



# **Freedom and Responsibility**

REPRESENTATIVE ON  
FREEDOM OF THE MEDIA

YEARBOOK 2004

**osce**

The cover is a drawing entitled *Des Schreibers Hand (The Writer's Hand)* by the German author and Nobel prize laureate (1999) Günter Grass. He has kindly let our Office use this as a label for publications of the OSCE Representative on Freedom of the Media.

The drawing was created in the context of Grass's novel *Das Treffen in Telgte*, dealing with literary authors at the time of the Thirty Years War.

© 2005

Organization for Security and Co-operation in Europe (OSCE)

Office of the Representative on Freedom of the Media

Kärntner Ring 5-7, Top 14, 2. DG,

A-1010 Vienna

Telephone: +43-1 512 21 450

Telefax: +43-1 512 21 459

E-mail: [pm-fom@osce.org](mailto:pm-fom@osce.org)

[www.osce.org/fom](http://www.osce.org/fom)

The views expressed in this publication represent those of the authors and contributors and do not necessarily reflect the official position of the OSCE Representative on Freedom of the Media.

Design: WerkstattKrystianBieniek, Vienna

Printed in Austria



REPRESENTATIVE ON FREEDOM OF THE MEDIA

**Freedom and Responsibility**  
Yearbook 2004

Vienna 2005

# Contents

Solomon Passy <i>Preface</i>	9
Miklós Haraszti <i>Introduction</i>	11

## I. Freedom of Information

Peter Noorlander	
<b>Freedom of Information and the Media</b>	17
Laszlo Majtenyi	
<b>Freedom of Information –     Experiences from Eastern Europe</b>	29

## II. Freedom of the Media on the Internet

Arnaud Amouroux and Christian Möller	
<b>2004 – The Internet Year for the RFOM</b>	45
Morris Lipson	
<b>In the Name of Protecting Freedom     of Expression: Rejecting the Wrong Rule     for Liability for Internet Content</b>	53
Cathy Wing	
<b>An Introduction to Internet Literacy</b>	63
Gus Hosein	
<b>Open Society and the Internet:     Future Prospects and Aspirations</b>	77

## III. Libel and Defamation Laws

Miklós Haraszti and Ilia Dohel	
<b>Libel and Insult Laws: Where We Stand and     What We Would Like to Achieve</b>	101

Toby Mendel	
<b>The Case against Criminal Defamation Laws</b>	<b>105</b>
Ronald Koven	
<b>How Dangerous Archaic Insult Laws Can Be</b>	<b>113</b>

#### **IV. Views and Commentaries**

Dardan Gashi	
<b>The Media Situation in Kosovo</b>	<b>119</b>
<b>Media Voices Speak Out about Libel and Freedom of Information in Central Asia</b>	<b>125</b>
<b>Extracts from the First South Caucasus Media Conference</b>	<b>133</b>
Miklós Haraszti	
<b>“Berlin Speech” at the Conference on Anti-Semitism</b>	<b>141</b>

#### **V. Overview – What We Have Done**

<b>Mandate</b>	
of the OSCE Representative on Freedom of the Media	<b>147</b>
<b>Reports and Statements</b>	
to the OSCE Permanent Council and other OSCE fora by Freimut Duve	
• <i>Statement on Russia, Ireland and Azerbaijan at the Permanent Council of 23 October 2003 (Under Current Issues)</i>	<b>151</b>
• <i>Regular Report to the Permanent Council of 11 December 2003 by Freimut Duve</i>	<b>153</b>

- *Speaking notes for Jutta Wolke, the Acting Head of Office of the OSCE Representative on Freedom of the Media, for the Meeting of the OSCE Parliamentary Assembly in Vienna on 19-20 February 2004* **160**

by Miklós Haraszti

- *Inaugural Statement at the Meeting of the Permanent Council of 11 March 2004 by Miklós Haraszti* **163**
- *Statement on Armenia at the Permanent Council of 1 April 2004 (Under Current Issues)* **165**
- *Statement on the March 2004 Kosovo Events at the Permanent Council of 22 April 2004 (Under Current Issues)* **166**
- *Report on the Role of the Media in the March 2004 Events in Kosovo* **168**
- *Non-paper on Anti-Semitism in the Media for the Berlin Conference on Anti-Semitism, 29 April 2004* **188**
- *Regular Report to the Permanent Council of 8 June 2004* **193**
- *Assessment Visit to Ukraine: Observations and Recommendations* **200**
- *Statement on Belarus at the Permanent Council of 9 September 2004 (Under Current Issues)* **213**
- *Regular Report to the Permanent Council of 16 September 2004* **215**
- *Report on Russian Media Coverage of the Beslan Tragedy: Access to Information and Journalists' Working Conditions* **223**
- *Media Freedom Violations in Belarus in 2004* **238**
- *Annual Human Dimension Implementation Meeting (HDIM) Speaking Points, Warsaw 6 October 2004* **249**
- *Regular Report to the Permanent Council of 16 December 2004* **254**
- *Assessment Visit to Moldova: Observations and Recommendations* **266**

<b>Joint Declaration by OSCE, UN and OAS</b> International Mechanisms for Promoting Freedom of Expression, 6 December 2004	<b>279</b>
----------------------------------------------------------------------------------------------------------------------------------	------------

## **Projects 2004**

- **Guaranteeing Media Freedom on the Internet**  
*Expert Seminar, 30 June 2004, Vienna* **283**  
*“The Recipes”, Recommendations of the OSCE*  
*Representative on Freedom of the Media from the*  
*Amsterdam Internet Conference, 27–28 August 2004* **284**
- **Sixth Central Asian Media Conference**  
*23-24 September, Dushanbe*  
*Dushanbe Declaration on Libel and Freedom of Information* **294**
- **First South Caucasus Media Conference**  
*25-26 October, Tbilisi*  
*The Tbilisi Declaration on Libel and Freedom of Information* **296**
- **Legal Assistance in 2004** **300**
- **Libel and Insult Laws:**  
**A Matrix on Where We Stand and**  
**What We Would Like to Achieve**  
*June 2004 – March 2005* **301**

<b>Visits and Interventions in 2004</b>	<b>303</b>
-----------------------------------------	------------

<b>Publications</b>	<b>315</b>
---------------------	------------

<b>Media NGOs in the OSCE Region</b>	<b>318</b>
--------------------------------------	------------

<b>The Authors</b>	<b>321</b>
--------------------	------------



Solomon Passy  
***Preface***

There was never any doubt that media are an inseparable part of our daily routine. By raising public awareness, questioning beliefs and comprehensions, casting light on uncertainties, serving as a multicultural forum for the exchange of ideas and opinions, media have proven themselves to be an influential constituent and focal tool of democracy – the very essence of the contemporary connotation of knowledge and freedom.

It takes years, decades, sometimes even centuries for a society to live up to the liberties and responsibilities of democracy. It comes as no surprise that such processes are sometimes left incomplete, due to the fact that, from both a political and social point of view, patience and unwavering determination are often not enough. Success is seldom the result when people are deprived of their basic human right, namely the freedom of expression.

The revolutionary means of information exchange have influenced and therefore moulded our world to a great extent. The very nature of contemporary communications provides unlimited possibilities in terms of communicating ideas and opinions to continents, regions, countries, societies, but most importantly – to the individual. With great power comes great responsibility. The sky is the limit, people often say, but how do we handle that? On the one hand freedom of expression and the media must not be limited. We have to be careful not to over-regulate the free exchange of ideas and information. And yet, we must not allow abuse by those who wish to spread hatred and intolerance. The responsibilities, evoked by the freedom of media, must be shouldered by all of

us – by governments, industry, NGOs, societies – at both a national and an international level. The contemporary standards in the media must be flexible in order to respect different approaches, but also stern enough to effectively oppose attempts of abuse and misconduct.

To a certain extent the best approach is self-regulation through developing codes of conduct. However, I am not suggesting that there is no need for clear moral guidelines about how media should serve society and, most of all, perform their paramount duties of promoting, supporting and protecting democracy in all its forms. In that respect, we share a deep commitment to the core OSCE principles, but we also have to acknowledge that freedom does not suggest an unobstructed right to spread hatred, lies and abuse, which could harm people and even destabilize our societies.

The OSCE has always paid great attention to the media and has launched a number of programmes aiming to establish and develop free and independent media outlets. Education with the focus on human rights stood high on the agenda of the Bulgarian Chairmanship in 2004 and we have to bear in mind that media have a very significant role in this respect. With power and freedom comes great responsibility and the media must also assume their fair share by performing their duties in favour of human rights, fundamental freedoms, and long-term democratic society interests.

I avail myself of this opportunity to wish the OSCE Representative on Freedom of the Media Miklós Haraszti the best of fortune and success in his essential endeavour to preserve and further develop what the OSCE has achieved in terms of freedom of expression, and its corollary, freedom of the media.

*Dr. Solomon Passy is Minister of Foreign Affairs of the Republic of Bulgaria and was Chairman-in-Office of the OSCE in 2004.*

Miklós Haraszti  
***Introduction***

In March 2004, I was appointed OSCE Representative on Freedom of the Media by the 55 participating States. I replaced the founder of this Office, Mr. Freimut Duve of Germany, who fought censorship for many years.

I inherited an institution that is dedicated to promoting freedom of expression and which has developed a unique system of monitoring press freedom violations. While I took on board this early warning system, I was eager to use the information we obtained to advise our participating States on how to better comply with the free speech standards to which they have all committed themselves, uniquely among the regional security organizations of the world.

During my first year of tenure, I issued assessment reports, mostly after personally visiting several countries. We prepared our reports not in order to point a finger at the States concerned, but to offer practical, clear and future-oriented recommendations on how to improve the situation and the laws. We did not consider any of the participating States to be exempt from deficiencies.

In fact, we tried to provide the governments of the countries where we intervened or visited with tips on how to make their life easier. Let's face it: restricting press freedom does not make the political situation more secure; on the contrary, it leads to instability and sometimes conflict. Free media are not only a reflection of a good democracy but also foster the security and co-operation of all people living under that jurisdiction.

Our main mandate concerns government behaviour *vis-à-vis* the press, but we also did not hesitate to try and improve the quality of the press. Our Kosovo report about the events in March 2004 and the help we offered to journalists to form

self-regulating bodies are two examples. However, we made it clear that freedom of the press must not be treated as an exchange item for quality of journalism; while contrarily, freedom *is* a precondition for quality. Where the press is controlled by the government, quality journalism can be born only in opposition to that control, if at all. The only task of the State in this respect is to exercise self-restraint, and provide all the freedoms the press needs in order to develop. Pluralism of media ownership is the best breeder of quality.

Governmental self-restraint was the gist of all our recommendations to counter the many troubles of our region, whether this was the lack of pluralism in the broadcasting scene; the failed transformation of the state-owned broadcaster into independent public institutions; the administrative discriminations used against the non-governmental press; or the lingering (or even comeback) of taxpayer-funded government press in many of the OSCE nations.

Media democratization means the full transfer of ownership and custody of the press from the State to civil society. That is a civilization-long process that demands innovation and adjustment from all three players – government, society and the press. Encouraging the learning process was our foremost preoccupation.

As we have found out, today's freedom of the media is facing not only new challenges, but also new dangers.

The Internet, with its growing role as a global medium for exchanging ideas, is a case in point. It connects us with all corners of the world. For this very reason, the presence of "bad" content in our global public space is now more striking. Especially after the attacks of 11 September 2001, the world has tried to find more efficient ways to fight terrorism. It has become less tolerant to both democratic extravagancies and dictatorial platitudes. In fact, a rise in hate speech-fuelled incidents has shown us that poisonous intolerance is still very much alive.

But instead of helping civil society to fight “bad” content and utilizing capabilities of the Internet itself, it is the freedom of the global public space that is now being threatened by overly zealous regulators. Old and new democratic governments, Internet service providers, and even some of the gigantic search engines that bring the Web to our fingertips, are ready to forget about the classic freedoms of the media. I had to explain on many occasions, and in our *Media Freedom Internet Cookbook*, that the various new media types of the Internet deserve the same handling the classic press has obtained over the centuries.

You will find in the chapters of this Yearbook accounts of all these troubles as well as the results to date of our advocacy of full decriminalization of libel and defamation in our region.

I hope the Yearbook will be a source of useful information and good reading for you. I also hope that you will provide us with feedback.



# **I. Freedom of Information**

Peter Noorlander

**Freedom of Information and the Media**

László Majtényi

**Freedom of Information –**

**Experiences from Eastern Europe**



Peter Noorlander

## **Freedom of Information and the Media**

The right to freedom of expression and information is of fundamental importance to democracy and to the protection of human rights. A society where the flow of information is inhibited cannot call itself a democratic society. As the United Nations General Assembly put it in its very first session, freedom of information – understood as the free flow of information in its broadest sense – is “the touchstone of all the freedoms to which the UN is consecrated.”<sup>1</sup>

Freedom of expression as protected under international law guarantees the right of everyone to impart, receive and seek information.<sup>2</sup> In lay terms, this translates to freedom of the media, the right to express oneself freely and receive information from anyone, and the right to access information held by public bodies. The latter is commonly referred to as “freedom of information”. These rights are closely intertwined and depend on each other for their implementation. In this essay, I will review the strong links between freedom of the media and freedom of information; and I will argue that international law now requires States to take steps to make freedom of information a reality for everyone.

***Freedom of Information and the Media in Practice.*** It is trite to note that information is the lifeblood of the media. Without information, it would be impossible for the media to publish anything – let alone the kind of public interest stories for which it is held in such high regard.

---

1 UN General Assembly Resolution 59(1), 14 December 1946.

2 See Universal Declaration of Human Rights, UN General Assembly Resolution 217A(III), adopted 10 December 1948, Article 19.

What is more: journalists need not just any information; they need good, reliable information, particularly when investigating issues that relate to the functioning of the government or its officials. In order to perform its role of “watchdog” of democratic society, the media needs access to documents and information at the heart of governmental functioning: not just the text of legislation and regulations, but budgetary information, policy papers, correspondence with contractors, and information relating to health and the state of the environment, to name but a few things. Absent such access and journalists cannot effectively scrutinize governmental action; they would be condemned to rely on “leaked” documents, second-hand information or even rumours, laying themselves open to defamation suits or other legal threats along the way.

Freedom of information is crucial to the media in other ways, too. The lack of a legal access to information regime allows governments to dominate the flow of official information. If there are no enforceable access laws or regulations, governments can choose which information to release and, almost as importantly, whom to release it to. It is not unknown for governments not only to reward those media that provide sympathetic coverage, but also to “punish” critical and opposition media by refusing to provide it with information.<sup>3</sup> In such a political climate, a free media cannot exist and democracy flounders.

Freedom of information laws are currently in effect in some 60 countries around the world,<sup>4</sup> and journalists in these countries use the laws in their everyday work – and they often take it for granted. Examples abound of stories on issues of public interest that would not have been published without freedom of information. In the United States, where access to information has been around since the 1960s, journalists using freedom of information laws have been able to break stories on such diverse topics as poor dam maintenance which had

resulted in the death of dozens of people;<sup>5</sup> use of the death sentence;<sup>6</sup> and Gulf War syndrome.<sup>7</sup> In 2002, using the Freedom of Information Act, the *Washington Post* produced a feature story detailing how the Reagan and Bush I administrations had authorized the sale to Saddam Hussein of poisonous chemicals and deadly biological viruses, including anthrax and bubonic plague. The documents obtained by the *Washington Post* showed that Donald Rumsfeld, the current US Defense Secretary, had travelled regularly to Iraq at a time when Iraq was using chemical weapons in defiance of international law.<sup>8</sup>

Often, the media in countries where legislation has only recently been enacted are particularly active in pursuing information that has previously remained hidden from public view. In the United Kingdom, for example, whose Freedom of Information Act only came into force in January 2005, important information has been obtained by the *Financial Times* concerning the crash of the national currency in 1993 that would otherwise have remained hidden.<sup>9</sup> Journalists have also obtained documents showing that British soldiers tortured Mau Mau rebels in Kenya in the 1950s;<sup>10</sup> and official correspondence of government ministers with the media mogul Rupert Murdoch, who was promised that he would be able to bid for a UK television channel.<sup>11</sup> In Bulgaria, a country whose freedom of

---

3 For various examples of this, see *FOI and the Media in Armenia, Azerbaijan and Georgia* (London: ARTICLE 19, 2005).

4 Putting an exact figure on the number is difficult because, first, the number is constantly growing, and, second, some countries (notably Zimbabwe) have enacted laws that carry the name of freedom of information but that in reality are tools for censorship.

5 Tribune-Democrat, Johnston, Pa., 19-20 March 1995.

6 Tribune-Review, Greensburg, Pa., 11-12 December 1994.

7 See <<http://rcfp.org/courtaccess/examples.html>> for some “everyday” examples.

8 “U.S. Had Key Role in Iraq Buildup”, *Washington Post*, 30 December 2002.

9 “Secrets of Black Wednesday”, *Financial Times*, 10 February 2005.

10 “Army tortured Mau Mau rebels in 1950s”, *The Guardian*, 5 February 2005.

11 “Files show extent of Murdoch lobbying”, *The Guardian*, 3 January 2005.

information law was adopted in June 2000, journalists have been able to obtain detailed information on such matters as the terms of privatization agreements and the fulfilment of contractual obligations.<sup>12</sup> In Jamaica, freedom of information legislation came into force in January 2004 and the media were reported to be heavy early users.<sup>13</sup> And in Ireland, the building of a proposed new national stadium was abandoned after a newspaper, using the newly enacted freedom of information legislation, unearthed documentation showing the spiralling cost of the project.<sup>14</sup>

The crucial importance of freedom of information to the media can also be illustrated by the lack of information on certain topics. For example, the definitive story on the legality of Britain's decision to go to war in Iraq cannot be written until and unless the British Government decides to release the legal advice it was given by its own top lawyers. Journalists are aware that the legal position was less than solid – many academic legal commentators opposed the war and a top British Foreign Office lawyer resigned her post over the advice given<sup>15</sup> – but the Government has so far released only an abbreviated version of the advice it was given. An application for the release of the full advice has been made and refused; at the time of writing, the matter is pending with the UK Information Commissioner.<sup>16</sup>

### ***Freedom of Information and the Media under International Law.***

International law has long recognized the strong links between freedom of expression, freedom of the media and freedom of information. The starting point is the Universal Declaration of Human Rights (UDHR), adopted in 1948 and the United Nation's flagship human rights document.<sup>17</sup> Article 19 of the Declaration states:

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.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.<sup>18</sup>

The International Covenant on Civil and Political Rights (ICCPR),<sup>19</sup> a treaty ratified by over 150 States, including most OSCE Member States,<sup>20</sup> imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

Everyone shall have the right to freedom of opinion.  
Everyone shall have the right to freedom of expression; this right shall include 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.

---

12 The Access to Information Programme: Fighting for Transparency during the Democratic Transition, Gergana Jouleva: <<http://www.freedominfo.org/case/bulgaria1.htm>>.

13 "Jamaicans utilising Access to Information Act, says minister", *Jamaica Observer*, 7 February 2004.

14 *Irish Times*, 9 February 2004.

15 Review of Intelligence on Weapons of Mass Destruction, Report of a Committee of Privy Counsellors (the "Butler Review"), par. 376, 14 July 2004, HC 898 (London: the Stationary Office, 2004).

16 "Information watchdog tests law over advice on invasion", *The Independent*, 8 February 2005.

17 Note 2.

18 See, for example, *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Rep. 1970 3 (International Court of Justice); *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice); *Filatiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit). Generally, see McDougal, M.S., Lasswell, H.D. and Chen, L.C., *Human Rights and World Public Order* (Yale University Press: 1980), 273-74, 325-27.

19 UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

20 Andorra and Kazakhstan have signed but not yet ratified the ICCPR; the Vatican has not signed it (it has signed only very few human rights conventions).

Both Article 19 of the UDHR and Article 19 of the ICCPR have been interpreted as imposing on States the obligation to enact freedom of information laws. The UN Human Rights Committee, the body established to supervise the implementation of the ICCPR, has long commented on the need for States to introduce freedom of information laws. In its 1994 Concluding Observations on the implementation of the ICCPR in Azerbaijan, for example, the Committee stated that Azerbaijan “should introduce legislation guaranteeing freedom of information...”<sup>21</sup>

In 1995, the UN Special Rapporteur on Freedom of Opinion and Expression<sup>22</sup> noted:

The right to seek or have access to information is one of the most essential elements of freedom of speech and expression.<sup>23</sup>

He returned to this theme in 1997 and since that year has included commentary on the right to freedom of information in each of his annual reports. In his 1998 Annual Report, the Special Rapporteur declared that freedom of information includes the right to access information held by the State:

[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems.<sup>24</sup>

His views were unanimously welcomed by the UN Commission on Human Rights, the most authoritative UN body on human rights.<sup>25</sup>

In November 1999, the three special mandates on freedom of expression – the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe and the Special Rapporteur on Freedom of Expression of the Organization of American States – came together for the first time under the auspices of ARTICLE 19.

They adopted a Joint Declaration which included the following statement:

Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.<sup>26</sup>

That same year, the OSCE Heads of State recognized the crucial importance of freedom of information and freedom of the media. The Charter for European Security, adopted by OSCE Heads of State in Istanbul in 1999, states:

We [The participating States] 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.<sup>27</sup>

This clearly states the link between the different aspects of freedom of expression, freedom of the media and freedom of information.

The UN Special Rapporteur further developed his commentary on freedom of information in his 2000 Annual Report to the Commission, noting its fundamental importance not

---

21 UN Doc. CCPR/C/79/Add.38; A/49/40, 3 August 1994, under "5. Suggestions and recommendations" (there are no page or paragraph numbers).

22 The Office of the Special Rapporteur on Freedom of Opinion and Expression was established by the UN Commission on Human Rights, the most authoritative UN human rights body, in 1993: Resolution 1993/45, 5 March 1993.

23 Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1995/31, 14 December 1995, para. 35.

24 Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 14.

25 Resolution 1998/42, 17 April 1998, para. 2.

26 26 November 1999.

27 SUM.DOC/1/99, 19 November 1999, para. 26.

only to democracy and freedom, but also to the right to participate and realization of the right to development.<sup>28</sup> He also reiterated his “concern about the tendency of Governments, and the institutions of Government, to withhold from the people information that is rightly theirs”.<sup>29</sup> Specifically, the Special Rapporteur laid down a number of general principles concerning freedom of information:

44. On that basis, the Special Rapporteur directs the attention of Governments to a number of areas and urges them either to review existing legislation or adopt new legislation on access to information and ensure its conformity with these general principles. Among the considerations of importance are:

- Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; “information” includes all records held by a public body, regardless of the form in which it is stored;
- Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
- As a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;
- A refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;

- All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);
- The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
- The law should establish a presumption that all meetings of governing bodies are open to the public;
- The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;
- Individuals should be protected from any legal, administrative or employment related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body.<sup>30</sup>

Most recently, in November 2004, the UN, OSCE and OAS special mandates adopted a Joint Declaration in which they build on the principles outlined above, adding a number of principles on secrecy legislation and the impact it has on journalism, freedom of expression and freedom of information:

- Urgent steps should be taken to review and, as necessary, repeal or amend, legislation restricting access to information to bring it into line with international standards in this area, including as reflected in this Joint Declaration.

---

28 Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 42.

29 Ibid., at para. 43.

30 Ibid., at para. 44.

- Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control. Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information. Criminal law provisions that don't restrict liability for the dissemination of State secrets to those who are officially entitled to handle those secrets should be repealed or amended.
- Certain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label "secret" for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.

The UN Human Rights Committee has also expressed its concerns over the way secrecy laws are sometimes used to restrict freedom of the media. Commenting on a high-profile case in the United Kingdom in which various newspapers had been banned from publishing information leaked by former secret service employees, the Committee said:

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

The State party should ensure that its powers to protect information genuinely related to matters of national security are narrowly utilized and limited to instances where it has been shown to be necessary to suppress release of the information.<sup>31</sup>

Earlier, the Committee had issued similar critical comments on state secrets laws in Uzbekistan, recommending that they should be amended and considerably tightened up.<sup>32</sup>

**Conclusions.** It is abundantly clear that freedom of information is of great importance to the media. Without freedom of information, a free and independent media cannot exist.

Freedom of information is a crucial element of the right to freedom of expression and is protected under legally binding international treaties. International law requires States to act on their treaty obligations and introduce freedom of information legislation, and to amend their state secrets laws to bring them in line with international standards. ARTICLE 19 urges all States to act on the recommendations made by the OSCE, UN and OAS special mandates on freedom of expression and the media and pass freedom of information laws in line with the principles expressed by them. It is important that these laws conform with the overriding principle of maximum openness subject to narrow exceptions, as advocated in ARTICLE 19's standard-setting publication, *The Public's Right to Know: Principles on Freedom of Information Legislation*.<sup>33</sup>

More than 60 countries have now adopted freedom of information laws and the rate with which new countries can be added to that list is increasing. In the OSCE region, only a handful of States remain without effective freedom of

---

31 UN Doc. CCPR/CO/73/UK, 6 December 2001, para. 21.

32 UN Doc. CCPR/CO/71/UZB, 26 April 2001, para. 18.

33 ARTICLE 19, London: 1999.

information laws – Andorra, Azerbaijan, Belarus, Cyprus, Germany, the Holy See, Kazakhstan, Kyrgyzstan, Luxembourg, Malta, Monaco, the Russian Federation, San Marino, Montenegro, Macedonia and Turkmenistan.<sup>34</sup> These countries should act now on the commitment they signed up to in the OSCE’s 1999 Charter on European Security and make freedom of information a reality for all within their jurisdiction.

*Peter Noorlander is Legal Adviser at ARTICLE 19, a non-governmental organization that works to protect and promote the right to freedom of expression around the world.*

---

<sup>34</sup> Some of these countries have laws that carry the name of freedom of information but either do not grant sufficient access rights or have not been effectively implemented.

László Majtényi  
**Freedom of Information –  
Experiences from Eastern Europe**

The notion of freedom of information means that we have the right to find out about information of public interest and the right to inspect official documents. The State, sustained on our own taxes, cannot hide its operations from society. The shared purpose of data protection and freedom of information is to continue maintaining the non-transparency of citizens in a world that has undergone the information revolution while rendering transparency of the State.

The principles of freedom of information habitually have their origins ascribed to the ideas of the Enlightenment. However, its first legal source can be found not in the French or American Enlightenment but in Sweden, which was the first country in the world to recognize, in the Act of Freedom of the Press of 1766, that every citizen has the right to information about official documents (undoubtedly, this became possible for the sole reason that between 1718 and 1772 Sweden was under parliamentary rule with rivalling parties).

The 14th point of the Declaration of the Rights of Man and the Citizen of the French Revolution announced the need for transparency in the State's economic management: "All citizens have the right, by themselves or through their representatives, to have demonstrated to them the necessity of public taxes, to consent to them freely, to follow the use made of the proceeds, and to determine the means of apportionment, assessment, and collection, and the duration of them."

It is not difficult to hear the same maxim behind the famous demand of the citizens of the British colonies in North America: "No taxation without representation." One may perhaps reasonably paraphrase this as: "No taxation without information on how those taxes are used."

## Examples from Eastern Europe

**Poland.** “(1) A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions...

(2) The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by general elections, with the opportunity to make sound and visual records.”<sup>1</sup>

The Act on Access to Public Information, which was enacted in September 2001 and went into effect in January 2002, gives anyone the right to access to public information (exemptions: official or state secrets, confidential and private information and business secrets). The processor must respond within 14 days. As yet there is not an independent commission or commissioner to enforce the Act.

**Romania.** In Romania the Constitution guarantees the right to access information of public interest:

“A person’s right of access to any information of public interest cannot be restricted. The public authorities, according to their competence, shall be bound to provide for correct information to citizens on public affairs and matters of personal interest...”<sup>2</sup>

The Law on Free Access to Information of Public Interest was approved in 2001. The public bodies must respond within ten days. There are also exemptions to citizens’ free access. These include, for example, information relating to national security, deliberations of the authorities, personal and business interests, criminal investigations and judicial proceedings.

**Slovak Republic.** “State bodies and territorial self-administration bodies are under an obligation to provide information on their activities in an appropriate manner and in the state language.”<sup>3</sup>

“Everyone has the right to timely and complete information about the state of the environment and the cause and consequences of its condition.”<sup>4</sup>

The Act on Free Access to Information was approved in May 2000 and enforced on 1 January 2001. The authority must respond within ten days and information shall be provided free of charge with the exception of payment to cover the cost of reproduction or delivery.

**Czech Republic.** In the Czech Republic’s Charter of Fundamental Rights and Freedoms we can read: “Freedom of expression and the right to information are guaranteed.”<sup>5</sup>

The Law on Free Access to Information was enacted in May 1999 and came into effect in January 2000. There must be a response within 15 days.

On 5 August 2004 the Czech Cabinet rejected a Senate-sponsored amendment to the Law on Free Access to Information which would have made access easier. Under the rejected amendment, information could not have been withheld on the grounds of protecting business secrets or personal data.

**Albania.** “1. The right to information is guaranteed.  
2. Everyone has the right, in compliance with law, to get information about the activity of state organs, as well as of persons who exercise state functions.”<sup>6</sup>

The Law on the Right to Information about Official Documents was enacted in 1999. The authorities must decide in 15 days and respond within 30 days. The Ombudsman is

---

1 Article 61, Constitution of Poland.

2 Article 31, Constitution of Romania.

3 Article 26, Constitution of the Slovak Republic.

4 Article 45, Constitution of the Slovak Republic.

5 Article 17, Constitution of the Czech Republic.

6 Article 23 of the 1998 Constitution of Albania.

tasked with oversight of the law. “Implementation of the law has been limited. The Act is not well known and there are a low number of requests.”<sup>7</sup> The OECD report also observed that: “There are no adequate mechanisms in place to provide full access to information.”<sup>8</sup>

## **Freedom of Information in Hungary**

“In the Republic of Hungary everyone has the right to the free declaration of his views and opinions, and has the right of access to information of public interest, and also the freedom to disseminate such information.”<sup>9</sup>

One of the most important aims of the rule of law revolution was to guarantee the right of everyone to exercise control over his or her personal data and at the same time to have access to data of public interest in Hungary.

I believe that not respecting either one of these two rights may easily lead to a curtailment of freedom and that it is not only preferable to combine them in one Act but it is even advisable that we place ourselves in the care of a joint protector. As we make the transition from a totalitarian to a constitutional State founded on the principles of liberty, we have especially good reason to grant equal and concurrent representation to freedom of information and informational self-determination based on privacy protection. If we do not, it will be even more difficult for us to face the past. But if we do achieve this, society will have a chance not only to get the informational redress that it rightfully demands but also to avoid a tyranny of freedom.

The model of informational rights in Hungary can be best appreciated as a follower of the Canadian model. Besides Canada, Hungary is unique in the degree to which the protection of personal data within its borders is linked with the constitutional values of freedom of information (see DP&FOI Act No. LXIII of 1992). In Europe, Hungarian legislation stands alone in

having opted for the rather common-sense solution to enact a single law to regulate freedom of information in conjunction with the protection of personal data. Here it must be pointed out that exemplary European democracies, such as Germany, are still only planning to pass their own comprehensive freedom of information laws. In a way that is again pioneering in Europe, the Hungarian Act has assigned the protection of freedom of information and of personal data to the same specialized ombudsman. This obviously sensible solution has been featured in the draft legislation of a number of countries, but it has not, to the best of my knowledge, been put into practice anywhere except in Hungary, Canada and recently in Great Britain and the provinces of Germany. In Canada, at both provincial and federal levels, one of the most exciting tasks is demarcating the thin line between these two mutually restrictive and seemingly conflicting constitutional values of freedom of information and data protection. While privacy and freedom of information are complementary imperatives, they also impose limits upon each other. It goes without saying that those who hold public office or assume a public role enjoy limited privacy protection.

The Hungarian freedom of information law can be described as radically liberal legislation – a fruit ripened by the 1989 rule of law revolution which created the constitutional State. As such, the FOI Act is a firm refutation of the single-party power structure which for decades used secrecy as its very foundation. Since the adoption of the law in 1992, a long enough period has passed for us to realize the social limits of its enforcement and application. We must therefore be self-critical and hasten to add that the Act promises more freedom than it has in fact enabled us to achieve.

---

7 Quoted from the country reports by David Banisar, *Freedom of Information and Access to Government Records Around the World* (Privacy International, 2004).

8 Ibid.

9 Article 61, Constitution of Hungary.

The obligation to safeguard freedom of information extends to cover the entire Hungarian state administration from the lowest ranks to the highest levels of state power – both horizontally and vertically. All state-wide or local governmental bodies, public organizations or persons are under legal obligation to disseminate data of public interest in their possession. Freedom of information is a human rather than a civil right, and therefore it also extends to non-Hungarian citizens. (It is an interesting but not widely known fact that the law of the United States – a nation justly regarded as the yardstick in regard to freedom of information – makes only *government agencies* liable to supply information, which means that the freedom of information principle does not apply to documents controlled, say, by the President.)

Under Hungarian law, any information that is not personal in nature and is controlled by a state or local government authority must be considered data of public interest. Access to data of public interest is not subject to any restrictions except by legally defined categories of secrecy (e.g. bank or insurance secrets, or confidential health-related information).

Freedom of information is limited in several ways. Access to data of public interest is restricted by the data protection act itself as a means of protecting personal data. I will not discuss the conflict between personal data and data of public interest. Basically adopting the ruling of the Council of Europe's Convention, the Act on FOI permits restriction of the legal obligation to publish information relating to the following categories: national defence, national security, criminal investigation and prevention of crimes, the monetary and currency policy of the State, foreign and international relations, and judicial procedure. Between the two poles of protection of personal data and state secrets, several categories of secret are identified and mostly regulated by law (business secret, insurance secret, bank secret, medical secret etc.).

Both European law and national legislation, such as the Hungarian Act on the protection of personal data and on publishing data of public interest, grant an exception from the principle of publicity for draft documents used internally and in preparing decisions. This can be explained by the fact that it could be justified to carry out the decision-making process away from the public eye, no matter how democratically it is run by the administration. Decision-making processes cannot be exposed to the pressure of public opinion at every step of the procedure.

Enjoying the highest level of protection are the secrets of the State, which have been subjected to rigorous – but arguably not the most stringent – legal limitations in terms of procedure and substance. The Secrecy Act provides two cases of secrecy law. Data constitute a state secret when the classifier has determined during the classification procedure beyond doubt that their “disclosure before the end of the effective period, their unrightful acquisition or use, their revelation to an unauthorized person, or their withholding from a person entitled to them would violate or threaten the interests of the Republic of Hungary in terms of national defence, national security, criminal investigation and prevention of crimes, the monetary and currency policy of the State, foreign and international relations, or in terms of jurisdiction.” Information can be categorized a state secret for a maximum of 90 years.

An official secret means any data whose “disclosure before the end of the effective period, unrightful acquisition or use, or access by an unauthorized person would interfere with the orderly operation of a body fulfilling a state or public function and would prevent it from exercising its official function and authority free from influence.”

Requests for data of public interest must be met within 15 days, and any refusal to supply such information must be communicated to the applicant within eight days, together with an explanation. Controllers of data of public interest are

under obligation to publish this periodically anyway. Whenever a request for information is denied, the applicant has the option to make an appeal to the Commissioner for Data Protection and Freedom of Information, or to bring a court case. Such cases will be heard by the court with special dispatch, and the grounds for withholding information must be proved by the party refusing to disclose the data.

Should the same plaintiff seek help from the DP&FOI ombudsman, the procedure will be much quicker and definitely free of charge. The ombudsman will issue a recommendation for that case, which is not officially binding, but as a rule is accepted.

Notwithstanding these considerations, Hungarian law provides for an exception that is unheard of in other countries. Whenever the Commissioner for DP&FOI finds that a classification as a state or official secret is without grounds, he or she is entitled in the recommendation to call on the classifier to alter this or to abolish it altogether. This empowers the “recommendation” with administrative force, leaving the addressee with the option to accept or to file a lawsuit against the Commissioner, requesting the court to uphold the classification. Such cases will be heard by the County Court with special dispatch. It is worth mentioning that to date a classifier has not risked a court procedure and has always bowed to the Commissioner’s judgement.

However, law is not just a normative system of rules but also a social reality. The Commissioner not only watches over freedom of information, but also lobbies for its recognition. To some extent, the institutions created to safeguard constitutional rights have the power to generate the social demand to have these rights enforced. Legislators are mandated to submit bills with an impact on informational freedom rights to the DP&FOI Commissioner for evaluation, although they are not bound by law to accept the Commissioner’s recommendation. This authority is an important tool in the hands of the Freedom of Information Commissioner, enabling him or her to

shape the legal environment. And yet, we must give some credit to the voices which claim that freedom of information in Hungary – as in many other places of the world – generates more smokescreen than real flames.

The statistics in the Commissioner's reports, submitted annually to Parliament, can be used to draw up a social diagnosis. Hungarians – like other peoples in eastern Central Europe – have travelled a unique road to civil society, and age-old habits and traditions are not easy to change. Believers in the aphorism “my home is my castle”, Hungarians tend to be much more sensitive to violations of their privacy than to secrecy over data of public interest. The ancient Latins who grew indifferent to an increasingly corrupt public sphere summed up their wisdom in the advice: “Go not to the Forum, for truth resides in your own soul.” Many in Hungary today subscribe to this view. At any rate, the Commissioner's case statistics provide valuable lessons. While the number of cases investigated by the Commissioner has been changing dramatically, the representation of the various informational branches shows great consistency. Since 1995, when the Bureau was set up, the number of investigations has multiplied to reach a thousand in a single year. Most of them pertain to data protection, with only 10 per cent concerning freedom of information issues. In terms of complaints filed, the share of freedom of information cases is only seven per cent. True enough, statistical figures add their own distortion. Matters involving freedom of information are typically high-profile cases receiving keen social attention and wide publicity. As such, their significance far outstrips their share in the total number of cases investigated.

As I have suggested before, one can point to a number of long-standing great democracies whose constitution and law do not spell out the constitutional right to freedom of information. Ours in Hungary do – but we have our own weaknesses to face in this area.

## How Far and For How Long Can Government Maintain Secrecy?

Although the case I am going to address here has no direct or visible implications for national security, it is tempting to see it as a symptom of the paranoia permeating constitutional democracy. As such, it is an apt illustration of the kind of perversion in government that may easily overflow the shadowy confines of the secret services to infect the whole apparatus of the State.

***Government Sessions: On or Off the Record?*** Prompted by citizens' submission, I launched a probe into the issue of documenting sessions of the Government of the Republic of Hungary, including the preservation and disclosure of official documents.

After the Government's rules of procedure were modified in June 1998, government sessions were no longer audio-taped or otherwise recorded in verbatim minutes until the opposition emerged victorious from the 2002 elections.

A look at the history of documenting government sessions offers valuable lessons for the legal judgment of the case. As the director of the Hungarian National Archive told me, the Archive kept the documents of governments that served in 1848–49,<sup>10</sup> 1867–1944, and 1944–83. These records are now accessible for research, and annually the Archive receives nearly a thousand requests for data from researchers wishing to study them. Changes in government practices with regard to documenting government sessions and preserving those records can be clearly traced over the years. After the political transformation of 1990 the governments returned to the habit of holding their sessions on the record. This constitutional routine was derailed by the cited procedural change<sup>11</sup> instated by the Government that formed in 1998, which abolished the rule of documenting government sessions.<sup>12</sup>

When I inspected the administrative premises of the Office of the Prime Minister on 10 December 1998, the official in charge of the department informed me that every single proposal to be discussed by administrative secretaries prior to convening a session of government was classified as “Strictly Confidential”, “Confidential”, or “Not Public”. The administrative department added the last of these stamps itself if the document had been submitted to the Office of the Prime Minister without one of these designations.

Democracies around the world employ various means to document the operation of their governments. Some countries insist on verbatim minutes, while others merely mandate abstracts of content. Accordingly, there are as many ways to regulate the process of recording and the handling of the documents thus created. In certain countries, freedom of information is a constitutional right; in others it is a privilege guaranteed by law only; in several countries, which lack proper legal regulations on this count, the need for this freedom right is acknowledged and legitimized by custom and an unwritten constitutional code of values. In some places the preferred solution is to remove a specified range of government papers from the ambit of freedom of information. Starting in the eighteenth century,

---

7 Quoted from the country reports by David Banisar, *Freedom of Information and Access to Government Records Around the World* (Privacy International, 2004).

8 Ibid.

9 Article 61, Constitution of Hungary.

10 The age of modern parliamentary culture in Hungary, understood as government reporting to parliament, began with the fall of Habsburg absolutism in April 1848. From 1849, when the revolution and war of independence were crushed, until the Compromise of 1867, power reverted to absolutist models.

