,” said Miklos Haraszti, the OSCE Representative on Freedom of the Media. “It is indispensable in ensuring the freedom and transparency of elections, in fighting against hate speech, and in protecting the minority cultures of a country, by offering objective news reporting and by broadcasting high quality programmes.”

“I encourage the governments of the region to transform their state-owned broadcasting institutions into independent public services,” he added.

The conference addressed ways to create a legally protected broadcasting infrastructure, with guaranteed editorial autonomy, and with a financing system that allows public-service broadcasters to be independent from both political and commercial interests.

Participants also discussed the changes affecting broadcasting in the digital age. The event concluded with calls to governments to regard the increase in the number of broadcasting channels on all new platforms as a new opportunity to strengthen media pluralism.

The conference resulted in a declaration on the future of public-service broadcasting and the digital switchover in Central Asia. The document will be available from 20 October in English and Russian at www.osce.org/fom.

http://www.osce.org/fom/item_1_34440.html

OSCE media freedom watchdog condemns killing of two journalists in Croatia

VIENNA, 24 October 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, condemned today the recent killing of two journalists in Zagreb and called on Croatian authorities to work to ensure that journalists can carry out their work safely.

Ivo Pukanic, the owner of the leading investigative weekly newspaper Nacional and Niko Franic, the paper's marketing executive, were killed by a bomb blast on Thursday. Nacional has covered corruption and human rights abuses.

"It is shocking that Croatia has lost two prominent media workers. This shows once again that journalism is still a very dangerous profession in some parts of the OSCE region," said Haraszti. "This crime represents a wave of terror against media that are striving to accomplish an indispensable job in exposing wrongdoing."

Pukanic had been considered one of Croatia's most fearless investigative journalists. In April, he survived a gun attack in central Zagreb.

"I welcome the authorities' pledge to punish the perpetrators of this outrageous crime. The Government has to stop violence against journalists to protect democracy," Haraszti said.

http://www.osce.org/fom/item_1_34535.html

OSCE workshop promotes co-operation between state press services and journalists in Armenia

YEREVAN, 27 October 2008 – Helping press officers working for state agencies and journalists to improve their interaction is the purpose of a two-day OSCE training workshop launched today in Yerevan.

Around 40 participants from press and public relations offices and media will discuss legal and ethical aspects of access to information and learn about European practices in this field. International and local experts will deliver the training, organized by the OSCE Representative on Freedom of the Media and the OSCE Office in Yerevan.

“We want to encourage professional dialogue between Armenian state authorities and journalists to enable the media to convey information on matters of public interest. This will enable citizens to participate more in decision-making processes,” said Alexander Boldyrev, the Senior Adviser to the OSCE Representative on Freedom of the Media.

Ambassador Sergey Kapinos, Head of the OSCE Office in Yerevan, added: “Free access to government-held information is crucial to promote good governance and transparency.”

The workshop follows the project implemented by the OSCE Office jointly with the Armenian Civil Service Council and Freedom of Information Centre NGO this year. Sponsored by the Italian Government, it resulted in the adoption of a freedom of information training programme as a part of the permanent training curriculum for governmental press officers. About 80 Armenian governmental press officers have already been trained under the project.

http://www.osce.org/fom/item_1_34565.html

OSCE promotes media self-regulation in Romania

BUCHAREST, 31 October 2008 – How to best develop an effective mechanism of self-regulation in Romania is the focus of a roundtable discussion that started in Bucharest today.

Funded by the Office of the OSCE Representative on Freedom of the Media and organized by the Centre for Independent Journalism in Romania, the two-day event brings together 50 media professionals from around the country.

The roundtable discussion aims to raise awareness about the importance of media self-regulation as a credible and viable mechanism to uphold journalistic ethics and guarantee editorial independence.

“I welcome the initiative of Romanian media professionals to start discussing ways to create a self-regulatory body in their country. Establishing a media accountability system will prove journalists’ commitment to quality and responsibility, and will boost the recognition of independent reporting in Romania,” said Miklos Haraszti, the OSCE Representative on Freedom of Media, in a message to event participants.

The results of a study done by the Centre for Independent Journalism in Romania that gathered information on Romanian journalists’ adherence to ethical norms and their understanding of the concept of self-regulation were presented at the roundtable event.

Experts also presented different European models of self-regulation, with the aim of supporting the drafting of a common policy paper towards self-regulation in Romania, an expected outcome of the discussion.