11 Government Decree 1090/1998 (VII. 15.).

12 According to this regulation, which remained in effect until the ruling party lost the elections in 2002, “The abstract prepared of sessions of the government shall contain the names of those attending, the titles of the proposals discussed, the names of those contributing comments to the debate, the fact and for/against ratio of voting, if any, reference to the disagreement, if any, voiced by a cabinet member from the coalition party, as well as the decision itself.”

monarchs often made the solemn pledge that the affairs of the State would be conducted in full view of the public eye.<sup>13</sup> The age of enlightened absolutism heralded a period in which the citizens' rights to exercise control over government have gradually broadened, despite a number of setbacks in the process. This right also implies publishing the government's papers and disseminating information about its operations.

The matter under review is rife with the difficulties that occur when reconciling a number of mutually contesting constitutional rights and interests. The existing regulations must observe the constitutional right to access data of public interest. They must serve the cause of transparency in the work of the government, leave open the opportunity for scholarly and scientific study of governments past or present, and they must be conducive to the smooth operation of the administration free of undue influence. In this sense, we have no constitutional grounds to demand full publicity about all of the government's activities as they are happening as this would interfere with its smooth operation.

The disclosure of data of public interest is fundamental proof of the proper functioning of the democratic constitutional State which is declared in Article 2 (1) of the Hungarian Constitution. The significance of this was recognized in the Council of Europe's 1982 Declaration on Freedom of Information, when it affirmed the goal of the Member States to follow an informational policy of openness in the public sphere – including one of allowing access to information – in order to help their citizens better understand political, social, economic and cultural issues, and to improve their skills in freely discussing such topics [clause 8. II. c)]. Nevertheless, the disclosure of data of public interest and the right to free research both encounter constitutional limits in those provisions of secrecy which comply with legal requirements and the rules governing the restriction of constitutional rights.

“The smooth operation of the administration free of undue influence” would obviously be thwarted if the law prescribed full publicity for government sessions. Little wonder then that this is not the custom in democracies around the world. Therefore, far from being illegal, provisional restrictions upon the freedom of information can be constitutionally well founded when these are motivated by the above-mentioned purpose. It cannot properly be regarded as a constitutional exigency to prepare full documentation of government sessions – meaning verbatim minutes, audio and/or video tapes. Legislation can outline several ways of documenting these sessions. However, it must be kept in mind that the Government is not a congregation of private individuals but a body of officials which plays a crucial role in the system of political institutions. On account of its prominent legal and political position, it is indispensable to have its activities documented. It is not sufficient to publish resolutions but the content of government sessions needs to be documented. Seen in this light, Government Decree No. 1090/1998 (VII. 15.) clearly broke with the traditions of 1848 which had held sway for a century and a half in Hungary. The total prevention of access in the interest of “the smooth operation of the administration free of undue influence” cannot be deemed inevitable or, for that matter, equitable.

---

13 A case in point is the 1868 Imperial Oath of Japan's Emperor.



## **II. Freedom of the Media on the Internet**

Arnaud Amouroux and Christian Möller

**2004 – The Internet Year for the RFOM**

Morris Lipson

**In the Name of Protecting Freedom  
of Expression: Rejecting the Wrong Rule  
for Liability for Internet Content**

Cathy Wing

**An Introduction to Internet Literacy**

Gus Hosein

**Open Society and the Internet:  
Future Prospects and Aspirations**



Arnaud Amouroux and Christian Möller  
**2004 – The Internet Year for the RFOM**

2004 was again a very eventful year in terms of Internet policy, legislation and governmental rulings as well as technical innovation and free speech issues. China has made every day or so greater use of new technologies to control the circulation of news and information, and to curb free media through censorship and assaults on the Internet infrastructure. In Iran, Syria and Vietnam dozens of Internet users languish in prisons for looking at banned websites. The supposedly well-established democracies of Europe and North America are certainly not off the hook and the distrust of the Internet in these countries is also worrying, although to a lesser extent. 2004 also saw the rise of weblogs or “blogs”, a new form of journalism which is reported to eventually challenge classical forms of journalism – an assertion that remains to be proved in the long term. In 2004 a virtual battle was fought by a number of online activists on Google’s results for the search word “Jew”. Debate was also sparked off about the legitimacy of the Internet Corporation for Assigned Names and Numbers (ICANN) assigning all Internet addresses and domain names throughout the world. Overall, “Internet governance” was a subject of heated discussion in the perspective of the second part of the World Summit on the Information Society (WSIS) in Tunis in 2005.

Finally, in 2004 governments and international organizations continued to try to come to grips with the challenges of the new information technologies. The Council of Europe looked at the “Internet with a Human Face”, UNESCO organized conferences on Internet, Human Rights and Culture, the European Commission launched the next phase of the

Safer Internet Action Plan and the OSCE tried to pinpoint the possible “Relationship between Racist, Xenophobic, and anti-Semitic Propaganda on the Internet and Hate Crimes” and will soon address the use of the Internet by terrorists.

The OSCE Representative on Freedom of the Media (RFOM), also, continued his endeavours to guarantee freedom of the media on the Internet. An expert seminar was held in June in Vienna and about a hundred experts assembled in August for the Second Amsterdam Internet Conference. Furthermore, the Representative and his staff had a say in the discussions at various occasions and offered cutting-edge experts the opportunity to address a wide audience.

However, the main goal of giving an account of the past year’s activities is not really to reel off a rather boring list of meetings, venues and participants but to show the broad range of topics addressed, their interconnection and complexity as well as our strategy to contribute to the Internet debate. Certainly, the milestones of RFOM’s activities in 2004 have been the Amsterdam Conference and the *Media Freedom Internet Cookbook*.

***The Second Amsterdam Internet Conference & The Media Freedom Internet Cookbook.*** From 27 to 28 August 2004 the Second RFOM Internet Conference took place in the City Hall of Amsterdam. The event brought together more than 25 speakers and an audience of about 80 international experts from OSCE, Council of Europe, UNESCO, academia, media and a number of non-governmental organizations from all over the OSCE area, including Europe, the Caucasus, Central Asia and North America. The topics included legislation and jurisdiction for digital networks; hate speech on the Internet; education and the development of Internet literacy; access to information and networks; as well as the problems of self-regulation, blocking and filtering.

A quick glance at some of the titles chosen for presentations tells you about the general issues and position of the debate at this conference: “Reading the Readers”, “Hate Speech – What Is There To Be Worried About?”, “Who Is Watching the Watchmen” or “Confronting Hate Speech Online: Should Big Brother Be Involved?” These are some of the catchy headings about serious issues that show that the expert community is not automatically caving in to the calls for regulation and normalization when it comes to the Internet. Even if some people might not necessarily agree, we think that it is useful once in a while to step back and have a proper look at the debate about the Internet, media freedom, what is really at stake and of what we should be cautious. This is what this conference was meant to do.

But the conference was also meant to produce recommendations and examples of best practices for guaranteeing media freedom online and at the same time handling “bad” content. Another purpose was to find a common terminology that helps us to understand the Internet’s particularities. This necessitates explaining, clarifying and differentiating, for example between an obvious crime like child pornography and content like hate speech where any consensual definition is difficult. Eventually, users, governments and other stakeholders might come to the conclusion that the Internet is not unavoidably the “evil” black hole some people might think.

However, there is an urgent need to identify ways that counter illegal contents with a minimum “chilling effect” on freedom of expression and without any limitations for the various media types that the Internet hosts. Promotion of the least damaging and the least restrictive approach in order to further guarantee freedom of expression is one of the main goals of RFOM’s search for “best practices”.

*The Media Freedom Internet Cookbook* was published in December 2004 as a result of the Second Amsterdam Internet Conference and it was presented by RFOM during his Regular Report to the Permanent Council, the weekly meeting of all 55 delegations to the OSCE. The 276-page-publication is available free of charge in English and Russian editions.<sup>1</sup>

**Other Activities in 2004.** Besides these two highlights in 2004, RFOM has been represented in several conferences and meetings dealing with Internet issues. These include the release of the Reporters sans frontières *Internet under Surveillance Annual Report* in Paris, the UNESCO conferences on *Freedom of Expression in Cyberspace* in Paris and on *Internet, Culture and Human Rights* in Oegstgeest, the Netherlands and many more. The Office has also organized several expert side-events on the margins of major OSCE meetings.

During the Brussels Conference on *Tolerance and the Fight Against Racism, Xenophobia and Discrimination* in September as well as during the OSCE Human Dimension Implementation Meeting in Warsaw in October, RFOM convened two successive side-events where several experts advocated that education, media awareness activities and development of Internet literacy should be seen as the most effective tools to increase tolerance and to counter hate speech, both online and offline.

The Representative also organized a side-event on “Guaranteeing Media Freedom on the Internet” during the Paris Meeting on the *Relationship between Racist, Xenophobic, and anti-Semitic Propaganda on the Internet and Hate Crimes* in June 2004. Here experts stressed that within regulatory and co-regulatory bodies for the Internet, transparency, accountability and the right to appeal needed to be observed to at least the same degree as in classic media.

---

<sup>1</sup> It can also be downloaded from the FOM website at <<http://www.osce.org/fom/documents/books>>.

Activities at the current stage of the project in 2005/2006 include a Third Amsterdam Internet Conference, further promotion of the Internet as a tool to foster tolerance and guarantee freedom of the media at different OSCE conferences and the implementation of the recommendations from the First Amsterdam Conference by assisting participating States.

***Lessons Learned.*** But what was the outcome of all these meetings and conferences? The most important results of the experts' discourse and general recommendations will be presented in a nutshell in the following paragraphs.

The *Cookbook* combines the Recommendations by RFOM ("Recipes") with 18 articles by renowned international Internet and human rights experts. It offers insights into:

- What media freedoms or even media types can get lost in the hands of uninformed or uncaring legislators;
- How good intentions of uninformed or uncaring legislators result only in loss of freedom rather than helping to fight "bad content";
- What are the unexplored non-regulatory ways of fighting "bad content", methods that use the potential of the Internet itself and of the communities that create and consume media on the Internet?

The authors of the *Cookbook* do not deny the challenges posed by the freedom of the Internet. There is a certain amount of appalling material to be found on the Internet, but the "information society" does not exist in a normative or legal vacuum, as Rikke Frank Jørgensen of the Danish Institute for Human Rights reckoned. Laws and provisions, for example to fight child pornography, exist and are being enforced by police and prosecutors.

However, besides clearly illegal contents there are other forms of so-called "harmful" or "unwanted" content like obscenities or hate speech (although some experts raise the

objection that there is no more xenophobia or racism on the Internet than you can find in an ordinary pub anywhere on a normal Friday evening). Also the mere fact that something exists online tells you nothing about how widely it is read or accepted. The Internet is a rather distorted reflection of society where minority and extreme opinion are indistinguishable from the mainstream. And it is important not only to see the small fraction of problematic content when it comes to the Internet. The overwhelming amount of online content is useful – or at least mostly harmless.

The benefits of access to information, which is a prerequisite for any political, economical and cultural development, outweigh the risks by far and the Internet enables the vast majority to communicate and collaborate for more progressive ends and to counter “bad” content on it.

There is an overriding consensus between technicians, the academic world and many human rights lawyers that filtering and blocking content on the Internet is not an option. Studies show that it is simultaneously “under-effective” and “over-blocking” and poses a serious danger to the principles of freedom of expression and free media. Or as Ben Edelman put it, “on a filtered Internet things just are not as they seem”.

In democratic States a complete blockade is not in line with basic principles of free expression. But at the same time, even the blocking of particular sites tends to go further than the limits one first sets because it is anything but an exact science. So even with the best intentions, legislators and regulators may cause substantial collateral damages to freedom of expression even if they originally only had one specific target. The technical infrastructure of the Internet itself, however, is no safeguard against censorship as examples arise everyday from all over the world.

Together with the experts, we believe that recognizing this difficulty of “controlling” content in a global medium

should as a logical consequence lead to the promotion of awareness, critical thinking skills, and knowledge as “life-long literacies” and the basic foundations for all attempts to counter hate speech. The Internet does not work on the principles of censorship or control, but rather on the principle of responsible decision-making by literate and enlightened users. Or as Prof. Frederick M. Lawrence put it: “The educated mind is the best filter imaginable.”

The Internet is not a medium. In fact, it is an infrastructure combining different media, classical and new, and it also consists of private spheres and public space. Legislation and governmental action must provide safeguards to guarantee the privacy of the former, the openness of the latter and freedom of expression in general. Also, it must not be forgotten that provisions of national legislation guaranteeing fundamental rights as well as the Universal Declaration of Human Rights or the European Convention on Human Rights also apply to the Internet without restrictions.

Digital media are forcing a shift in responsibility from statutory regulators towards the individual citizens in modern democratic societies. This is a paradigm shift and a challenge for all societies but at the same time the only passable way as all alternatives are at the expense of the human right of freedom of expression. Each attempt to “balance” this with issues of national security or even intellectual property and copyright regimes or the protection of the public from obscene content is always a considerable threat to human rights.

What is more, the enormous potential of the Internet for educational purposes has not yet been fully utilized. The Internet is indeed a great tool for fostering development, supporting awareness raising activities and providing key databases of information for wider public dissemination. It is at the same time the most efficient way of fighting abuse, more than blunt regulation or filtering mechanisms could ever be.

“Bad” speech can be countered with more speech on the Internet. This battle of ideas is certainly not an easy one but it has to be fought. Racist and xenophobic ideas can be unmasked as what they are instead of just moving them out of the realm of society’s vigilance.

Keeping the accustomed level of freedom on the Internet and resisting the regulatory reflex might be far more beneficial for all than implementing hazardous remedies to uncertain diseases.

Morris Lipson

## **In the Name of Protecting Freedom of Expression: Rejecting the Wrong Rule for Liability for Internet Content**

It might be thought that publishing content over the Internet is pretty much like publishing material in a newspaper. As this paper explains, courts in particular have been tempted to think so. However, this fact, in combination with the fact that restrictions on the publication of content vary widely from jurisdiction to jurisdiction, yields the result, probably unintended, of a very significant threat to freedom of expression. This paper describes that threat, and recommends a way of avoiding it.

***A Range of Content Restrictions.*** Different national and sub-national legal regimes, often supported by international instruments, have content restrictions on publication (not to say, expression more generally) which may differ quite considerably. The consequence is that the publication of material in one jurisdiction, perfectly legal and non-actionable there, may well be subject to criminal or civil liability in other jurisdictions. For the purposes of what follows, I will restrict my attention to variations in restrictions on hate speech and defamation, though the points made in this paper apply with equal force to other (varying) content restrictions: on obscenity or pornography, blasphemy or sedition, among others.

Take hate speech first. In the United States, it is well settled that the publication of racially vilificatory material is protected under the First Amendment of the United States Constitution unless it is directed to inciting or producing

imminent lawless action and is likely to incite or produce such action.<sup>1</sup> This is a very high threshold: publications which cast clear and vulgar aspersions on racial groups, which express the strong desire that certain groups be deported or eliminated altogether, are protected unless it can be shown that they are intended to produce violence and in fact are likely to produce such violence imminently. In the United Kingdom, the test for restricting certain racial content is the substantially weaker one of whether the challenged speech is intended to stir up racial hatred and “is likely” to stir it up. By the terms of the applicable statute, at least, no showing needs be made of the *imminence* of any allegedly likely violence, or indeed of any likely *violence* at all.<sup>2</sup> Again, jurisdictions including Austria, France and Germany have blanket restrictions on Holocaust denial. Finally, broad and potentially far-reaching bans are common: to take one example, Article 156 of the Criminal Code of Uzbekistan prohibits the premeditated “insulting [of] citizens’ feelings ... committed with the purpose of ... agitating ... intolerance or separation between groups [which are distinguished racially or ethnically]”.<sup>3</sup>

It must be said that international instruments reflect a far from consistent approach to what sort of expression may be prohibited as hate speech. Article 20(2) of the International Covenant on Civil and Political Rights requires the enactment of national legislation which prohibits only the advocacy of racial hatred “that constitutes incitement to discrimination, hostility or violence”. In contrast, Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination prohibits not only the incitement of racial discrimination, but also the dissemination of “ideas based on racial superiority or racial hatred”. The Additional Protocol to the Convention on Cybercrime goes even further, in both directions so to speak, in that it invites Parties to enact prohibitions which can be very broad (for example, on the mere

“distribution” of racist material through a computer system [Article 3], or on the public insulting of persons “for the reason that they belong” to a racial or ethnic group [Article 5]); but it also permits Parties to opt out of these provisions (or effectively to do so). The effect is explicitly to recognize and mandate substantial differences in restrictions on hate speech.<sup>4</sup>

Similar, and similarly dramatic, variations in criminal defamation laws exist across jurisdictions. In Azerbaijan, for instance, you can be imprisoned for as much as two years if you defame someone, and you can go to prison for as much as six months just for insulting them.<sup>5</sup> Many countries have special, and particularly objectionable from the point of view of freedom of expression, criminal penalties for insulting the President or other heads of state, or for insulting public institutions or even national flags; enhanced criminal penalties are often a part of such regimes.<sup>6</sup> In many countries, prosecutions

---

1 *Brandenburg v. Ohio*, 395 US 444 (1969).

2 1986 Public Order Act, Section 18.

3 The European Court of Human Rights has found on numerous occasions that a similarly broadly-worded provision in the Turkish Criminal Code has been employed to restrict expression which is protected under Article 10 of the European Convention on Human Rights. See e.g., *Okcuoglu v. Turkey* (8 July 1999, Application No. 24246/94); *Karatas v. Turkey* (8 July 1999, Application No. 23168/94).

4 It is perhaps worth noting that, at the time of writing, there are 23 signatories to the Additional Protocol, but there have been no ratifications.

5 Articles 147 and 148, respectively, of the Criminal Code of 2000.

6 For instance, the Criminal Code of Albania prohibits intentionally insulting: “an official acting in the execution of a state duty or public service, because of his state activity or service” (Article 239); “an official acting in the execution of a state duty or public service, because of his state activity or service” (Article 240); “the President of the Republic” (Article 241); “a judge or other members of trial panel, the prosecutor, the defence lawyer, the experts, or every arbitrator assigned to a case because of their activity” (Article 318); “prime ministers, cabinet members, parliamentarians of foreign states, diplomatic representatives, or [representatives] of recognized international bodies who are officially in the Republic of Albania” (Article 227); and “the flag, emblems or national anthem of foreign countries and international organizations” (Article 229).

It is well to point out that this sort of enhanced coverage is precisely the opposite of what international law requires, recognizing as that law does that public officials should be required to accept more, rather than less, criticism. See e.g., *Lingens v. Austria* (8 July 1986, Application No. 9815/82) para. 43; *Thoma v. Luxembourg* (29 March 2001, Application No. 38432/97) para. 47.

under such laws occur with alarming frequency. On the other hand, however, some jurisdictions, such as Bosnia and Georgia, have actually abolished criminal defamation provisions altogether. And other countries which have criminal defamation on the books have not seen prosecutions under such provisions for many years.<sup>7</sup>

To repeat the principal point thus far: A racial comment, or a critical comment about a public official, may be fully protected in one jurisdiction, while at the same time sanctionable by the criminal regimes (or actionable in the civil regimes) of other jurisdictions. Indeed, some jurisdictions support the punishment, either criminal or civil, for expression which is almost certainly protected under the international law of freedom of expression.

***The Newspaper Rule for Assessing Liability in Foreign Jurisdictions.*** Consider the situation of a newspaper publisher, facing the fact that content in his or her newspaper may not constitute illegal or civilly actionable expression in the jurisdiction where the newspaper is typically read, but would be punishable or civilly actionable in other jurisdictions. To set the stage for the special problem posed for Internet publishers by the variation of content restrictions across jurisdictions, let us ask the following: *Would the newspaper or the editor be legally liable in the event that the article in question finds its way into one of the latter jurisdictions?*

The answer is: it depends. Note, first, that publishers, particularly those whose newspapers cross national frontiers, have well-established distribution networks. Newspapers are shipped throughout the newspaper's home country, and abroad as well, to vendors who have sales arrangements with the newspaper, and to individual subscribers.

In these cases, it is highly foreseeable to the publisher that copies of the newspaper will find their way to these foreign vendors and subscribers and will be read in those jurisdictions. Indeed, it is not only foreseeable – the publisher fully intends that copies of the newspaper be sent to and read in those jurisdictions. Under these circumstances, it is appropriate, and courts and other tribunals have not hesitated in concluding, that if the newspaper contains material falling under a hate speech ban, or if it is defamatory, in one of the jurisdictions to which copies are sent, the newspaper and publisher (and perhaps others affiliated with the newspaper) will be liable for that content in that jurisdiction.<sup>8</sup>

This situation, which makes reasonable sense, is to be sharply distinguished from the situation in which a newspaper with certain problematic content finds its way by accident, so to speak, into a jurisdiction in which such content is illegal, notwithstanding that the content is legal in all the jurisdictions of the paper's distribution network. For example, a tourist from Uzbekistan purchases a newspaper published in the United States at LaGuardia Airport in New York. It contains racially vilificatory material relating to an ethnic community in Uzbekistan. The tourist drops the newspaper on a seat in the arrivals lounge at Tashkent airport where it is picked up by an airport employee who takes it home with her and reads it there. The newspaper has no subscribers or vendors in Uzbekistan. The reader finds the material offensive, takes it to the authorities who determine that it is illegal racist content under Article 156 of the Criminal Code, and they prosecute the publisher.

---

7 A similar variation can be seen in civil defamation regimes.

8 See e.g., *Shevill v. Presse Alliance S.A.*, Case C-68/93 (1995) 2 A.C. 18; *Berezovsky v. Michael* (2000) 2 All ER 986 (both relating to defamation, but usefully illustrating the general principle).

It is quite clear that in this circumstance, the publisher should not be held liable, and in most jurisdictions would not be so held. Why? Because it was not reasonably foreseeable by the publisher that the newspaper would be read in Tashkent; the publisher took no steps at all to get the newspaper to that jurisdiction and had no control over the fact that it would end up there. Under these circumstances, courts would hold that, in fact, the newspaper *was not published* in that jurisdiction; and on that basis would not impose liability on it there.

This hypothetical situation illustrates what I would like to call the “newspaper rule” for liability for newspaper content. According to this rule, a publisher is legally liable for content deemed illegal or otherwise actionable by a given jurisdiction as long as two conditions are met: (1) a copy of the newspaper actually reaches the jurisdiction and is read there; and (2) the publisher had reason to know that the newspaper would probably be read there – because, most prominently, the jurisdiction is in the distribution network of the newspaper. This liability rule, most crucially, imposes liability in every place in the newspaper’s distribution network *where the newspaper is read, regardless of where it is produced or where the content was written.*

### ***Applying the Newspaper Rule to Internet Publications.***

Publication on the Internet is fundamentally different from publication by newspaper, in ways directly relevant to the newspaper rule. Suppose someone writes an article with racial content. It is written in the United Kingdom, uploaded and stored there on the author’s website. The author knows, or should know, that the moment that the material is posted on his website, it is instantly accessible by virtually any person virtually anywhere in the world.<sup>9</sup> To put it another way: fundamentally unlike the typical newspaper, the Internet makes

virtually every person with Internet access *within the distribution network* of any Internet publisher. And, equally crucially, this is a fact which virtually every Internet user knows, or should know.

What, therefore, if we employ the newspaper rule for fixing liability for materials posted on the Internet? It's simple really: (1) since the newspaper rule subjects a newspaper to potential liability for any content actionable in any jurisdiction within its distribution network, (2) since virtually every place with a computer connected to the Internet is within the distribution network of every website, then (3) application of the newspaper rule to Internet publication subjects an Internet publisher to liability *in virtually every jurisdiction in the world*.

As we have already seen, however, different jurisdictions have radically different content restrictive regimes; some have restrictions on allegedly defamatory material, or on allegedly racist material, which go far beyond what is permissible in one's home jurisdiction. Some, indeed, have restrictions which are not mandated by the international law of freedom of expression. Yet, if the newspaper rule is also the rule for Internet publication, the Internet publisher would be "legitimately" liable for content which is legal and protected in his or her home jurisdiction (and which might also be protected by international law), as long as (1) it is prohibited in a jurisdiction which has Internet access and (2) someone actually downloads it there.

---

9 I say "virtually" for two different but related reasons. First, if I have sophisticated technical skills and some software, I can restrict access to my website, for example, only to persons who have taken out a subscription. In that case, only persons of whom I have knowledge (or should have) will have access to the site. At the other end, there may be some form of sophisticated blocking or shielding software employed by a particular server which would prevent access to my website, or to the particular content in my article on that website, for any would-be user attempting to gain access employing that server. These, however, are relatively exceptional situations.

**Some Cases.** Surprisingly, to some at least, it would appear that the trend has indeed been to apply the newspaper rule to Internet publication. There is, for example, the attempted prosecution of Frederick Toben, who had posted material denying the Holocaust on a website in Australia. Toben was arrested in 1999 on a visit to Germany and was tried there, in part for inciting racial hatred. That part of the prosecution was based on the fact that the materials on his website had been downloaded in Germany. The trial court had dismissed the charge because the offending materials “existed” outside Germany, but the *Bundesgerichtshof* reversed, holding that German laws prohibiting the glorification of the Nazi party could be applied to materials situated outside Germany as long as they were downloaded within the jurisdiction.<sup>10</sup>

A defamation case brought in Australia applied similar reasoning. *Dow Jones & Company Inc. v. Gutnick*<sup>11</sup> concerned the uploading by the *Wall Street Journal* of a story which made critical comments about Gutnick, an Australian businessman. The story was written in the United States, and was uploaded and stored on a computer there. Gutnick downloaded the story in Australia, read it there, took offence and sued the *Wall Street Journal* for defamation in Australia. It is highly likely that the material in question would not have been found to be defamatory in the United States, but could well have been so found under the defamation laws of the Australian state where the download occurred. Again, the *Wall Street Journal* argued that publication occurred in the United States, where the material was uploaded and stored; Gutnick disagreed, arguing that publication occurred where download occurred – in Australia. At a crucial point in its reasoning, the court wrote that “those who post information on the World Wide Web do so knowing that the information they make available is available to all and sundry without any geographic restriction”. The

court's point appears to be that in this respect the same applies to Internet and newspaper publishers. As newspaper publishers know about and control their distribution networks and have full knowledge of where the content of their newspapers is likely to be read, it is appropriate to impose liability on them for any content found problematic anywhere in their distribution networks. In the same way Internet publishers have full knowledge that the reach of the materials they publish is everywhere (that is, the whole world is in their distribution network), and therefore imposing liability in any jurisdiction in which the material is downloaded is entirely proper. On this basis, the court took the case.

**Conclusion.** Applying the newspaper rule to Internet publication subjects Internet publishers to the content restrictions of virtually every country on earth, regardless of whether such content restrictions exist in the jurisdictions where such publishers live,<sup>12</sup> and regardless of whether the foreign restrictions comply with the international freedom of expression standards. Application of the newspaper rule will subject persons living in regimes whose laws fully protect freedom of expression to the laws of regimes which regularly censor, and whose public officials otherwise keep a stranglehold over the press and others by the use and abuse of content-restrictive laws.

---

10 See "German Hate Law: No Denying It", available at <[www.wired.com/news/politics/0,1283,40669,00.html](http://www.wired.com/news/politics/0,1283,40669,00.html)>. Another case of the same ilk involved Yahoo!, Inc., which operated an automated online auction site from the United States. Nazi memorabilia were offered for sale on the site – perfectly legally in the United States, but illegal in France. Persons in France were able to access the site. The French Union of Jewish Students brought suit against Yahoo! for violating France's prohibition on Holocaust denial. The French court found a basis for taking jurisdiction of the case based on the fact of the availability of the materials, by download, in France.

11 (2002) HCA 56.

12 As often as not, of course, Internet publishers are individuals, writing and working from their own homes and uploading their materials on their home personal computers.

Of course, this may not be a particularly fearsome prospect for those Internet publishers who do not expect ever to find themselves in jurisdictions far from home where they may be subject to suit. On the other hand, it may well cause a great many persons to think twice before uploading material protected “at home” because of what may happen to them when they travel abroad.<sup>13</sup> The potential for the chilling of expression, in other words, is considerable.

A full respect for freedom of expression requires a different treatment for Internet publication. The Internet, as has often been noted, is a liberating tool, a tool with which ordinary individuals can reach out across the globe to communicate with others on matters of concern to them. It is a means of transcending borders and differences. Yet, a rule which catapults the unknown laws of unknown places into the communication space of persons living in freedom-protecting countries has precisely the opposite effect: of stifling expression for fear of legal – often criminal – liability abroad.

It may not be perfectly clear what the precisely right liability rule for Internet publication is. Perhaps it is to impose liability only where material uploaded is actionable in the jurisdiction of upload. Perhaps it is to impose liability in those jurisdictions where materials are downloaded provided that the author is “substantially connected” to the download jurisdiction. But what is certain is that, in the name of freedom of expression at least, *the newspaper rule must not be the rule of liability for Internet publishers.*

*This article is from* The Media Freedom Internet Cookbook  
(Vienna: OSCE, 2004).

---

<sup>13</sup> Not to mention the simple fact that many Internet publishers will not wish to face the possibility of having criminal convictions or civil judgements entered against them in foreign jurisdictions even if they have no intention of travelling there, and even if such judgments would not be enforceable in their home jurisdictions.

Cathy Wing

## **An Introduction to Internet Literacy**

In 1962, Canadian media guru Marshall McLuhan coined the phrase “global village”, to describe how, through electric technology, we were becoming increasingly linked together across the globe. The past two decades have seen the advent of new electronic technologies – the Internet, satellite TV, mobile phones, digital cameras and wireless devices – that are making this notion a reality. While much of the developing world still remains “outside” the village, many people around the globe now watch the same TV shows and movies, listen to the same music and access the same sites on the Web.

In a world that now suffers from information overload, a central message of McLuhan’s – the importance of the active study of media – remains truer than ever. The challenge for educators in the twenty-first century is to respond to multiple literacies, and more specifically, to media literacy – an essential skill in this age of electronic information, entertainment and communications.

Media literacy has been practised around the world for more than 40 years, and in many countries, such as Canada, Australia and the UK, it has a strong presence. Canadians have always felt the need to take an analytical and reflective approach to media, given the pervasiveness of popular culture from our close neighbours, the United States. Despite this, implementing media literacy in Canadian schools has been a fairly recent phenomenon. As recently as the 1980s, critics considered media literacy a “frill”. Fortunately in today’s multilayered, interactive information society, attitudes have changed. Media literacy outcomes now form a substantial part of every Canadian province’s Language Arts curriculum. Increasingly

school boards are understanding that if young people are to be truly literate they're going to have to develop rigorous critical thinking skills to sift through and make sense of what they see, hear and read – in school and in the wider community.

This article will explore media literacy; what it is, approaches for implementation; and best practices for promotion and integration into schools, homes and communities.

***Defining Media Education and Media Literacy.*** UK media educator David Buckingham defines media education as the “process of teaching and learning about the media; media literacy is the *outcome* – the knowledge and skills learners acquire.”

Media education has been called the perfect curriculum because it incorporates the latest thinking in pedagogical practice; it's interdisciplinary; it develops critical thinking; and it is student-centred, putting the emphasis on analysis, enquiry and self-directed learning.

Media education encourages an approach to media that is always probing: Who is this message intended for? Who wants to reach this audience, and why? From whose perspective is this story told? Whose voices are being heard, and what voices are absent? What strategies are being used to engage my attention? Because media education is not about having the right answers but asking the right questions, the result is lifelong empowerment of the learner and the citizen.

The end result of media education is a media literate individual who has the ability to *read* the messages that are informing, entertaining, and selling to him or her daily. It's the ability to bring critical thinking and life skills and pertinent questions to all media productions and texts – from music videos to Web environments, to product placement in films and virtual advertising on football fields. It's about analysing what's there, and noticing what's not, and questioning what lies behind media productions – the motives,

the money, the values and ownership – and how these factors influence the content.

The field of media is broad and amorphous, extending not just from information and entertainment mediums such as newspapers, magazines, television, film and the Internet, but encompassing many areas of popular culture such as fashion, toys, the nature of celebrity, etc. Anyone attempting to make sense of this area needs a clear conceptual framework that will allow for discussion of a variety of complex and interrelated factors. The following is a framework that is used by many Canadian educators for the analysis of media messages<sup>1</sup>:

1. All media messages are constructed
2. The media construct reality
3. Audiences negotiate meaning in the media
4. Media have commercial implications
5. Media contain ideological and value messages
6. Media have social and political implications
7. Form and content are closely related in the media
8. Each medium has a unique aesthetic form

A non-protectionist approach key to engaging students in media literacy in a meaningful way. Young people don't need to be protected, but invited to participate in a dialogue about media. David Buckingham argues that young people shouldn't be viewed as victims who need to be rescued from the excesses and evils of their culture – which is simply the intersection of high technology, mass media and consumer capitalism – rather we should focus on their emotional engagement with media and the genuine pleasures they receive, promoting real questioning and analysis.<sup>2</sup>

---

1 J.S.J. Pungente and B. Duncan, *Media Literacy Resource Guide*, Ontario Ministry of Education (Toronto, 1989).

2 R. Hobbs, "The seven great debates in the media literacy movement", *Journal of Communication*, 1998.

***Successful Integration of Media Literacy.*** In 1990, participants at the UNESCO-sponsored New Directions in Media Literacy conference at the University of Toulouse, including the British Film Institute and the Council of Europe, identified four steps that are required for the successful development of media literacy in a country's education system:

1. The establishment of curriculum guidelines (nationally or regionally) by appropriate educational authorities.
2. Teacher training programmes at university level. These are degree programmes in education with a specific specialization or major in media studies.
3. Teacher support – in-service educational programmes, summer “refresher” courses, national organizations through which teachers grow and develop in their chosen specialization – and through which the specialization itself evolves and develops through feedback by grass-roots teachers.
4. Educational resources for teaching – writing, testing and publishing of the textbooks, lesson plans, activity sheets, videos or other audio-visual materials, posters, supplemental booklets, etc. needed for teaching – developed in collaboration with all of the above.<sup>3</sup>

Canadian media educator John Pungente, S.J., who has studied media literacy implementation in various countries, has identified these additional factors as being crucial to success:

1. Media literacy, like other innovative programmes, must be a grass-roots movement. Teachers need to take the initiative in lobbying for its inclusion in the curriculum.
2. School districts need consultants who have expertise in media literacy, and who will establish communication networks.

3. There must be appropriate evaluation instruments suitable to the unique attributes of media studies.
4. Because media literacy involves such a diversity of skills and expertise, there must be collaboration between teachers, parents, researchers and media professionals.<sup>4</sup>

***Integrating Internet Literacy into Media Education.*** The Internet has increased the importance of developing independent thinkers and informed media consumers. Because the Internet has no geographical boundaries, many regulatory and legislative standards that we take for granted – including advertising and broadcasting to young people – do not apply. The Internet has countless publishers and few gatekeepers, so the standards for authenticity and reliability of information are also absent. Third, media is no longer a matter of a passive transfer of content from producer and carrier to the receiver – it is interactive in nature. And finally; media consumers can now also be media *producers and distributors*. These last two points, specifically – interactivity and capacity for individuals to produce and distribute media – have fundamentally changed the role that media play in our society, and particularly in the lives of young people. In this new environment, the need for media literacy is more critical than ever.

Educators play a crucial role in bridging traditional media education and Internet literacy, particularly as many societies move towards the convergence of all media platforms – the Internet, television, radio, videos, CD ROMs, DVDs, computer games, and the many forms of advertising – into one multifaceted “small screen” experience.

---

3 See *Four Steps to Success in Media Literacy*, 1991 <[http://www.medialit.org/reading\\_room/article125.html](http://www.medialit.org/reading_room/article125.html)>

4 See *Nine Factors that Make Media Literacy Flourish*, 2002 <[http://www.mediaawareness.ca/english/resources/educational/teaching\\_backgrounders/media\\_literacy/9\\_factors.cfm](http://www.mediaawareness.ca/english/resources/educational/teaching_backgrounders/media_literacy/9_factors.cfm)>

In a 2003 study conducted by the Media Awareness Network into young Canadians' Internet habits, students expressed frustration with what they identified as adults' need to control their Internet use. Efforts to keep them from being exposed to inappropriate material are ineffective they felt, because there are too many access points and too many places where unsupervised exploration is possible. The Internet doesn't work on the principles of  *censorship*  or  *control*  they felt, but rather on the principle of  *responsible decision-making* . Rather than spending time and money and energy to try the impossible – keeping children away from material that is not suitable to their maturity or nature – young people said that efforts should be made to develop opportunities, particularly for young children, to learn how to think about choices, and gain decision-making skills.

Teachers are becoming aware that, along with learning how to navigate the Internet, young people need to develop a critical consciousness when dealing with its enormous range of content. Most, however, lack the necessary training to implement Internet literacy into their day-to-day teaching. According to a 2003/04 Statistics Canada study looking at ICT infrastructure and reach in Canada's 15,500 elementary and secondary schools, over 97 per cent of schools were connected to the Internet. Less than half of school principals, however, felt that the majority of their teachers were adequately prepared to engage their students effectively in the use of ICT to enhance learning.

There are many obstacles to preparing teachers to meet this demand, including a scarcity of professional development opportunities and resources to support classroom activity and the lack of pedagogical recognition by faculties of education. While we know that teaching young people to think critically about all the information available to them today is an essential skill, support within the education system is minimal or non-existent.

***Internet Literacy and Anti-racism Education.*** Central to all media education is the concept of representation – how we see ourselves and how others see us. The way visible minorities are represented in mainstream media reinforces perceptions of minorities as outsiders, erodes the self-image of young people from these groups and undermines the social cohesion of society. In a multicultural democracy, media education curricula must reflect the concerns of diversity, identity and difference.

While representation, bias and stereotyping in traditional media have always been key areas of inquiry in media education, the Internet presents new challenges. The Web offers easily accessible messages of hate aimed at ethnic and racial minorities. A 2001 Media Awareness Network survey of nearly 6,000 Canadian students, ages 9 to 17, indicates that two in ten youths have come upon a site that was “really hateful” towards an individual or group of people.<sup>5</sup>

In the early days of the Internet, hatemongers tried to spread their messages through interactive forums. The free speech environment of newsgroups, however, ensured that false claims were challenged by healthy and vigorous debate. As a result, hatemongers soon retreated into less interactive areas of cyberspace, such as the Web, allowing them to avoid interacting with those who disagree with their views. Websites also help groups identify potential recruits who can be brought into the hate community through private chat rooms and e-mail, well away from the public eye.

With fewer opportunities for Internet users to openly confront hatemongers and debate their messages, it has become increasingly important to educate young people to recognize online hate in its many forms and to understand the strategies used to target them. Hate on the Net is not always

---

5 See *Young Canadians In A Wired World: The Students' View*, 2001  
<[http://www.mediaawareness.ca/english/special\\_initiatives/surveys/phase\\_one/students\\_survey.cfm](http://www.mediaawareness.ca/english/special_initiatives/surveys/phase_one/students_survey.cfm)>

obvious: although hard-core sites are easy to detect, some hatemongers use more subtle tactics to attract new blood. They create fun-and-games sites for children and music sites for teens; infiltrate chat rooms and newsgroups frequented by kids; and even set up sites where children might go for homework assignments. The most effective long-range strategy for helping young people is to give them lots of information about online hate – as well as the critical thinking skills to decode messages of hate, and read between the lines.

***Promoting Internet Literacy: A Canadian Response.*** In 1999, the CRTC, Canada’s national broadcast regulator, issued its decision to not regulate the Internet. The decision pointed to the necessity for industry, government and non-governmental organizations to work together, to ensure a self-regulated environment and an education and awareness approach to ensure that the new media environment provided a positive and empowering experience for Canada’s young people.

Since then, a broad spectrum of Canadians have worked to develop a partnership model involving public, profit and not-for-profit partners to deliver programmes that empower children and young people with critical thinking skills for their online activities and explorations.

***Government of Canada’s CyberWise Strategy.*** In February 2001, the Canadian Government unveiled its strategy for dealing with offensive and illegal Internet content. The CyberWise Strategy focused on educating and empowering Canadians so they can become “safe, wise and responsible” Internet users. Although Canada has strong laws that apply to cyberspace, the Government of Canada acknowledged in its strategy that legislation alone will not solve the problems of illegal and offensive content on the Internet and identified “awareness, education and knowledge” as the foundations of its approach.