The event is part of a broader campaign by the OSCE Representative to promote mechanisms of media self-regulation in the OSCE participating

States. It follows the publication of a practical guidebook on the topic, The Media Self-Regulation Guidebook, which was used in the roundtable sessions.

http://www.osce.org/fom/item_1_34683.html

OSCE helps Serbian municipal officials and journalists improve communication to ease access to information

BELGRADE, 6 November 2008 – Fostering effective ties between municipal officials and journalists to increase the public's access to information is the purpose of a two-day OSCE training seminar that started in Belgrade today.

“Stronger and more principled links between municipal bodies and journalists will help improve media coverage of community affairs and increase public trust in both the authorities and the media,” said Anthony Pahigian, Deputy Head of the OSCE Mission to Serbia.

The seminar, jointly organized by the OSCE Mission and the Office of the OSCE Representative on Freedom of the Media, brings together 29 participants from across the country. International and local experts will conduct sessions on the technical, legal and ethical principles of interaction between municipal officials and journalists, as well as global standards related to access to information.

Alexander Boldyrev, the Senior Adviser of the OSCE media freedom representative, added: “We hope that this event will encourage professional dialogue between state authorities and journalists to achieve good co-operation. Journalists can then better convey information on matters of public interest, enabling citizens to participate more in decision-making processes.”

The Belgrade event is the first of its kind in the South-Eastern Europe. The Office of the OSCE Representative on Freedom of the Media has held more than a dozen similar seminars in other parts of the OSCE region since 2005.

http://www.osce.org/fom/item_1_34769.html

OSCE representative commends media situation in Montenegro, outlines areas for improvement

VIENNA, 13 November 2008 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that the media situation in Montenegro was free and pluralistic.

“There is a high degree of media pluralism in the country, in terms of both the quantity of media outlets and the different views that are represented,” said Haraszti in a report which also reflected on the challenges facing media freedom in the country and offered concrete recommendations to the authorities.

“Montenegro has an exemplary ban on state ownership of the media. This could serve as ‘best practice’ for OSCE participating states with still-preserved or even bolstered state media ownership. The privatization of the press is almost complete in Montenegro.”

However, Haraszti said that the recently adopted Law on Electronic Communications has partially downgraded the competences and autonomy of the Broadcasting Agency. “We are also watching the ongoing re-regulation of the Public-Service Broadcaster of Montenegro with hopes for improved amendments,” he said.

The OSCE Representative said Montenegro should continue the positive reform process started in 2003, under which imprisonment as a punishment

for speech offenses was abolished, and decriminalize libel and insult. He noted that, for the sake of freedom of discussion, awarding damages in civil defamation suits should be limited in cases when the journalistic mistake occurred while covering issues of public interest.

The Representative added that Montenegrin journalists should bolster media self-regulation to decrease the number of complaints and strengthen journalism's public status.

Haraszti expressed hope that investigations into violence against journalists, including the 2003 murder of Dusko Jovanovic, the editor of the daily Dan, would be concluded in a timely and forthcoming manner.

Miklos Haraszti visited Montenegro from 16 to 18 July. He had meetings with the country's leadership, including President Filip Vujanovic and Prime Minister Milo Djukanovic, as well as with chief media regulators, broadcasting officials, and newspaper editors.

The full report can be found at: https://www.osce.org/documents/rfm/2008/11/34890_en.pdf

http://www.osce.org/fom/item_1_34892.html

South Caucasus journalists discuss public-service broadcasting, digitalization at OSCE media conference

TBILISI, 14 November 2008 – The challenges and future of public-service broadcasting and how the digital switchover can support media freedom and media pluralism were among the topics discussed at the Fifth OSCE South Caucasus Media Conference that ended in Tbilisi today.

The two-day event, organized by the Office of the OSCE Representative on Freedom of the Media with the help of the OSCE Mission to Georgia, brought together media professionals, NGOs, and government officials from Armenia, Azerbaijan and Georgia, as well as international experts. Parliamentarians from all three countries also took part.

“Free media remains a basic human right in need of constant protection,” said Ambassador Terhi Hakala, the Head of the OSCE Mission. “The recent crisis in Georgia has shown that it is essential in keeping the public informed on issues of crucial importance.”