Media Awareness Network (MNet), a not-for-profit organization that supports media education in Canadian homes, schools and communities, was recognized in the CyberWise Strategy as the leading public education organization working in this area.<sup>6</sup>

**Research into Young Canadians' Internet Use.** To maintain critical vigour and the ability to adapt to rapid changes in the new technologies, Internet literacy demands ongoing, in-depth research. In 2000 to 2001, the Media Awareness Network (MNet) conducted the most comprehensive and wide-ranging survey of its kind in Canada in order to gain a fuller and deeper understanding of issues, behaviours and attitudes related to Internet use by young people. Phase I of the *Young Canadians In A Wired World (YCWW)* research project, which was funded by the Federal Government, included both qualitative and quantitative findings and comprised:

- a telephone survey of 1,080 Canadian parents with a home computer;
- focus groups of parents and children (aged 9–17);
- a survey of 5,682 students in grades 4 to 11 across Canada.

The survey results reinforce the fact that Canadian youth are highly engaged participants in the online world. However, the data also presents findings which show that, in this age of connectivity, there is a substantial discrepancy between how parents see their children using the Internet, and what their children are actually doing online.

The research findings from YCWW Phase I attracted the attention of numerous communities of interest and served as a call to action to address the risks and challenges of new media use by young people. The benefits that Canada derived from

---

<sup>6</sup> Cyberwise Strategy: <[http://www.media-awareness.ca/english/special\\_initiatives/surveys/phase\\_one/index.cfm](http://www.media-awareness.ca/english/special_initiatives/surveys/phase_one/index.cfm)>

the research have been extensive. Data collected from YCWW contributed to:

- Internet policies in Canadian schools and public libraries;
- government policy-setting (including the Government of Canada's policy statement on *Illegal and Offensive Content on the Internet*);
- an extensive Internet education programme to educate teachers, parents, librarians and students how young people can get the most out of new technologies while being safe and responsible Internet users.<sup>7</sup>

In autumn 2003, Media Awareness Network embarked on Phase II of YCWW with a series of national focus groups with young people and parents. This qualitative research, funded by Industry Canada, showed a media landscape that has evolved significantly since 2001. In 2005 MNet will return to the classrooms from YCWW Phase I and survey another 6,000 students in order to revisit the benchmark measures from the original data and assess how patterns of use and attitudes have changed.<sup>8</sup>

**Web Awareness Canada.** In 1999, the Media Awareness Network (MNet) launched an Internet public awareness programme, *Web Awareness Canada*. The objective of this initiative was to ensure that public librarians and educators were informed about the challenges and opportunities that young people face when they go online and to ensure that adults are more informed and confident in supporting young people's use of Internet and ICT. The focus of the programme was to build partnerships in schools and libraries – the first public sectors to be completely connected to the Internet – by training teachers and librarians, and building the capacity in those sectors for decentralized local and regional delivery of the programme.

*Web Awareness Canada* has received awards and international recognition for promoting and fostering the positive use

of ICT in the education and community sectors. Perhaps most importantly, provincial governments have purchased licences for these workshops, allowing thousands of teachers, librarians, parents, community leaders and health workers across Canada to use the *Web Awareness* workshops as part of their professional development and self-directed learning programmes.

***Canadian Library Association (CLA) Initiatives.*** Canada's libraries are well connected – 98 per cent are linked to the Internet, and over 90 per cent provide public access to their patrons. In recent years, the Canadian Library Association (CLA), a national English library association, has taken a leadership role on the issues related to Internet access in public libraries. In Canada, many public libraries have come under fire for offering unfiltered Internet access and have subsequently found their relationships of trust within their communities undermined. Librarians now find their traditional role as protectors of the free flow of information measured against the protection of their patrons, and in particular children, from offensive and potentially illegal online content.

The CLA Statement on Internet Access, encourages libraries to “offer Internet access with the fewest possible restrictions” and to “assume active leadership in community awareness of, and dialogue on, the issues inherent in the *informed* use of this essential, yet non-selective and unregulated medium in libraries.”<sup>9</sup>

---

7 Canada's Children In A Wired World: The Parents' View:  
<[http://www.media-awareness.ca/english/special\\_initiatives/surveys/phase\\_one/parents\\_survey.cfm](http://www.media-awareness.ca/english/special_initiatives/surveys/phase_one/parents_survey.cfm)>

Young Canadians In A Wired World: The Students' View:  
<[http://www.media-awareness.ca/english/special\\_initiatives/surveys/phase\\_one/students\\_survey.cfm](http://www.media-awareness.ca/english/special_initiatives/surveys/phase_one/students_survey.cfm)>

8 Young Canadians In A Wired World – Phase II, Focus Groups:  
<[http://www.media-awareness.ca/english/special\\_initiatives/surveys/phase\\_two/upload/yccww\\_phase\\_two\\_report.pdf](http://www.media-awareness.ca/english/special_initiatives/surveys/phase_two/upload/yccww_phase_two_report.pdf)>

9 Canadian Library Association, Internet Service in Public Libraries – A Matter of Trust. Net Safe/Net Smart: Managing and Communicating about the Internet in the Library, 2001. Available at: <<http://www.cla.ca/netsafe/index.htm>>

The CLA developed an initiative, centred on the *Web Awareness* workshop series, in co-operation with MNet, to deliver Internet education in public libraries across Canada. The programme provides professional development for library staff, who in turn raise awareness of Internet issues among those accessing the Internet from public libraries. In response to demand from libraries, MNet produced a *Parenting the Net Generation* workshop to present to the public.

In February 2003 and 2004, the CLA, in partnership with the Media Awareness Network (MNet) and Bell Canada (one of Canada's largest Internet service providers) proclaimed a national *Web Awareness Day*. The purpose of the event was to build public awareness of Internet literacy and of the role being played by Canada's public libraries. To celebrate *Web Awareness Day* libraries around the country promoted Internet literacy through open houses, workshops on safe Internet use and other special events, as well as handing out information pamphlets and other materials for parents. Public libraries used *Web Awareness Day* as a positive opportunity to deliver the message that they are ready to support parents and communities in teaching young Canadians literacy skills for the twenty-first century.

***Be Web Aware Campaign.*** Much work needs to be done in empowering adults to address Internet issues in homes, schools and communities. This is especially true for parents, who are frustrated with what they see as the negative aspects of the technology and with their inability to control what their children are accessing and doing online. If parents are to be effective Internet gatekeepers for their children, they're going to need tremendous advice, guidance and support from the education system, government and industry.

In 2004, Media Awareness Network with Microsoft Canada and Bell Canada, and a coalition of leading Canadian organizations, launched *Be Web Aware* – a national, public

education campaign on Internet safety.<sup>10</sup> The goal of the *Be Web Aware* initiative is to raise awareness amongst parents that there are safety issues when their children go online and that they need to get involved. The *Be Web Aware* initiative includes public service announcements (PSAs) on television, radio, print and outdoor media that direct parents to a comprehensive *Be Web Aware* website. The site, developed by Media Awareness Network, is full of information and tools to help parents teach their children to handle the potential risks associated with going online.

Every day, each of us assimilates, evaluates, and controls immense amounts of data and diverse messages in a complex information and entertainment culture. Given this climate, it makes sense that we expand the notion of what it is to be literate beyond the limits of the traditional areas of reading, writing and numeracy, to include information, visual, and media literacy.

Young people today use technology for entertainment, to learn, to research, to buy and to communicate. Governments, industry, education and library sectors realize that the thinking must change regarding the importance of traditional literacies – not to upstage them – but rather to encompass all the lifelong learning skills that young people require for the management and understanding of information and messages that they receive, create and repurpose.

*This article is from The Media Freedom Internet Cookbook  
(Vienna: OSCE, 2004).*

---

<sup>10</sup> Be Web Aware: <<http://www.bewebaware.ca>>



Gus Hosein

## **Open Society and the Internet: Future Prospects and Aspirations**

We once dreamed about the future. It involved a global information infrastructure that was not hampered by borders and governments. Human potential would reach beyond its prior limits as we communicated without interference in a space that was separate from flesh and steel. The Internet would set truth free, and we would follow.

And this truth and liberty are required for the maintenance of an open society. In an open society, social actors yearn for improving society, knowing that no one has perfect knowledge or control of the outcome of decisions – thus creating a space for further actors to join in and participate. It is taken for granted that actors are able to contribute, to participate, and to submit their ideas for consideration. It is far too often taken for granted that the marketplace of ideas will be filled with merchants vying for attention. It is far too often taken for granted that we have the ability to interact, to communicate, to speak freely. The Internet was supposed to be the veins through which this lifeblood could sustain an open society.

I have no intention of mocking the Free Internet image of the future. Although it is common to argue that we were ignorant when we had that dream, such hindsight is uninteresting. I am more interested in the questions of “Why did we want that dream to be true?” and “What was it that we were once seeking that we seem to be so far away from now?”

***We Sought in Technology What We Were Promised.*** Before the popularization of the Internet, the media world was relatively stable. Film and broadcasting industries were regulated with

regards to what they could show, and ratings schema applied. Print and newspaper media were regulated through liability regimes, codes of practices, and ownership regimes, amongst other forms of intervention into the marketplace of ideas. And borders were reasonable constraints on the flow of information, where books and other material could be stopped at borders in accordance with national laws.

Yet we were promised so much more, and we heard of the potential of that promise. Free speech and free expression were long heralded values, core beliefs, and rights. Freedom of speech was enshrined in constitutional documents, international charters, and sustained in jurisprudence.

The law took some time to come around, however. Consider a case in the United States, decided in the Supreme Court in 1919. The case involved five Russians in the United States who were accused of violating the Espionage Act for conspiring with the Imperial Government of Germany. The conspiracy took the form of printing, writing and distributing copies of a leaflet entitled “Revolutionists Unite for Action” and “The Hypocrisy of the United States and her Allies” that criticized the US Government’s attitudes towards Soviet Russia, calling upon “workers” for solidarity and to strike, and to fight. The Court sided with the Government, contending that

while the immediate occasion for this particular outbreak of lawlessness, on the part of the defendant alien anarchists, may have been resentment caused by our government sending troops into Russia as a strategic operation against the Germans on the eastern battle front, yet the plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing and if possible defeating the military plans of the government in Europe.<sup>1</sup>

The country, after all, was at war. In a famous dissenting opinion, Supreme Court Justice, Oliver Wendell Holmes argued that the accused were not impeding the war by expressing their opinions.

[I]t is evident from the beginning to the end that the only object of the paper is to help Russia and stop American intervention there against the popular government – not to impede the United States in the war that it was carrying on.

Controversially, he argued:

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.

With this statement he opened discussion on the “marketplace of ideas” and the importance of speech and contestation. Holmes’s words were most surprising because he was behind two court decisions in the previous year that took harsh views of freedom of expression during war time.<sup>2</sup> This change of

---

1 *ABRAMS v. US*, 250 US 616 (1919).

2 Peter Irons, *A People’s History of the Supreme Court* (Penguin, 1999).

faith reflected conversations he held with others in the meantime, and also that the war was over by the time of the decision. He concludes:

That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.<sup>3</sup>

In declaring this he revised his earlier opinion that falsely screaming fire in a theatre was worthy of infringing First Amendment rights to free speech, calling instead for such infringement to occur only in the case of imminent threats and immediate interference. The essence of this dissent was adopted by the Supreme Court 50 years later.

Even before that, however, the promise of speech and protecting its conditions grew greater. In a 1960 court decision in the case *Talley v. California*, the US Supreme Court upheld the right to anonymous pamphleteering. This case involved a Los Angeles city ordinance restricting the distribution of handbills. The ordinance required the naming of the person who wrote, printed, and distributed the handbill. The petitioner, Talley, was arrested and tried for violating this ordinance with handbills urging readers to boycott against certain merchants and businessmen on the grounds that they carried products of “manufacturers who will not offer equal employment opportunities to ‘Negroes, Mexicans, and Orientals’.” The Supreme Court supported Talley, arguing that

Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws anonymously. The obnoxious press licensing law of England, which was also enforced on the Colonies was due in part to the knowledge that exposure of the names of printers, writers and distributors would lessen the circulation of literature critical of the government. The old seditious libel cases in England show the lengths to which government had to go to find out who was responsible for books that were obnoxious to the rulers. John Lilburne was whipped, pilloried and fined for refusing to answer questions designed to get evidence to convict him or someone else for the secret distribution of books in England. Two Puritan Ministers, John Penry and John Udal, were sentenced to death on charges that they were responsible for writing, printing or publishing books. Before the Revolutionary War colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. (...) It is plain that anonymity has sometimes been assumed for the most constructive purposes.<sup>4</sup>

A similar decision emerged 35 years later that contended that there was a marketplace of ideas, as promised by Oliver Wendell Holmes in 1919. In 1995, the Supreme Court decided that anonymous pamphleteering was protected under the Constitution, in *McIntyre v. Ohio*.

The interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly,

---

<sup>3</sup> *ABRAMS et al. v. UNITED STATES*.

<sup>4</sup> *Talley v. California*, Supreme Court of the United States, 362 US 60, decided 7 March 1960.

an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.<sup>5</sup>

Beginning with a dissent, and then adopted into mainstream jurisprudence, free expression is considered as a key component to a functioning democracy, and something that should be upheld, promoted, and protected. This is even the case when it involves anonymous speech.

***Law Unto the Internet.*** The printing press was heralded because it *democratized* publishing, decentralizing power to all those who owned printing presses. This was not everyone, obviously. As such, the ability of individuals to rise and speak freely was inhibited by the lack of technology available to all.

The promise of the Internet changed this. Everyone was potentially a printing press. Everyone could broadcast information, and could be the recipient of broadcasts, one-to-one, many-to-one and one-to-many forms of communications. And this was to be beyond the reach of legislatures, courts, and others who wished to impede the flow of information. And no one would know if you were a dog whilst on the Internet due to promises of privacy and anonymity. We wanted an infrastructure that could sustain our liberties, and believed that the Internet would be it.

It almost was. A most celebrated case is the fate of the Communications Decency Act, passed by the US Congress in 1996. The law required access control mechanisms on sites that made "indecent" information available to the general public, to verify the age of visitors. The constitutionality of the CDA was questioned immediately. According to David Sobel, a leading expert on the matter,

Whether the millions of individuals visiting sites on the Internet are seeking information on teenage pregnancy,

AIDS and other sexually transmitted diseases, classic works of literature or avant-garde poetry, they enjoy a Constitutional right to do so privately and anonymously. The CDA seeks to destroy that right.<sup>6</sup>

The US District Court injunction on the CDA used similar ideas.

Anonymity is important to Internet users who seek to access sensitive information, such as users of the Critical Path AIDS Project's Web site, the users, particularly gay youth, of Queer Resources Directory, and users of Stop Prisoner Rape (SPR). Many members of SPR's mailing list have asked to remain anonymous due to the stigma of prisoner rape.

The Act was eventually struck down on the grounds of identity, anonymity, and free speech. According to the District Court decision, "any content-based regulation of the Internet, no matter how benign the purpose, could burn the global village to roast the pig", and this was "due to the nature of the Internet." That is,

There is no effective way to determine the identity or the age of a user who is accessing material through e-mail, mail exploders, newsgroups or chat rooms. An e-mail address provides no authoritative information about the addressee... There is also no universal or reliable listing of e-mail addresses and corresponding names or telephone numbers, and any such listing would be or rapidly become incomplete. For these reasons, there is no reliable way in many instances for a sender to know if the e-mail recipient is an adult or a minor.<sup>7</sup>

---

5 *McIntyre v. Ohio Elections Commission*, Supreme Court of the United States, No. 93-986, decided 19 April 1995.

6 Electronic Privacy Information Center, "Internet 'Indecency' Legislation: An Unconstitutional Assault of Free Speech and Privacy Rights" (Washington DC, 1996).

7 *American Civil Liberties Union et al. v. Janet Reno* Civil Action No. 96-963, In The United States District Court for the Eastern District Of Pennsylvania.

At the Supreme Court, the majority concurred.

This dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer. As the District Court found, “the content on the Internet is as diverse as human thought.”<sup>8</sup>

The Internet was the newest incarnation of the “press” that the Founders of the US had envisioned when they adopted the Constitution, and thus was worthy of all the protections from incursions under the First Amendment. The Supreme Court concluded:

The Government apparently assumes that the unregulated availability of “indecent” and “patently offensive” material on the Internet is driving countless citizens away from the medium because of the risk of exposing themselves or their children to harmful material.

We find this argument singularly unpersuasive. The dramatic expansion of this new marketplace of ideas contradicts the factual basis of this contention. The record demonstrates that the growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.

The marketplace of ideas seemed secured from extraneous interference of censorship and content controls.

This all probably appears to be a bit dramatic, however. Consider the *Abrams* case: we were really talking about controversial political speech at a time of war. Certainly that deserves some constitutional scrutiny and protection. Similarly, the *Talley* case involved anonymous pamphleteering regarding racially discriminatory hiring practices at companies; and proportionately, the Supreme Court decision referred to dramatic transgressions upon expression in history as the root of oppression. But when it came to the CDA, this involved a law that merely restricted access to pornography. Why did everyone get so excited, speaking of pigs, and the marketplace of ideas, just because of mechanisms to restrict access to pornography?

My answer to that question is quite simple, and perhaps simplistic. We, and I count myself amongst those who opposed the CDA, saw this as the first step to greater controls. It is a case of the ever-articulated “slippery-slope” argument: if you begin with one form of content regulation, even with the most noble intents the rest will naturally follow. Other forms of regulation will arise either intentionally, through using the “verification” technologies to verify someone’s geographic location to prevent access to non-indecent information, or less directly through the chilling of online speech for fear of surveillance or eventual censoring.

***We Are Left with Strengthened Politics.*** Despite the “victory” in the CDA decision, the incursions upon free expression continued. Regardless of calls by experts, technologists, and lawyers that the Internet would not respond well to content regulation, content regulation followed nonetheless.

---

8 *Reno v. ACLU*, 26 June 1997, 521 US 844.

Even in the CDA decision, we were warned that the technology of the Internet could be changed. The technology could be shaped, the structure of the market altered, to permit censorship. According to the dissenting opinion from Justice O'Connor:

Cyberspace differs from the physical world in another basic way: Cyberspace is malleable. Thus, it is possible to construct barriers in cyberspace and use them to screen for identity, making cyberspace more like the physical world and, consequently, more amenable to zoning laws. This transformation of cyberspace is already underway. (...) Internet speakers (users who post material on the Internet) have begun to zone cyberspace itself through the use of "gateway" technology. Such technology requires Internet users to enter information about themselves – perhaps an adult identification number or a credit card number – before they can access certain areas of cyberspace much like a bouncer checks a person's driver's license before admitting him to a nightclub. Internet users who access information have not attempted to zone cyberspace itself, but have tried to limit their own power to access information in cyberspace, much as a parent controls what her children watch on television by installing a lock box. This user-based zoning is accomplished through the use of screening software (such as Cyber Patrol or SurfWatch) or browsers with screening capabilities, both of which search addresses and text for keywords that are associated with "adult" sites and, if the user wishes, blocks access to such sites.<sup>9</sup>

Slowly the marketplace of ideas could be chipped away at, through law, and other mechanisms.

Filtering technology emerged and is now enshrined in laws and policies in a number of countries, calling for their use at the end-user level (e.g. Australia), at service providers (e.g.

US schools and libraries), and at the national level (e.g. China and Saudi Arabia). Whether through direct regulation of individuals' conduct or indirect regulation of Internet service providers, censorship is occurring. In the United Kingdom, mobile phone providers are now filtering access to pornographic content in order to prevent children from accessing these sites. An adult customer would have to contact the phone company to prove her age.<sup>10</sup>

There are other mechanisms, however. Notice and takedown procedures are being implemented into a number of laws in a number of countries. The United Kingdom is particularly proud of the regime for preventing access to criminally obscene material, enforced by a self-regulating Internet Watch Foundation. The IWF is now supporting other countries in copying the UK's success. But what starts with "criminally obscene" for the protection against child pornography will soon be used for other purposes. A number of countries in Continental Europe have harsh regimes to combat xenophobia by requiring the takedown of online material.

"Notice and takedown" requests are used now for the protection of "copyright". A recent study by the Dutch NGO Bits of Freedom found that, when combined with the European E-Commerce Directive that placed liability for illegal content upon website-hosting providers, the effects of copyright protection laws upon free speech are increasingly dangerous. Bits of Freedom tested ten Dutch ISPs on their practices of notice and take down by creating a number of websites quoting a text written by Multatuli, a famous author, in 1871. The text is clearly something that belongs to the public domain, and is no longer subject to copyright protection. Bits of Freedom then filed complaints to the ISPs on behalf of a fake society that was

---

9 Justice O'Connor, *Reno v. ACLU*, 521 US 844.

10 BBC News, "Mobile censorship" for under-18s, 19 January 2004.

created to act as a copyright holder. Seven providers removed the text without even looking at the website, “or demonstrating any clue about copyright basics”. One provider went so far as to send all the personal details of their customer to the complainant, breaching privacy protections.<sup>11</sup>

Copyright laws are the creature of increased lobbying by increasingly powerful content production industries. This is a different form of politics from the politics of child protection that led to the CDA. Both political stratagems, however, rely on personal information. Simultaneously, we are seeing a return of the politics that led to the decision in *Abrams*, in policies and initiatives to combat terrorism. This strategy also relies on the reduction of privacy.

***Politics of Surveillance-Enabled Censorship.*** While the CDA decision noted the challenges in requiring age verification, the minority opinion noted that technology is malleable and can be shaped to meet the concerns of those who wrote the CDA. For a reasonably-regulated Internet, all we would require is every user to disclose her name and country of residence (and even state/province), age, and then bind that information to her network information (e.g. IP address, account number at ISP).

The judges who decided that the CDA was unconstitutional argued that no such infrastructure of personal information disclosure existed at the time. The dissenting justice said that it is possible to do what the CDA envisioned. A French Court made an analogous argument in 2000 when it required Yahoo! to prevent French network users from accessing message boards where users can trade in Nazi memorabilia.

On the other hand, a US Federal court struck down a Pennsylvania law that forced Internet service providers to block access to sites thought to be distributing child pornography, by filtering the IP addresses.<sup>12</sup> Because over 80 per cent of

websites on the Internet are served from IP addresses that are shared amongst sites, it was argued that the law overblocked legitimate sites. The court agreed with this contention, concluding that

with the current state of technology, the Act cannot be implemented without excessive blocking of innocent speech in violation of the First Amendment.<sup>13</sup>

These three decisions all have differing conceptions of the technology. Technology can be constructed to limit access, according to the dissenters in the CDA decision and the French court, while in the Pennsylvania case the technology to limit access also limited access to protected speech, and was thus unconstitutional.

If every user was compelled to disclose this information, these regulations could work. Then if she was under 18 she could not access pornography; if she was from France, she could not access sites that trade in Nazi memorabilia. The Pennsylvania problem does not go away in her case, but if we also required that all those who speak (and set up websites) must first identify themselves, then it is likely that he would risk prosecution. It is also possible that if they both knew that this level of information was available and required in order to speak and gain access to speech, they would probably not bother in the first place. This is the way that surveillance can act as prior restraint, chilling free speech by threatening surveillance.

This is in essence what is occurring currently in the surveillance of subscriber and traffic data, but is being exhibited in two different ways on both sides of the Atlantic Ocean. In

---

11 Sjoera Nas, Bits of Freedom, *The Multatuli Project: ISP Notice & take down*, 1 October 2004.

12 Tom Zeller Jr., Court Rules Against Pennsylvania Law That Curbs Child-Pornography Sites, 11 September 2004.

13 *Center for Democracy & Technology v. Pappert*, United States District Court for the Eastern District of Pennsylvania, No. 03-5051, 10 September 2004.

North America, under claims of copyright infringement, content-producing industry associations such as the Motion Picture Association of America (MPAA), the Recording Industry Association of America (RIAA), and the Canadian Recording Industry Association (CRIA) are approaching ISPs to demand subscriber information based on IP addresses. That is, the RIAA and the MPAA are capturing IP addresses of individual users and approaching ISPs so that they will disclose customer information, informing the RIAA and MPAA which user was using what IP address at what moment. Once legal avenues are opened to allow industry associations access to this information, these same avenues will be used by others. In so doing we will increase the use of subscriber information and other sensitive information for any number of purposes.

In Europe, the surveillance of traffic data is not yet focused on copyright infringement policies, but it soon will be, and when combined with anti-terrorism policies, it could be disastrous. Currently various governments in the European Union are establishing national policies that compel communications service providers (telephone companies [land and mobile], ISPs, etc.) to *retain* their traffic data logs. Under previous law, these service providers would have to delete this personal information once it was no longer necessary for billing or engineering purposes. Now in countries like Italy, France, and the United Kingdom, service providers will have to retain this information regarding users' e-mail, Internet and telephone habits (and locations) for periods ranging between one and five years. The UK, France, Ireland and Sweden are also pushing for this policy to be adopted at the EU, thus obliging all countries to compel all communications providers throughout Europe to keep this information for a number of years, just in case one day this information is of value to law enforcement authorities.<sup>14</sup>

The surveillance of subscriber and traffic data is tantamount to the collection and tracking of all human conduct in the Information Society: who we speak with, who we move with, what we look for, where we receive information from, and where we send it to. As a result of these policies, European users of the Internet will have to grow accustomed to the idea that their actions will be logged for a number of years and accessible to any government that is interested, and possibly others. North American users live under the threat of their personal information being divulged to the content industry which would result in further legal proceedings. If the users are aware of these policies and mechanisms it could chill their ability to create and impart information, hampering their right to free speech. They would be less likely to consult “controversial” information for fear that it will eventually be used against them. On the other hand, if they are unaware of these policies the users will not be changing their conduct in the face of one of the largest threats to personal privacy in the modern era.

***The Politics of Security-Induced Censoring.*** An increasingly common argument for creating structures to limit free expression is that it will aid in the war on terror. Some countries have returned to the public state of fear in which the US found itself at the time of the *Abrams* case during the First World War. Governments have called for stricter rules, greater powers, and increased funding to combat terrorism, and it was inevitable that these changes would have effects on free expression.

There are many instances of countries announcing the “takedown” of websites hosting “radical” Islamist material. In reaction to the assassination of a Dutch film director, Belgium announced its intention to shut down certain Islamic websites

---

14 Privacy International. *Invasive, Illusory, Illegal, and Illegitimate: Privacy International and EDRI Response to the Consultation on a Framework Decision on Data Retention*, 15 September 2004.

and closely monitor radio programmes promoting violence.<sup>15</sup> A number of anti-terrorism laws introduced around the world involved curbing hate speech. In reaction to threats made on websites or the posting of messages from terrorists, websites have been removed or their contents blocked. It is likely that the website logs were also seized in this process.

One example of this is what happened to Indymedia. The Independent Media Center is an international news network of individuals, independent and alternative media activists and organizations. On 7 October 2004 its servers were seized from the London office of Rackspace, a server-hosting firm. The loss of these servers resulted in the removal of content from twenty news websites. Rackspace received a US Court order to hand over the servers in London. According to the General Secretary of the National Union of Journalists in the UK

To take away a server is like taking away a broadcaster's transmitter. It is simply incredible that American security agents can just walk into a London office and remove equipment.<sup>16</sup>

The reason for the seizure remains under seal, and no US law enforcement agency has taken responsibility for the investigation into Indymedia. No UK law enforcement authorities were involved in the seizure, even though it took place in London. A public prosecutor in Italy admitted that she did request the IP logs from the server through a request to the American authorities, on grounds of combating terrorism. There was apparently also a request from the Swiss authorities, but this cannot be confirmed either.<sup>17</sup> This is the new face of censorship.

Another example of a law developed to combat terrorism that increased surveillance at ISPs is the USA PATRIOT Act, passed by the US Congress in October 2001. Under the USA PATRIOT Act, the Federal Bureau of Investigations may demand information from Internet service providers by showing a

“national security letter”, without any judicial oversight. ISPs are then required to comply and are gagged from disclosing their compliance. The NSLs are issued without any judicial review, or any requirement to show individualized suspicion, compelling need, and it cannot be contested.<sup>18</sup> The American Civil Liberties Union challenged this procedure on many grounds including that it chilled First Amendment rights. In September 2004 a US District judge agreed. Referring to *Talley v. California*, and other decisions on restraint on freedom of association,

The Court concludes that such First Amendment rights may be infringed [...] in a given case. For example, the FBI theoretically could issue to a political campaign’s computer system operator a [...] NSL compelling production of the names of all persons who have email addresses through the campaign’s computer systems. The FBI theoretically could also issue an NSL [...] to discern the identity of someone whose anonymous online web log, or ‘blog,’ is critical of the Government. [...] These prospects only highlight the potential danger of the FBI’s self-certification process and the absence of judicial oversight.<sup>19</sup>

The Court also argued that “transactional records” deserve privacy protection, despite existing jurisprudence on telephone traffic and bank records that leaves Internet traffic data in legal limbo:

---

15 Reuters, “Mosques, Islamic school attacked in the Netherlands”, *Financial Times*, 8 November 2004.

16 Indymedia UK, *Ahimsa Gone and Returned: Responses to the Seizure of Indymedia Harddrives*, 09.11.2004 19:56.

17 Electronic Frontier Foundation, Indymedia Server Seizures  
<<http://eff.org/Censorship/Indymedia/>>

18 Anita Ramasastry, *Why the Court Was Right to Declare a USA Patriot Act Provision Dealing with National Security Letter Procedures Unconstitutional*, FindLaw Legal Commentary, 13 October 2004.

19 *John Doe, ACLU v. Ashcroft*, 04 Vic. 2614, United States District Court Southern District of New York, 28 September 2004.

NSLs can potentially reveal far more than constitutionally-protected associational activity or anonymous speech. By revealing the websites on visits, the Government can learn, among many other potential examples, what books the subscriber enjoys reading or where a subscriber shops.

Without judicial review, the Court concluded, this power was unconstitutional.

Surveillance has indeed been used to limit political activity. These policies are not limited to online activity either. Surveillance has been used as a coercive measure to prevent or disable free assembly. In August 2004 the UK Appeals Courts approved of the United Kingdom Government's use of stop and search powers at protests. This involved a case where police stopped-and-searched attendees of a protest outside an arms fair in London. The police were empowered to stop and search anyone in the city of London without any precondition of reasonable grounds of suspicion. During the course of the case, it was discovered that since February 2001, this authority, granted to the Government under the Terrorism Act 2000, has been in effect on a rolling basis.<sup>20</sup>

Similarly, in the summer of 2004 during the American political campaign season, anti-terrorism powers were used against protestors at the presidential conventions. First the FBI would surveil activists using the Internet, and then interrogate activists before the conventions.<sup>21</sup> Later, at the Republican Convention, New York police routinely fingerprinted 1,500 people arrested during the convention. This fingerprinting had the effect of delaying the release of detainees.<sup>22</sup>

In another American case, police installed metal detectors to scan protestors at an annual protest at the School of the Americas in Georgia. On average 15,000 people attend these yearly protests, and in the 13 years of protests, no weapons have ever been found and no protestor ever arrested for an act

of violence. A week before the November 2002 protest, the City of Columbus instituted police requiring all protestors to submit to a metal detector search at a checkpoint away from the protest site. If metal was detected in the scan, the police would search through the protestor's belongings. The City claimed that the decision was due to the elevated risk of terrorist attack, prior "lawlessness", and problematic "affinity groups". The Circuit Court in this decision, known for often conservative decisions,<sup>23</sup> decided that the practice violated the Fourth Amendment to be free of "unreasonable search and seizures" as "there is no basis for using September 11 as an excuse for searching the protestors", and "September 11, 2001, already a day of immeasurable tragedy, cannot be the day liberty perished in this country." The Court also found that the practice violated the First Amendment by burdening free speech and association, that the checkpoints and searches were a form of prior restraint, and that the policy was content-based in that it was geared towards these protestors on this issue. Finally, the Court concluded that the search constituted "an 'unconstitutional condition;' protestors were required to surrender their Fourth Amendment rights in order to exercise their First Amendment rights."<sup>24</sup>

In the coming months and years more decisions will emerge from courts around the world, and they are equally as likely to conflict with one another as they are to lead to a renewed right to free expression. Each case and every decision

---

20 Privacy International, *UK Appeals Court Approves Stops and Searches at Protests*, 8 August 2004.

21 ACLU, *ACLU Denounces FBI Tactics Targeting Political Protesters*, 16 August 2004.

22 Diane Cardwell, "City Challenged on Fingerprinting Protesters", *The New York Times*, 5 October 2005.

23 C.G. Wallace, "Screening of Protesters Unconstitutional, Court Rules", Associated Press published in *Washington Post*, 17 October 2004.

24 *Bourgeois et al. v. Peters et al.*, United States Court of Appeals for the Eleventh Circuit, No. 02-16886, 15 October 2004.

highlights the tightening relationship between surveillance and censorship, and the risks to privacy and free expression emerging from our responses to terrorism.

***Paths to Re-invigorating the Open Society and Protecting the Marketplace.*** When we imagine the right to free expression, as it is enshrined in constitutional and international human rights declarations and treaties we imagine situations involving small printing presses distributing revolutionary material under an oppressive regime. Certainly the pro-Soviet Abrams and his colleagues believed that they were revolutionaries when they printed pamphlets during the First World War. Or Talley when he appealed to consumers regarding discriminatory hiring practices. Or McIntyre who insisted on publishing pamphlets despite regulations by the state of Ohio. We do not imagine people trying to download pornography, share copyrighted music illegally as champions in an oppressed world. Yet the fight for both types of people, those who are struggling against oppression and for justice, and those who wish to impart and access information are one and the same. Once we start building mechanisms to control one, the others will also be affected.

It is hard to believe, but is true nonetheless, that we need unfettered speech and privacy rights to ensure the marketplace of ideas, that will sustain the open society. Unless people can speak freely, and not be encumbered by surveillance, particularly from recent policies and practices created to combat terror, then we will not have the dream that we once had, of a place where we can all come together and communicate, separate from flesh and steel.

If we are still seeking such a world, and I think we are, then we need to fix many things. We need to understand that a zone of autonomy exists around all individuals, supported, enhanced, and protected by privacy. This will be supported

through laws upholding long-respected rights to be secure from interference.

We also need to halt this alarming progression of policies and practices introduced with the intent of combating terrorism, that in the end have the effect of reducing our rights collectively. We do indeed live in perilous times, just as we did when Abrams was of issue at the end of the Great War. I acknowledge that Oliver Wendell Holmes, whom I celebrate in this paper, actually was quite unforgiving in two previous cases involving similar wartime activity, and wrote opinions condemning the accused. But I remain optimistic. Just as Holmes turned the bend and acknowledged that war does not mean the suspension of rights, and just as the US jurisprudence followed in the 1960s, and reaffirmed in the Georgia decision, rights may prevail.

If rights prevail, then the marketplace of ideas may be secured. I imagine it will be a struggle, but this is not a bad thing in itself. As Holmes noted, when speech is threatened it only reaffirms its importance. Speech is only valuable when governments try to limit it. And as he says, the “ultimate good desired is better reached by free trade in ideas.” We dreamed that the Internet would sustain this marketplace, which in turn would sustain the open society. We were wrong, but our goals remain intact.

Our reasons are thus noble, as we recognize that any incursion upon free expression, even the smallest, interferes with the marketplace of ideas. This marketplace is too important to sustaining an open society to have it damaged. It offends me to see limits placed upon this marketplace, as it offends others too. And these “others” will be visionaries, coming up with legal, political, and technological innovations that may yet deliver on that dream, and bring us in from the cold.

*This article is from The Media Freedom Internet Cookbook (Vienna: OSCE, 2004).*



### **III. Libel and Defamation Laws**

Miklós Haraszti and Ilia Dohel

**Libel and Insult Laws: Where We Stand and  
What We Would Like to Achieve**

Toby Mendel

**The Case against Criminal Defamation Laws**

Ronald Koven

**How Dangerous Archaic Insult Laws Can Be**



Miklós Haraszti and Ilia Dohel  
**Libel and Insult Laws: Where We Stand and  
What We Would Like to Achieve**

I am pleased to announce that most of the OSCE participating States have realized that their criminal libel and insult laws must be changed.

At stake is liberation of journalists from fear of prosecution for criticism, or for simply being inaccurate in their reporting. That fear is more than well founded in many participating States. It is crippling journalism either by self-censorship when dealing with sensitive subjects, or by harsh punishments for a lack of self-censorship.

The fear of being prosecuted for defamation has been lurking over the press even in countries where freedom of expression has been flourishing for decades. You will find an example of this later in this chapter.

The evolving twenty-first century standard does not tolerate criminal sanctions for libel and insult, especially those involving imprisonment. This standard must and will be established in the legislation of many more OSCE participating States in the near future.

Let me share with you a few remarkable trends in the OSCE area. In 1997, when the post of the OSCE Representative on Freedom of the Media was established, there was only one country in the OSCE area which did not envisage criminal liability for defamation at the federal level: the United States of America, where 17 states still retain those laws despite a federal ban on their application.

Since then – within only five years – five more States have taken criminal libel off their books. They are Bosnia and Herzegovina, Cyprus, Georgia, Moldova and Ukraine.

To date, 70 per cent of the OSCE participating States have realized that the application of their obsolete defamation laws is against free speech. During the past ten years they have been, to different extents, involved in liberalizing their defamation legislation. However, understandably, initiating an abolition of these laws is a lengthy process.

And liberalization is continuing, with current plans to amend criminal provisions in at least 14 OSCE participating States.

Only nine out of the 55 countries of the OSCE region admitted having applied actual incarceration for defamation. This shows that court practices in most of the countries of the OSCE area follow the case law of the European Court of Human Rights. The Court has always ruled against imprisonment as a disproportionate punishment for libel and insult.

For those countries who wish to decriminalize libel and insult, my Office is always there to assist: through dialogue with state officials, MPs, partner international organizations and journalists; intervening in individual criminal defamation cases; and reviewing current and draft legislation.

We have also prepared some useful tools to assist reform. Actually, my optimism is boosted by the results of a comprehensive database on defamation provisions and court practices in the OSCE area, which was produced by my Office.

This pioneering database – the **Matrix** – has been accessible on our website since March 2005, at <[www.osce.org/fom](http://www.osce.org/fom)>. The Matrix is a good tool for research and for highlighting best practices for reform and advocacy policy.

This chapter of our Yearbook also includes speeches by our colleagues Ronald Koven, the European Representative of the World Press Freedom Committee, and Toby Mendel, the Law Programme Director of ARTICLE 19, both renowned experts in defamation laws, who presented their thoughts at the round table *What Can Be Done to Decriminalize Libel and Repeal Insult Laws* in Paris in 2003.

Professor Andras Sajo from the Central European University helped shape the survey and the **Matrix**, and that work was managed by Ilia Dohel, my Office's Research Assistant. I am thankful to both of them.

Finally, I wish to thank the governments of those OSCE participating States, the OSCE field operations and Reporters sans frontières who have assisted my Office in compiling the Matrix.

It takes much time and effort to change one's mind, but even more to change the law in the books. However, we can work on this together and I believe that we will succeed.



Toby Mendel

## The Case against Criminal Defamation Laws

Criminal defamation laws present a particularly thorny problem for freedom of expression campaigners. On the one hand, they clearly represent an unacceptable restriction on freedom of expression and cause serious chilling effects in many countries where such laws are not only oppressive in and of themselves, but also roundly abused. On the other hand, these laws remain in place in almost every OSCE Member State, and in some cases they have even survived constitutional challenges. Furthermore, even international human rights bodies have failed to take sufficiently decisive action against these laws. I should start with a terminological note. I prefer to use the generic English term *defamation* rather than the legal terms *libel* or *insult*. In English law, defamation refers to the undermining of someone's reputation, and that is what these laws are all about. It therefore seems to me that defamation is a more appropriate, and more general, term than *libel*, which refers to a defamatory statement in permanent form (as opposed to an oral defamation), or *insult*, which is not generally found in common law countries, but which, in many European countries, refers to a statement of opinion (as opposed to a factual allegation).

Let me first outline from a legal perspective some of the problems with criminal defamation laws. The most serious problem is the risk of a criminal sanction being applied for the peaceful exercise of the right to freedom of expression. The risk of imprisonment, a definite possibility upon being convicted for criminal defamation in most jurisdictions, obviously poses a serious chilling effect on freedom of expression, even if this extreme sanction is rarely imposed. Suspended sentences, which come into effect if the crime is repeated, are particularly insidious as they serve as an ongoing threat, limiting

the freedom of expression of those over whom they hang. Nevertheless, this form of sanction attracts far less international condemnation than actual prison sentences.

A range of other criminal-type sanctions has also been applied for breaches of criminal defamation rules, including suspension of the right to practice journalism, being barred from participating in a particular form of media, such as the broadcast media, and excessive fines. In addition, in most countries, simply having a criminal record can serve as an unwanted and sometimes quite unpleasant form of sanction.

A second legal problem with many criminal defamation laws is that, despite their criminal nature, they do not require mental guilt for conviction. A fundamental principle of criminal law, which has very few exceptions, all of which are problematical, is that no one may be found guilty simply for a wrongful act in the absence of mental guilt, known as *mens rea*. In the context of criminal defamation, this should normally imply an intention to cause harm to the reputation of the party claiming to be defamed. In relation to a statement of fact, this additionally requires either proof of *knowledge of falsity*, or, at least, *reckless disregard* of whether or not the statement was false. Few criminal defamation laws respect these fundamental legal standards.

A third, closely-related problem, is that few criminal defamation laws place the burden of proving all the elements of the offence on the party who claims to have been defamed. This placement of onus flows from the fundamental tenet that the accused shall be presumed innocent until proven guilty, and it is highly anomalous that this principle is frequently disregarded or *not* respected in the criminal defamation context. In relation to defamation, this onus should require the party who brings the case to prove that the statement made was false and that the accused had the requisite mental element of *mens rea*, as discussed above.

A fourth problem with many criminal defamation laws is that they provide special protection for public officials. Such protection may take a variety of forms, including the involvement of public prosecutors in court cases, higher penalties for defaming certain officials, or different standards as to what constitutes defamation in relation to these officials. All of these special provisions obviously run counter to the principle that officials should tolerate more, not less, criticism, a principle that has repeatedly been endorsed by international courts and other standard-setting bodies.

It may be noted that, were these problems to be addressed and criminal defamation laws relatively sanitized, there would probably be little interest in making use of them. In other words, if the most obvious problems with criminal defamation laws were addressed, they would likely fall into disuse.

Let me turn now to the apparently anomalous situation described above whereby, despite the problems just noted, criminal defamation laws have remained in place in almost all OSCE participating States. Perhaps one of the reasons for this is the ongoing influence of the historical development of criminal defamation laws, which date from a time when the evils of defamation and public disorder were closely related. In the UK, for example, criminal defamation dates from the 1275 Statute of Westminster, which established the offence of *Scandalum Magnatum*, providing that

... from henceforth none be so hardy to tell or publish any false news or tales, whereby discord or occasion of discord or slander may grow between the king and his people or the great men of the realm.

The purpose of *Scandalum Magnatum* seems to have been mainly to promote peaceful means of redress in a society characterized by constant threats to public order. Holdsworth, in *A History of English Law*, notes that the purpose of these statutes

was, “not so much to guard the reputation of the magnates, as to safeguard the peace of the kingdom,” adding, “this was no vain fear at a time when the offended great one was only too ready to resort to arms to redress a fancied injury.” The Supreme Court of Canada has amplified this noting that, “in a society dominated by extremely powerful landowners, [defamatory statements] could threaten the security of the state.”

It is obviously time to draw a clear line under the confusion between defamation laws and laws designed to protect public order or security. The risk of even minor disorder – such as a fight – resulting from defamatory statements is relatively remote in modern times, and the risk of serious disorder is almost unimaginable. Equally important, most modern States have at their disposal a range of laws more appropriately tailored to deal with public-order concerns, making it totally unnecessary to use defamation laws for this purpose. I note that many of these other laws are also problematical from a freedom-of-expression perspective, but that is not our concern here.

Finally, let me address the question of international standards in this area. Although, as noted above, international human rights bodies have not done enough to combat the evils of criminal defamation, there exists a growing body of authoritative legal standards which suggests that criminal defamation laws on their own, or at least the imposition of criminal sanctions, are contrary to the guarantee of freedom of expression. International guarantees of freedom of expression, like almost all constitutional guarantees, do allow for some restrictions on this fundamental right, but only when these meet certain conditions, including that they are necessary in a democratic society. Necessity implies that there is a pressing social need for the restriction and that the restriction is proportionate. This latter implies, at a minimum, that the least intrusive measures available for effectively addressing the

problem must be employed, as opposed to any measures which more seriously limit the right to freedom of expression.

The experience of countries around the world where criminal defamation laws no longer exist or have fallen into disuse demonstrates clearly that civil defamation laws, along with a variety of self-regulatory and other remedies, suffice perfectly as a means for addressing the problem of harm to reputation. Therefore, given that civil defamation laws are clearly less intrusive than criminal defamation laws, criminal defamation laws cannot be justified, since they represent a restriction on freedom of expression.

This view is reflected in a number of statements on this matter by authoritative international bodies. None of the quasi-judicial bodies responsible for human rights at the UN, or in the three regional systems for the protection of human rights in Africa, the Americas and Europe – with the exception of the European Court of Human Rights (more about this below) – have had an opportunity to deal with the issue of criminal defamation in the context of a contentious case. The UN Human Rights Committee, the body responsible for overseeing the implementation of the International Covenant on Civil and Political Rights, however, has repeatedly expressed its concern about criminal defamation in the context of its consideration of regular country reports.

The Inter-American Court of Human Rights has recently agreed to hear the case of Mauricio Herrera Ulloa, a Costa Rican journalist who was convicted of criminal defamation by his national courts. And in October 2000, the Inter-American Commission on Human Rights adopted a *Declaration of Principles on Freedom of Expression*. Paragraph 10 of this Declaration states among other things:

[T]he protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a

public person or a private person who has voluntarily become involved in matters of public interest.

The UN Special Rapporteur on Freedom of Opinion and Expression has stated unconditionally that imprisonment is not a legitimate sanction for defamation. Furthermore, in his Report in 2000, and again in 2001, the Special Rapporteur called on States to repeal all criminal defamation laws in favour of civil defamation laws. Every year, the Commission on Human Rights, in its resolution on freedom of expression, notes its concern with “the abuse of legal provisions on criminal libel.”

The three special international mandates for promoting freedom of expression – the UN Special Rapporteur, the OSCE Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression – have met each year since 1999 under the auspices of ARTICLE 19 and each year they issue a Joint Declaration addressing various freedom-of-expression issues. In their Joint Declaration of November 1999, and again in December 2002, they called on States to repeal their criminal defamation laws. According to the 2002 statement,

Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.

These standards are encapsulated in the July 2000 ARTICLE 19 publication, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, a set of principles on how to balance the right to freedom of expression and the need to protect reputations. These principles have been endorsed by the three special international mandates noted above, as well as by a large number of other organizations and individuals. Principle 4(a) states categorically:

All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.

The European Court of Human Rights has never actually ruled out criminal defamation, and, in fact, in a small number of cases, the Court has allowed criminal defamation convictions. Nonetheless, the Court has clearly recognized that there are serious problems with criminal defamation, and has frequently reiterated the following statement, including in the context of defamation cases:

[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.

Indeed, the European Court has stated that criminal measures should only be adopted where States act “in their capacity as guarantors of public order.” In my view, it is significant that in those cases which involved convictions for defamation the Court referred to the application of criminal measures only as a means of maintaining public order, and not as a means of protecting reputations. I have already made my views on the use of defamation as a public order mechanism known.

In any case, the European Court of Human Rights has made it clear that disproportionate sanctions, even of a civil nature, violate Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In holding that a high civil defamation award represented a breach of the right to freedom of expression, the Court stated clearly:

[U]nder the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered.

The possibility of imprisonment for defamation is a very severe penalty, and the European Court of Human Rights has never upheld a prison sentence for defamation. Indeed, it has specifically stated in relation to criminal penalties for defamation that such measures should only be adopted where they are “...intended to react *appropriately and without excess* to defamatory accusations devoid of foundation or formulated in bad faith.” [*Emphasis added.*]

Although on occasion the Court has upheld criminal defamation convictions, in these cases it has been at pains to point out that the sanctions were modest and hence met the requirement of proportionality. For example, in *Tammer v. Estonia*, the Court specifically noted “the limited amount of the fine imposed” in upholding the conviction; the fine in that case was ten times the daily minimum wage.

From the decisions cited above, we can conclude with some confidence that criminal sanctions for defamation are contrary to international law. Furthermore, there is a growing body of increasingly authoritative legal standard-setting that argues that criminal defamation laws by their very nature, regardless of the particular penalty applied, represent a breach of the right to freedom of expression. There are good reasons for this. The public order rationale for criminal defamation laws is no longer relevant. Most criminal defamation laws have serious legal flaws, and they exert an unacceptable chilling effect on freedom of expression. It is high time that States around the world repealed their criminal defamation laws, replacing them, where necessary, with appropriate civil defamation laws.

*This speech is from the book Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws (Vienna: OSCE, 2004).*

Ronald Koven

## How Dangerous Archaic Insult Laws Can Be

My friend Toby Mendel from ARTICLE 19 has been questioning the definition of the expression *insult laws*. The World Press Freedom Committee publication, *Insult Laws: An Insult to Press Freedom* defines insult laws as laws that

give special protection from so-called insult, offence, outrage, contempt or disrespect to the chief of state and other officials – high and low – public institutions or bodies, like the parliament, the police or the armed forces, the symbols of the state, like the flag, or the coat of arms, and the state or nation themselves...

Insult laws make it a crime to offend the “honour and dignity” of public officials, state offices and national institutions.

That is what I mean when I talk about insult laws. I should also mention the famous statement that was made by a judge of the US Supreme Court discussing obscenity, who said, “I can’t define it, but I know what it is when I see it.” I think the same thing applies, to some extent, to insult laws.

Before I go any further, I would like to thank Freimut Duve for all the work he has done in the field of criminal defamation and insult laws. Over the years he was in office, he was always at the vanguard of those fighting these laws. He never hesitated to speak out against them. We have not always agreed on everything, but on that point, may he be greatly thanked and may his successor pick up his banner and fight just as hard as he has to eliminate such laws.

It is not Utopian to think that such laws can be eliminated in the OSCE area or anywhere else for that matter. A wide variety of countries in different parts of the world have recognized that these laws are no longer justified and should be

removed from the books. Nevertheless, such laws continue to exist in Western European democracies, and even if they are constrained by democratic traditions, they still provide States elsewhere that wish to maintain and, in many cases, use such laws with a convenient excuse to do so.

Although there is a distinction between criminal defamation and insult laws, in most countries that distinction is greatly blurred in practice because a criminal defamation charge is generally brought by a public prosecutor, and a public prosecutor does not act on behalf of private individuals, but of public officials. Thus, while it is perfectly true that the distinction between these two types of law is merely a grey line, they can be defined separately.

Let me give you an example of how the existence of such laws can be harmful – even in France. In 1996, the [then] Iraqi president Saddam Hussein took a very prominent journalist, Jean Daniel of the *Nouvel Observateur*, to court for having offended him. Saddam Hussein’s lawyers brought the case as if Hussein were a private person, but the French judges said in effect, “No, Saddam Hussein has no right to sue in a French court as a private person because he is a chief of state, and as a chief of state he is protected under the provisions of the French Press Law of 1881, which specifically protects heads of state. He should sue under the special protection afforded to a chief of state.”

Fortunately, Saddam Hussein’s lawyers did not pursue that invitation, but in effect the judges were saying, “Although that law is no longer in general use, we invite you to avail yourself of it.” I hope this shows you how dangerous it can be to keep such legislation on the books, even in countries with democratic traditions where such laws have not been used for a long time.

I think it is no coincidence that the French presidents who vowed they would never use the 1881 law to protect them-

selves failed to seek its revocation. They wanted to keep it in place like a sword of Damocles that could always be used if they felt they had been truly offended. And it was always up to them to decide what constituted a true offence.

What needs to be done now is to conduct an intensive campaign not only in countries where these laws exist and are applied, but also in countries where they seem to be only an anachronistic appendix with no practical uses. But as we all know, an appendix can always become infected and kill you. These laws must be eliminated, not only where they are regularly used but also where they are not applied but serve as a convenient excuse for other states. I hope we will make that point very strongly in our recommendations.

*This speech is from the book Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws (Vienna: OSCE, 2004).*



## **IV. Views and Commentaries**

Dardan Gashi

**The Media Situation in Kosovo**

**Media Voices Speak Out about Libel and  
Freedom of Information in Central Asia**

**Extracts from the First  
South Caucasus Media Conference**

Miklós Haraszti

**“Berlin Speech” at the  
Conference on Anti-Semitism**



Dardan Gashi

## **The Media Situation in Kosovo**

When the Prime Minister of Kosovo, Ramush Haradinaj, received the indictment from the International Criminal Tribunal for the Former Yugoslavia (ICTY) on 8 March 2005, we all feared that this could be the possible detonator for a repetition of what had happened almost exactly a year ago. Between 17 and 19 March 2004, tens of thousands of mostly young Albanians had violently confronted both the security forces and local Serbs over an alleged cruel and vicious murder of three Albanian children by nationalist Serbs. What followed was the worst outbreak of violence in Kosovo since the war in 1999. This time, however, the situation remained calm.

What was different this time? Why could rumours about the vicious killing of children provoke thousands to ransack churches and homes but the apprehension of a popular war hero and a charismatic Prime Minister not spark off such events?

There are probably many answers to this. The most important fact is that the Prime Minister himself called for calm and asked everyone to refrain from violent acts. But let us just for a moment imagine a media that had reacted hysterically, which had called the indictment an anti-Albanian act by the ICTY, played patriotic music, movies and documentaries all day long and aired interviews with “experts” who condemned the indictment and called on people to show their disapproval. It is hard to imagine that the situation would have continued to be calm after such programming.

However, this time the Kosovar media did refrain from unprofessional, emotional and biased reporting. They covered this important and difficult event with the necessary objectivity and aired no programmes that would have exacerbated

tensions and fuelled an atmosphere of hysteria. In other words, this time the media acted in a completely different way to the broadcast media a year ago. The media were so restrained that they were even accused of being sterile and of underplaying the event!

Have the media matured as a result of the events in March 2004? It would seem so. The events themselves, but especially the reactions of the OSCE Representative on Freedom of the Media (RFOM) and the Temporary Media Commissioner (TMC) in Kosovo, prompted a discussion within the Kosovar media scene. The results were a series of round tables and other events where it was concluded that the media had behaved unprofessionally at the very least, if not recklessly. Later on, the leading television broadcasters *RTK*, *KTV* and *TV 21* publicly admitted to different degrees of unprofessional conduct during the events. In this way they confirmed the findings of both the RFOM and of the TMC who in separate reports had accused the leading broadcast media, and in particular the public broadcaster *RTK*, of having contributed massively to the escalation of violence in March 2004.

As a result of the *Report on the Role of the Media during the March Events in Kosovo* a Special Representative for Kosovo was appointed by the OSCE Representative on Freedom of the Media. The main task of the Special Representative was to assist with implementing the recommendations made in the report on the media in Kosovo.

After seven months of work in Kosovo and in close cooperation with the TMC and the OSCE Mission in Kosovo, all but one<sup>1</sup> of the recommendations have either been implemented or are in the final stages of being implemented.

---

1 The only recommendation that was neither implemented nor acted upon is the one calling for a separate public broadcaster for minorities in Kosovo. Both the international community and the Government in Kosovo refused to entertain the idea with the argument that this would lead to further segregation of society.

The most important achievements of the joint efforts undertaken by RFOM, TMC and the OSCE Mission in Kosovo are those dealing with reforms within the public broadcaster *RTK* and the drafting of media-related laws and other regulations.

- After months of negotiations and discussions *RTK* did agree (in addition to publicly acknowledging poor conduct) to pay a substantial fine. It also agreed to accept external advice and training, adopted an internal code of ethics and consented to changes in the management and the governing board. Since then, no further reporting of similar misconduct by *RTK* have been registered, although it cannot be claimed that the overall quality has improved.
- The Law on the Establishing of the Independent Media Commission was redrafted and finally passed by the assembly.
- The Law on the Establishing of the Public Broadcaster (*RTK*) was drafted. The drafting of this Law will finally give the broadcaster a clear mandate and protection from outside influence.
- A code of ethics for print media was drafted and signed by all relevant print media in Kosovo.
- The OSCE Mission in Kosovo restructured the media section within the Democratization Department in order to meet the new challenges and changes in the media landscape more effectively.
- A strategic plan for minority broadcasting, which is designed to ensure the sustainability of minority broadcasters through governmental aid, was adopted by the Government in Pristina.

These achievements have not, however, been imposed on Kosovar media by the international community. At every step media associations and the media themselves were involved and consulted. It was in fact Kosovar journalists and

the associations who transformed the discussion about the March events into a fruitful debate that led to an acknowledgement of mistakes. During the drafting of the laws all relevant parties were invited and their arguments were taken into account. In fact, the drafting of the laws was a prerogative of the Government. The TMC, RFOM and OSCE Mission in Kosovo only helped and advised. The same situation occurred with the code of ethics. It was drafted by Kosovar journalists from different ethnic backgrounds and the international representatives only facilitated the process.

Much more remains to be done in Kosovo. While the legal foundations for a functioning media landscape seem to be in place, the quality of some of the media is still poor. On the other hand, media which are courageous and professional are increasingly confronted with intimidation and threats.

A case in point is the newly established newspaper *Express*. In its few months of existence it has displayed a high degree of investigative and professional journalism uncovering scandals and publishing stories that were avoided in the past. Yet the upshot of this is that the paper reports threats on a daily basis and its journalists have been intimidated and attacked.

Nevertheless, as a result of these important milestones the Kosovar media landscape now bears a closer resemblance to the media scenes in the rest of Europe. The laws and the code of ethics are for the most part compatible with best practices in Europe. The quality of the media is constantly improving – even though some partisan papers continue to display a worrisome degree of intolerance, mainly against political opponents.

One year after the tragic events of March 2004, the media landscape in Kosovo looks different. Through the joint efforts of international organizations, local institutions and journalists, we have managed to establish the basis for a more professional and responsible media. These achievements could, however, be jeopardized if donors, media organizations and

other relevant institutions withdraw their help. Kosovar media now need a final push. They have shown that they can handle criticism and remedy deficiencies. They have been cooperative and have demonstrated that they can indeed tackle difficult situations in a professional manner. It would be a great loss if they were now left in the lurch when things are finally moving in the right direction.



## **Media Voices Speak Out about Libel and Freedom of Information in Central Asia\***

“Any journalist today faces the choice to either work according to the rules of the Government or to try and be fair. In the first case, he or she must accept restrictions pertinent to some taboo topics and to criticism of the akim (on the regional level) and the President (on the national level). Within the framework of these restrictions one can say that there is freedom of speech. Many journalists have accepted these restrictions and, taking them as the norm, believe that they are independent. Many of my colleagues told me: Why do you care about the President and his family? Forget about them, set your sights on a lower level and you won't have problems. But what kind of journalism is it when the President – the core of the existing political system, the man who has accumulated all the plenitude of power – is excluded from the range of issues discussed in the media? This restriction deprives journalism of its main features – depth and objectivity.

In the second case, when a journalist does not accept these restrictions, he or she starts walking in a minefield. At the very least these journalists jeopardize their job chances. The maximum punishment for this may be a jail term.

Between these extremes a journalist faces a whole bunch of troubles and problems. No media will print his or her articles except opposition media. Writing for the opposition media is a serious risk: a journalist may face lawsuits from insulted officials, get into trouble with the police and, finally, could simply end up being the victim of a physical attack. The journalist's family may also face the influence of the notorious 'administrative resource'.

---

\* The following quotations are from the presentations at the Sixth Central Asian Media Conference *Twenty-First Century Challenges for the Media in Central Asia: Dealing with Libel and Freedom of Information* held in Dushanbe in September 2004.

The Internet is the only 'air vent' for such journalists. There, an opportunity exists to publish any critical and unwanted articles. Nowadays opposition and independent Internet newspapers outplay pro-government sites. Popular news sites *Navigator*, *KUB* and *Eurasia* have become the main independent news sources for Internet users in Kazakhstan. However, considering that only three per cent of the population have regular Internet access, the impact of these sites is extremely limited."

"...I know the reasons used by supporters of the regime to justify the media freedom suppression in the country. They claim that excessive freedom and uncontrolled criticism of the authorities may destabilize the situation and plunge the country into anarchy.

Therefore, it is suggested that in the political regime of Nazarbayev, hushing up free media and restricting free speech, preserves the stability of Kazakhstani society. This is the price of such stability. We have to answer the question of what is more important for Kazakhstani society: the stability acquired in such a way or a democracy with the risk of destabilization. Essentially, this is the main issue when defining the prospects of the development of our country.

The real political orientation of different politicians, parties and the country's policy as such depends on the answer which is given to this question.

Obviously, the priority of stability over democracy is the basis of Nazarbayev's policy. However, this has nothing to do with the democratic principles which envisage maintaining stability by observing human rights and freedoms, without dull obedience and fear, without suppressing civil initiative. The price of stability set by the President is illegitimate; it is too high and, most importantly, it contains a denial of and a threat to stability.

Stability without democracy is stability based on constraint and fear. If we continue in this direction we eventually

might end up agreeing that the supreme manifestation of stability is concentration camps.”

*Sergey Duvanov, independent journalist, Kazakhstan*

“...People’s misunderstanding of the term ‘information security’ leads to its overindulgence which is not a big surprise in authoritarian States. Censorship is a tool which is quietly introduced to allegedly protect state secrets, but in reality it serves as a filter of unwanted information. Everything that does not do for the authorities or discredits the authorities in the eyes of citizens may qualify as ‘unwanted’. This is why stories about corruption, shadow economy, poverty and outrages of officials could rarely be seen in the Uzbek press. This shows that the authorities are not capable of fighting these negative phenomena or are not willing to do so. It is better not to speak about them because then people will not know – this is the position of censorship.

The problem of information security is often confused with hostile powers countering the formation of the national ideology that the authorities support, although the Constitution of the Republic of Uzbekistan stipulates that no ideology can be established as a state ideology. Meanwhile, supporters of the national ideology propose countering the influence of external information with controlled media. The tasks of these media include shaping the public conscience and opinion to be in favour of the State. ‘Globalization leads to the erosion of our moral values. The people respect power less and less and seek another authority,’ they say. ‘Therefore, we should erect technical and other barriers to such a barrage of information.’

...Speaking about information security, one must emphasize the following detail: this security can only exist in a society which is not open in terms of access to information. Based on this, the authorities can declare dangerous everything that is a natural human right – the right to freedom of speech,

thought, opinion, way of thinking, and freedom of belief. This was probably the reason why the Foreign Minister of Uzbekistan warned journalists against possible 'mistakes' in their coverage of the national foreign policy in November 2002. This is a kind of censorship too. Its 'noble' purpose is not to 'harm' the country's image and not to increase tension with the 'brother' nations, with which the authorities have cultivated 'friendship' for many years. This means that we should not reveal mistakes of the Government, because our Government is the most incorruptible, faultless and wise."

*Alisher Taksanov, Asia Monitor Centre, Uzbekistan*

"...Obviously, there are objective factors obstructing the development of the media. These are a lack of finances and staff, electricity power cuts, an underdeveloped infrastructure (printing facilities, etc.), the modest size of the advertising market, the low buying capacity of the people and the weakness of the civil society. However, the main reason is the unwillingness of the authorities to have strong and independent media as their opponents who could monitor the work of the Government to some extent. To acknowledge that we still have nothing to be proud of is not enough. It is more important, I think, to answer the question: what should we do? Put our pens away and leave the country? There have already been such suggestions. But in my opinion this is not a way out.

My conclusion is probably trivial. Our journalistic community needs to work hard to improve its status in Tajikistan. They won't let you print your paper? Then you have to establish your own printing house. The state post service works badly? You need your own system of distribution. In order to achieve this media need to co-operate and we require the active input of resources from international organizations.

As a man from the street, I understand why our colleagues prefer not to deal with courts. However, one cannot live without

them. We need positive court precedents as much as we need air. We must punish officials for denials of access to information, for denials of access to the printing press, for denials of a licence. We can and must initiate a real and not simply a formal judicial reform.

We often like to draw on the examples of other countries and say that, for instance, the Russian Government does not like the media and the US Government does... But I believe they are all the same. No government will ever 'love' the media. That would be unnatural. Actually, we must compare not our governments but the activities of those who restrain their outrage. The US Government would have been happy to behave the way our authorities behave but it cannot afford to: the whole system of civil society institutes does not allow this.

We – the journalists – can and must change the Government's attitude to us and the media. We must be seen not as sensation hunters but as servants of the civil society. While officials are elected once in several years, media are chosen much more often: every week and even every day. And citizens vote for the media not by filling in ballots but by paying their hard-won money.”

*Marat Mamadshoyev, journalist, Tajikistan*

“Since the end of 2001 state organs in Kyrgyzstan practically stopped allocating frequencies to independent broadcasters, even though there are no legal grounds for this.”

“...After a long and tedious slog the Regulation on Allocating Radio Frequencies was elaborated and sent to the Government for approval. Nothing was reported about the regulation for a while, and in the summer we learned that the ruling of the State Commission on Radio Frequencies was issued on 9 July 2004... stipulating that broadcasting frequencies are to be issued on an auction basis. Still, many things are unclear. The

previous regulation was being worked out for three years and eventually was not adopted. How exactly will frequencies be allocated? What's the deal? In Kazakhstan, stations paid several tens of thousands of dollars for a frequency. Will Kyrgyz broadcasters be able to afford a rate of 10,000 dollars? Also, there is no guarantee that having worked for several years a station will not lose the frequency because there is no law regulating allocation of a frequency on an auction basis.”

“...I have been appealing to newspapers, Parliament and the Government regarding this issue. The NGO *Journalists* wrote a letter to the President of the Kyrgyz Republic about the difficulties of obtaining radio frequencies. At the moment, about 40 new stations cannot get frequencies and nobody is providing them with a clear answer about when they can start broadcasting. In 2003, the *Mass Media* association joined the campaign to protect the rights of the electronic media. It has been communicating with state organs and international organizations and trying to unite all broadcasters in a single ‘fist’.

Nowadays, some state organs in our country would like to introduce censorship, although this is prohibited by the Constitution. All actions against allocating frequencies to broadcasters testify to this. Our task is not to let freedom of speech be restricted and not to allow everything we have achieved since obtaining independence to be smashed to pieces.”

*Rustam Koshmuratov, Director of Almaz Radio, Kyrgyzstan*

“...The most painful issue of all is the problem of finances. The lack of any long-term development strategy for a certain medium, the absence of an advertising policy, and weak human resources management seriously affect the general trends of media development in Kyrgyzstan. For the last ten years, a new pattern of regional printed and electronic media in the Kyrgyz Republic has evolved. These media only live off grants received from international organizations. They suc-

cessfully sell the same project to different sponsors... The dominant opinion is that should these grants run out, these media will simply disappear as they cannot be financially successful in the present conditions.”

“...Enduring professional development of journalists is one of the prerequisites for the development of an independent press.

The future of the regional media in Kyrgyzstan lies in establishing an alternative system of distributing print products, launching new private printing houses, developing the economy in the regions, thus promoting an advertising market and increasing people’s prosperity which would surely affect the buying capacity of consumers of information.”

*Almaz Kalet, independent journalist, Kyrgyzstan*

“The legal regimes and practices in the Central Asian States are significantly behind the rest of the OSCE participating States in providing for media and citizen access to information held by government bodies. None have adopted adequate laws providing for a strong right of access to information and what laws the countries have adopted are undermined by broad acts on state secrets that classify information in often seemingly arbitrary ways and uncooperative practices by officials.”

“All of the Central Asian countries have laws on regulating the mass media and on the activities of journalists. All of the laws provide for some additional rights of access by the media on their face and limit censorship. However, in practice, the media laws in the Central Asian region are more focused on controlling the media than about providing access.”

*David Banisar, Privacy International*

“All Central Asian States have a provision in their constitution to the effect that international treaty norms that are directly enforceable, such as human rights provisions, have the force

of law and, in the cases of Turkmenistan and Kazakhstan, have priority over national laws that contradict them. Additionally, in certain cases, media-specific laws provide explicitly for the primacy of international law. This is the case in relation to Kazakhstan's mass media law, for example. In theory, this means that individuals in these countries can invoke international law on freedom of expression before national courts when challenging unduly restrictive norms on defamation. To our knowledge, no such claim has been successfully brought in any of the Central Asian republics to date – but this is not to say that it is an avenue that ought not to be explored. The Central Asian States have guaranteed to their citizens that they will implement international human rights law in their national jurisdictions, and they ought to be challenged on their failure to do so.”

*Peter Noorlander, ARTICLE 19*

## **Extracts from the First South Caucasus Media Conference\***

“The saying ‘whoever controls television is in power’ is totally true of Armenia. The majority of private national and Yerevan-based television channels, at least those wielding some political influence, are owned by big businessmen who in some way or other are linked with the authorities. Add to this the Public Television and Radio Company, Armenia’s most powerful media body in terms of coverage, which is controlled by a board whose members are appointed by the President himself.”

“The analysis of the situation shows that the state-oligarchic monopoly on the media is the main threat to freedom of speech in Armenia, a monopoly based not so much on force as on the pseudo-market and pseudo-legal mechanisms which I attempted to describe. And it is on creating some alternatives to this monopoly that an independent media advancement strategy should be built.”

*Boris Navasardyan, President, Yerevan Press Club, Armenia*

“In 2003, there were 133 registered cases of physical violence used against journalists and other media people, in contrast to 13 cases in 2004 (even though the list is incomplete). The difference is more than tenfold. Proceeding from the above figures and comparing the 2003 and 2004 situations, one can expect the number of violations of media and journalist rights to decline further. On the face of it, the trend is rather positive. However, this is true on the face of it only, because, in fact,

---

\* The following quotations are from the presentations at the First South Caucasus Media Conference *Twenty-First Century Challenges for the Media in South Caucasus: Dealing with Libel and Freedom of Information* held in Tbilisi in October 2004.

the situation is not all that good: both the figures and the trend indicate that the authorities have resolved the problems of their relationship with the media. There are no independent TV companies, most newspapers are pro-government or have become pro-government for a variety of reasons. There are only a few independent and opposition newspapers left that are fighting for their own survival under an extremely heavy burden of skilfully created and seemingly objective pressures. The current situation poses the greatest threat to freedom of speech in the country.”

*Chinqiz Sultansoy, Director, Baku Press Club, Azerbaijan*

“The independent media played a crucial role in the November 2003 Rose Revolution laying the groundwork for independent journalism in Georgia. However, they failed to meet challenges they have been facing in the period following the revolution. Many of the weaknesses, which have characterized Georgian media for the last 10 to 15 years, have become painful in the new situation.

According to various international assessments, Georgia is still considered among countries with partially free press. This is quite alarming with the country’s democratic development moving forwards, and such progress not taking place in media. Moreover, it’s not only that the Georgian media is lagging behind society, but we are also dealing with a certain retreat.”

“If the Georgian media restores its connection with society, and focuses more on public interest, it will be able to respond to the new challenges properly. Unfortunately, today’s realities do not allow such optimism. Probably it is very hard for some journalists to step out of the golden cages created by some media owners.”

*Levan Ramishvili,  
Director of Programmes, Liberty Institute, Georgia*

“It is a great honour for my country to host the conference, for it attests to Georgia’s strong commitment to democratic principles, among which freedom of the media is one of the most important.”

*Giorgi Gomiashvili, Deputy Minister of Foreign Affairs of Georgia*

“In the context of defamation cases, the European Court of Human Rights has emphasized that the duty of the press goes beyond mere reporting of facts; its duty is to interpret facts and events in order to inform the public and contribute to the discussion of matters of public importance.”

“Criticism of government is vital to the success of a democracy and defamation suits inhibit free debate about vital matters of public concern. In consequence, public bodies as such should not be allowed to sue in defamation and governments should tolerate a virtually limitless amount of criticism. The European Court of Human Rights has said that, ‘[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician.’”

“The European Court of Human Rights has also held that public officials, while they can sue if they are defamed in their private capacity, should tolerate significantly more criticism than ordinary individuals. This is based on two key factors. First, it is of the greatest importance that public officials, like public bodies, are subjected to open debate and criticism. Second, public officials have knowingly opened themselves up to criticism by their choice of profession.”

“As noted above, imprisonment can never be regarded as an appropriate response to defamation. The European Court of Human Rights has never upheld a sentence of actual imprisonment and international bodies have frequently emphasized the illegitimacy of defamation laws providing for imprisonment as a sanction.”

*Peter Noorlander, Legal Adviser, ARTICLE 19*

“Following the collapse of the Soviet Union and the start of reforms, Armenia, perhaps like all the other ex-USSR republics, savoured the taste of freedom of speech. People avidly read newspaper publications focusing on the ups and downs in our recent history. Freedom of speech and freedom of information are certainly some of the basic gains of modern society. All of us would find it extremely hard, even impossible, to give up the freedom of thought and freedom of speech that we have grown so accustomed to. And yet, it is safe to say that we often are tired of the licence with which freedom of speech is interpreted by certain dishonest journalists. Increasingly often one can hear the press being run down as ‘yellow’. The number of grievances against the press has been growing lately. Regrettably, journalists themselves are often to blame for many of these grievances, their legal competence and professional ethics leaving much to be desired. At the same time, the number of unfounded complaints is considerable as well, and the majority of these are lawsuits for the protection of honour, dignity, and business reputation. It is this category that is of particular interest, being a classic example of ‘inversion of responsibility’.”

“After all, it is axiomatic that government pressure mounts where there is no professional self-regulation, as is evident from the practice of other States, where the institutions of criminal and civil persecution scaled down precisely owing to the existence of media self-regulation as expressed in professional ethics and media quality control.”

*Olga Safaryan, lawyer, Internews Armenia*

“Azerbaijani practice shows that most cases between mass media and plaintiffs are initiated on the basis of claims for protection of honour and dignity. On the whole, Azerbaijani courts strictly abide by legal provisions during the consideration of such cases, which leads to numerous rulings issued against the media, mainly due to the content of the laws.”

“It should be mentioned, however, that considerations of freedom of expression (freedom of speech, thought, and information) are usually disregarded during the hearings of libel cases in spite of their constitutional guarantees.”

*Ramil Gasanov, lawyer, NGO Association of Journalists of Azerbaijan, Yeni Nesil – New Generation*

“It could be concluded that despite the fact that the new Georgian law on freedom of speech and expression is very close to the European one, and in general to the Western standards of freedom of expression, we cannot say that it will necessarily be implemented automatically. For that reason, we consider it extremely important that Georgian courts define relevant provisions of that law in a proper manner and elaborate its jurisprudence in accordance with the case law of the European Court of Human Rights.”

*Irakli Kotetishvili, Legal Expert at Liberty Institute*

“Freedom of information is a fundamental prerequisite for providing members of the general public, including the media, with information on matters in the public interest. On the one hand, it enables public participation in policy debates and is crucial for making informed choices, while on the other it exposes wrongdoing and corruption, thus contributing to eliminating a culture of secrecy and improving governmental accountability and transparency.”

“The right to freedom of information is a multilayered right. It imposes an obligation on public bodies to disclose information; it also implies that public bodies publish and disseminate widely documents in the public interest, for example that they publicize any decision or policy which affects society. On the other hand, it grants to every member of the public a corresponding right to receive information. In exercising these rights and duties, the media is delegated a vital mission as a channel to facilitate the free flow of information.”

“Adopting of freedom of information laws is particularly important for societies in transition that emerged after the collapse of communism (in the Soviet Union) or other authoritarian forms of government as they have to overcome a profound culture of secrecy and their democratic institutions are still weak, although they proclaimed a commitment to the rule of law and to fostering democratic reforms.”

“Government transparency and accessible information are among the most important prerequisites for fighting corruption, especially for societies in transition where democratic institutions are fragile. Therefore, the role of the public bodies in Armenia, Azerbaijan and Georgia should be to ensure accessibility to complete and comprehensive information on their activities.”

*Iryna Smolina, Europe Programme Officer, ARTICLE 19*

“The summarized results of several monitoring projects conducted by the Freedom of Information Centre and other partner organizations prove that access to information and mechanisms for ensuring implementation of FOI legislation in the state and self-regulatory bodies of Armenia are inadequate. The state bodies do not function transparently and openly; the legislative provisions are infringed.”

“Journalists may become monitors of the FOI practice as well as the most active users of the law, thus promoting the establishment of a transparent regime in the country.”

“Civil society groups are ready to assist the Government. The Government, which already declared its commitment to transparency, should be monitored. It has to demonstrate a strong political will to implement the FOI legislation, and put theory into practice.”

*Shushan Doydoyan,  
Director of the Freedom of Information Centre, Armenia*

“Undoubtedly, the independent media are an important factor influencing the authorities’ actions. This is a legitimate method of exerting influence upon the State within the framework of the Constitution, which accords with the generally accepted democratic principles. Azerbaijan, however, is a country where such principles exist only on paper.”

“It is necessary to foster civilized relations between the mass media and the authorities. We still must learn to live in conditions where there is freedom of speech. Obviously, the authorities’ accountability to the public as regards access to information must be of a high standard. Otherwise, we will not be able to build a free, democratic society in which all the rights and liberties of citizens are respected.”

*Elmar Huseynov, editor-in-chief, Monitor, Azerbaijan*

“Information about the structure of public bodies and about officials holding positions in them, decision-making processes, the election of elective officials in these agencies, as well as information about the collection, processing and release of information and financial activities of public bodies should not be classified as secret.”

*Dimitri Kitoshvili, Chairman of the Georgian  
National Commission on Communications*



Miklós Haraszti  
**“Berlin Speech” at the  
Conference on Anti-Semitism**  
29 April 2004

Who would have thought that on the eve of expansion of the EU we would still be discussing anti-Semitism and how to combat it? This could be entirely bad news, but the good part is that we are discussing this in Berlin, in the very city where the anti-Semites of the '30s pillaged and murdered.

Germany, thanks to its great post-war writers and its energetic young democrats, did a great job in what now, even in Hungary, is called by its long German name: *Vergangenheitsbewältigung*. Communism, with its seemingly anti-fascist posture, only delayed a coming to terms with the past, so in the *new* democracies of Europe the bulk of that hard work still has to be delivered.

Since the latest wave of hatred manifested itself, we have had to understand that fighting anti-Semitism would not succeed by fighting only the anti-Semitism of the past. For example, my country, Hungary, does very well when it commemorates the 60th anniversary of the Holocaust with a museum opening in the presence of all mainstream political leaders.

But it might be equally educational to look at what many of the best writers of the country did in this anniversary year. They quit a Writers' Union that could not decide to condemn a fellow writer, who gave an anti-Jewish speech at a rally. By the way, at that same rally, as if to translate the speaker's somewhat coded words, the participants burned the Israeli flag.

The Nazis did not hide behind coded words; prejudice did not masquerade as political correctness. With the establishment of Israel as the first democratic State in the Middle East,

with the history of the Holocaust behind Europe, anti-Semitism adapted to the new reality.

But what is being called the “New Anti-Semitism” these days is not really new. It was developed in the 1960s and ’70s. It happened when the Soviet Union ordered its satellites to withdraw recognition from Israel. At that time, the terrorist organizations fighting against the existence of Israel in the name of Palestine were called Marxist-Leninist, but they did exactly what their purportedly religious successors of today do: they cruelly massacred innocent Israeli civilians. Their training camps and hiding places were all over the Warsaw Pact countries. I remember vividly the campaigns when, in Central and Eastern Europe’s workplaces and schools, “voluntary” donations had to be paid to support the terrorists.

It was then that “anti-Zionism” was invented. The new coded phrase to denominate the Jews was “supporters of the Israeli aggressors” or simply, “Israeli aggressors”. The single greatest official state action against Jews since the end of WW2 was taken by the Polish Government in 1968, when thousands of Jewish persons were fired from their jobs and even squeezed out of the country – all in the name of fighting Zionism.

There is nothing new in the denial of democratic solidarity with the State of Israel; in turning an insensitive eye when it is menaced by open calls of annihilation from old-style anti-Semites, and in equating its eventual political or humanitarian failures with the sins of Nazism.

I don’t believe that the present-day manifestations of Israel-bashing in the press would amount to a New Anti-Semitism, but I am sure the symptoms do indicate a “New Insensitivity”.

My Office recently issued a report about the role of the media in Kosovo in the mid-March inter-ethnic violence. We found that inaccurate and sensationalist television reporting about the death of three Kosovar Albanian children, which was presented as a brutal, deliberate, ethnically motivated

killing by Serbs, probably played a crucial role in the outbreak of the violence that took 19 lives.

Please compare this case to the cartoon in a British newspaper which depicted Prime Minister Sharon devouring a child. Critics saw this as a clear reference to the ancient blood libel accusation. But the supposed anti-Semitism of the artist is less important than the apparently missing sense of political responsibility in the editors of that paper, and the even more missing sense of responsibility at the British Political Cartoon Society, which awarded that “work of art” the title: “Cartoon of the Year 2003”.

If such a caricature were to be published anywhere in the volatile post-Yugoslav region, or in the Caucasus region, the OSCE would be up in arms, and rightly so. The problem with blood libel accusations today is not that they resemble anti-Semitic patterns, but that they can kill, almost literally, by supporting already violent sentiments both in the Middle East and inside Britain.