Miklos Haraszti, the OSCE Representative on Freedom of the Media, added: “Even voices critical of their country’s public-service broadcasters have acknowledged that these channels are indispensable guarantees in further improving their democracies, and therefore have to be robustly protected from governmental or parliamentary intrusion.

Haraszti urged the Governments of Armenia, Azerbaijan and Georgia to grant their young public-service broadcasters sustainable financial independence. “Where such laws have already been passed, what remains to be done is to ensure governmental or opposition restraint from tampering with programming decisions and editorial freedom,” he added.

Participants at the conference learned about the recent decision of Georgia’s public-service broadcaster to dedicate its second channel to equal presentation of all political and societal forces, and to debates among them, modeled after the C-Span channels in the United States. They also noted that depriving BBC, Radio Liberty, and Voice of America of frequencies in Azerbaijan would signal danger for pluralism. The representative of Azerbaijan’s National Radio and TV Council expressed his hope that a solution would be found.

Participants also discussed the changes affecting broadcasting in the digital age, and the challenges of the transition period. One of these challenges is the recent moratorium on issuing licenses in Armenia, which was justified by the transition to digital transmission. The moratorium prevented TV station A1+ from getting its license, a loss deemed by the European Court of Human Rights as a human rights violation.

Participants demanded greater transparency of media ownership and expressed the need for quality and self-regulation in journalism.

At the request of participants, the Office of the OSCE Representative will commission a survey to collect the most important recommendations and good practices regarding the transition to the digital switchover. The report, scheduled to be finalized in the first quarter of 2009, will be published in Russian and English at www.osce.org/fom.

http://www.osce.org/fom/item_1_34914.html

Recent assaults on journalists in Armenia threaten free press, says OSCE representative

VIENNA, 19 November 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, expressed his concern today over a violent attack this week against an independent journalist in Armenia.

Edik Bagdasaryan, the President of Investigative Journalists' Association and Chief Editor of Hetq Online, known for his investigative reporting on Armenian politics and business, was attacked on 17 November in Yerevan by three assailants. He sustained serious head injuries.

“Violence against journalists is not ‘crime as usual’, because it undermines a basic institution of democracy – the free press,” Haraszti wrote to Foreign Minister Edward Nalbandian.

Haraszti also referred in the letter to earlier cases of violence against journalists in Armenia, including Lusine Barseghyan from the opposition newspaper Haykakan Zhamanak, and Hrach Melkumyan, the acting Chief of the Yerevan bureau of Radio Free Europe/Radio Liberty. Their cases are still unsolved.

“The aim of such crimes is to intimidate media workers in the country and obstruct investigative reporting. The lack of progress in resolving these cases could provoke further cases of violence against journalists,” said Haraszti.

The OSCE media freedom representative urged the Armenian authorities to thoroughly and swiftly investigate all attacks against journalists, and to bring those responsible to justice.

http://www.osce.org/fom/item_1_34990.html

OSCE promotes discussion in Belarus on Internet media regulation

MINSK, 24 November 2008 – The challenges of Internet media regulation are the focus of a roundtable discussion in Minsk today.

The event, organized by the Ministry of Information, the OSCE Representative on Freedom of the Media, the OSCE Office in Minsk with the support of the Foreign Ministry, brought together state officials, journalists and international experts in the field.

Later this month, the Belarusian Parliament will review possible Internet regulation measures in the context of a new media law, which enters into force in February 2009.

“Internet regulation is an arduous task for any State and a particularly topical matter in Belarus, where the Internet is widely used. We need to develop concrete proposals on how to avoid restricting access to information on the Internet and at the same time adequately take into consideration concerns regarding security as well as ethics,” said Ambassador Hans-Jochen Schmidt, the Head of the OSCE Office.

Roland Bless, Director of the Office of the Representative on Freedom of the Media, added: “When it comes to regulation of media-like content on the Internet, we encourage the governments of OSCE participating States to exercise self-restraint. Any over-regulation carries the danger of violating important OSCE commitments on pluralism and the free flow of information.”

http://www.osce.org/fom/item_1_35040.html

OSCE media freedom representative asks Moldovan Parliament to improve draft state secrecy law

VIENNA, 26 November 2008 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, said today that the draft law on State Secrets of Moldova needs to be improved before it is adopted by Parliament.