Let me finish this by calling on the press to fight the “New Insensitivity”. All we have to do is keep caring, relentlessly.

[http://www.osce.org/documents/cio/2004/04/2825\\_en.pdf](http://www.osce.org/documents/cio/2004/04/2825_en.pdf)



# V. Overview – What We Have Done

## **Mandate**

of the OSCE Representative on Freedom of the Media

## **Reports and Statements**

to the OSCE Permanent Council and other OSCE fora

by Freimut Duve

- *Statement on Russia, Ireland and Azerbaijan at the Permanent Council of 23 October 2003 (Under Current Issues)*
- *Regular Report to the Permanent Council of 11 December 2003 by Freimut Duve*
- *Speaking notes for Jutta Wolke, the Acting Head of Office of the OSCE Representative on Freedom of the Media, for the Meeting of the OSCE Parliamentary Assembly in Vienna on 19-20 February 2004*

by Miklós Haraszti

- *Inaugural Statement at the Meeting of the Permanent Council of 11 March 2004 by Miklós Haraszti*
- *Statement on Armenia at the Permanent Council of 1 April 2004 (Under Current Issues)*
- *Statement on the March 2004 Kosovo Events at the Permanent Council of 22 April 2004 (Under Current Issues)*
- *Report on the Role of the Media in the March 2004 Events in Kosovo*
- *Non-paper on Anti-Semitism in the Media for the Berlin Conference on Anti-Semitism, 29 April 2004*
- *Regular Report to the Permanent Council of 8 June 2004*
- *Assessment Visit to Ukraine: Observations and Recommendations*
- *Statement on Belarus at the Permanent Council of 9 September 2004 (Under Current Issues)*
- *Regular Report to the Permanent Council of 16 September 2004*

- *Report on Russian Media Coverage of the Beslan Tragedy: Access to Information and Journalists' Working Conditions*
- *Media Freedom Violations in Belarus in 2004*
- *Annual Human Dimension Implementation Meeting (HDIM) Speaking Points, Warsaw 6 October 2004*
- *Regular Report to the Permanent Council of 16 December 2004*
- *Assessment Visit to Moldova: Observations and Recommendations*

## **Joint Declaration by OSCE, UN and OAS**

International Mechanisms for Promoting Freedom of Expression, 6 December 2004

## **Projects 2004**

- **Guaranteeing Media Freedom on the Internet**  
*Expert Seminar, 30 June 2004, Vienna*  
*"The Recipes", Recommendations of the OSCE Representative on Freedom of the Media from the Amsterdam Internet Conference, 27-28 August 2004*
- **Sixth Central Asian Media Conference**  
*23-24 September, Dushanbe*  
*Dushanbe Declaration on Libel and Freedom of Information*
- **First South Caucasus Media Conference**  
*25-26 October, Tbilisi*  
*The Tbilisi Declaration on Libel and Freedom of Information*
- **Legal Assistance in 2004**
- **Libel and Insult Laws: A Matrix on Where We Stand and What We Would Like to Achieve**  
*June 2004 – March 2005*

## **Visits and Interventions in 2004**

# Mandate of the OSCE Representative on Freedom of the Media

PC.DEC No. 193  
Organization for Security and Co-operation in Europe  
5 November 1997

137th Plenary Meeting  
PC Journal No. 137, Agenda item 1

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

2. Based on OSCE principles and commitments, the OSCE Representative on Freedom of the Media will observe relevant media developments in all participating States and will, on this basis, and in close co-ordination with the Chairman-in-Office, advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media. In this respect he or she will assume an early-warning function. He or she will address serious problems caused by, *inter alia*, obstruction of media activities and unfavourable working conditions for journalists. He or she will closely co-operate with the participating States, the Permanent Council, the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities and, where appropriate, other OSCE bodies, as well as with national and international media associations.

3. The OSCE Representative on Freedom of the Media will concentrate, as outlined in this paragraph, on rapid response to serious non-compliance with OSCE principles and commitments by participating States in respect of freedom of expression and free media. In the case of an allegation of serious non-compliance therewith, the OSCE Representative on Freedom of the Media will seek direct contacts, in an appropriate manner, with the participating State and with other parties concerned, assess the facts, assist the participating State, and contribute to the resolution of the issue. He or she will keep the Chairman-in-Office informed about his or her activities and report to the Permanent Council on their results, and on his or her observations and recommendations.

4. The OSCE Representative on Freedom of the Media does not exercise a juridical function, nor can his or her involvement in any way prejudge national or international legal proceedings concerning alleged human rights violations. Equally, national or international proceedings concerning alleged human rights violations will not necessarily preclude the performance of his or her tasks as outlined in this mandate.

5. The OSCE Representative on Freedom of the Media may collect and receive information on the situation of the media from all bona fide sources. He or she will in particular draw on information and assessments provided by the ODIHR. The OSCE Representative on Freedom of the Media will support the ODIHR in assessing conditions for the functioning of free, independent and pluralistic media before, during and after elections.

6. The OSCE Representative on Freedom of the Media may at all times collect and receive from participating States and other interested parties (e.g. from organizations or institutions, from media and their representatives, and from relevant NGOs) requests, suggestions and comments related to strengthening and further developing compliance with relevant OSCE principles and commitments, including alleged serious instances of intolerance by participating States which utilize media in violation of the principles referred to in the Budapest Document, Chapter VIII, paragraph 25, and in the Decisions of the Rome Council Meeting, Chapter X. He or she may forward requests, suggestions and comments to the Permanent Council, recommending further action where appropriate.

7. The OSCE Representative on Freedom of the Media will also routinely consult with the Chairman-in-Office and report on a regular basis to the Permanent Council. He or she may be invited to the Permanent Council to present reports, within this mandate, on specific matters related to freedom of expression and free, independent and

pluralistic media. He or she will report annually to the Implementation Meeting on Human Dimension Issues or to the OSCE Review Meeting on the status of the implementation of OSCE principles and commitments in respect of freedom of expression and free media in OSCE participating States.

8. The OSCE Representative on Freedom of the Media will not communicate with and will not acknowledge communications from any person or organization which practises or publicly condones terrorism or violence.

9. The OSCE Representative on Freedom of the Media will be an eminent international personality with long-standing relevant experience from whom an impartial performance of the function would be expected. In the performance of his or her duty the OSCE Representative on Freedom of the Media will be guided by his or her independent and objective assessment regarding the specific paragraphs composing this mandate.

10. The OSCE Representative on Freedom of the Media will consider serious cases arising in the context of this mandate and occurring in the participating State of which he or she is a national or resident if all the parties directly involved agree, including the participating State concerned. In the absence of such agreement, the matter will be referred to the Chairman-in-Office, who may appoint a Special Representative to address this particular case.

11. The OSCE Representative on Freedom of the Media will cooperate, 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**

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	Latvia
Germany	Liechtenstein
Austria	Lithuania
Belgium	Luxembourg
Bulgaria	Malta
Cyprus	Moldova
Denmark	Norway
Spain	Netherlands
Estonia	Poland
Finland	Portugal
France	Romania
United Kingdom	Slovak Republic
Greece	Slovenia
Hungary	Sweden
Ireland	Czech Republic
Italy	Turkey

*<[http://www.osce.org/fom/mandate/files/fom\\_mandate.pdf](http://www.osce.org/fom/mandate/files/fom_mandate.pdf)>*

## **Reports and Statements to the Permanent Council and other OSCE Fora**

### **Statement on Russia, Ireland and Azerbaijan at the Permanent Council of 23 October 2003**

*(Under Current Issues)*

I would like to raise three issues today.

First of all, my condolences go to the family and friends of Alexei Sidorov, a Russian editor fatally stabbed by two men who ambushed him in the car park of his apartment building in Toliatti, Samara Region. His predecessor Valery Ivanov, who also edited the local weekly *Toliatinskoie Obosrenie*, was murdered on 29 April 2002. His case I raised in this forum in my regular report on 20 June 2002.

I have issued a press statement on this matter voicing my indignation at another case of “censorship by killing” and urging the Russian authorities to swiftly investigate this murder. What concerns me is the chilling effect such attacks against press freedom have on rank-and-file reporters who for survival’s sake end up opting for self-censorship and passing on the opportunity to investigate, for example, corruption or the abuse of the environment by big business. Being a journalist in some regions of the Russian Federation is a hazardous profession. Unless more is done to ensure safe and secure conditions for all reporters, notwithstanding the political affiliations of their publications, investigative reporting might just die out together with the watchdog function of a free media.

My second point concerns Ireland and the ongoing discussion in this OSCE participating State regarding press freedom. I specifically refer to the proposal to establish a statutory Press Council appointed entirely by the Government to impose a government-initiated Code of Conduct on journalists and newspapers. This proposal was made by a Legal Advisory Group set up by the Government.

*The Irish Times*, for example, in a recent editorial wrote that it “strongly believes that statutory press regulation of the kind proposed is not in the public interest as it would significantly interfere

with editorial independence, freedom of expression and the role of the press in a democracy.” I fully agree with this view. In a letter I wrote last week to the Minister for Foreign Affairs, I stressed, among other things, that some of the statements made by officials during this public debate put into question certain fundamental beliefs on how a free media operates in a democratic society.

I would like to repeat once again: we live in a global village. Anything that happens in one OSCE Member State might be closely followed and even replicated in another. That is why there is no need to set an example that is questionable to say the least.

My third point concerns the extreme violence directed toward journalists during the post-election protests in Baku, Azerbaijan, and the reports of journalists throughout the country being prevented from covering the elections, as well as being subject to beatings and insult as they tried to report from the polling stations. For a while, one journalist was missing and a major independent daily was closed down. *Yeni Musavat* continues to have problems with access to its office and with distribution. I call for a full investigation of these incidents, prosecution of those responsible for excessive use of force and for clear measures by the Government of Azerbaijan to ensure the safety of journalists in the future.

One last point: I would like to mention the latest publication of my Office that we have distributed to you today. It is called *Spreading the Word on the Internet* and contains contributions from participants of the conference on *Freedom of the Media and the Internet* that was held in June 2003 in Amsterdam. The *Amsterdam Recommendations on Freedom of the Media and the Internet* that were issued at it can also be found in this publication.

<<http://www.osce.org/item/1127.html>>

## **Regular Report to the Permanent Council of 11 December 2003 by Freimut Duve**

This is my last report to the OSCE Permanent Council since having been elected in 1997 by the then 54 foreign ministers as the Representative on Freedom of the Media. I served for two three-year terms. Six years ago there was great hope in the world for those countries that came from a very dramatic past where freedom for writers and journalists was non-existent. As a publisher I had brought to the public some of the authors who were forbidden in their own countries. Back in the nineties we all felt confident that we would be able to overcome the burden of the past in the structure of many media outlets in the newly emerging democracies.

At that point it seemed that media freedom had taken hold in almost all OSCE participating States and what was then needed was to cement this successful start with vigorous monitoring and support, mostly of a legal nature. Thus, my two-fold work started.

We had not foreseen that in the following six years the situation would change not for the better: many of the new governments used new and old methods of countering criticism of their policies. As a result, the climate changed. The new media openness in some States was replaced by one of nervousness, self-censorship and a constant fear of oppression. This difficult situation for the media was exacerbated by the murder of thousands of citizens on 11 September 2001.

As a result of a shift in priorities among the OSCE participating States, civil liberties, including freedom of expression, were pushed to the sidelines by what many countries believed were more pressing needs. Many of the new priorities were justified but we also saw the misuse of the 11 September tragedy by certain governments for their own selfish reasons.

An organization that prided itself on being a community of declared democracies, in 2003 changed its policy outlook more towards global threats to security than to its deteriorating human rights record.

I have to declare here and now that after six years I leave the OSCE with a record in some of our Member States where the new reality concerning freedom of the media is more problematic today than when I took this job in 1997. Who at that time would have

thought that in developing democratic Russia the Kremlin would again have direct or indirect control of many of the print media and of most of the electronic media? Who could have predicted that the just-concluded Russian State Duma elections would be so widely criticized for failing to meet international standards precisely because of the lack of media independence, balanced coverage and the absence of a broad range of information for voters, thus casting a dark shadow, perhaps for years to come, over Russia's true democratic intentions? Who at that time would have foreseen, that an elected Prime Minister of a founding member of the European Union would organize media legislation so as to help his political agenda and his family's economic interest?

It is with great concern that I view last week's passage in Italy of a new media law. As far as I understand, the law would allow Prime Minister Silvio Berlusconi's family holding company to buy into radio and newspapers starting in 2009. Prime Minister Berlusconi, through his political office and his business interests, already has direct and indirect influence over an estimated 95 per cent of Italian TV. In this respect, Italy is setting a very dangerous precedent that could seriously influence the media structure in other OSCE States, not to mention it also undermines the position of this Office regarding media monopolization.

Let me now focus on some of the methods that are being used in the OSCE region by both governments and big business to stifle public debate and curtail independent journalism.

As you know since my first reports to this forum from 1998, we encountered what I called "structural censorship". Many of the governments in order to avoid open censorship introduced a series of indirect methods of harassment of media, which have a chilling effect and often force journalists and editors to revert to self-censorship. Structural censorship encompasses using the tax police, the fire department, office space owners, distribution and printing companies, to exert pressure on the media from either uncalled for and numerous harassing inspections to the denial of services under different economic pretexts.

In the end, journalists and editors are forced to compromise their editorial policy so as to be able to continue to publish and broadcast. I have mentioned dozens of such cases in this forum, I will not repeat them, but all of you know what I am talking about. One newspaper, for example, in an OSCE participating State survived over forty tax inspec-

tions in one year and finally was forced to completely change its attitude towards the authorities. It has not seen a tax inspector ever since.

“Censorship by killing” still remains a threat in the OSCE region, albeit ours is one of the areas in the world with the lowest number of killed journalists: this year two were murdered in Russia. Nevertheless, even one case of such an ultimate form of censorship is extremely disturbing. Of note is also the fact that rarely is anyone charged with murdering a journalist. Often these cases linger for years with no arrests ever made.

When these threats, especially “structural censorship”, do not produce the required effect, direct legal harassment through the use of both criminal and civil codes is put into gear. The weapon of choice here is usually libel legislation. That is why I have taken a very strong stand concerning criminal defamation and insult laws that provide undue protection for public officials.

In late November I held a round table in Paris on this matter and together with Reporters sans frontières issued a set of recommendations that are distributed to you today. They call, among other things, for the decriminalization of defamation in OSCE participating States. That is why I continue to stress that the two main pillars of a democracy are free media and the independence of a country’s legal institutions.

Libel is not the only legal means to target an offending journalist. When all else fails, a criminal case might be fabricated that could involve any allegedly unlawful activity: from bribery to having sex with a minor. Again, I have brought to the attention of this forum several such cases. The depth of cynicism of some of the governments that belong to this organization never ceases to amaze me. Journalists who had the courage to criticize these governments are locked up for years under trumped up charges that on the face of it have nothing to do with exercising one’s right to freedom of expression. Just two names: Sergey Duvanov serving time in Kazakhstan and Ruslan Sharipov who is incarcerated in Uzbekistan. Even after I leave this job, I will continue fighting for their freedom.

There is one country in the OSCE region where I have basically put all the activities of my Office on hold. This is Turkmenistan, a dictatorial regime in our organization, where the only function of the media is to glorify the President-for-life and destroy his opponents. Until civil liberties are reinstated I do not see any reason to work with the Government. Of course, I will continue defending those reporters who run afoul of this racist dictatorship.

Now, I will provide you with a review of some of the themes we have worked on for the past years.

Freedom of the media and the Internet. This is becoming an important topic, with governments and civil society debating the future development of information technologies and the pros and cons of this global network. I held a meeting of experts this June in Amsterdam where we all agreed that illegal content must be prosecuted in the country of its origin but all legislative and law enforcement activity must clearly target only illegal content and not the infrastructure of the Internet itself.

Another theme I have been pursuing concerns media in multilingual societies. Our latest effort is a publication issued in several languages on what is happening in this field in five OSCE countries: former Yugoslav Republic of Macedonia, Luxembourg, Moldova, Serbia and Montenegro, and Switzerland. The five country reports were presented at a conference in March in Bern, Switzerland. I also presented them in Belgrade in October. In the global future of this new electronic century there will be no completely monolingual country in the OSCE world or elsewhere.

Journalists working in conflict zones has been an ongoing theme that I focused on over the past years. There are two dimensions here: the security of those reporters who follow events from the front lines, often filing from conflicts where dividing lines are blurry and combatants represent diverse groups and communities. Another dimension concerns the relationship that is established between journalists and the military, such as was the case during the war in Iraq.

How to balance fair and unbiased reporting with security when covering a conflict area is a theme that all of us, inside and outside the OSCE, should continue to discuss. Any military action by a democracy is preceded by a public debate and is followed scrupulously only if the public has access to all kinds of information coming from different sources. This established practice should not be jeopardized.

We all understand that at the very moment a democracy sends its soldiers to war, the pros and cons debate becomes limited since we all side with our fellow soldiers. But any military action a democracy feels it has to take needs to be debated critically.

After 11 September, national security matters started again creeping in as reasons to censor the media. Overly intrusive legislation is being passed in several OSCE States. Some media outlets feel the full burden of being targeted for allegedly undermining national security. When I point an accusing finger at a country to the east of Vienna that

country points its own finger to the West: if they can get away with it why can't we? I believe that in the developed democracies the glitches in the system that we come across in the end will be fixed through the efforts of civil society assisted by an independent judiciary and a vigilant media. However, these glitches still set a bad precedent for the developing democracies, where civil society is weak, independent judiciary mostly non-existent and media hounded into submission. That is why, no matter how often I am criticized for raising what might appear to be minor issues, I will urge my successor to do the same. A minor issue in the US that will be ironed out in a week or two may set a precedent in another country that will become law for years to come. We know that this must be avoided.

This year I have started looking at the business side of media and how it may affect editorial policy and independent journalism. Again, this is not strictly a black and white issue; shades of grey prevail here, which is why it is essential to be very careful when making recommendations and offering advice. This July I have proposed a set of *Principles* to guarantee the editorial independence of media in Central and Eastern Europe and in Central Asia. These principles concern media that have been or are in the process of being acquired by Western conglomerates, as is happening in Bulgaria, the former Yugoslav Republic of Macedonia, Croatia, and in several other OSCE participating States.

These *Principles* set out the criteria that the media owners take upon themselves to adhere to once they are in a position to financially control a media outlet/s in one of the developing democracies. For the time being, only two media giants have signed up: the German Die WAZ-Gruppe and the Norwegian Orkla Media AS, although I have invited many more to support these *Principles*. I hope that my successor will continue this lobbying effort so that we will be able to ensure that pluralistic media takes hold in all of our countries.

Before I leave this Office, I will present to you a report on the *Impact of Media Concentration on Professional Journalism*. This study looks at the situation in four EU countries: Germany, Finland, United Kingdom, and Italy; three new Member States: Hungary, Lithuania, Poland; and one applicant country: Romania.

As you know, besides our Vienna work, I have developed, thanks to donations by participating States and Open Society Institute, some very concrete projects dealing with the media future of the younger generation: five years ago I started several school newspapers in Central Asia.

Later I moved to my largest project for the young people: *Defence of Our Future*. This was a long-term project that has ended in 2003 after three years on the road in South-East Europe. As you know, it was called the *mobile.culture.container*. It concentrated more and more on media: establishing student newspapers, initiating radio and video groups. I hope that these initiatives will continue to foster understanding between the young in a region only a decade ago torn by war. That is why I call our project *In Defence of Our Future*. Its focus was on the 14 to 18 generation who now are facing a dilemma: either to stay where they were born and to help rebuild their countries or to emigrate. *In Defence of Our Future* was geared at persuading them to stay.

This report, our 2002-2003 Yearbook *Freedom and Responsibility* and our regular *Central Asian conference review* are the latest publications of my Office. During my tenure we have published over three dozen books in several languages and in several countries. I gather this is a first for any OSCE institution.

I would also like to announce here the establishment of the Veronica Guerin Legal Defence Fund that would provide support to journalists who are being prosecuted in OSCE participating States. The Fund is named after Irish journalist Veronica Guerin who covered organized crime for Ireland's *Sunday Independent*. Guerin was killed on 26 June 1996. The purpose of the Fund is to assist, through voluntary donations by OSCE participating States, human rights organizations and individuals, in making available appropriate legal defence for those reporters who are in need of it. Relevant cases involving journalists would be referred to the Fund by OSCE field presences and bona fide non-governmental organizations. The Fund would be administered by the Office of the Representative on Freedom of the Media.

All of us at some point leave to new pastures but we do have a legacy. It is in our work, in our books, in the effect we had, or even in a lack of one. That is also a legacy.

I leave you with a fully developed and well-organized Office of the Representative on Freedom of the Media working in accordance with a functioning mandate in support of free media in the OSCE region. An Office that is well known and respected and staffed by a dedicated group of professional experts from half a dozen countries. I very much hope that our work was not in vain and will continue under a new Representative.

One last remark: one of my staff members just came back from a country where OSCE observed how in a very cynical fashion election results were pre-organized. My Office was looking into the terrible

situation that the journalists were in. On several occasions my staff member was informed especially by journalists how much they need the attention of OSCE institutions, of Freedom of the Media and ODIHR, to their problems and the dangers they face, and how much they were disappointed by the reduced interest many journalists and public figures in the West have in their extremely dangerous situation.

Thank you as I bid farewell to all of you after six years as the first OSCE Representative on Freedom of the Media.

*<[http://www.osce.org/documents/rfm/2003/12/1641\\_en.pdf](http://www.osce.org/documents/rfm/2003/12/1641_en.pdf)>*

## **Speaking notes for Jutta Wolke, the Acting Head of Office of the OSCE Representative on Freedom of the Media, for the Meeting of the OSCE Parliamentary Assembly in Vienna on 19-20 February 2004**

Today I am speaking to you on behalf of an Office that has been without a Representative on Freedom of the Media for almost two months. This Office continues to function in a low-key manner: we monitor, we identify cases of non-compliance with participating States' commitments to freedom of expression and freedom of the media, but we cannot enter into a public debate as we are advised that this would be in the way of finding a consensus on a new Representative. I therefore turn to you, the legislators, to help the Office of the Representative on Freedom of the Media to return to the full implementation of its mandate, and appeal to you to urge your governments to come to a solution.

This institution is a unique one, unprecedented in the history of international organizations. The idea of a watchdog established by those who are being watched came out of this Parliamentary Assembly. Now it is in danger of being keyed down by a bureaucratic process. My colleagues and I urge you to support the continuation of this Office and the election of a new Representative.

I will now give you a short overview of our long-term projects that we will work on in 2004:

***Media in Multilingual Societies.*** This pilot project in 2002/2003 pointed out the constructive role media could and should play in combating discrimination, promoting tolerance and building a stable peace in multilingual societies. The project showed how the media can help overcome prejudices and intolerance against citizens as members of minorities. It focused on the media in the former Yugoslav Republic of Macedonia (FYROM), Luxembourg, Moldova, Serbia and Montenegro, and Switzerland. Country reports were presented at a concluding conference in Switzerland in March 2003. A publication was issued later in the year in several languages: English, Albanian, Hungarian, Romani and Serbian. We will continue to develop the project this year.

***Freedom of the Media and the Internet.*** The project *Freedom of the Media and the Internet* included a workshop in Vienna in November 2002 and the booklet *From Quill to Cursor* with working papers from this meeting, as well as a two-day conference in Amsterdam in June 2003. The Representative issued the *Amsterdam Recommendations on Freedom of the Media and the Internet* at the conference. Contributions from participants were combined in the book *Spreading the Word on the Internet: 16 Answers to 4 Questions* that was presented by the Representative to the Permanent Council on 23 October 2003.

The Office intends to continue this project with a round table for OSCE delegations in Vienna and a follow-up Strategy Conference with experts in Amsterdam, both in the first half of 2004. The strategies and solutions will be published in a fact sheet, pointing out best practices and provided to all participating States.

***Libel Legislation in OSCE Participating States.*** Another key area we focused on in 2003 was criminal libel legislation and so-called insult laws in the OSCE region. To discuss what steps can be taken to try to deal with this problem, a meeting on 24-25 November 2003 in Paris issued recommendations. The Office will continue following this matter in 2004 and plans to solicit funds to develop a matrix on libel in the OSCE participating States. A publication on this subject is also being prepared.

***Freedom of the Media and National Security: What Comes First?***

The purpose of this project is to analyse how the war on terror in the aftermath of 11 September has influenced media coverage of national security matters. We will focus on cases in the US and Western Europe as well as in Eastern Europe and the former Soviet Union. How should a modern democracy balance the right to freedom of expression with certain legitimate national security concerns? We plan to discuss this at a meeting with journalists, editors and media experts from OSCE participating States.

***Legal Reviews.*** The Office has been working closely with several OSCE field presences on reviewing existing as well as draft legislation related to media. Specific projects have been undertaken together with the OSCE missions in Croatia, Armenia, Tajikistan, Ukraine, Georgia, Kazakhstan, Belarus and Moldova. We will continue providing legal reviews in 2004.

**Central Asia.** Five Central Asian Media Conferences have been held in the region. Last year we met in Bishkek. In 2004 we plan to hold our annual conference in Tajikistan. The theme for this conference is being discussed and input from delegations is, of course, very much welcome.

We are also distributing to you a list of recent cases of harassment of media in the OSCE region. This is by far not an exhaustive list, and it shows all of us that media continue to face different forms of harassment from both governments and big business in the OSCE region.

## **Inaugural Statement at the Meeting of the Permanent Council of 11 March 2004 by Miklós Haraszti**

This is a very emotional moment for me, as the task of the OSCE Media Representative is in many respects the natural continuation of my life's work. I have to express my gratitude for the possibility to go on working, this time internationally, for freedom of the press.

First of all, I would like to say thanks to all participating States for their support and consent to appoint me as the new Representative. Similarly, my cordial appreciation goes to two consecutive chairmanships, to the Netherlands and to Bulgaria, for their steering of the difficult selection process.

I also have to pay tribute to all the great candidates who participated in this contest that was run on merit. I know and appreciate the personal sacrifice that some of the candidates have offered when consensus building required it.

And, of course, I am acknowledging the powerful role played by the first shaper of this mission, the passionate, devoted personality of my predecessor, Mr. Freimut Duve, in the shadow of whom I will have to labour hard to find my own way of directing our work.

Let me tell you about some of my preferences for our future work. The greatest challenge is to find the right measure when choosing between the different tools that are at the Representative's disposal, defined by the Mandate. The right balance is needed between observation, co-operation, recommendation, and sometimes protest in order to achieve the greatest possible impact, always having in mind that our actual aim is to help. To help all the three players in developing media freedom – the governments, the press, and the societies – in their unending learning process; helping them hold on to our common principles of freedom of the press, and to turn those principles into life.

It is in this spirit that yesterday, on my first working day, when hearing of the recent criminal cases in Turkmenistan, I contacted by telephone His Excellency Ambassador Kadyrov and asked him for further information, which he kindly agreed to provide next week.

In my work, I will not differentiate between the West and the East, between new and old democracies. I consider two features to be common to all the 55 participating States of the OSCE. All of them

have pledged to adhere to our common principles of a democratic society, and I know all of them wish to belong to this great community of democracies, the community of the northern hemisphere in fact. And alas, a feature that we also all share in common is that no country is perfect.

Let me also refer to some areas that I would focus on in the near future. There are delicate interdependencies and conflicts between freedom and other needs of society. One of them is freedom of the Internet and the problem of proliferation of hate speech on it. Another is the similarly delicate interdependence between freedom of expression and the needs of national security and the fight against terrorism. (I express my heartfelt condolences to the Spanish people and their Government for the terrible blasts in Madrid this morning.)

A third area is the problem of libel committed via the press, and the need to decriminalize it, or at least exempt imprisonment as a sentence. This also could be an example of how universal the deficiencies are, and of how diverse their impact could be in different societies. The clause in question is a nineteenth-century legacy in our penal codes, from the times when deliberate, criminal ruining of someone's reputation – typically committed for money by a certain type of journal – was contained by imprisonment. Today, incarceration is obviously not the proper handling of defamation that nowadays is generally committed for purposes of a political nature. The traditional punishment has to be replaced by more “civil” ones. But we have to differentiate where truly independent courts have applied prison for libel, or where imprisonment of journalists has been utilized by governments that wish to silence critical media.

Let me finish by this: I need the co-operation of all of you in our common endeavour, esteemed participating States, and I am offering the same to you.

*<[http://www.osce.org/documents/rfm/2004/03/2331\\_en.pdf](http://www.osce.org/documents/rfm/2004/03/2331_en.pdf)>*

## **Statement on Armenia at the Permanent Council of 1 April 2004**

*(Under Current Issues)*

After two years, the case of the two independent TV stations in Armenia, *A1+* and *Noyan Tapan*, is still not resolved. They lost their broadcasting frequencies in 2002 and have not been able to resume their operations.

My Office has been closely following the developments with regard to the issuing of broadcast licences in Armenia for the last two years. In particular, special attention was paid to the eight tenders where the above-mentioned stations participated followed by a number of court cases.

My predecessor, the OSCE Chairman-in-Office and other international bodies have stated on several occasions that the absence of these two stations from the airwaves limits media pluralism that I believe exists in Armenia.

I note that no progress has been made in rectifying the existing situation and I appeal to the Government to take all the necessary steps to help recreate a broad media landscape in Armenia.

In particular, I urge the Government to ensure that the National Commission on TV and Radio functions as an independent body. It is also important to provide for licensing procedures to be more transparent.

[http://www.osce.org/documents/rfm/2004/04/2503\\_en.pdf](http://www.osce.org/documents/rfm/2004/04/2503_en.pdf)

## **Statement on the March 2004 Kosovo Events at the Permanent Council of 22 April 2004**

*(Under Current Issues)*

Today I present to you our report on the role of the media in the tragic events that took place in Kosovo in mid-March. At the end of this report, we offer several ideas and recommendations as to how to prevent similar situations in the future by providing conditions for a free, fair and balanced media in Kosovo.

Out of this report I would like to emphasize here the three main problems as I see them: biased reporting, lack of plurality; and the failure of public-service broadcasting. All of them, and especially their combination, contributed to a practical, even if temporary loss of Kosovo's media freedom, and did a great disservice to Kosovo's ethnic peace and democracy.

The essence of our findings is that the most powerful broadcasters provided biased coverage on two counts.

On 16 and 17 March, they portrayed the death of the children as a cruel, criminal, ethnically motivated killing. But when, in the wake of their own previous reporting, the real inter-ethnic violence occurred, the TV media in particular followed up with justifying, almost supportive coverage.

For several crucial days, the media in Kosovo borrowed some of the characteristics of its own unfree, pre-democratic past, features that I personally know too well: lack not only of objectivity but also of plurality. What we witnessed in Kosovo was not just one-sided, careless and unprofessional journalism in a post-conflict, volatile society, but it was a tragic lack of other balancing voices, at least in the broadcast media.

The last but not the least important disappointment is the failure of the Public Broadcasting System of Kosovo. Its aim – and its only justification – is to meet the need for a firm, reliable infrastructure that provides for objective news; it should be so reliable that it could counterbalance any irrational and irresponsible disinformation. This is why public radio and television in Kosovo (*RTK*) is supported by the taxpayers of Kosovo as well as by the taxpayers of the OSCE countries.

And this is why first among our recommendations I would put the strengthening of public radio and television. It should become a

bulwark of objectivity, fairness and built-in pluralism. The citizens and donors of Kosovo should get their money's worth.

Equally important is to provide a legal framework for the media. The third most important proposal is that, at least temporarily, there should be regular checks of programmes of the broadcast media. My Office would be willing to select and appoint, with your generous support, a special representative in order to help identify a course of action.

One last note: with me today is the expert who prepared the report, Dardan Gashi, a journalist and the author of two books on the Balkans. He has worked in the region for over ten years as a reporter, as a human rights activist, as well as for three OSCE missions: in Bosnia and Herzegovina, in Croatia and in Kosovo. He has also worked for the International Criminal Tribunal for Former Yugoslavia. He is ready to answer your factual questions if you have any.

[http://www.osce.org/documents/rfm/2004/04/2854\\_en.pdf](http://www.osce.org/documents/rfm/2004/04/2854_en.pdf)

## **Report on the Role of the Media in the March 2004 Events in Kosovo**

The research for this report was provided by an outside expert, Mr. Dardan Gashi, a journalist who has worked in the region for over ten years, as well as for the OSCE missions in Bosnia and Herzegovina, Croatia, and Kosovo, and for the International Criminal Tribunal for Former Yugoslavia.

### **Executive Summary**

The aim of this report is to evaluate the role of the Kosovar media in the tragic events of mid-March 2004 in Kosovo. Even in a society with no ethnic conflict, linking the media to loss of life entails walking the thin dividing line between defending freedom of expression and condemning hate speech. But in a post-ethnic conflict society such as Kosovo, biased reporting alone could lead to violence. This report offers ideas and recommendations as to how to repair the evident deficiencies of the media in order to prevent similar situations in the future and provide for a free, fair and balanced media landscape in Kosovo.

While displaying the weaknesses it did, the media was not, of course, intentionally instigating violence. But the media has a responsibility to react properly and professionally to serve the best interests of the population of Kosovo.

Without the reckless and sensationalist reporting on 16 and 17 March, events could have taken a different turn. They might not have reached the intensity and level of brutality that was witnessed or even might not have taken place at all.

In particular, the clear spin given by the media in accounts of the fatal drowning of a group of children on 16 March seems to be unsupported by any journalistically valid accounts. Neither can one say these accounts were informed by a desire to help avoid violence. In fact, media coverage seems to have led to massive demonstrations of a violent nature involving 50-60,000 people on 17 March, as compared to the 18,000 who demonstrated prior to the coverage of this incident in the media.

It should also be noted that the media, specifically the broadcasting sector, displayed unacceptable levels of emotion, bias, carelessness, and falsely applied “patriotic” zeal. In particular, the reporting on the

evening of 16 March by the three main Kosovar TV channels deserves the strongest possible criticism. The performance of *RTK (Radio and Television of Kosovo)* during the riots, as well as on the evening before, should be viewed with special concern, since this is the only public broadcaster.

In contrast, the mainstream print media, with some unfortunate exceptions, displayed rather more constructive behaviour. Editorials and most of the reporting in the dailies *Koha Ditore* and *Zeri* helped to decrease tensions.

The events also made it evident that there is a severe lack of mutual trust between UNMIK Public Information offices and local journalists.

However, it would be premature and unfair to say the media development efforts of the OSCE Mission in Kosovo (OMIK) and others have failed. One has to acknowledge that free media is still a novelty in Kosovo. OMIK, the Temporary Media Commissioner (TMC), the donors and the OSCE Representative on Freedom of the Media will have to strengthen their efforts to improve the quality and accountability of broadcasters in Kosovo.

Finally it should be noted that the events of mid-March were the first serious crisis that the Kosovo media has ever faced. While this report shows there is credible concern that the electronic broadcast media might have been one of the reasons for the outbreak of violence, long-term sanctions could prove counter-productive.

## **Background Story**

This is the event related by the Kosovar Albanian media that is believed to have sparked the riots: On 16 March, six Kosovar Albanian children from the village of Caber, located in the majority Serb-populated municipality of Zubin Potok, were playing on the Serb side of the river Iber. This divides the village of Caber from a Serb neighbourhood. At some point, an unidentified group of local Serbs was said to have charged the children with a dog. While escaping them, four of the children jumped into the river. After a terrible experience, only one of the four survived. The surviving child is also the only eye-witness source the media continued to refer to. It was never explained how the two other children – who did not jump into the river – also survived. Nor was it made clear whether they were also attacked by

the Serbs allegedly chasing the group or by the dog, and if not, then why not. Finally, neither of the two other surviving children, nor their views, were ever presented in the media during the critical days.

The present report does not set out to speculate about the reasons, possible organizers or motivation behind the violent events in Kosovo in mid-March. Nor does it aim to speculate about the circumstances of the tragic death of the three children from Caber. Its sole purpose is to analyse the role that the media (in particular the TV broadcasters) played or might have played to fuel or provoke the intensity and the nature of the events which led to the massive ethnically motivated violence and the loss of life and property, including religious and cultural sites.

Circumstantial evidence and opinions gathered by a number of institutions, as well as by the author of this report, suggest that the way the news about the drowning of the children was qualified and presented by the mainstream media constituted the *casus belli*, so to speak. What the organizers of extremist anti-UNMIK demonstrations had failed to achieve in the past, the news concerning the drowning of the three children succeeded in doing. It offered a perfect emotional motive for popular outrage and a good tool for sentimental manipulation by extremist individuals and groups longing for escalation.

There is hardly anything that provokes stronger feelings and greater outrage than crimes against innocent children, the more so if they are committed on ethnic grounds in a volatile environment, as is the case in Kosovo.

However, the relevant question is not whether we know today what caused the tragic deaths of these children or whether an investigation might even prove the initial media allegations to be right. Rather the fundamental question is, could the media have known for a fact, beyond any doubt, that the children were victims of an ethnic crime at the time it disseminated this news?

Unfortunately, there is no supporting evidence that the media presented the news after having checked all facts to the best of their knowledge, nor that the media were even in a position to know beyond any doubt that the children had been victims of an ethnically motivated crime. In fact, it seems they did not even listen carefully to their own interviews with one of the children who survived the incident.

Different statements by the surviving child, aired on 16 March, referred to a distant Serb house, to Serbs who had sworn at them from the house, to a dog, and to the fact that they were afraid.

At no point in the interviews aired did the child use the words, “We were chased by a group of Serbs with a dog.”

The TV stations chose, however, to spin the story as if the Serbs had actually chased Albanian children to their deaths with a dog. Even the respected daily *Koha Ditore* on 17 March had as its front-page headline: “Three Albanian children drown in Iber, while escaping Serbs.” The public was left to believe, that beyond any reasonable doubt, a despicable, ethnically motivated crime had been committed.

To date, the main TV broadcasters and other media have failed to explain to the public:

- that they had based their story on statements by only one of the three surviving children;
- that they had misrepresented and/or exaggerated the statements of the child in their headlines;
- that they had ignored or/and censored statements by appropriate authorities cautioning them not to jump to premature conclusions as the case was still being investigated; and that
- they chose to interview partners who seemed to confirm their story, no matter that those interviewed had no credible means of knowing what had really happened (this is in particular the case with *RTK*, the public broadcaster).

To date, several senior representatives of the Kosovar media refuse to acknowledge any link between their reporting on 16 and 17 March and the events that followed over the next few days. This is the equivalent of saying that the events of 17 March and of the following days would have happened anyway, no matter what the media had broadcast the previous night. This is both unconvincing and misleading.

A reconstruction of some of the events on 16 March (before the media began airing headlines about the alleged killing of the children by Serbs), when placed in contrast to the next day, will probably prove wrong the alleged total lack of connection between the reporting and the riots.

## **The Demonstrations on 16 March**

Since the end of the war in June 1999, demonstrations have become routine in Kosovo. With few exceptions these events have usually ended peacefully and have failed to attract massive crowds. As March marks the anniversary of the start of the NATO campaign in Kosovo, it is routinely used by different groups to express their opinions in the

streets. Every year since June 1999, diverse groups and organizations originating from the former KLA (UCK) have called for Kosovo-wide demonstrations (“All in Support of the Liberation War”). This time, the demonstrations were organized in protest against the arrests and prosecution, on war crimes charges, of a number of former KLA officers by either the UNMIK authorities in Kosovo or by the ICTY in The Hague.

On 16 March this year, in almost all major towns of Kosovo (including all 27 Albanian majority municipalities), among them Mitrovica-South, supporters of these organizations gathered and voiced their dissatisfaction with the above-mentioned arrests. According to UN police figures, the overall number of protesters was 18,000. This is in marked contrast to the next day, the violent nature of the riots notwithstanding, when some 50-60,000 people took to the streets. Also in contrast to the previous day, school directors in many towns, having heard the news about the drowning of the children, ordered students and school children to take part in the demonstrations in protest over this “monstrous crime”, as did many other institutions and organizations.

As one of the organizers of the riots in Gjilan/Gnjilane put it in an interview: “Yesterday (16 March) we had fewer demonstrators than today ...”

Even though the rhetoric used during the pro-KLA rallies on 16 March was extremely hostile toward the international presence – in particular towards the UNMIK administration – remarkably the demonstrations ended peacefully, with no major incidents reported. In Mitrovica-South itself, the demonstrators marched towards the bridge which divides the town but made no efforts to cross it nor to charge the security forces. This is also in contrast to the following day, when the number of demonstrators was dramatically higher and angry protesters engaged both the security forces and local Serbs in lethal confrontations.

Simultaneously, local Serbs in the villages of Gracanica and Caglavica were continuing to maintain a blockade of the two main roads that connect Pristina with the southern and the eastern parts of Kosovo. This protest had begun over a drive-by shooting which left a member of the Serb community in Caglavica wounded. The local Serb community attributed this incident to an unidentified Albanian gunman and provoked a few minor incidents involving Kosovar Albanian passers-by. The number of local Serb protesters in both blockades was estimated in the hundreds, while no attempts were

made by Albanian protesters participating in the pro-KLA demonstration to “unblock” the roads. This also stands in contrast to the pattern of behaviour on the following day, when a large number of young Albanians, including some who had gathered in the centre of Pristina on a rally “Against Violence” (following a hand-grenade attack on the residence of Kosovo President, Ibrahim Rugova), decided to march towards Caglavica, there to engage in confrontations with the security forces and local Serbs.

Halil Matoshi, one of the leading veteran journalists in Kosovo, and editor of the weekly *Zeri*<sup>1</sup> described the role of the TV media during the events in an editorial as follows: “The rebellion was a chain reaction that spread across Kosova within a few hours. It was the spark of Caber which ignited the fire that as a consequence burned our home of Kosova. Of course, in times of advanced technology, the rebellion was transmitted live on TV and this strongly influenced every teenager in Kosova to want to be part of that picture that was being aired non-stop for 24 hours. This picture had a lot of influence on anyone who had no idea what was happening and suggested that now everyone had to rebel, everyone had to use this opportunity to grab something of what had been left from the rule of law and the law itself.”

Another Kosovar Albanian columnist, Ylber Hysa, compared the way people tend to take media news for granted in Kosovo with the experimental broadcast in 1938 by Orson Welles in the United States, when he aired the “news” that Martians were invading the country. Back then many people believed the “news”, which generated panic.

Ylber Hysa: <sup>2</sup>“... no matter if the news is true or not, we tend to believe what we like to hear. So that was the case with the wounding of the Serb in Caglavica; the local Serbs took it for granted that it must have been an Albanian perpetrator and blocked the roads. The same thing happened later as the news was spread about the drowning of the Albanian children.”

But while the situation on 16 March seemed tense, there was nothing to suggest that the next day would lead to the greatest eruption of violence in post-war Kosovo, nor did it seem to represent a great exception to previous similarly uneasy situations.

---

1 Halil Matoshi was a prisoner of conscience in Serbia for nearly a year during 1999. The Office of the Representative on Freedom of the Media was involved in trying to secure Mr. Matoshi's release. The column quoted is from the weekly *Zeri* of 27 March.

2 In the daily *Koha Ditore*, 2 April.

## Media Coverage of the Fatal Drowning of the Three Children

Later that night, the main Albanian-language TV broadcasters began airing news of the fatal drowning of the three Kosovar Albanian children in the river Iber. It must be noted that at this stage it was absolutely unclear what had happened or even *if* all the missing children were dead, since not all the bodies had been recovered. In journalistic terms, even the incident as such was not a *fact* until the respective authorities had confirmed it.

What the media reported that evening was, however, letting the audience believe that the case was absolutely clear: three innocent Albanian children had drowned in the cold river Iber while escaping from Serbs who were chasing them with a dog. A cowardly, brutal and ethnically motivated crime!<sup>3</sup>

The first news about the incident, aired during prime time on almost all TV channels, was already connecting the death of the children with a potentially ethnically motivated crime. Later in the evening, additional “evidence” was produced suggesting to the audience that, beyond any doubt, the children had been victims of a vicious ethnically motivated crime, committed by local Serbs.

What follows are excerpts from transcripts of the TV media coverage of this case during the late evening on 16 March.<sup>4</sup> These were broadcast several times during the night and throughout the next day with minor, unsubstantial changes.<sup>5</sup> Particular attention should be paid to the news presenters who guided the story in the “no doubt this has happened” direction. It goes without saying that this constituted breaking news until later in the day on 17 March, when other violent events dominated the screens.

---

3 In all truth and fairness it should also be stated that ongoing police investigations might well prove that this indeed was the case. However, it was by no means possible for the media, on the evening of 16 March, to know for a fact, beyond any reasonable doubt what had happened, nor is it clear to date.

4 The quoted transcripts are courtesy of the Office of the Temporary Media Commissioner in Pristina.

5 Even as the regular programme was aired, a news bar at the bottom of the screen constantly reminded the audience about the incident.

**RTV 21** (an independent private broadcaster, founded after the war):  
News Flash at 22:00, 16 March.

**Presenter:** Two Serbs chased four Albanian children today around 16:00 in the village of Caber and, while trying to escape from them, the Albanian children jumped into the Iber river. To learn more details we have our correspondent in Mitrovica...

**The correspondent from Mitrovica on the phone:** It is feared that a major tragedy happened today at around 16:00 in the village of Caber, Zubin Potok municipality, the only village inhabited by Albanians in this municipality. As 13-year-old Fitim Cerkin Veseli recalls, he and five other children around his age were walking along the bank of the Iber river. Then, two persons came out of a Serb house who had a dog and started chasing the children. From fear, four of the children jumped into the river hoping to make it to the other side by swimming. But, since the current was too strong, only Fitim Veseli made it to the other side, whereas nothing is known about the fate of Egzon Deliu, 12, Avni Veseli, 11, and Florent Veseli 9...

While the "criminal" nature of the incident was underlined through the attribution of the narrative to the 13-year-old witness, no other sources to confirm or deny these facts were mentioned, leaving the impression of a clear case of an ethnically motivated crime. The same news was broadcast at least half-a-dozen times during the night and the following morning.

**RTK** – (the only public broadcaster, founded after the war)  
*Blic* News at 23:00, 16 March.

**Presenter:** Three Albanian children, Florent Veseli, 8 years old, Avni Veseli, 11 years old, and Egzon Deliu, 12 years old, went missing in the waters of the Iber river, meanwhile Fitim Veseli, 14 years old, has been found. They are victims of an attack by a group of Serbs in the village of Caber (...) Before seeing the material, we'll go live to our reporter Petrit Musolli, who is at the scene.

**Reporter from Mitrovica on the phone:** The police, KFOR and TMK have not yet found the bodies of the three children missing in the river Iber, having fallen in after being chased by a group of Serbs. At the moment, police, KFOR and TMK have put some nets close to the bridge of Binaq in Koshtove in the Iber river, expecting to find the bodies of Florent Veseli, 8 years old, Avni Veseli, 11 years old, and

Egzon Deliu, 12 years old... so far, the police have not issued an explanation nor given any information other than the story of Fitim Veseli, the only one found. The police said that all the information they had was from Fitim Veseli ...

**News presenter:** How is the situation in Mitrovica, is it under control, how are the citizens reacting?

**Reporter:** The situation in Mitrovica is calm at the moment. Almost all citizens are heading toward the village of Caber to learn more about the fate of the three children missing in the Iber river.

Of course, not “almost all citizens of Mitrovica” were marching toward Caber that evening. While it is evident that a critical mass of young Albanians was moving towards the village, by no means did the number constitute “almost all citizens”. The reporter chose to dramatize the situation and the news presenter failed to ask him if this indeed was the case, thus leaving the impression that a popular uprising over a brutal crime was already underway.

After the presentation by the correspondent (2 minutes and 16 seconds), a statement by the regional UNMIK Police spokesperson was aired:

**Tracy Becker - UNMIK Regional Police Spokesperson:** “Initially, some have said that the incident was ethnically motivated. Since for the moment we don’t have such information, we cannot confirm it.” (The airtime given to Tracy Becker was 12 seconds).

What followed was an interview with one of the surviving children for 1.42 minutes.

#### **Interview with the child (Fitim Veseli):**

**RTK:** Fitim, can you tell us about today’s event, how did it happen?

**F.V.:** Yes, we, some cousins of mine and some friends of mine, and myself were walking and we went close to the river when some Serbs with a dog swore at us from the house. We looked at them, I can identify them if I see them, and I know their house, and we tried to escape but we couldn’t as we were close to the river. My brother, Florent Veseli, 9 years old, was with me, he can’t swim. I put him on my back, I swam 15 metres, I could not swim more than that. He fell from my back, I don’t know anything more about him, and the other two swam in front of me, I don’t know anything about them either. But there were another two who did not go in the Iber river, they were further away from us, further away from the bridge. It was 4:00 p.m.,

3:55 p.m., and there was a Serb hidden in the maize, and we tried to tell them to run away, we called them but they did not hear us and we jumped in the Iber but they survived, I don't know how the others survived but my brother who was on my back fell from my back because the waves were big, the Iber was big, he fell from my back, I came out from the Iber somehow tired.

**RTK:** Who helped you to come out of the river?

**F.V.:** I came out myself.

NOTE: It is clear that the boy never said himself: "We were chased by Serbs and a dog." It was *RTK* which decided to qualify the story in the way they did, thus misinterpreting the child's statement.

Immediately after the interview with the child, there was a live studio interview with Halit Berani (for 1.46 minutes), a senior regional activist of the "Council for the Defence of Human Rights and Freedoms" in Mitrovica. It should be noted that while Mr. Berani is viewed as controversial by some international and local institutions, he was invited to (and did) testify in the trial against Slobodan Milosevic in The Hague and so is considered a credible source by some. The fact that Mr. Berani was invited to talk does not itself constitute a problem, nor necessarily does what he said as it is up to him to qualify things his way. But the fact that his conclusive claims were at no stage challenged by the interviewer nor balanced by inviting other appropriate authorities, represents serious misconduct on the part of *RTK*. It should also be noted that Mr. Berani was not an eyewitness to the incident itself, but was invited as an "expert witness". To this extent, there is no reason why other "expert witnesses" were not present.

#### **Interview in the studio in Pristina with Mr. Berani:**

**Presenter:** The Chairman of the Council for the Defence of Human Rights and Freedoms in Mitrovica, Halit Berani, is with us in the studio. Mr. Berani, what kind of information do you have about this case?

**H.B.:** Today around 16:00 in the village of Caber, Zubin Potok municipality, while six children from the above mentioned village were playing, a group of Serb bandits attacked these children, the Serb bandits also had a dog, and swearing at their Albanian mother they forced the Albanian children to run away. Two of them managed to hide in the roots of the willow trees by the river Lumebardh [editor's note: recent Albanian name of the Iber river], whereas the other four fell into the river. It is known that the Lumebardh river, apart from being very deep, has very cold water and is fast-moving. Most probably the

children could not swim well. There is no information about the fate of three of them, whereas one survived after making it to the other side of the river.

**Presenter:** So what will your reaction, from the Council, be to this tragic event?

**H.B.:** We are used to these Serbian bandits. As well as that case, tonight at 19:17 in the suburb called “7 September” they threw a bomb near three multi-storey buildings. We think that is in revenge for what happened in Caglavica, the case that showed what the Serbs are willing to do when the situation is getting calm in Kosova.

**Presenter:** Mr. Berani, thank you!

Mr. Berani’s unchallenged allegations and the way the news presenter and the reporter qualified the incident led to yet another conclusion: that the incident was undoubtedly one of the most sinister possible character. *RTK* also chose to allocate a disproportionate amount of airtime to the content that spoke in favour of the fact that this was an ethnically motivated crime: 258 seconds, while allocating only 12 seconds to the police spokesperson. Disturbing too is the probability that *RTK* and the other TV broadcaster, *KTV*, who had their correspondents on the ground on the evening of 16 March, might have willingly chosen to ignore the statements calling for calm made by UNMIK and UN Police.

Tracy Becker, UNMIK Regional Police Spokesperson in Mitrovica, stated for this report: “At about 22:00 we received intelligence information that some Albanians from the areas were coming to Caber to protest the death of the children. I went back to the media, specifically to *RTK* and *KTV*, and gave them an on-camera interview during which I appealed for people to stay calm and stay home so that police can focus on finding the children rather than deploying manpower to handle crowds. I again emphasized that we had no evidence to support the rumour of Serbians killing Albanian children. I requested *RTK* and *KTV* to air the footage in order to calm the public and decrease ethnic tension. To my knowledge they did not air my interview.”

Georgy Kakuk, the regional UNMIK spokesperson, also stated for this report: “During that evening it did not seem to matter to the journalists what we said. They seemed to have made their conclusions before. Whatever we said, it was disregarded.”

As far as this report can establish, *RTK* did not air the appeals by the UN Police.

While the reporting over the death of the children was the main focus of the media on 16 March, it is also important to look, at least briefly, at how the other events of the day were reported.

The pro-KLA Kosovo-wide demonstration was extensively presented during prime time, and also in the subsequent news programming during the evening. All three TV broadcasters displayed a high degree of sympathy with the demonstrators and their demands, while at no time were the views of the institutions challenged by the demonstrators presented. The ICTY and UNMIK were not invited to present their views over the serious allegations by the demonstrators and those who made speeches in connection with the arrests of former KLA officers on suspicion of war crimes. The arrests were generally qualified as unfair, ill-intended, as criminal and as a service to Belgrade, a fact that should have forced the editors to seek opinions from the ICTY and UNMIK, or other independent sources, given the serious nature of the allegations and the sensitivity of the issue in itself.

The demonstrations by local Serbs in Caglavica and Gracanica were also extensively covered. In general terms, the reporting over these events was rather more balanced. In fact, had the media reported the case of the three children the same way as they did the events in Gracanica, probably Kosovo would not have experienced the situation it did during the following days.

The reason for the demonstrations by the local Serbs was a drive-by shooting, which left a Serb male wounded. The crime was attributed by local Serbs to an Albanian suspect.

The media, while reporting the case, respected the rule that the crime was still being investigated and did not jump to conclusions or speculate about the nationality of the suspect or the nature of the crime. Whether they did so out of professionalism, or out of bias because the victim was a Serb, is a question one cannot answer.

## **Reporting of the Events on 17 March**

On 17 March, as the violence had begun to spread throughout Kosovo, all TV channels switched to special programming including live broadcasts from the scenes of violent unrest. The news about the drowning of the children was still being presented the same way as the previous night, however this time it was accompanied by images and reports about the violent protests that had begun in Mitrovica and had been provoked by the news about the tragic death of the children.

It is a rather complicated exercise trying to evaluate the quality of the reporting during such a crisis. It is at this stage when freedom of speech can easily be confused with incitement and hate speech and vice versa. While it might be considered careless and sensation-driven or even an incitement, the fact that the media decided to air live footage sometimes even without comment from these scenes (including hospitals filled with blood-covered casualties), it also represents a widespread phenomenon of how modern media report in real-time.

What is worrisome is the extremely one-sided anti-Serb and sometimes anti-UNMIK nature of the reporting that had begun to dominate the TV screens. The media did little, if anything at all, to calm down the situation on 17 March. The way interviews were conducted, their content and the failure to balance the statements by providing different opinions cannot be even remotely described as professional. In fact, the nature of most of the interviews and some of the reports by correspondents represent a clear case of incitement.

What dominated the screens on 17 March, was a mixture of dramatic and often disturbing footage from the scenes of violence, the repetition of the story about the tragic death of the children and interviews with individuals and personalities who expressed understanding for the riots, condemned the “barbaric Serb” killing of the children and criticized the conduct of the security forces engaged by the protesters. Programming containing balance, calls for calm and reason was a rarity during this day. Only on 18 March did the media begin to give sufficient space to constructive statements and actively engage in calming the situation down.

Here is a just a brief selection of some of the interviews and contributions by correspondents aired on 17 March.

**RTK Special Edition, 17 March**

In an interview, LDK Member of Parliament and former senior human rights activist, Nekibe Kelmendi, said:

**RTK:** Some say the revolt is understandable ...

**N.K.:** Of course it is understandable. There have been many things going wrong here ...

**RTK:** How do you see this? The police are using force and tear gas against Albanian protesters, while the Serbs are allowed to block roads for days?

**N.K.:** This is a clear double-standard practice that UNMIK has applied

from the beginning. This is the effect of so-called “positive discrimination” ...

In an interview, another MP, Berat Luzha, said:

**RTK:** The tragic events of last night, caused by Serbs and the inefficiency of the security forces. How do you evaluate this and also today's protests?

**B.L.:** This is all due to the failure of UNMIK and the double-standard policy towards the ethnic groups here ...

In an interview with another PDK MP, Arsim Bajrami, Mr. Bajrami states: “The barbaric act of the killing of the children ... has provoked a legitimate revolt by the Albanian population. This should be a lesson for the international community”...

Other interviews of a similar nature and content, with suggestive questioning by the journalists continued to be aired during the Special Edition of *RTK* and throughout the day.

### **KTV, 17 March**

Correspondent from Gjakova/Djakovica: “The criminal acts of the Serb population in the north have been condemned by the population of Gjakova during peaceful demonstrations. They demand an end to these terrorist acts against the Albanian population. In an expression of solidarity, the protesters marched towards the Serb street, the Serb church was set on fire. The situation is calm, while the church is burning.”

Later an interview with Ali Ahmeti, the leader of the largest Albanian Party in the former Yugoslav Republic of Macedonia, was aired. He explained the reason for the riots: “The reason is the death of the three children who, while trying to escape Serb monsters, drowned in the river ...”

This was also a statement by the PDK (the Democratic Party of Kosova), read out by the presenter without comment: “... The killing of the children is a well-planned act by Belgrade, executed by its agents in Kosova ...”

Another interview was aired with Shaqir Shaqiri, who was presented as a member of the organizing committee of the protests: “Yesterday we had fewer demonstrations [referring to the pro-KLA demonstrations of the previous day] than today and this gives a good picture to the international community. This is a popular revolt and an expression of the accumulated frustration with the wrong policies of UNMIK” (while the interviewee was praising the event, burning cars and other debris left by the demonstrations could be seen).

Another news report that day deserves a closer look, as it is a good example of bias by the media when reporting on victims of a different ethnicity. According to a correspondent from Gjilan/Gnjilane: “Thirty wounded and one dead is the toll after today’s events. The dead person is a Serb, who according to witnesses came out of his house with a Kalashnikov and provoked the protesters, they then took away his gun, subsequently the Serb died of his wounds.”

On closer examination, it is clear that the reporter offers a “good” reason for the “death” of the Serb, who had “provoked” the demonstrators in the first place. Even more interesting, for the media the Serb was not “killed” or “lynched”. He simply “died” after having been disarmed. The case was reported identically in some print media the next day. But according to the appropriate authorities in Gjilan/Gnjilane, this is what occurred: “It seems to be true that the victim was armed. However he did not use his weapon. It also is true that the crowd disarmed him. However he did not just fall dead after being disarmed. In reality, and, according to a senior local official, the victim, after having been disarmed, was stabbed and then beaten to death for almost half an hour by dozens of young Albanians, cheered by the crowd. What had happened in reality was a mob lynching, which the media presented as a very ‘clinically clean’ sudden death.”

It should be noted, that this is not an isolated case. On numerous occasions, Kosovar Albanian media have shown tendencies to downplay stories when Serbs have been victims of possible ethnically motivated crimes. In some cases the media have gone so far as to suggest that the casualties were victims of their fellow Serbs who had killed their compatriots in order to blame the Albanians.

### **The Print Media on 17 and 18 March**

It is clear that TV played the main role during the events, as the three main TV channels reach at least 70 per cent of the population. It is also assumed that the newspapers based their story of the drowning of the children mainly on TV reporting during the evening of 16 March.

Nonetheless, the role of the newspapers should not be downplayed as, in general, they exercise important influence with the so-called “opinion leaders” and the educated elite of the communities. For the sake of keeping this report at a reasonable length, only headlines, main titles and quotes of special interest are presented. Compared to the analysis of the TV footage, which was randomly sampled and by no means complete, all the relevant print media output during the crucial days has been examined.

## 17 March

The main stories in the newspapers were the same as those on TV: the drowning of the three children, the pro-KLA demonstrations and the blockade of the respective roads by local Serb protesters.

**Koha Ditore.** Main headline: “Three children drown in Iber, while escaping Serbs.” While the headline did clearly suggest the incident was an ethnically motivated crime, the story itself was rather balanced, and space was given to the UN Police to express its views. The coverage of the pro-KLA protest was balanced and moderate, the same is true of the coverage of the Serb protest.

**Zeri daily.** The main headline is not related to any of the three main stories of the day. The incident involving the children is presented on the front page: “Three Albanian children went missing in the river Iber. (...) They went missing while escaping two Serbs.” The Serb blockade is given a full page and in general the reporting was fair and balanced. Over one page is dedicated to the pro-KLA protest. Here extensive space was allocated to a variety of serious allegations against UNMIK and other institutions involved in the prosecution of war crimes suspects, but not a single line was offered to other views, nor to these respective institutions.

**Bota Sot.** The news about the children was presented on the front page. At this point no allegations were made toward the possibility of an ethnically motivated crime. However, a different title on the front page reads: “Serb gangs have started their activities to expel Albanians from the north.” This, it was suggested, had been a consequence of a report by the Berlin based think-tank ESI. Another editorial implied that the hand-grenade attack on the President’s residence was a terrorist act organized by the Serbian Prime Minister Vojislav Kostunica. The pro-KLA protest and the Serb blockade were given no special attention.

**Epoka e Re.** Main headline: “Serbs drown three Albanian children in the river Iber.” Next prominent headline from the pro-KLA protests: “This was also chanted at the protests: ‘UNMIK beware, KLA will burn you down’.” Three additional full pages were dedicated to the event. While extreme anti-UNMIK statements were carried, no quote from an UNMIK official was given space.

The next day (18 March) the print media, in general, while reporting extensively about the riots, did not engage – with a few exceptions – in any serious misconduct. In fact the two respected dailies, *Koha Ditore* and *Zeri*, besides offering a rather more balanced picture of the events, published statements and editorials appealing for calm and a stabilizing of the situation.

Unfortunately, the two other main dailies, *Bota sot* and *Epoka e re*, did continue to use anti-Serb and to some extent anti-UNMIK rhetoric. However, this constitutes a long-term problem, as both these media outlets have behaved so in the past and continue so to date. It should, however, be stated that to the credit of these two outlets, they also contributed to pacifying the situation, through editorials and the publishing of appeals for calm.

In general terms, the print media cannot be blamed specifically for having negatively influenced the situation. In fact, aside from worrying language used by some of the print media, they were more engaged in calming down the situation than escalating it. In particular the dailies, *Zeri* and *Koha Ditore* as well as the weekly *Zeri* should be commended for their work during the crisis.

## Conclusions

One cannot judge the media without taking into account the overall situation in Kosovo, and the social and political problems that still exist.

It is generally accepted that media cannot generate sentiments or hostilities overnight. Instead, what they do is to strengthen existing or previously generated stereotypes and animosities. What the broadcasting media in Kosovo did, especially on 16 March, was to inject into a situation already dominated by fear, prejudice and uncertainty:

- emotional, unsubstantiated reporting about a tragic event involving innocent children,
- one-sided reporting about the unjust arrests of “liberators” by UNMIK and the blockade of the main roads of Kosovo by rebellious Serbs.

This is not to say that some of the prejudices and fears had not originally been generated by the same media in the past.

The situation created on 17 March and during the following days, cannot be separated from the TV reporting on 16/17 March. In particular, TV journalists and their editors failed to behave according to the ethics of their profession, acted emotionally and put their

“patriotic” duty, as they saw it, first. The Kosovar Albanian TV media decided to qualify the incident of the drowning of the three children as cases of death caused directly and beyond any doubt by hostile, local Serbs. No evidence was offered to support this and the child interviewed never claimed this, as was clearly and vigorously presented by the media. The coverage of the riots created a new dimension of biased reporting when references to the violence were preceded by “justifications”. The strong visuals used were there not to appal but to incite.

At this stage it should be noted that all three channels mentioned have been founded since the war in 1999 and have been generously financed by international donors. In particular, *RTK* – the only public broadcaster of Kosovo – has enjoyed substantial financial and technical support, including training, provided by the OSCE and other international donors and organizations.

While this report does not deal with the general quality of the media in Kosovo, one should ask whether the unsatisfactory performance during these crucial days represented just an accidental mistake or a pattern that became evident only during the tragic events.

The fact that the media decided to ignore statements by UNMIK and the UN Police on 16 March, and to some extent also during the following day, is another matter of concern. While strong criticism should be voiced of the media in this regard, this also clearly indicates a seriously flawed relationship and lack of mutual respect between the UNMIK press operation and the local media.

This present report did not set out to examine the role of the Serb-language media during the crisis. There is no Kosovo-wide Serb-language broadcaster operating in Kosovo. The respective local TV and radio stations usually air news programming generated in Serbia, in addition to their own programming. During the crucial period, most of these media provided extensive airtime to news from Serbia. While no credible analysis is available, circumstantial evidence collected by media monitors from the OSCE in the region suggests that there is also reason for concern regarding their programming.

In order to examine the role of the Serb-language media in Kosovo during these days and also in order to analyse the performance of the electronic media in Kosovo in general – including radio – the Temporary Media Commissioner in Kosovo (TMC) asked a number of broadcasters to provide his Office with the tapes of the programmes aired during those turbulent days.

## Recommendations

- A full investigation into the performance of the electronic broadcast media, Kosovo Albanian and Serbian, during the events of 16/17 March should be conducted. This should not only investigate the content of the footage aired, but also look at footage, statements and evidence that was not aired.
- The findings of this investigation should be presented to the public in Kosovo and to the donors, as well as to the journalists in question.
- OMIK and the OSCE Representative on Freedom of the Media should hold a special meeting with donors in order to evaluate the performance of the media and discuss further plans for action.
- In particular, the performance of *RTK*, as the only public broadcaster, needs to be evaluated. The fact that only four out of eight members of the *RTK* Board of Directors appeared for the first board meeting after the events is worrying and needs to be properly addressed.
- The senior management and the editorial component of *RTK* need to be strengthened. Ways, scope and nature of appropriate measures should be considered with the aim of enhancing the quality and the accountability of the public broadcaster.
- While there is a legitimate need to further regulate and strengthen the accountability and transparency of the public broadcaster, this should also be dealt with by introducing a necessary legal framework – for instance, through a Law on Broadcasting and a Law on Public Service Broadcasting.
- The Law on the Establishing of the Independent Media Commission, which was drafted last summer and is awaiting approval by the Office of the Prime Minister, should be urgently presented to Parliament for consideration.
- Self-regulating, non-governmental institutions, such as journalists' associations and Media Councils, need to be established and/or strengthened.
- Serb-language media in Kosovo relies mostly on information provided by broadcasters in Serbia. Media broadcasting news programming generated out of Kosovo should be held accountable for content, regardless of origin, according to the regulations valid in Kosovo.

- A local Kosovo-wide Serb-language broadcaster should be established.
- OMIK should be advised to re-establish the Media Development Section. Particular attention should be placed on training, education of young journalists and monitoring of the local media. Funding for training would be required.
- In addition to monitoring the print media, regular, random checks of programmes aired by the electronic broadcast media should be conducted. This should be done outside the Office of the TMC, whose role is to enforce the TMC Code of Conduct, and should focus on evaluating the quality of the broadcasters for the purpose of identifying genuine problems that are not related to legislation.
- The OSCE Representative on Freedom of the Media should appoint a special representative for a limited duration to assist OMIK, the TMC and the donors to identify problems and action needed to be taken in order to rectify the situation. This representative could also serve as a new and neutral asset in re-establishing a constructive dialogue between the Kosovar media and the institutions involved.
- The TMC should be supported in his efforts to enforce existing regulations, and in particular article 2.2. of the TMC Code of Conduct for Broadcast Media, which states: "Broadcasters will not broadcast any material that encourages crime or criminal activities or which carries imminent risk of causing harm, such harm being defined as death, injury, or damage to property or other violence."
- Necessary sanctions notwithstanding, OMIK, the OSCE Representative on Freedom of the Media and donors should increase their activities to financially and otherwise support the Kosovo media.
- UNMIK Public Information components need to take action in order to ensure that UNMIK's message is represented in a fair and consistent manner in the future.

<[http://www.osce.org/documents/rfm/2004/04/2695\\_en.pdf](http://www.osce.org/documents/rfm/2004/04/2695_en.pdf)>

# **Non-paper on Anti-Semitism in the Media for the Berlin Conference on Anti-Semitism, 29 April 2004**

## **Session 4:**

### **The role of the media in conveying and countering prejudice: information and awareness raising**

Considering the different issues to be addressed in Session 4, and to complement his speech, the RFOM would like to make the following comments and suggestions on the role of the media with respect to anti-Semitism.

#### **The Media and Contemporary Anti-Semitism**

The Middle East conflict is fuelling a new wave, and seemingly a new version, of hostility against Jews around the world. Almost all surveys carried out in recent years agree that “classic-style” violent acts against Jewish targets have fluctuated in tandem with media coverage of events in the Middle East.

That fact alone deserves scrutiny to see if the media has done its best in terms of the quality of coverage of the Middle East conflict, and to see if it acted on its double responsibility to fight both Islamophobia and Judophobia.

But many observe that, in addition to the old hate-speech discourse, a new and sometimes ideologically-motivated resentment has emerged. Some observers even identify it as a “new anti-Semitism”. Uncomfortably for Europe’s post-WW2 democratic pride, some main-line press outlets, and sometimes even Europe’s hallmark public-service broadcasters, have been accused of generalizing or of biased reporting and commenting on Israel.

This note does not aim to define and conceptualize contemporary anti-Semitism. Here, the goal is just to set out a framework for further comments on the role of the media in countering such reoccurrences of an old prejudice.

### **Covering “Classic” Anti-Semitism**

Since the Holocaust, the European press has done a great job in exposing the traditional themes of anti-Semitism which had provided the ideologies for discrimination and genocide. These fallacies are well identified and generally despised in Europe. Just a brief list shows this: the Jews are responsible for both capitalism and Communism; Jews rule the world by proxy and get others to fight and die for them; the Holocaust is a Jewish lie, while forgeries like *The Protocols of the Elders of Zion* or the blood-libel accusation of ritual child murder are all true.

Today, any re-emergence of open anti-Semitism is mostly due either to right-wing fringe groups or to extremists in the Muslim community. There is a job here, too, for improved press coverage: as if the old threat were well under control, reoccurrences of these “classic” ideologies are not always reported in the mainstream media. Many people point to a certain under-reporting of the presence of outspoken anti-Jewish doctrines, for example in the educational background of Muslim extremism. These underlying prejudices usually get uncovered only if they are accompanied by physical attacks on Jewish individuals, or vandalizing actions against Jewish targets.

However, we cannot exclude the possibility that these traces of the classic anti-Semitic themes and forgeries could still serve as fertile soil for new intolerance. It reportedly emerges in some of the media by way of opinionated, often emotion-filled reporting and comment on the mere existence, the battles, and the failures of the State of Israel; on the fate of the Palestinian people and the causes that led to the delay in the foundation of their own State; or on the perceived complacency of American and European Jewish standpoints towards the perceived sins of the State of Israel.

### **Covering “New” Anti-Semitism**

Is there a “new” anti-Semitism, in fact? I am not sure, even if the new wave of biased reporting or ideological generalization about Israel can be proven to exist.

Part of it might simply be the nature of the encounter between modern media and the sort of modern wars that democracies are waging. Since the dawn of the television age, journalists covering all such engagements have become strict demanders of peacetime human rights standards, notwithstanding the fact that the enemy’s own behaviour might be lower than that expected under the rule of law. This phenomenon could be described as the “Stockholm syndrome” of war reporting, if we wish.

Another part of it is probably real, but nobody can prove it beyond doubt because the essence of a supposed “new” anti-Semitism lies in its not manifesting itself via direct hate speech. And so if it were proven, it would turn out to be the old version anyway.

Nevertheless, the very accusation of seeing a “new wave” of prejudice convinces me that the press must do a better job in covering a situation with so many variables. Instead of perpetually defending the press from suggestions that it has given in to prejudices, let me offer here a short “checklist” on possible shortcomings, a list to be amended or rejected by Europe’s seasoned, erudite editors and journalists.

### **A Tentative Checklist against Bias**

“New anti-Semitism”, if it exists, would supposedly consist of generalizations about “Zionism” and “the Jews”, or biased Israel-bashing. All this would be disguised as legitimate, politically correct criticism. So when devising media strategies to counter contemporary anti-Semitism, or its semblance, the first task is to differentiate it from the legitimate criticism of the policies of the Government of Israel. Here is a first possible “checklist”:

- Does our coverage obscure the fact that the Israeli Government, like any other democratically elected government, is not only deserving of criticism but is actually living with it in every political aspect? Is it made clear to the readers of our comment that most of our legitimate critical points against the Government of Israel are originally produced within Israel’s passionately pluralistic political and media scene, notwithstanding the state of war there? Furthermore, is it recognized that Jewish people all over the world are taking different sides in the debate over Israel’s policy questions?
- In the light of the above, the allegation that “Israel” or the “Jews” “reject every criticism of Israel as anti-Semitism” could safely be identified as one of the “new” forms of anti-Semitic prejudice.
- One could safely detect some latent anti-Semitism in the hypothesis that anti-Semitism is “caused” by “the Jews”, by “Israel”, or for that matter by anything else on Earth. Faulting the Jews for anti-Semitism is perhaps the oldest anti-Semitic prejudice, and is today, just as it was in the past, the only common feature of all forms of anti-Semitism.
- The same goes for finding excuses for anti-Semitism. Poverty, the Middle East conflict, Israel’s illegal settlers, its illegal executions of terrorists, and the still ongoing occupation of Palestinian territories

are each as bad an excuse as some older excuses used to be in Europe: Germany's humiliation in the peace treaties after WW1, the sufferings of the working classes under capitalism, or the over-representation of Jews in trade and journalism.

- Also, the word "but" should figure on our checklist. Check if otherwise commendable condemnations of anti-Semitism are not followed by a "but . . .".

When checking for involuntary bias, the press could ensure that it does not make false equations; not even out of a sense of striving for objectivity.

- To start with, objectivity is not reciprocity. None of Israel's numerous faults could lead to a labelling of Israeli democracy as totalitarianism, nor to relating its present-day violence to genocide, or, as too often happens, to "a" or to "some" Holocaust.

Avoiding such harsh equations could simply be a matter of style and taste. In order to preclude charges of prejudice, editors could apply the tools which the modern liberal press has developed to use when handling minorities.

- When the Star of David is equated with the swastika, or any use is made of that ancient religious symbol in caricatures, especially for the purposes of marking Israeli brutality, it can hardly be explained away to the Jewish readers of European mainstream journals, not even by pointing to Israel's state symbols. Editors must know that the pride felt in the existence of Israeli democracy has become an integral part of today's European Jewish identity, and such visuals are unavoidably perceived as a deliberate trampling on those peoples' own feelings.
- Similarly, when the imagery of "the Zionists" is presented in the manner of the traditionally caricatured Jew, it is hard to avoid a frightening resemblance to past propaganda. I am not only referring here to right-wing propaganda. In my own childhood, when Soviet-bloc countries did not recognize the State of Israel the Communist dailies used the same images, and that was not benign either.
- When African, Arab, Muslim, or other non-Jewish minority principals in Europe or America are correctly described as "community leaders", while Jewish ones are often termed "lobbyists", that approach deserves scrutiny that goes beyond linguistics.

As data collected by the Stephen Roth Institute at Tel Aviv University, and other researchers, make clear, the rise in anti-Semitism in Europe coincided with the beginning of the Second *Intifada* and Israel's military and political response. Therefore the quality of the conflict's coverage is crucial, if we seek a press approach that is conscious of the possible fall-out.

- Editors could check if it is clear to their audiences that the *Intifada* war they are watching (the terrorist attacks on civilians, and Israel's heavy-handed responses) was actually started **not** to force a peace or to end the illegal occupation, but rather to stop the promising negotiations over the ending of the occupation, the Palestinian State, and Jerusalem. Of course, that fact does not alter the need for an Israeli peace strategy, but it does present a more accurate picture of the difficulties.

<[http://www.osce.org/documents/rfm/2004/04/2837\\_en.pdf](http://www.osce.org/documents/rfm/2004/04/2837_en.pdf)>

## **Regular Report to the Permanent Council of 8 June 2004**

This is my first quarterly report since I took office in March. In the past three months my Office has been very busy dealing with both urgent concerns and with more strategic issues of freedom of the media.

But before being more specific on any of these issues, please allow me some words about the guiding principles that shaped the priorities of our work.

### **Principles**

The main mission of the Office is of course unchanged: the monitoring of violations of press freedom, and early warning of dangers threatening journalists. These dangers typically appear when governments misuse their overwhelming legal power to subordinate the media to their own political goals.

But we should actually expect more from governments than simply not abusing the media. Governments, supervising authorities, prosecutors, and even independent courts need to exercise self-restraint in handling the media. More than that, they need to play a proactive role in safeguarding the freedom of the press. It is not sufficient for governments to refer to their compliance with the law if that law can actually harm freedom of the press.

As you can see from the results of my first country assessment visit, it is only if the authorities are not obstructive that a balance can be achieved, for example, in the ownership structure, in the licensing procedures, and in the distribution of frequencies between broadcasters.

In my work, I tried to come up with future-oriented, practical, constructive recommendations, in order to assist governments that are ready to take advice. I hope the results can be seen in the Kosovo report and the Ukrainian report.

Freedom of the media is inseparable from the actual existence of a free media with the independence, quality and responsibility that democracy deserves. Governments can harm or even ruin freedom of the press, but they cannot create a free press.

When, for example, public-service broadcasters behave as willing propagandists against the opposition in a country, as was reported from Belarus, or when they blame a national minority for unproven crimes, as reported from Kosovo, they do a disservice to freedom of the media which can be corrected only by the broadcasters themselves.

## Country Reports

And now to the specifics. Let me start with the two major reports we did.

I went on my first assessment visit in April, to **Ukraine**. The trip was made at the invitation of the Government of Ukraine, and was organized by the Ministry for Foreign Affairs, for which I am grateful. The report was distributed last week.

Overall, media pluralism is present in Ukraine. Different views are represented, politicians at all levels are regularly criticized in the media, even if the media does not yet provide for a dialogue between different sides and views.

Here are some of my observations and recommendations: Ukraine has several laws that I can recommend to all OSCE participating States, including some of the older democracies.

- Ukraine is one of the few OSCE participating States that has taken the bold move to decriminalize libel.
- Amendments to the Law on Television and Radio, passed in 2003, lifted limits on advertising revenues, thus allowing the media to become more independent of different “sponsors”.
- A law that defined and banned censorship was signed in 2003.
- This law also prohibits state and local government agencies from filing for defamation claiming “moral damages”.

Nevertheless, certain recent developments are worrying and raise questions about the authorities’ active commitment to freedom of expression.

- The broadcasting media is heavily tilted towards the Government, often representing only one view out of several prevalent in the country.
- The practice of sending out so-called *temniki*, basically coverage guidelines for editors, should be abolished and replaced by a transparent public relations strategy with clearly defined goals and objectives.
- The ending of the rebroadcasting of *Radio Liberty/Radio Free Europe* and of other quality western programmes in Ukraine, although ostensibly done for commercial and legal reasons, nevertheless raises questions regarding its timing during an election year.
- The current “two-headed” licensing procedure is not only complicated but it also leaves room for political favouritism.

- The Gongadze case, often raised by my predecessor, is still under investigation three Prosecutor-Generals later. For the sake of public trust in the rule of law we need answers in this seemingly never-ending investigation.

On **Kosovo, Serbia and Montenegro**. My original Kosovo report was presented to you on 22 April. It was the result of urgent concern expressed in the Permanent Council that, before and during the violence that erupted in mid-March in Kosovo, objective and pluralistic information practically collapsed, especially on public broadcasting.

On World Press Freedom Day in early May, accompanied by expert Dardan Gashi, I visited Kosovo to present our findings and our recommendations. The visit received wide media coverage. I held meetings with local and international officials, including the then Special Representative of the UN Secretary General, Harri Holkeri. I met media executives and many journalists. I gave a press conference in Pristina, and – in an event that speaks volumes about the situation there – I held a separate press conference, along with the Temporary Media Commissioner Robert Gillette, for Serbian journalists, in Mitrovica, which was still sealed by barbed wire.

Among the recommendations made in the Report, I mostly focused on the need to strengthen the board and the management of the public service broadcaster *RTK*. I believe this is the single most important message, both symbolically and institutionally, that the OSCE can put across. *RTK* could and should be the main agent of ethnic peace in Kosovo, but today its newsmaking does not even provide for the Serbs of the province. I have raised this matter with the Head of the OSCE Mission in Kosovo, the Temporary Media Commissioner and the UN-SRSG, who specifically welcomed more vigorous involvement by my Office in Kosovo.

I believe that there is a need to monitor *RTK* in the long term, focusing not only on concrete violations of the Broadcasting Code but on tendencies and editorial policy, so as to avoid a similar situation in the future. As I indicated in my recommendations in April, this could be done by an outside expert who could make suggestions on how *RTK* might improve its performance. I have approached several OSCE participating States for voluntary contributions to fund this work.