“Despite some modest improvements, including better defining the categories of secrets and the inclusion of a public-interest test, the bill fails to boost democratic accountability. It would not reduce unnecessary secrecy and other obstacles to access by the media to governmental information,” said Haraszti.

He noted that in many areas the draft expands secrecy, including in the definition of state secrets and the types of information that can be classified, and includes a new undefined category of “restricted” secrets which does not require the potential harm to national security to be proven. The draft also reduces parliamentary oversight over secrecy.

“I hope that the Parliament of Moldova will reconsider the draft and implement the recommendations of our legal review,” said Haraszti.

The OSCE Representative has consistently advocated a more liberal Law on State Secrets in Moldova since 2005.

Haraszti’s Office prepared a legal analysis of the draft law to help Moldova improve its media legislation and allow better access to information.

The legal review can be viewed at: http://www.osce.org/documents/rfm/2008/11/35108_en.pdf

http://www.osce.org/fom/item_1_35109.html

OSCE media freedom representative receives Chydenius medal

HELSINKI, 2 December 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, received the Chydenius medal in Helsinki today for his work to promote access to governmental information.

The medal for ‘merit in promotion of openness internationally’ was handed to him by bishop Gustav Bjorkstrand, the Chairman of the Board of the Anders Chydenius Foundation.

“I am honoured to receive the Chydenius medal here in Finland, the home of the first freedom of information law of 1766 and of the 1975 Helsinki Final

Act. Both documents established important principles of openness and pluralism vital for all OSCE democracies,” said Haraszti.

The Chydenius medal for Openness Merits was established by the Anders Chydenius Foundation. It marks outstanding activities on the international level that promote the Nordic principle of public access to governmental information.

Anders Chydenius, a Finnish enlightenment thinker and politician (1729-1803) played a crucial role in creating the world’s first Freedom of Information Act in the Diet of Sweden-Finland in 1766.

Finland and Sweden celebrate 2 December as “Freedom of Information Day”.

http://www.osce.org/fom/item_1_35242.html

International broadcasts on Kyrgyz airwaves should be fully restored, says OSCE media freedom representative

VIENNA, 12 December 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, expressed concern today over the temporary suspension of broadcasts in Kyrgyzstan of Radio Free Europe/Radio Liberty (RFE/RL) and the Kyrgyz-language service of the BBC.

“Both RFE/RL and BBC are reputable public-service sources of information for Kyrgyz society. Their suspension would be a loss to pluralism, which is a major OSCE commitment in the media field,” said Haraszti.

In his letter to Foreign Minister Ednan Karabayev, Haraszti described the decision by the National TV and Radio Broadcasting Corporation to temporarily take the RFE Television and Radio programmes and BBC

Kyrgyz-language services off the air as a “drawback to the democratic changes that the Government of the Kyrgyz Republic seeks to implement”.

“I welcome the fact that BBC’s Kyrgyz-language service is provisionally back on air since 10 December 2008, despite the fact that their contract is not extended yet,” said Haraszti.

“I urge the authorities to renew the contracts of both RFE/RL and BBC, so that they can resume full operation in the nearest future,” said Haraszti.

http://www.osce.org/fom/item_1_35669.html

Global free speech rapporteurs concerned about ‘defamation of religion’ and ‘anti-extremism’ laws

GENEVA/PRETORIA/VIENNA/WASHINGTON DC, 15 December 2008 – The freedom of expression rapporteurs of the United Nations, the OSCE, the Organization of American States (OAS), and the African Commission on Human and Peoples’ Rights (ACHPR) released a joint declaration today on defamation of religions, and anti-terrorism and anti-extremism legislation.

After meeting on 9 December in Athens, the four media freedom ‘watchdogs’ adopted their annual international mechanism for promoting freedom of expression. Toby Mendel, Senior Director for Law at ARTICLE 19, Global Campaign for Free Expression, co-ordinated the drafting process.

“The four global mandates’ annual joint declarations for promoting freedom of expression are an excellent example of international co-operation in the field of human rights advocacy,” said Miklos Haraszti, the OSCE Representative on Freedom of the Media. “Just like the OSCE media freedom commitments, these documents are directed at updating international mechanisms on freedom of opinion, expression and the media.”

This year's document coincides with the 60th anniversary of the Universal Declaration of Human Rights and covers the dangers to freedom of speech inherent in national legislation regulating the fight against 'defamation of religions' and 'blasphemy' laws, as well as against 'extremism' or other terrorism-related speech offences.