## Freedom of the Media Concerns

**Armenia.** We are waiting for an answer to our letter from 19 April 2004 to the Foreign Minister, asking for information about the ongoing investigation into violence against journalists during rallies on 5 and 13 April 2004.

In **Azerbaijan**, we were glad to hear that Sadiq Ismaylov, a journalist from *Baku Kheber* newspaper who was detained in connection with demonstrations in October 2003, has been released from prison. He has appealed against his conviction and a four-and-a-half-year suspended prison sentence. We will continue to follow his case. Regarding **Belarus**: on 28 April, after the release of two reports by Rapporteur Christos Pourgourides, the Parliamentary Assembly of the Council of Europe (PACE) passed a set of resolutions and recommendations on disappeared persons, including a journalist, and on the persecution of the press in Belarus. The Assembly called the situation in Belarus a “systematic violation of fundamental freedoms and obligations under the Helsinki Final Act”, and asked my Office and several other international bodies “to take appropriate action.”

Recently, several delegations at the Permanent Council criticized Belarus State Television for broadcasting programmes solely aimed at discrediting the political opposition in the country.

I am currently looking into options on how to proceed with regard to these serious complaints.

In March I asked the Minister of Justice of **Belgium** about the police search of the house and office of Hans-Martin Tillack, the Brussels correspondent for the German weekly *Stern*. I understand that police confiscated documents related to his investigative work, his bank statements, his computer and his mobile telephone. He himself was taken away to the Palace of Justice for questioning and detained for 10 hours. I have asked for information regarding the Articles of the Criminal Code that were invoked in the procedure, and if it is ensured that a journalist’s sources of information remain protected.

I am still waiting for an answer, which, no doubt, will be coming shortly.

In April, I asked the Minister of Economy in **France** about the Bill to Promote Confidence in the Digital Economy (known as the LEN). Several NGOs have expressed their concerns because this Bill would make Internet hosts responsible for censoring web content in the absence of any judicial process. In addition, a provision of the Bill would allow freedom of expression to be limited not only by public concerns but also by the necessities of the audio-visual technologies. I look forward to receiving the Minister’s answers.

On **Italy**. I have suggested to the Italian Delegation that I could hold a workshop in Rome, an informal hearing, on the pros and cons of the country's new media legislation known as the Gasparri Law.

The Law aims both at the fulfilment of the 20 per cent upper limit for television market concentration, asked for by the Constitutional Court in 1994, and at preparing for the era of modern technology of broadcasting which will bring countless new channels into existence. There are several questions I would like to raise dealing strictly with the legal aspects and the concrete implications of this law. The gist of the questions is whether this combination law fulfilled its antimonopoly function.

At our Rome event experts who are both supportive and critical of this law could take part. I look forward to hearing the answers from the Italian Government, as well as from the NGO community whom I have also approached.

In **Serbia and Montenegro**, the editor of the Montenegrin daily *Dan* Dusko Jovanovic was killed last month. I fully support the statement issued by the OSCE Mission and expect the authorities to conduct a swift and thorough investigation.

In **Russia**, I am concerned with the recent dismissal of Leonid Parfenov, the director and anchorman of the political programme *Namedni*, on *NTV*. I understand that Parfenov was fired after he aired an interview with the widow of a former Chechen rebel leader, Zelimkhan Yandarbiyev, violating orders from the channel's management. In an official statement, *NTV* said the programme had been taken off the air because of a contract violation by Parfenov, but many journalists, including Parfenov himself, see the action as a clear-cut case of censorship.

In **Turkmenistan**, I have raised the fate of writer Rakhim Esenov and two other individuals who were accused of criminal activity in relation to Esenov's book, *The Sacred Wanderer*. According to media NGOs, the charges concern the act of "smuggling" Esenov's novel, which is banned in Turkmenistan, from Russia.

I have the book here with me. I have not been able to read it all yet but it is quite clear that it deals with a sixteenth-century story. I am glad that the authorities released Esenov and his friends, but they are still banned from travelling and they still face conviction.

On a personal note, let me remind the Council that I was in a similar situation in 1973 when I was arrested in my native Hungary for attempting to "smuggle" the manuscript of my book, *A Worker in a Worker's State*, outside the country.

I have asked for the charges to be dropped in the Esenov case, since as far back as the Helsinki Final Act, signatory States agreed to provide for a free flow of ideas across borders. I have also approached PEN International on this case and asked for their support.

### **Legal Assistance**

At the end of this report, let me turn to more strategic issues and to some good news. We had several positive developments regarding our Office's legal assistance to the participating States.

I advised on and then welcomed the withdrawal of an amendment in **Albania** limiting broadcasting of macabre scenes that might harm the victims or cause panic. The legal opinion provided by my Office was that the amendment was too vague and thereby capable of restricting freedom of the media to an unacceptable degree.

I also welcomed the decision by President Nazarbaev of **Kazakhstan** to reject a draft media law that did not meet international standards. I also notified him that my Office stands ready to support a redrafting by providing international experts.

In **Uzbekistan**, we are reviewing three media-related laws. We are in the process of looking for further ways to assist with legal improvements in other participating States and any suggestions from you, dear colleagues, would be very welcome.

### **OSCE-Wide Campaigns**

There is welcome news regarding our campaign for improved libel legislation in the OSCE region. As you know, we are talking not just about *decriminalization* of this offence, but, if I may misuse the English language, especially about *de-prisonization*.

Ukraine, as I have already mentioned, and Moldova have just decriminalized libel, a step which I applaud, and Croatia has a vibrant ongoing debate on this issue.

I have just forwarded some legal reviews related specifically to this topic to the Georgian authorities and I have started a similar exercise in Azerbaijan.

We have started to assemble a pioneering database on the different legal regulations on libel in the OSCE countries, which we hope will be a valuable tool in our shaping of recommendations that will be helpful throughout the OSCE.

Finally, for inspiration in the exercise of abolishing criminal libel and insult laws, I am distributing today a publication with texts from an expert round table organized in Paris last November that includes concrete recommendations for improvement.

My Office also further elaborated on our efforts to safeguard the freedom of the **Internet** in this era when it is under pressure from hate speech.

For next week's Paris meeting on the issue of hate speech and the Internet, we helped collect the answers of the participating States to a questionnaire provided by the Chairman-in-Office on this subject.

There is a considerable degree of uncertainty about how to counter hate speech on the Internet. Both our side-event in Paris, and our seminar in Vienna on 30 June, called *Guaranteeing Media Freedom on the Internet*, are preparations for our second Amsterdam Conference in September. I would like to thank the Netherlands and Germany for their generous contributions to this project. My Office will try to identify ways of countering hate speech without restricting freedom of expression on the Internet.

### **On our future plans and projects**

The CiO has approached my Office to organize a study trip for Georgian journalists to Vienna and Sofia this summer. In September we are planning the annual Central Asian Media Conference and in October we hope to be able to organize our first Caucasus Media Conference. For these projects we will need voluntary contributions and I ask for your generous support.

<[http://www.osce.org/documents/rfm/2004/06/3091\\_en.pdf](http://www.osce.org/documents/rfm/2004/06/3091_en.pdf)>

# Assessment Visit to Ukraine: Observations and Recommendations

## 8 June 2004

The OSCE Representative on Freedom of the Media Miklós Haraszti, accompanied by Adviser Alexander Ivanko, visited Kyiv, Ukraine, from 6 to 8 April 2004. This was the Representative's first assessment visit since taking over his post. The trip was made at the invitation of the Government of Ukraine and was organized by the Ministry for Foreign Affairs. The purpose of the trip was to assess the current state of media freedom in the country and to provide the authorities with recommendations. The Representative appreciates the co-operative approach of Ukraine, and he has prepared this Report in the same spirit.

Miklós Haraszti met with government officials, parliamentarians, journalists, and representatives of non-governmental organizations. Among those he had talks with were, in order of the meetings:

Ivan Chizsh, Chairman of the State Committee  
for TV and Radio Broadcasting;

Victor Krizhanivskii, Deputy Head of the Department  
for Foreign Policy of the Administration of the President;

Deputy Foreign Minister Oleg Shamshur;

Members of the Verhovna Rada (Parliament) Committee for  
Freedom of Expression (including its Chairman, Mikola Tomenko);

Vice Speaker of the Verhovna Rada Olexander Zinchenko;

Members of the National Broadcasting Council,  
including Chairman Borys Kholod.

The Representative also met newspaper editors (*Zerkalo Nedeli*, *Silski Visti*), print and television journalists, publishers, media owners, experts, and non-governmental organization (NGO) activists.

## **Positive Developments – Pluralism and Good Legislation**

### **There are a number of commendable developments in the situation of the Ukrainian media.**

Overall, media pluralism is present in Ukraine. The mere quantity of media outlets is impressive. Different views are represented; politicians of all ranks are regularly criticized in the media. A lively discussion of public issues – alas, not exactly a dialogue – is taking place.

The general legal framework in the media field is considered satisfactory by independent experts from both inside and outside the country. In some instances, recent media-related law-making in Ukraine was even more forward-looking than relevant legislation in older democracies:

- Ukraine is one of the few OSCE participating States that has taken the bold move to decriminalize libel. The current OSCE Representative and his predecessor have been advocating libel decriminalization in the OSCE region for over three years.
- Amendments to the Law on Television and Radio, passed in 2003, lifted limits on advertising revenues. The advertising market has been growing at 40-60 per cent each year, thus allowing the media to become more independent of different “sponsors”;
- A law that defined and banned censorship was signed in 2003. This law makes it a crime to “deliberately intervene in the professional work of journalists”, while also limiting the amount of damages sought in defamation cases;
- In a move that is beneficial for vigorous public discussion in any country, the law also prohibits state and local government agencies from filing for defamation claiming “moral damages”;
- Although repeated complaints are made about harassment or incapacitation of independent media outlets in this pre-election year – among them the possible political utilization of the tax authorities – a welcome step on the part of the President of Ukraine was his support for the proposal of an election-year moratorium on tax inspections of media companies, and its approval by Parliament.

However, several serious concerns still exist in the legal field, especially in relation to the new Civil Code. These concerns have been made public by ARTICLE 19, a highly regarded expert NGO that has provided legal support to the Representative for several years. The Representative would be happy to forward these concerns to the relevant authorities.

The Representative is ready to provide support in drafting other relevant media legislation. Several officials noted during the trip that they welcomed such assistance.

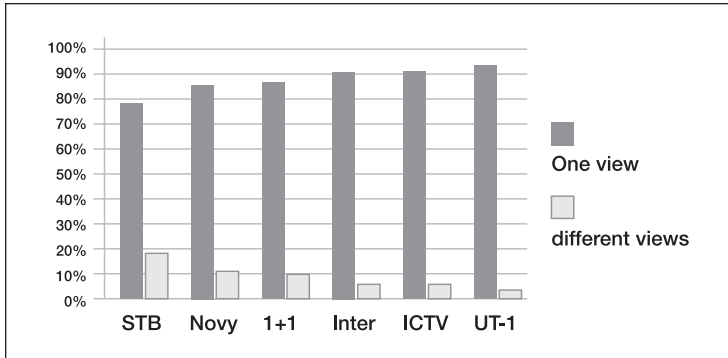
The Representative is also evaluating the project proposals provided to him by officials during his visit.

One senior official underlined that the authorities had tried to be “transparent” in their relationship with the media. Nevertheless, certain recent developments are of a worrying nature and question the authorities’ full commitment to, or at least their readiness to do everything they could to ensure, equal chances for everyone to exercise freedom of expression.

## Monopolization of Television Broadcasting

**Although, in general, political pluralism does exist in the media in Ukraine, where it seems to be least developed is in the broadcast media, specifically on television. So even as private television broadcasting exists at the national and local level, the Government’s position is prevalent on the most popular channels that also have the largest area reach.**

The Deputy Speaker of the Rada, Olexander Zinchenko described the situation in the electronic media as “highly monopolized”. He added that: “Society develops only when there is a discussion, when public institutions debate, but there is no spirit of discussion on our television.”



According to a report issued in 2003 by the Ukrainian Press Academy, the accompanying graph shows how the six main TV channels – the largest in terms of area reach – report on political events:

### **The one view dominating the airwaves is that of the Government.**

The problem seems to stem from three main causes:

- an ownership structure that is closely connected to, or influenced by, the current Government;
- *temniki* (guidelines) which play an important role in homogenizing the coverage of public issues (see the chapter about *temniki*);
- an institutional framework of frequency allocation and licensing that allows for favouritism (see the chapter about the licensing authority).

This situation could be resolved quite quickly with respect to all these three main components if the political will to do so were present on the part of the Administration, the Rada majority, and the licensing authorities. In the short term, much depends on the broadcasters themselves. There is the possibility to enhance pluralism, objectivity and balance; to offer more airtime to events and views that are not in line with the Government or the Rada majority.

### **Temniki – Homogenization of Coverage of Public Issues**

**For a long time *temniki* have operated as internal guidelines, issued from above on a daily basis, as to how the media should cover current events.**

During the trip, several officials confirmed that *temniki* do exist. One senior government official referred to them as “press releases”, or “public relations efforts”. “*Temniki* express the view of one side on certain themes in a pluralistic situation where there are many sides; it is welcomed if *temniki* catch the attention of the editors, but, just like public relations efforts anywhere, they are without any coercive power,” noted State Broadcasting Committee Chairman Chizsh.

The Chairman of the Rada Committee on Freedom of Expression, Mikola Tomenko, on the other hand, called them “a form of censorship”. The OSCE Representative was shown several of these *temniki*. There are five reasons why the Representative considers the *temniki* an illegitimate tool of governmental influence on the press.

1. They are not press releases but instructions on how to cover political developments in the country;
2. They are anonymous and do not refer to the author/authority that sends them out, which excludes the notion of a legitimate PR effort;
3. They are meant to be read not by the public but by editors of seemingly independent media outlets, which can only be seen as

- a means of exerting pressure on the editors; reportedly they are followed in the editorial work at the main television networks;
4. They float in cyberspace, in other words they are not disseminated to those editors who are prepared to use them; the editors have previously received the right Internet mail addresses and passwords, thus they can access the *temniki* seemingly at their own initiative;
  5. They in fact originate from inside the Presidential Administration.

In the end, the effect is that of a new form of governmental guidance, although the methods used to produce and disseminate the *temniki* are in no way illegal.

Most governments try to influence media coverage of their activities. However, whatever authority issues the *temniki*, the Representative recommends it should refrain from doing so in the future. Any governmental public relations efforts employed should be transparent, even accountable; clear in where the message comes from, and who is its intended audience. In their current form, *temniki* only remind journalists and the public alike of instructions that used to be issued by the Communist authorities to the media. Thus they reinforce an old fear that coverage of public issues in the press, and as a consequence, public opinion itself, are the products of a government-sponsored conspiracy.

### **National Broadcasting Council – Licensing without Achieving Pluralism**

**The monopoly situation in Ukraine is facilitated, even perhaps caused by an artificially maintained bureaucratic duality in the licensing of the broadcasting outlets that allows for possible political favouritism in frequency allocation.**

According to Article 22 of the Law on the National Television and Broadcasting Council of Ukraine [N.B. English as is in the original]: “The National Council shall issue the licences for broadcasting, cable broadcasting, retransmission and wired (cable) radio broadcasting, as well as for the time of broadcasting. (...) A licence of the National Council shall be the sole and sufficient document, which grants the television/radio organization the right to broadcast according to the conditions specified in the licence. Television/radio organizations shall not be subject to other special registrations...”.

However, according to Article 28, the actual frequency allocation is a matter supervised by a non-independent government agency, on the

decisions of which the National Council can be “dependent” if it so wishes: “The National Council shall co-ordinate the distribution of frequency bands allocated for the television and radio broadcasting, installation and use of the radio frequency broadcasting facilities with the General Radio Frequencies Department under the Cabinet of Ministers of Ukraine.”

Borys Kholod, Head of the National Broadcasting Council, defended this decision-making duality as a “technical necessity”. However, when it comes to adherence to technicalities, still according to Article 28, it is the National Council again which can withdraw licences based on technical non-compliance: “Within the distributed radio frequency bands, the National Council shall supervise the adherence to the established procedure of the radio frequency spectrum utilization, radio-electronic facilities and cable television systems, radio emission norms and allowed industrial interference with the radio reception.”

During the Representative’s fact-finding trip, members of the National Council acknowledged that two separate agencies – the Council itself and the General Radio Frequencies Department – were involved in providing the necessary framework for broadcasters to become operational. In many cases where licensing was rejected by the Council, the reason cited was the decision of the Frequencies Department of the Government. It also became clear, for example, in the legal dispute between *Channel 5* and the Council, that not even the country’s court system could clarify the disputed decisions taken under the present, two-headed structure.

Splitting the licensing authority between two bodies – one politically fairly independent in its design, the other a purely government body – leads to decision-making that cannot exclude arbitrariness and favouritism, thus threatening the political pluralism of the broadcasting industry.

Even if not utilized politically by the Government, this duality of unclear responsibilities leads to confusion, and results in unresolved cases. This duality also contradicts the constitutionally required legal security of licensing. It creates uncertainty about the rule of law, and forces the licensees to seek political favours instead of complete compliance with the law.

The case of *Channel 5* shows that the artificial duality in the licensing procedure, and the finger-pointing of the two involved authorities, could be used to maintain a quasi-monopoly situation favourable for the Government.

*Channel 5* has been described to this Office as the most objective in its coverage of political events; but even if that is disputable, nobody questioned the fact that in terms of coverage of public issues, it aims at a difference compared to that of the three dominant channels. But while the competitors have near total area reach, *Channel 5* can only broadcast over approximately 25-30 per cent of the territory. The station failed to receive additional regional frequencies. The management at *Channel 5* had complained to this Office that there were political reasons behind the denial of local licences. For its part, the Council, when explaining the denial of regional licences to *Channel 5*, and thereby its failure to come up with a truly pluralistic broadcasting landscape, referred to the decisions of the General Radio Frequencies Department.

To avoid such a situation in the future, whether it be intended or unintended, a unified licensing procedure should be established. It should be both more flexible and transparent, and should concentrate the responsibilities under one body, for example, the National Council. (It should certainly be a body that is established with guarantees of political independence and plurality.) Only with the help of a clear structure of responsibility/accountability in licensing could the Government and the legislation fulfil its obligation to take a proactive approach towards all-dimensional media plurality, which is one of the most important aspects of media freedom.

### **Radio Free Europe/Radio Liberty and Other Western Stations, and their Discontinued Rebroadcasting on Radio Dovira and on Radio Kontynent**

**During the last year, practically all privately-owned radio stations that helped to retransmit the programmes of Western-owned public-service networks in Ukraine, have encountered broadcasting problems, or were even removed from the air. These stations have traditionally helped to lend a seasoned quality, and add pluralism, to the coverage of public issues in Ukraine.**

**The state representatives attributed each case to internal problems or legal violations by the media outlets in question. But in this election year, their removal is a serious loss to media pluralism in the country.**

The largest loss was suffered by *Radio Free Europe/Radio Liberty (RFE/RL)*: it was removed from the nationwide FM network of *Radio Dovira* by its new management.

*BBC*, *Voice of America*, *Deutsche Welle*, and *Radio Polonia* were also taken off the air within weeks after their own retransmitter, *Radio*

*Kontyent*, decided to take over the retransmission of the abandoned *RFE/RL Radio Kontyent* was totally closed down by the authorities, citing licence violations.

*RFE/RL* was rebroadcast nationwide in Ukraine (in 11 cities) for five years through *Radio Dovira* on an FM frequency. However, after the station was sold in January this year to Ukrainian Media Holding (Address: 104, Frunze st., 04080, Kyiv, Ukraine; tel: +380 (44) 205-43-00; Boris Lozhkin, President & CEO; Valentin Reznichenko, Vice President) the owners installed new management who decided to change the format of the station and cancel future rebroadcasting of *RFE/RL* programmes.

They informed *RFE/RL* of their intention (letter from 11 February 2004 addressed to the Director of the Ukrainian *RFE/RL* Service, Olexander Narodetsky and signed by V. Reznichenko. This Office has a copy of the letter. Mr. Reznichenko did not return calls.) *RFE/RL* went off the air on 17 February. Mr. Narodetsky informed this Office (contacted in May) that he tried to get hold of someone at the management level at *Radio Dovira* so as to receive a further explanation but was unable to do so. Although several interlocutors argued that *Radio Dovira* based its decision on economic reasons, Mr. Narodetsky disagrees. "We would have found common ground if this was strictly an economic dispute," he told this Office.

Nevertheless, *RFE/RL* made an agreement with *Radio Kontyent*, a Kyiv-based radio station, that it would as of 1 March rebroadcast *RFE/RL* programmes. "I made a deal with Sergei Sholokh [owner of *Radio Kontyent*] when I was in Kyiv. Although he said he was under pressure, threatened, he went along," said Mr. Narodetsky. *RFE/RL* programming went on air on 1 March 2004 and two days later *Radio Kontyent* was raided, its equipment confiscated. According to Mr. Narodetsky, since then *RFE/RL* has not been able to find a partner who would rebroadcast their programmes. "I had some talks with radio owners in Lviv, but they told me that they were threatened that their licences would be withdrawn if they put *RFE/RL* on air," said Mr. Narodetsky.

The raid on *Radio Kontyent* led to several critical statements by the NGO community and some governments, especially in light of the fact that *Radio Kontyent* had been rebroadcasting foreign stations for several years.

According to the National Television and Broadcasting Council (Open letter of 5 March 2004 to US Secretary of State Colin Powell and Chairman of the Federal Communications Commission Michael K. Powell from Borys Kholod, Chairman of the Council, whose tenure

expires on 9 June 2004), *Radio Kontyent* was taken off the air for the following reasons:

In the early 1990s, according to Mr. Kholod, one of the first companies to get a 12-hour broadcasting licence on channel 100.9 MHz (Kyiv) for the duration of five years was a company called Media-centre Ltd, the owner of *Radio Kontyent*. Later, it applied for an extension of broadcasting time to 24 hours, was granted the right but did not in the end pay the required fee.

Chairman Kholod states in his letter: “this violation of Ukrainian legislation requirements was ignored by *Radio Kontyent* and it began to broadcast 24 hours a day illegally. In view of [the] ending of [the] 5-year term of licence of *Radio Kontyent* on December 23, 2000 the National Council announced [an] open contest for 100.9 MHz frequency.” [N.B. English as in the original.]

Media-centre Ltd took part in the tender but lost. However, according to Mr. Kholod, *Radio Kontyent* continued to broadcast on the same frequency illegally. He also stated that the radio station did not repay a loan taken out in 1996. For these reasons the plug was finally pulled on *Radio Kontyent*.

The owner of *Radio Kontyent* Sergei Sholokh, an intimate participant in the so-called Gongadze case (see further down) told this Office back in 2001 when his station was under a relicensing procedure, that he believed that *Radio Kontyent* was targeted because of his statements related to Gongadze and because of the rebroadcasting of foreign radio stations. Mr. Sholokh fled the country in March 2004 after he alleged that he was being threatened. He first made such allegations to this Office back in 2001 (interviews held with him in 2001-2002).

Ivan Chizsh, Chairman of the State Broadcasting Committee, described *RFE/RL* as “biased” and acknowledged that he had refused to take part in its programmes. In his view, the whole *Radio Kontyent* saga was a “commercial conflict”. Nevertheless, he accused foreign broadcasters of “occupying the information territory of Ukraine” without any reciprocity. In a letter addressed to Rada Speaker Volodymyr Lytvyn on 22 April 2004, Chizsh described the, in his view disproportionate, presence of foreign broadcasters as a “real threat to the information security of our country.” (This Office has obtained a copy of the letter).

Selective action, mostly directed at independent media, while perhaps not unlawful in itself, would violate standards for evaluating freedom of the media. Whatever “commercial” or “bureaucratic”

reasons are cited for taking *RFE/RL* off the air and for the closure of *Radio Kontyent* which had rebroadcast many independent foreign stations, the fact that all this was done during an election year, when a multiplicity of views and their open debate are essential for a democracy, makes one question if the supervising authorities were really interested in pluralism in the media.

These cases, just like the ownership structure of the television scene, or the licensing procedure, should be dealt with by the relevant authorities in the spirit of a proactive concern for media pluralism. If media pluralism becomes a real concern for them, then the legal solution to providing pluralism in all respects could be found just as easily as the excuse is offered today of “letting the regulations do their work”, that is, to the detriment of pluralism.

### **Silski Visti – An Overly Harsh Measure against a Newspaper**

The case of *Silski Visti* shows that the judicial system of Ukraine is not yet imbued with the spirit of proactively safeguarding freedom of expression. This mass-circulation paper was ordered to close down by a low-level court before anything had been proven against the paper. But under democratic standards of freedom of the press, even if criminal instigation of hatred were proven, the total closure of a newspaper should not figure among possible punishments.

*Silski Visti*, a nationwide newspaper affiliated with the opposition Socialist Party and popular in rural areas, has a circulation of 500,000.

Early this year a legal case was brought against it by the Anti-Fascism Committee because of two, page-length book excerpts, by an outside author, Vasil’ Yeremenko, published in the newspaper in 2002-2003. The two excerpts discussed the history of Ukraine in the light of alleged Jewish conspiracies.

For the record, the Representative has read the two excerpts in question, and his own – cultural, not legal – assessment is that these pieces *are* grossly anti-Semitic. But it is up to the court to decide if their content was criminal. And even if it were, and a conviction were officially punishable with total closure of the newspaper, what we are discussing here are the implications of such overly harsh judicial moves for the general legal security of Ukraine’s press freedom.

On 28 January, the Kyiv Shevchenkivksy district court ordered the closure of the newspaper. *Silski Visti* is still being published only because of a pending appeal to the Kyiv Appellate Court.

This Office has spoken to senior editors at *Silski Visti* as well as with other experts well versed in this case. As this Office understands the merits of the case, the closure of the newspaper could only take place after a criminal action (anti-Semitism) was proven in a court of law, that this action could lead to incitement, and that the newspaper had been used as a tool for such criminal action. Only if these facts were proven in criminal proceedings, could the court take action against the newspaper.

According to lawyers from the reputable NGO, IREX ProMedia, and the Institute of Mass Information, the procedure under which the decision was made to close down *Silski Visti* had actually been unlawful. In addition, IREX ProMedia argues that the organization that filed the case had no right to do so because their rights as a legal entity were not violated. The appeal is still pending and according to legal experts from the Institute of Mass Information the higher court is expected to invalidate the decision of the lower court.

On the other hand, the abrupt closure of a whole newspaper, especially a publication with one of the highest circulations in the nation, is an overly harsh measure in itself. Its mere existence in the legal codex has an overall intimidating effect on all editors. In fact, such harshness could block the free debate of public issues and the scrutiny of the Government, especially sensitive in an election year. The harshness of this action is as harmful to press freedom as the imprisonment of journalists for libel used to be before Ukraine decriminalized libel.

Ukraine's judicial system needs to rid itself of *all* harsh sanctions available to the Government, the prosecution, or the courts, to remove their "chilling" punitive effect on freedom of expression. Closure of one of the most important dailies, even for an offence committed against minorities, is certainly one of those sanctions that should be abandoned.

## **The Gongadze Case – Still Unresolved**

The murder of the journalist Georgiy Gongadze has still not been resolved. This remains a serious source of mistrust in the rule of law and the security of journalists.

The previous Representative has dealt with the Gongadze case since the beginning. The initial disappearance and subsequent murder of Ukrainian journalist, Georgiy Gongadze, has received substantial publicity around the world. Numerous experts, both domestic and international, have been involved in trying to solve this case.

However, although Prosecutors-General have changed three times since Gongadze was killed, there is still no light at the end of the tunnel. The Representative expects the relevant authorities to continue to vigilantly pursue this case and hopes that in the end those who have murdered Gongadze will be brought to justice.

## Recommendations

- The broadcasting media is heavily tilted towards the Government, often providing airtime only for one view out of several prevalent in the country. This situation could be resolved quite quickly with respect to all its three main components (ownership, coverage, and licensing) if the political will to do so were present on the part of the Administration, the Rada majority, and the licensing authorities. In the short term, much depends on the broadcasters themselves. There is the possibility to enhance pluralism, objectivity and balance; to offer more airtime to events and views that are not in line with the Government or the Rada majority.
- The practice of sending out the so-called *temniki*, basically coverage guidelines for editors, should be abolished and replaced by a transparent public relations strategy with clearly defined goals and objectives. In their current form, *temniki* only remind journalists and the public alike of instructions that used to be issued by the Communist authorities to the media. Thus they reinforce an old fear that coverage of public issues in the press, and as a consequence, public opinion itself, are the products of a government-sponsored conspiracy.
- A unified licensing procedure should be established. It should be both more flexible and transparent, and should concentrate the responsibilities under one body, for example, the National Council. (It should certainly be a body that is established with guarantees of political independence and plurality.) Only with the help of a clear structure of responsibility/accountability in licensing could the Government and the legislation fulfil its obligation to take a proactive approach towards all-dimensional media plurality, which is one of the most important aspects of media freedom.
- The closure of *RFE/RL* and other foreign stations rebroadcasting in Ukraine and the raid against *Radio Kontyent* are cases which, just like the ownership structure of the television scene or the licensing procedure, should be dealt with by the relevant authorities in the

spirit of a proactive concern for media pluralism. If this became their concern, then the legal solutions to providing full pluralism could be found just as easily as the excuse is offered today of “letting the regulations do their work”, that is, at the detriment of pluralism.

- Ukraine’s judicial system needs to rid itself of all harsh sanctions available to the Government, the prosecution, or the courts, to remove their “chilling” punitive effect on freedom of expression. Closure of one of the most important dailies like *Silski Visti*, even for an offence committed against minorities, is certainly one of those sanctions that should be abandoned.
- The Gongadze case, often raised in OSCE fora, is still under investigation. The authorities are encouraged to continue to pursue it until the perpetrators are finally brought to justice.

<[http://www.osce.org/documents/rfm/2004/06/3081\\_en.pdf](http://www.osce.org/documents/rfm/2004/06/3081_en.pdf)>

## **Statement on Belarus at the Permanent Council of 9 September 2004** *(Under Current Issues)*

As I have stated in my previous report to the Permanent Council, I was planning to make an assessment visit to Belarus regarding the media situation. On that subject, I will share some information with you in my regular report to this forum. However, my report will not contain the views of the Government of Belarus because I was not able to go to Belarus.

I would like to set the record straight, and brief you on the unprecedented circumstances surrounding my failed trip to Belarus.

In July, I informed both the Foreign Minister of Belarus and Ambassador Gaisenak of my intention to visit Belarus in order to hear the views of the Government. Throughout July and August, I successfully discussed all the details with both the Delegation in Vienna and the Foreign Ministry in Minsk. On 17 August, I was even provided with a detailed draft programme by Ambassador Gaisenak.

The Belarus authorities asked me to change the dates of my trip so that I could address a media-related training seminar organized in conjunction with the OSCE Office in Minsk. I did comply with this request. We changed the dates.

Then, the Belarus authorities decided to change the structure of this seminar by merging it with a meeting I planned to organize with independent journalists. They asked if I would agree to this change. I did agree and the two events were merged.

Once again, I was asked to shorten the duration of my meeting with the independent media. I agreed and complied with this request as well.

Then the very seminar, which was the reason why we had previously changed the date of our visit was altogether cancelled, and I was asked if I would still be interested in coming to Belarus. I said: "Of course I am."

Throughout this entire process, the Permanent Delegation of the Republic of Belarus to the OSCE fully co-operated with my Office. The Delegation informed me that the itinerary to which we had mutually agreed needed a final OK from Minsk.

I was supposed to leave for Belarus yesterday. I had officially requested an entry visa, which I never received because there had been no instruction from Minsk.

Up to date, I still have not received a final OK from the Minsk authorities. Neither have I received any kind of answer.

Tuesday night I had to cancel my plane tickets for the trip.

*<[http://www.osce.org/documents/rfm/2004/09/3485\\_en.pdf](http://www.osce.org/documents/rfm/2004/09/3485_en.pdf)>*

## **Regular Report to the Permanent Council of 16 September 2004**

This is my second quarterly report since I took office in March. I would like to start by focusing on current successes and setbacks of some of our long-term strategies.

### **Libel**

I am continuing the work started by my predecessor on libel: for several years now this Office has been actively lobbying for its decriminalization. Already, as of today, five OSCE participating States have abolished libel as a criminal offence, and turned to its civil-law based handling: USA (although 17 states within this country still retain their criminal libel provisions), Moldova, Ukraine, Bosnia and Herzegovina, and Georgia.

Also, on 1 July, President Robert Kocharian signed amendments to the Criminal Code partially decriminalizing libel in Armenia. In a letter to Foreign Minister Vardan Askanyan, I welcomed this as a step in the right direction. At the same time, libel remains a criminal offence and the existing provisions still offer more protection for public officials than ordinary citizens.

On 15 October 2004, the Parliament in Slovakia will have a debate on a new Criminal Code. To my knowledge, under the current proposal submitted by the Ministry of Justice, articles 331 and 384 would retain criminal penalties for defamation or slander that exist in the current penal code as articles 154, 156 and 206. In a letter to Deputy Prime Minister and Minister for Justice Daniel Lipsic, I urged him to reconsider his original proposal.

Both Armenia and Slovakia should not miss this opportunity for reform and should join those countries that have decriminalized libel and have set a good example to be followed by other OSCE participating States.

Unfortunately, in June the Kyrgyz Parliament rejected for the third time in seven years an initiative by President Akayev to decriminalize libel.

Here are some recent libel cases that I have raised. In Hungary, an appeals court in early July suspended a ten-month prison sentence against editor Andras Bencsik for two years. An eight-month suspended

prison sentence against journalist Laszlo Attila Bertok was upheld. The case was brought by MP Imre Mecs after *Demokrata*, the weekly that Bencsik edits, alleged that testimony by Imre Mecs had played a role in the sentencing of four people to death after the 1956 revolution.

In Poland, the Warsaw Supreme Court upheld a three-month prison sentence against Andrzej Marek, editor-in-chief of the weekly *Wiesci Polickie* (Police News), for libelling a local official.

In another case in May 2004, Beata Korzeniewska, a journalist for the daily *Gazeta Pomorska*, received a suspended one-month prison sentence for libelling a judge from the city of Torun.

In Azerbaijan, we were following the criminal libel case against Irada Huseynova, a journalist with *Bakinski Bulvar*. I was pleased to hear that on 24 June 2004, the Nizami District Court dropped the charges against her and closed the case. However, the case of Huseynova remains an exception to the rule and libel lawsuits against journalists are unfortunately still a regular occurrence in Azerbaijan. We were just informed that the editor-in-chief of *Baki-Khabar*, Mr. Aydin Quliyev, was sentenced to one year suspended imprisonment for reprinting an article from another newspaper. This case is particularly alarming since the same journalist was physically assaulted in July as is mentioned later in this report. We also heard that Elmar Huseynov, the editor of the weekly *Monitor* is facing a trial in a libel suit filed by a Member of the Parliament from the ruling party.

Not only incarceration for libel can cause damage to the general state of media freedom. On 16 July 2004, in a suit brought by the Presidential Administration for libel, an Almaty district court in Kazakhstan ordered the weekly newspaper *Assandi-Times* to publish a retraction as well as to pay 50 million tenge in moral damages.

That sentence practically annihilated the newspaper, an important independent voice in the country. Nothing could be a clearer proof that criminal libel in all its forms is having a general chilling effect on press freedom.

In some of these cases, I do not question the independence of the judiciary and its adherence to the law of the country. However, even if libel is a criminal offence, I urge the countries, as a first step, to “de-prisonize” it, or as Armenian Ambassador Jivan Tabibian has once suggested, to “de-incarcerate” it.

These ancient libel laws are inadequate, even detrimental, to a modern democracy where freedom of the press and uninhibited discussion of public issues could be diminished by the effect of a criminal libel sentence used against journalists for their work.

It is often the case that a journalist is sued for libel by a public official who is criticized, maybe even unjustly, in his or her official capacity. Let me give you two quotes here: “A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions – and to do so on pain of libel judgments virtually unlimited in amount – leads to a comparable ‘self-censorship’. Allowance of the defence of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defence as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars. [...] Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so.” This is from the opinion of the US Supreme Court in the case *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

Another quote is from a judgment by the European Court of Human Rights in the case of *Oberschlick v. Austria* that was adopted on 25 April 1991: “The limits of acceptable criticism are accordingly wider with regard to a politician acting in his public capacity than in relation to a private individual. The former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism.”

These two examples show that there is wide understanding of the need to provide journalists with a certain privilege when discussing issues of public importance. As with the protection of sources, journalists should also not be open to criminal prosecution or frivolous lawsuits even when the information that they disseminate might be false or derogatory. Weighed against the potential “chilling” effect, this privilege, if often questioned, should not be allowed to erode.

Some of the countries we approach about criminal libel refer to the older democracies of Europe. In these cases, we point to the fact that most of these countries do not use these ancient laws against journalists. Why don't we go a step further, for the benefit of the whole OSCE region? Where criminal libel laws have not been utilized for decades, I see no reason why they should not be taken off the books. I urge all countries to do so.

In general, I foresee for my Office several possible lobbying strategies regarding libel:

- Encourage parliamentarians to table proposals to repeal criminal libel legislation;
- Encourage government officials through public information campaigns to refrain from using existing criminal laws to sue the media and journalists;
- Encourage judicial bodies, where criminal libel does exist, to install a moratorium on issuing prison terms, even suspended ones, until the necessary reform;

My Office is currently in the process of developing a database matrix on libel legislation in the OSCE region. This matrix will also be accompanied by a legal analysis that will explain our findings, and help define the best ways to resolve the problem. I hope to present the matrix early next year. My Office is also currently reviewing libel legislation in Albania and Azerbaijan for its compliance with international standards, and we are planning a round table on this topic in Baku in October.

### **Russian Federation**

Last week, I raised three cases with the Russian Government: the cases of Andrei Babitsky and Anna Politkovskaya and the detained film crew from Georgian TV channel *Rustavi 2*. I look forward to receiving additional information.

Also, I have commissioned a report on how the media covered the tragic events in Beslan. The report is attached (it provides additional information on the cases mentioned above).

The coverage of the events has proven that media freedom had taken hold in Russia. However, several worrying developments in the relationship between the Government and the media drew the attention of local and international experts and human rights activists.

Cases of detention and harassment of journalists occurred, seriously impeding their work. Even more importantly, the Government did not provide in a timely manner truthful information on the handling of the crisis:

- How many people were taken hostage;
- What was the number of hostage takers;
- Who were they;
- What were their demands.

As a result, journalists were physically attacked in Beslan for allegedly misinforming the public.

A triple credibility gap arose between the Government and the media, between the media and the citizens, and between the Government and the people. This is a serious drawback for a democracy.

The main sources of information for the Russian people are the three nationwide broadcasters. Unfortunately, they did not provide accurate and up-to-date information. In the end, the print media and Internet news sites stepped in, filling the information void as much as they could.

## **Belarus**

Let me start by saying that as recently as the last two weeks several newspapers in Belarus were closed. This fact is unprecedented in the OSCE family of democracies, and is only one among the many signs of the menaces for press freedoms in Belarus.

In my previous Quarterly Report of 8 June 2004, I announced to the Permanent Council that I was looking into options on how to proceed with regard to the situation of freedom of the media in the Republic of Belarus. I decided to visit Belarus and make an independent and objective assessment of the situation. The purpose of my visit would have been to raise points of concern, and, by engaging in constructive dialogue, assess the Government's attitude to the independent media and freedom of expression. I also hoped that, as a result of my visit, I could make practical and future-oriented recommendations in order to assist the country in adhering to its OSCE commitments.

Unfortunately, I was not able to visit Belarus, due to the circumstances explained in my statement to you last week.

I thank Ambassador Gaisenak and the authorities in Minsk for the apology last Thursday and for the invitation that finally arrived last Friday. I hope that I will visit Belarus in the future at a time appropriate for both, my Office and the authorities, and that I will then be able to report to you from inside Belarus.

Here I can only summarize the information we receive from many well-known and respected media observers. The media situation has systematically deteriorated in Belarus. Currently, the following worrisome trends are observed:

- Coercive administrative measures taken against journalists, including deportation for alleged biased reporting of political events;

- Suspension and closure of independent media outlets;
- Denial of access to state-owned printing facilities for independent newspapers;
- Selective application of other economic means of control and limitation;
- Restrictive and arbitrary application of the Media Law against independent newspapers that are critical of the Government;
- Adoption of new legislation that increases the administrative licensing requirements for distribution of independent information;
- Application of libel and insult laws to silence critical voices in the non-state media, backed up by articles in the Criminal and Administrative codes;
- High level of state control over the electronic media; only the state-owned broadcasting company holds licences for nationwide channels;
- The four state-controlled nationwide TV channels are used for propaganda against the opposition, which, on the other hand, is denied the right to reply;
- Significant restrictions on access to independent information outside the capital.