The signatories agreed that the concept of 'defamation of religions' does not accord with international standards accepted by pluralistic and free societies. They said that international organizations should abstain from adopting statements supporting criminalization of 'defamation of religions'.

They also stressed that restrictions on freedom of expression should never be used to protect institutions, abstract notions, concepts or beliefs, including religious ones, and that such restrictions should be limited in scope to advocacy of hatred.

The four freedom of expression rapporteurs also advised that the definition of terrorism should be restricted to violent crimes which inflict terror on the public, and that vague notions such as 'providing communications support' or 'promoting' extremism or terrorism should not be criminalized unless they constitute incitement. They said that the role of the media should be respected in anti-extremism and anti-terrorism legislation.

While the vast majority of OSCE participating States have anti-terrorism laws, some of them extend to regulation of public speech. Six participating States – Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia and Tajikistan – have adopted anti-extremism laws since 2002.

"This year's joint declaration may be of important assistance to the authorities of Belarus and Russia which have used their anti-extremism legislation to punish independent journalists and dissenters," said Haraszti.

Along with Miklos Haraszti, the signatories of the joint declaration are Frank LaRue, UN Special Rapporteur on Freedom of Opinion and Expression, Catalina Botero, OAS Special Rapporteur on Freedom of Expression, and Faith Pansy Tlakula, ACHPR Special Rapporteur on Freedom of Expression and Access to Information.

The full text of the declaration is available at: www.osce.org/documents/rfm/2008/12/35705_en.pdf

http://www.osce.org/fom/item_1_35706.html

OSCE media freedom representative urges Moldova to renew license of independent TV station to ensure pluralism before elections

VIENNA, 16 December 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, urged the Moldovan authorities today to renew the broadcasting license of Pro TV Chisinau to ensure pluralism, especially in the run-up to the March 2009 parliamentary elections.

“The closure of Pro TV Chisinau will be a significant drawback in the already limited broadcast pluralism in the country, and will contravene Moldova’s OSCE commitments in the media freedom field,” wrote Haraszti in a letter to Foreign Minister Andrei Stratan.

Pro TV Chisinau has been informed by the broadcasting regulator, the Audiovisual Co-ordination Council (CCA), that its license would not be prolonged. The CCA said that the station had been warned four times about violating the broadcasting law but did not report to the Council on how those violations were rectified.

“While I recognise the important regulatory and monitoring activities of the CCA, it is unacceptable that minor violations are used to close a popular media outlet. “ said Haraszti.

“The main role of a regulatory body should be to ensure pluralism and not to limit it.”

The CCA warned that Pro TV Chisinau will have to compete for a new license after the current one expires on 23 December.

http://www.osce.org/fom/item_1_35720.html

Azerbaijan’s ban on foreign FM radio broadcasting is serious step backwards, says OSCE media freedom representative

VIENNA, 30 December 2008 – The OSCE Representative on Freedom of the Media, Miklos Haraszti, criticized Azerbaijan’s decision today to bar foreign broadcasters from FM radio frequencies as a serious step backwards for democracy, and urged Baku to reconsider.

Azerbaijan’s National Council on Television and Radio announced today that as of 1 January it would not renew FM licences for broadcasters including the BBC, Radio Liberty and Voice of America. The Council has said the broadcasters should instead use the Internet, satellite radio or shortwave transmissions.

“Opening borders to a free flow of information is one of the oldest Helsinki commitments regarding human rights, pledged by the participating States more than 30 years ago,” said Haraszti. “Closing down FM news radio broadcasts that were among the few remaining sources of varied, public-service quality information is a serious step backwards for an OSCE democracy.”

He said the alternatives to FM radio frequencies suggested by the Council's Chairman, Nushiravan Maharramli, were unacceptable.

"Internet usage in Azerbaijan is low, the expansion of satellite radio is unrealistic and shortwave radio is unable to provide modern-day reception quality," Haraszti said. "I hope the Azerbaijani authorities will soon review their decision in favour of audience access to information."

Haraszti noted he had written on 5 November to Foreign Minister Elmar Mammadyarov to express concern and to urge the authorities to renew the foreign broadcasters' licences.

www.osce.org/fom

THE REPRESENTATIVE ON FREEDOM OF THE MEDIA



Organization for Security and
Co-operation in Europe

ISBN 978-92-9234-627-0