In an attachment to my report you will find a detailed list of reported cases of violation of media freedom commitments. That list only contains the facts from the beginning of this year, but even so it is too long to be read aloud in any detail.

### **Kosovo**

As a follow-up to our report on *The Role of the Media in the March 2004 Events in Kosovo*, I am dispatching to Kosovo a Special Representative for a limited duration who, in close co-operation with OMIK and the Temporary Media Commissioner, will focus on observing and encouraging the implementation of our recommendations presented here in April 2004. The funding for the Special Representative, Mr. Dardan Gashi, has been generously provided by the United Kingdom and by OMIK.

The Special Representative will also follow a series of freedom of expression issues that have not been addressed adequately so far. In close co-operation with the donor community, the Representative will try to develop a more focused dispersion of funds for the local media.

## **Internet**

The 2004 Amsterdam Internet Conference took place on 27-28 August. To meet the needs of OSCE participating States, the conference agenda was developed at an earlier seminar in Vienna. During this seminar, it became clear that the OSCE is taking the lead on Internet issues where a discussion on constitutional and social values is needed, and that our conference could further strengthen the OSCE's unique position in the field of human rights.

In Paris during the OSCE *Meeting on the Relationship between Racist, Xenophobic and anti-Semitic Propaganda on the Internet and Hate Crimes*, as well as in Brussels, my Office organized two side-events on guaranteeing media freedom on the Internet.

The two-day conference in Amsterdam brought together over 80 international experts and 25 speakers from the OSCE, the Council of Europe, UNESCO, academia, media and a number of non-governmental organizations from Europe, the Caucasus, Central Asia and North America. Topics included legislation and jurisdiction for digital networks; hate speech on the Internet; education and the development of Internet literacy; access to information and networks as well as the problems of self-regulation, blocking and filtering. The participants' presentations can also be found on the conference website.

Results from the conference discussions and the recommendations delivered by the participants will be incorporated in a *Media Freedom Internet Cookbook* to be published later this year by the Media Representative. In the tradition of other "Internet Cookbooks" – such as those on software and programming – this publication will serve as a collection of best practices on a broad range of Internet issues and aims to provide valuable guidelines for OSCE participating States.

During the conference, the participants stressed that regulation must be limited to fields where it is absolutely inevitable. Actions taken towards the regulation of the Internet, even with the best of intentions, can cause potentially disastrous collateral damages for the freedom of the various types of media that the Internet hosts.

## **Additional Cases Dealt with by my Office**

I have publicly protested the killing of Paul Khlebnikov in Russia; the abduction and subsequent murder of Italian journalist Enzo Baldoni in Iraq; and the kidnapping of the two French journalists, also in Iraq.

In **Italy**, I raised the issue of the 16 August police raid on the offices of the Milan weekly *Gente* and the Rome home of journalist Gennaro De Stefano. The police, as I understand it, were acting on the

orders of the Genoa prosecutor and were looking for documents relevant to an enquiry into street clashes during the July 2001 G-8 summit in Genoa. Material was seized from the offices of *Gente*, which was planning to publish the results of its investigation into this matter. The weekly's editor, Umberto Brindani, and reporter De Stefano were told during the searches that their names were on a list of people being investigated for alleged illegal possession of documents. I have asked the Italian authorities for clarifications and I am thankful for their answer I received yesterday which I am currently studying.

In **Azerbaijan**, in my letter to Foreign Minister Elmar Mammadarov of 28 July 2004 I expressed my concern regarding reported acts of violence against two journalists, Mr. Aydin Quliyev, the editor-in-chief of *Baki-Khabar*, and Mr. Eynulla Fatullayev, a journalist with the magazine *Monitor*. I have just received an answer from Mr. M. Mammad-Guliyev, the Deputy Minister of Foreign Affairs, for which I am very thankful. According to the details included in this letter, the Quliyev case was dismissed. The investigation in the other case is ongoing.

I am also following the protests in **Moldova** by the journalists from the national broadcaster Teleradio Moldova (*TRM*) that started this summer. The protesters are demanding major changes at *TRM*. Demonstrations started on 27 July, when the journalists went on strike to protest unfair procedures of selection of staff at the new public broadcaster following the adoption of a law last year. Since 22 August, five persons have been on a hunger strike protesting continued political control over *TRM*.

I am also concerned with the arrest of cameraman Dinu Mija on 6 September by police in Tighina in the self-proclaimed Transdnestrian republic and his sentencing to 15 days in prison. I welcome his release on 13 September.

I am planning to visit Moldova in the second half of October to take a closer look at the media situation in this OSCE participating State.

I am also closely following the situation with the deteriorating media situation in **Tajikistan**. I will raise my concerns with the authorities during my trip to Dushanbe for the Sixth Central Asian Media Conference next week.

And, finally, I would like to welcome Mr. Roland Bless and Mr. Alexander Boldyrev who will join my Office as Senior Advisers in the very near future.

<[http://www.osce.org/documents/rfm/2004/09/3588\\_en.pdf](http://www.osce.org/documents/rfm/2004/09/3588_en.pdf)>

# **Report on Russian Media Coverage of the Beslan Tragedy: Access to Information and Journalists' Working Conditions**

16 September 2004

*The research for the report was conducted by  
the Centre for Journalism in Extreme Situations  
of the Russian Union of Journalists*

## **Summary**

The coverage of the events has proven that media freedom had taken hold in Russia. However, several worrisome developments in the relationship between the Government and the media drew the attention of local and international experts and human rights activists.

**Cases of detention and harassment of journalists occurred, seriously impeding their work.**

**Even more importantly, the Government did not provide in a timely manner truthful information on the handling of the crisis:**

- How many people were taken hostage;
- What was the number of hostage takers;
- Who were they;
- What were their demands.

As a result, journalists were physically attacked in Beslan for allegedly misinforming the public.

A triple credibility gap arose, between the Government and the media, between the media and the citizens, and between the Government and the people. This is a serious drawback for a democracy.

The main sources of information for the Russian people are the three nationwide broadcasters. Unfortunately, they did not provide accurate and up-to-date information. In the end, the print media and Internet news sites stepped in, filling the information void as much as they could.

## History of Events

On 1 September around 9:30 local time, a GAZ-66 car usually used by the military pulled up in the yard of school #1 in Beslan (Republic of South Ossetia-Alania). Armed people in camouflage uniforms and face masks got out of the car. With automatic guns, they shot in the air several times and announced that they were going to take everyone present hostage, all of whom were at that time attending the school year opening ceremony.

The largest death toll was registered on 3 September during the release of the school, when, at approximately 13:05 local time, there were two explosions in the school area. News agencies reported that at 12:45 the crisis centre managed to agree with the terrorists about evacuation of the bodies of people who had been killed during the capture of the school.

At 13:05, officers of the Ministry for Emergency Situations entered the school to evacuate the bodies. At that moment, there was an explosion and some hostages started to escape from the school. The terrorists started shooting at them. At 13:15, units of the special force were sent to the school to help the hostages. Only at 16:00 did security forces gain control over the whole building. In the school gym, more than 100 dead bodies from hostages were found. The Chief of the North Ossetian Federal Security Service (FSB) office, Valeriy Andreev, said that “No operation with the use of force was planned. The special forces started the operation in response to the shooting of the hostages by the terrorists”.

## Insufficient, Contradictory, or Incorrect Information from the Government

First, there were reports stating that ten of the terrorists resembled native Arabs and one resembled a native African. Later, official sources reported that the man resembling a native African actually proved to be a Chechen. According to the General Prosecutor of Russia, Vladimir Ustinov, the latest information on the number of terrorists as of 8 September was that there were “about 30 people, including two women”. A day earlier, Sergey Fridinskiy, the Deputy General Prosecutor, had announced a more definite number of 32 people.

During his meeting with President Vladimir Putin, Vladimir Ustinov announced that only one militant, Nur-Pashi Kulaev, was captured alive. However, according to *Izvestia*'s report, four militants were captured, including one woman.

Also, so far no representative of the authorities has been able to intelligibly explain the identity of the terrorist group that seized the school in Beslan. In the beginning, official reports said that the terrorists arrived in Chechnya through Ingushetia. Subsequently the name of the field commander, an ethnic Ingush who was nicknamed Magas, was reported in connection with the hostages at the school. Several times in the past, authorities have reported that he was killed, including after the attack on the Republic of Ingushetia in June 2004.

President Putin and General Prosecutor Ustinov are communicating that Shamil Basayev and Aslan Maskhadov organized the terrorist act although they have not given any evidence.

The number of people who were held hostage is also unknown. The latest data – 1,200 people – was delivered by Vladimir Ustinov, although a day earlier it had been reported that 1,181 people had been taken hostage. According to Ustinov, as a result of the terrorist attack, 326 people died, although the number of 335 was previously reported for several days.

News agencies reported that parents were not allowed to visit hospitals where their children were treated, and doctors were not allowed to use their mobile phones either.

### **Working Conditions of Russian Journalists in Beslan**

Two journalists, Svetlana Pelieva and Bella Dzeestelova, and news photographer, Fatima Malikova, who work for the Beslan paper *Zhizn Pravoberezhya* happened to be among the hostages. They had come to the school in the morning of 1 September to prepare a report about the Day of Knowledge (1 September) and were taken hostage as well. All of these journalists survived.

According to most of the journalists who were working in Beslan from 1 September until the release of the hostages at midday on 3 September, the authorities did not obstruct the work of most reporters during this time period.

Most of the problems that journalists faced came from local residents who began to treat the press aggressively after Russian state TV channels only reported official information about the number of hostages. The number of 354 people was persistently given, as initially stated by Lev Dzugaev, the press secretary of the President of North Ossetia and Valeriy Andreev, the chief of the local FSB office.

Only after the parents of the children who were held hostage announced that they would start making their own lists did North

Ossetian President, Alexander Dzasohov, say that there were over 900 hostages in the school.

Local FSB chief, Valeriy Andreev, said in the morning of 3 September that “journalists and locals provoke periodic shooting by terrorists because they want to be in the midst of things”.

On the second day of the school siege, 2 September, the press secretary of the North Ossetian President, Lev Dzugaev, and the Minister of Interior of North Ossetia, Kazbek Dzantiev, held a briefing where they asked journalists reporting from Beslan “not to report information of unfolding events to their editorial offices for some time or to co-ordinate their materials with the crisis centre for release of the hostages”. According to journalists’ remarks, this happened after the Russian media reported that the real number of people held by the terrorists differed greatly from the official data. They were referring to the evidence given by one of the first group of hostages to be released in the afternoon on 2 September.

The correspondent from the newspaper *Gazeta* ran an article on 3 September stating that ever since 1 September, the staff of the press services of all security services involved in the release operation – that is: the Ministry of the Interior, FSB and the General Prosecutor’s Office – had been sent to Beslan. These representatives were always present at the crisis centre. Their task should have been to provide the media with information and arrange meetings between journalists and the chiefs of the release operation. Not only did they not cope with these tasks, they never even started to carry them out, according to correspondents from *Gazeta* working in Beslan. “It seems as if there are no representatives of the law enforcement agencies here at all,” the correspondents said. “Only one man from the local FSB office came out to talk to journalists and said that a criminal case had been launched.”

Many journalists noted that local militia representatives were more willing to communicate: they answered reporters’ questions, presumably hoping that the journalists could help release the hostages, many of which were relatives of the militiamen.

On 2 September, the Industrial Committee, an organization that incorporates top managers of 24 media outlets, most of which are reported to be close to the Government, circulated an address to the Russian press. It reminded them that after the siege of the theatre in Moscow in October 2002, a so-called “Antiterrorist Convention” had been adopted. Most Russian journalists did not support this convention because they believed it was a way for Russian authorities to try to limit freedom of speech.

“While elaborating and discussing this document, we proceeded from our belief that the threat of terrorism should not be used as grounds and justification for imposing limits with regards to freedom of opinion and freedom of the media. At the same time, being aware of the measure of responsibility in working with information in these conditions, we proposed a range of acceptable restrictions and rules that we would willingly accept stipulating that in extreme situations the rescue of people and the human right to live are primary and take precedence over any other rights and freedoms,” the address of the Committee noted.

On 3 September, on *NTV* (a nationwide TV channel majority owned by GAZPROM, a state-controlled gas company) a correspondent in a broadcast from Beslan said that there were “many” wounded and dead at the school, but did not specify. The two state channels *ORT* and *Rossiya* also did not report the number of victims. The *NTV* correspondent suggested that the lack of information in the reports was the result of the antiterrorist self-restrictions that many media had voluntarily adopted after the tragic experience of the theatre siege. Nevertheless, *NTV* referred to doctors to confirm a *Reuters* report stating that the number of wounded reached 200.

By the end of 3 September, the Internet newspaper *www.gazeta.ru* wrote in a commentary: “The crisis centre applied tactics that can be explained as an information blockade of the terrorists’ demands. This seems almost obvious today. The demands included one major request, which was impracticable, as well as secondary demands which the terrorists probably also put forward.”

The hostages told the media that the terrorists in the school who were watching the news on TV were irritated by the distorted information. Yelena Milashina, a reporter for *Novaya Gazeta*, wrote: “A girl (hostage) said that after that persistent and extremely important newscast (because those lies provoked the terrorists’ aggression), the children were no longer given tap water.”

Local residents were also irritated. They accused journalists of incorrectly reporting the events in Beslan. During street meetings two days after the release of the hostages, locals beat up Alexander Kots, the correspondent from *Komsomolskaya Pravda*. The people who attacked him argued that he distorted everything in an article that had been published on Saturday, 4 September.

On 6 September, the *Moskovskiy Komsomolets* newspaper printed the article “Why did you, journalists, lie?” which quoted a dialogue

between a correspondent and a resident of Beslan as included in the following extract:

“Did you also write in your paper that there were 300 people there? But there were 1,220 of them, do you understand?!” The man in a black shirt waves his hand in impotence. “Why did you lie?”

The authorities admitted that there were over a thousand hostages in the school only after this figure appeared in the press. TV broadcasters were gagged; even Ruslan Aushev, the man who brought the first saved hostages out of the school, was cut out of reports.

In the same issue, the newspaper ran a commentary by the columnist, Alexander Khinstein, entitled *The Chronicle of Lies. From 38 Snipers to 354 Hostages*.

*NTV* was the first TV channel to report about the events that took place in Beslan on 3 September, the explosions and the release of the hostages. The channel started live broadcast of the events at 13:30, a half hour after the explosions appeared live on television during the newscast.

The government channels *Perviy Kanal* and *Rossiya* only started live broadcasts from Beslan at 14:00. According to the advisor to the Chair of the *All-Russian State Television and Radio Company (VGTRK)*, Viktoriya Arutyunova, this was explained by the fact that “We didn’t want to show the events unfolding the same way *NTV* did: someone is shooting from somewhere. We wanted to understand what was really happening. We waited until we had all the information in order not to create a panic.”

According to *Nezavisimaya Gazeta*, the delay in launching live broadcasts happened because at the same time that the events in Beslan were occurring, the Head of the Presidential Administration, Dmitry Medvedev, was meeting with the heads of state channels in Kremlin. This was indirectly confirmed by Arutyunova in her interview. She called this meeting the “traditional weekly Friday meetings”, an institution questionable in itself, during which the line of coverage of events was formulated.

According to *Nezavisimaya Gazeta*, the channel *Rossiya* limited coverage to an hour-and-a-half live broadcast then shifted to short news releases at the beginning of each hour apparently following the example of *Perviy Kanal*, which had adopted this form of coverage from the very beginning.

According to a *Rossiya* staff member, the channel's administration circulated guidelines for reports and commentaries shortly after the capture of the school. For example, state TV channels never mentioned President Vladimir Putin in their reports from North Ossetia.

*Ren-TV*, a privately owned cable channel, reported about the situation in Beslan most thoroughly. The channel's cameraman, Boris Leonov, actually went to storm the building with *Alfa* group soldiers and later told the audience on the phone about what he had seen at the request of Olga Romanova, the anchor of the special news broadcast *24 chasa*.

### **Cases of Violence, Detention, or Pressure on Russian Journalists**

Journalists encountered some of their most serious problems on 3 September right after the storming of the school began.

According to the testimony of Martin Wojciechowski, a correspondent from *Gazeta Wyborcza*, the crew of the Russian TV channel *TVTs* was beaten up. Local residents and men armed with hunting weapons suspected that the channel's cameraman was an accomplice of the terrorists and started chasing him. It was only after militiamen started shooting in the air from automatic weapons that the journalists managed to escape.

Many other journalists were attacked in a similar way. According to an article by Elena Milashina published in *Novaya Gazeta*, a French journalist and a Swedish cameraman were beaten up. According to other journalists' testimonies, provocations may have served as reasons for some attacks. This could have been the case, for example, when there were people in the crowd who screamed that it was all the fault of journalists and the crowd jumped on reporters.

*Ren-TV*'s cameraman, Boris Leonov, said that tapes were taken away by men in civilian clothes. Here is an extract of an interview by *Moskovski Komsomolets* with Boris Leonov:

- No, there is no censorship, but there is a complete mess. What does this mean? Well, they beat three cameramen then they took away my camera and my tape. They were civilians. Nobody knows who they are. Which cameramen were beaten? When I was there, the cameraman of *IPN* was beaten up. It's good that he was wearing a bullet-proof jacket. Then they beat a French cameraman and someone else. When we were standing by the Eurovision dish they also had a fight with locals.

- **Why were TV crews beaten?**
- They said we were lying. They asked: why do the representatives of the authorities come out to the cameras and announce the wrong number of hostages? This is why we became whipping boys. Already on 1 September, the people were saying that there were 1,200 hostages, but the authorities announced 354. Foreign journalists wondered: what kind of a number is that, 354? Why not 600 or 700? I was surprised by that too. Also, all foreign correspondents were telling their viewers, their people, the whole truth – they knew the real number. This immediately made local people hostile towards us, as if someone was doing this on purpose, fomenting people’s anger... Having the Ossetians as enemies would cap it all!
- **Why were the foreign correspondents attacked if ours were lying?**
- That didn’t make a difference. The foreigners have Russian cameramen too.

After the storming of the school, many Russian and foreign TV journalists were reported to have been searched. Their tapes with the material they had filmed were confiscated.

According to Margarita Simonyan, the *RTR (or Rossya state channel)* reporter, doctor Leonid Roshal, pediatrician, one of the negotiators, ordered, for unknown reasons, that the tape from the crew of the state channel be confiscated.

At the same time, during and after the storming of the school, many journalists were exposed to pressure from the militia and from security services. Elena Milashina said that when journalists were stopped and asked to show their passports and accreditation cards, unexpectedly to them, the militiamen started asking for certificates of temporary registration in North Ossetia.

Therefore, correspondents from *Novye Izvestia*, Anna Gorbatova and Oksana Semyonova, were detained (they were kept at the militia station for an hour). Madina Shavlokhova from *Moskovskiy Komsomlets* and Elena Milashina from *Novaya Gazeta* were also detained.

In the evening of 5 September, *The Moscow Times* correspondent Simon Ostrovskiy was detained in a military village called Sputnik near Vladikavkaz. He was brought to a militia station in the right-bank district of North Ossetia.

After the storming of the school, even the openness of officials with regards to giving information changed. Before the rescue operation, they often held briefings, announcing unreliable and altered messages. After the storm, the chief of the local FSB office, Valeriy Andreev, Deputy General Prosecutor, Sergey Fridinski, and the official from the Presidential Administration, Dmitry Peskov, offered information only to the government-controlled Russian press. Because there was not even a sign of a press centre at the crisis centre, these officials often came out to the streets of the town to find state correspondents.

***The Case of Raf Shakirov, the Editor-in-Chief of Izvestia.*** On Saturday 4 September, *Izvestia*, the Russian daily paper, came out in an unusual format. Having preserved the size and volume of the publication, the editorial office decided to print large page-sized photographs of wounded children on the first and the last pages of the paper. Inside the newspaper, there were also many photographs.

On Monday 6 September, the decision of the paper's owner, *ProfMedia*, to fire the paper's editor-in-chief, Raf Shakirov, was announced. In his interview with *Radio Liberty*, Mr. Shakirov explained the reasons for his dismissal: "The management at *ProfMedia* and I had different views about the format of that issue. It was considered too emotional and poster-like – in principle, newspapers are not made like that. Well, if you remember – I don't know whether you have seen the Saturday's edition – a half of it is devoted to coverage of the Beslan terrorist attack. It is truly made like a real poster: there is a huge picture on the front page and on the back. In general, we have not used this poster like format for the sake of fine writing but this Saturday edition was based on our assumption of what it meant for the country. The *ProfMedia* management considered the issue too emotional."

On 3 September, Raf Shakirov was the first of Moscow paper chiefs to publicly state his attitude about the information published by the media. In his interview with *Rosbalt* news agency, he said: "The media drew the right conclusions from the *Nord-Ost* events and now they deliver considerably less information concerning the attack on Beslan. At the same time, it is necessary to report more about the children and their parents because this may wake something human in the terrorists who are most likely to have access to radio and television even though attempts to win their compassion seem a little futile. Newspapers have a different status during terrorist attacks

because the terrorists do not receive them. The press may allow wide discussions about the appropriateness of methods in combating terrorism and such a discussion has already begun.”

It was never confirmed, at least for this report, that the Government played a role in the dismissal of Shakirov.

***The Case of Anna Politkovskaya, a Correspondent from Novaya Gazeta.*** Anna Politkovskaya, a correspondent from *Novaya Gazeta*, intended to come to Beslan on 3 September with Doctor Leonid Roshal who had been summoned by the terrorists as a negotiator. However, neither she nor other journalists were allowed on Roshal's jet. Politkovskaya could not get on other planes flying to towns neighbouring North Ossetia. She only managed to get on a Karat Airlines flight to Rostov-on-Don.

Politkovskaya did not eat anything on the plane. She just asked a stewardess for a cup of tea. Right after landing, Politkovskaya felt very ill. She was taken to the intensive care unit of the central hospital clinic of Rostov-on-Don. The *Novaya Gazeta's* editorial office said that she may have intentionally been poisoned. The paper's editor-in-chief, Dmitriy Muratov, promptly flew to Rostov. Politkovskaya was then transported to Moscow.

***The Case of Andrey Babitsky, a Correspondent from Radio Liberty.*** Andrey Babitsky, the correspondent for *Radio Liberty*, was detained at Vnukovo airport (Moscow) on 2 September. Babitsky was supposed to fly to Mineralnye Vody in North Caucasus. According to the journalist himself, he and the *Agence France Presse* correspondent, Yana Dlugi, were detained under claims that they had allegedly attempted to transport explosives, as reported by *Radio Liberty*. During the luggage check, a specially trained dog reacted to Babitsky's bag. Babitsky's luggage was searched. Because no explosives were found, the journalist was set free.

As soon as Babitsky walked out of the militia station, two young men came up to him and started a dispute demanding that the journalist buy them beer. At that moment, two militiamen appeared on the scene and took the three men to the station. This time Babitsky was detained as a victim. The journalist was forced to undergo a medical examination to find out whether he suffered injuries from the incident even though he said that no one had injured him.

On 3 September, a Justice of the Peace from Solntsevskiy district in Moscow sentenced Babitsky to a 15-day arrest. However, on 5 September, the Solntsevskiy district court changed that decision and released Babitsky changing the penalty to a 1,000-rouble fine (about USD 34).

## **Impact of Government Handling of Information on Public Opinion**

As a result of the fact that the nationwide broadcasters in Russia failed to correctly inform the public, and in the wake of this policy the media also underperformed, the Russian people sensed that some information was perhaps being concealed.

*Ekho Moskvy* radio station conducted an interactive poll of its listeners (1,216 respondents), 92 per cent of which said that TV channels concealed parts of information and only 8 per cent of the people polled thought that they received all the information.

On 5-6 September, an independent analytical centre conducted a national poll by means of telephone interviews using a random representative sample. 1,974 people were polled in 23 of the biggest cities and 31 settlements of the Russian Federation. The poll was meant to display the level of citizens' trust of the information on the terrorist attack. 36 per cent of the polled were constantly following the unfolding events, not missing a single newscast. 39 per cent were in touch with the situation all the time. 24 per cent followed the developments from time to time. 0 per cent did not know anything about the attack.

13 per cent of those polled had the feeling that they were receiving a full and genuine account. 45 per cent suspected the information was not reported in full (for security reasons). 22 per cent believed that except for some reports, most of the information was false. 18 per cent of the polled said that they had the feeling that they were constantly being deceived or something very important was being concealed from them.

## **Restrictions on the Work of Foreign Journalists**

As early as on 2 September, according to Martin Wojciechowski, the correspondent for the Polish paper *Gazeta Wyborcza*, a group of foreign journalists from *Gazeta Wyborcza*, *Liberation* and *The Guardian* was detained at the airport in Mineralnye Vody. The militia and FSB kept the journalists for several hours and thoroughly checked and

photocopied their travel documents. Besides, the security services staff asked the detained journalists about the whereabouts of the *Al Jazeera* correspondents who had been sent to Beslan.

On 3 September, during and after the storming of the school, tapes with content of the storming were confiscated from TV crews from *ZDF* (Germany), *ARD* (Germany), *APTV* (USA), and *Rustavi-2* (Georgia).

On 4 September, the militia and FSB detained the crew of the Georgian TV channel *Rustavi-2* which included correspondent Nana Lezhava and cameraman Levan Tetladze. They were accused of illegally crossing the border between Georgia and Russia. However, according to an intergovernmental agreement, residents of the border region between the two countries can freely travel to the adjacent territory for 10 days. Unofficially, the fact that the journalists arrived at the school only 15 minutes after its capture was used as a fact to prove and accuse the journalists of having contact with the terrorists.

According to the chief of *Rustavi-2* news service, Eka Khoperia: "The detention of the journalist could only happen because they (the Russian security services) did not like that she was interviewing people who were not saying very flattering things about the administration, the government, about how it was handled."

The journalists were released on 8 September. Nana Lezhava said that the security service staff who detained her did not treat the arrested badly. However, she was forced to undergo a medical examination although she had categorically been refusing to do so. Lezhava also said that she blacked out after drinking a cup of coffee that was offered to her.

On 10 September, the Minister of Healthcare of Georgia, Vladimir Chipashvili, said that Nana Lezhava, who had been kept for five days in pre-trial detention centres of the Interior Ministry and the FSB, had been poisoned with dangerous psychotropic drugs.

On 6 September, the chief of the Moscow bureau of the Arab satellite channel *Al Arabia*, Amr Abdul Hamid, was detained at the airport in Mineralnye Vody. According to the head of the Kavminvody-Avia company, Vassily Babaskin, the journalist arrived at Mineralnye Vody from Beslan where he was preparing reports about the School #1 siege. He was detained while checking in for a flight to Moscow because there was an object forbidden by air travel regulations in his luggage. Later it was reported that a gun cartridge had been found in his luggage. Amr Abdul Hamid is Egyptian but he has Russian citizenship.

According to the TV channel, he was detained for at least two days. Amr Abdul Hamin said he was released on 8 September but a criminal case was launched against him. He believes that the cartridge for a Kalashnikov automatic gun was secretly put into his luggage at the Beslan hotel.

Finally, on 7 September, North Ossetian security services expelled the crew from the Georgian TV channel *Mze* from Beslan. This included correspondent Zurab Dvali and his cameraman. "The night before, very late, local law enforcement officers broke into our hotel room in Beslan and demanded that we immediately leave the town, saying that they could not ensure the security of the Georgian journalists," Zurab Dvali said to *Ekho Moskvyy* radio station.

According to Mr. Dvali, "The representatives of the security services took the crew's travel documents and, at 9 o'clock the next morning took them to the airport in a militia car. It was only at the entrance to the plane which was flying to Moscow that they gave the journalists their IDs back." Zurab Dvali noted that during his work in Beslan, he often had problems with persons who said that the Georgians should not be there.

### **Observations on Consequences of Governmental Information Practices**

According to current Russian legislation the only restrictions concerning the work of journalists are stipulated by two laws, one entitled "On the Fight against Terrorism" (1998) and one entitled "On the Internal Security Troops of the Ministry of the Interior of the Russian Federation" (1993). These restrictions prohibit publishing information on the relocation and the manpower of the military units of the internal security troops of the Ministry of the Interior as well as "disclosing information about special technical measures and the tactics of a counterterrorist operation which can impede implementation of a counterterrorist operation and threaten the lives and health of the people who happened to be in the zone of the counterterrorist operation, or who are outside of the designated zone; [information] which serves the propaganda or justification of terrorism and extremism; [information] about the staff of special units, members of the crisis centre which controls the counterterrorist operation, as well as [information] about the persons who facilitate the implementation of the mentioned operation."

There are no other restrictions in the legislation. This is why any claims by militiamen or security services staff are even legally objectionable on the basis that they prevent journalists from exercising their profession. According to article 144 of the Criminal Code of the Russian Federation, officials who restrict the work of journalists by prohibiting them from working – for example, confiscating materials that they have filmed – may be prosecuted under criminal law.

On 9 September, the Internet newspaper *www.gazeta.ru* ran an article by Georgiy Satarov, the president of INDEM Foundation, entitled *The Lie that Kills* in which the author offers his thoughts about the information blockade of the government-controlled media. He finished his article with the following words: “I demand to view this article as an appeal to the General Prosecutor’s Office. I demand launching a criminal case looking into the fact of malicious misinformation which resulted in grave consequences.”

However, there are warning signs that in dealing with journalists covering terrorist attacks, some Russian politicians continue to be guided by what is expedient from their point of view, rather than by what is legal.

After the hostages were released, some Russian politicians commented on the work of the press. *Nezavisimaya Gazeta* interviewed some of these politicians. Lyubov Sliska, First Deputy Chairman of the State Duma, said “We should make sure that the media do not facilitate terrorist activity and all means are good for this. America has shown a decent example after 11 September. And the whole world said nothing. All the press limited its freedoms itself realizing that some of its actions help terrorists. This is why we should not be afraid of the suppression of freedom of speech, the suppression of democracy. We can take any temporary measures to prevent anarchic terrorism.”

The gravest consequence of the Government’s information policies were summed up by political analyst Dmitriy Oreshkin in his interview for *Ekho Moskvy* radio station: “In what we receive from the official media one can feel, to choose my words carefully, that some facts are not reported. And if we use real terms, one can feel that there is an attempt to lead the discussion in the wrong way. As a result they will not lead in the wrong way but will lose the people’s trust. One can hardly believe now in what is said on television. Excuse my using special terms, but the mechanism of communication between the power and the people is broken.”

Finally, here is how several leading Russian and international human rights organizations – Amnesty International (AI), International League of Human rights (ILHR), International Helsinki Federation (IHF), International Federation of Leagues of Human Rights, Moscow Helsinki Group, All-Russian Movement for Human Rights, and Human Rights' Defence Centre Memorial, Human Rights Watch – commented. On 8 September they issued a joint statement in which they pointed out the responsibility that Russian authorities bore in disseminating false information.

“We are also seriously concerned with the fact that authorities concealed the true scale of the crisis by, *inter alia*, misinforming Russian society about the number of hostages. We call on Russian authorities to conduct a comprehensive investigation into the circumstances of the Beslan events which should include an examination of how authorities informed the whole society and the families of the hostages. We call on making the results of such an investigation public,” the statement reads.

<[http://www.osce.org/documents/rfm/2004/09/3586\\_en.pdf](http://www.osce.org/documents/rfm/2004/09/3586_en.pdf)> (English)

<[http://www.osce.org/documents/rfm/2004/09/3586\\_ru.pdf](http://www.osce.org/documents/rfm/2004/09/3586_ru.pdf)> (Russian)

## Media Freedom Violations in Belarus in 2004

**State agency receives exclusive right to distribute TV listings.** The Presidential Administration's *BelTA* news agency was given the exclusive right to distribute the TV listings of Belarus' *BT*, *ONT*, *STV* and *Lad* channels. Many independent newspapers, among them *Belorusskaya Delovaya Gazeta*, *Nasha Niva*, *Vitebsky Kurier*, and *Gayeta Dlia Vas*, received a contract from *BelTA* that indicated a price of BLR 5,025,000 (USD 2,300) for the monthly subscription to TV guide listings. The previous cost of the TV programme schedule was BLR 80,000 – 250,000 (USD 40-150). **5 January 2004**

**Journalist receives phone threat.** In the night of the 10 to the 11 of January, *Belorusskaya Delovaya Gazeta's* correspondent Iryna Makavetskaya received several anonymous threats on her home phone. During an entire hour, an unknown man phoned her several times demanding that she stop her journalistic activities and leave the country and threatening to otherwise “bury” her. Mrs. Makavetskaya has recorded one of the phone calls on a tape recorder. She has filed an appeal to the police demanding that they reveal the identity of the anonymous man. **12 January 2004**

**State distribution monopoly terminates agreement with BDG.** Belarus' national postal services *Belpochta*, which deliver newspapers to subscribers countrywide, as well as the state distributor *Belsayuzdruk*, have both cancelled their 2004 contracts with *Belorusskaya Delovaya Gazeta*. **12 January 2004**

**One more independent newspaper forced to print abroad.** Having received refusals from all printing facilities in Minsk, on 8 January, the Belarusian independent newspaper *Salidarnasc* published its first issue in Smolensk (Russia). On 9 January, the newspaper was sold in Belarus. Despite higher costs of publishing abroad, the newspaper has managed to retain its circulation – 5,000 copies. **12 January 2004**

**Tax inspection, fire inspection and road police vs. independent newspaper.** Tax inspection officials in Smorgon confiscated the remaining copies of the independent newspaper *Mestnaya Gazeta* and

money recovered from selling the newspaper printout from private distributors in Smorgon. The distributors were charged with violating the order of retail trade, although the law doesn't ban them from selling newspapers. The authorities are creating all sorts of obstacles for the newspaper. The editorial office is presently sealed by the fire inspection office and the car delivering the printout is frequently stopped by road police. *Mestnaya Gazeta* is now published by Ramuald Ulan instead of *Novaya Gazeta Smorgoni*. **16 January 2004**

**One more independent newspaper strangled.** 16 January was the last day of issue for the independent newspaper *Region-Vesti* in Svetlogorsk. The regional department of Belarus' distribution monopoly *Belpochta* informed the newspaper about terminating the distribution agreement. Since the New Year, the newspaper had been publishing only TV listings, after local authorities had banned the local printer from printing any content that included information under the logo of *Region-Vesti*. **17 January 2004**

**Printout of *Asambleja* magazine disappears.** The printout of *Asambleja* magazine printed by the NGO Assembly disappeared from the Minsk post office on 21 January. **22 January 2004**

***Narodnaya Volya* faces two suits for a total amount of USD 50,000.** On 15 January, the company Alliance Media (the founder of *Obozrevatel* newspaper) and the entrepreneur Sergey Atroshchanka brought a suit against *Narodnaya Volya* for defiling their honour and business reputation. The plaintiffs demand that the Lenin District Court impose penalties on the newspaper in the amount of BLR 50,000,000 for each suit. The suits are based on two articles published in *Narodnaya Volya* last year. **28 January 2004**

**One more Belarusian independent newspaper forced to print in Russia.** The first issue of a non-governmental newspaper *Den* was printed in Smolensk (Russia) and delivered to Belarus on 28 January. According to the editor-in-chief, Mikola Markevich, on 28 January, the *Roscherk* company terminated a distribution contract with *Den*. **29 January 2004**

**Grodno branch of Belarus' press distribution company refuses to distribute *Den* newspaper.** On 30 January, *Den* was delivered to the distribution department of Grodno Regional Union of Publishing

(*Belsayuzdruk*). However, the head of the department refused to accept the newspaper for distribution referring to orders from the assistant director Galina Makarevich.

According to the distribution agreement signed on 22 January between the publishers of *Den* and the distribution company, the company undertook to distribute 450 copies of the newspaper in the Grodno region. **30 January 2004**

**Journalist sentenced for on-line publications.** The Court of Minsk Central District fined Natallia Kaliada, an employee of *Charter-97* press service, BLR 350,000 (about USD 160) on 2 February. The judge considered the distribution of information on the *Charter-97* website to be a violation of articles 167-10 of the Administrative Code. Natalia Kaliada monthly updates the section “Monitoring of Human Rights Violations in Belarus” on the Internet site of *Charter-97*. The Prosecution became interested in the activity of Mrs. Kaliada after the journalist was detained during a street action in Minsk on 10 December 2003. The Assistant General Prosecutor started legal proceedings against the journalist on 16 January of this year. **3 February 2004**

**Belarus cuts down Russian TV broadcasting.** On 3 February, the relaying of Russian programmes by Belarusian TV channel *ONT* was cut to the minimum. *ONT* will broadcast only an edited version of the news programme *Vremia*. Belarusian TV authorities did not explain the motives for this decision. **3 February 2004**

**Local newspaper censored by publisher.** An issue of a weekly newspaper *Volnaje Hlybokaje* dated 15-21 January was published with an ad instead of an article about the meeting of the Belarusian Popular Front. The decision to censor the newspaper was made by the directors of the Peramoha publishing house. This publishing house prints *Volnaje Hlybokaje*. The editors were not informed of the decision. **5 February 2004**

**Vitebskiy Kuryer published with “white spots”.** The Friday issue of the private newspaper *Vitebskiy Kuryer* came out with blank spaces in place of its TV guide section as the publication could not afford to pay the BLR 5,025,000 (USD 2,330) charged by the state-controlled *BelTA* news agency for subscription to the TV programming schedule. **6 February 2004**

**Ministry of Information suspends another independent newspaper.** On 5 February, the Ministry of Information suspended for one month the publication of yet another newspaper. The newspaper was entitled *Zgoda*. The order was issued by the Minister of Information, Uladzimer Rusakevich, following two warnings. **6 February 2004**

**Journalists declined access to executive authorities' session.** The reporters of the *www.belarusfree.org* website and the non-governmental newspaper *Den* were denied access to the meetings of the Grodno Regional Executive Committee on 6 February. The meetings were due to the chairman's annual report. The journalists appealed to the Prosecution claiming violation of the Law on Press. **9 February 2004**

**Ministry of Information suspended *Veczernij Stolin*.** On 11 February, Aliaxandar Ihnaciuk, the editor-in-chief of the non-governmental newspaper *Veczernij Stolin*, received an order from the Ministry of Information instructing him to interrupt publication for three months. According to the Minister of Information, Uladzimir Rusakevich, the paper *Veczernij Stolin* violated the Law on the Press as well as a few decrees of the cabinet council. **12 February 2004**

**Journalists removed from the hall.** Independent journalists Andzhej Pislak (Den) and Iryna Czarniawka (*Beloruskaja Gazeta*) were removed from the hall at the beginning of the Grodno Regional Executive Committee's meeting. The meeting was dedicated to the strategies of ideological work next year. This is the second time that Grodno authorities have interfered in the work of journalists this week. The journalists involved intend to appeal to the prosecution. **13 February 2004**

**Court partially satisfies a suit against *Narodnaya Volya*.** On 18 February, a court in Minsk partially satisfied the suit of Alliance-Media against the newspaper *Narodnaya Volya*. The court obliged *Narodnaya Volya* to pay court and lawyer fees for Alliance-Media (founder of the *Obozrevatel* newspaper). However, the court waived the claimant's demand of USD 25,000 in compensation of moral damages. The suit was triggered by an article in *Narodnaya Volya* covering the conflict between *Obozrevatel* and Mr. Levin, the head of the Union of Jewish Organizations. **18 February 2004**

**Belorusskaya Delovaya Gazeta fails to overrule oppressive verdict.** On 19 February, Belarus' Supreme Court rejected an appeal made by the newspaper *Belorusskaya Delovaya Gazeta* against the Ministry of Information's warning issued on 26 December 2003. The warning concerned three investigative articles written by Sergey Satsuk which the Ministry claimed did not correspond to reality. **19 February 2004**

**Prosecution resumes criminal investigation into the case of Belorusskaya Delovaya Gazeta journalist.** On 26 February, prosecutors in Minsk reopened a libel case against Irina Khalip, deputy editor-in-chief of the *Belorusskaya Delovaya Gazeta*. Ms. Khalip was summoned to the Minsk Prosecutor's Office for questioning in connection with an article that she had written nearly 18 months before for the investigative supplement *Belorusskaya Delovaya Gazeta. Dlya Sluzhebnogo Polzovaniya*. The story dealt with an official investigation into allegations of corruption against Viktor Kozeko, the former head of the Belarusian State Food Industry, and his son. **1 March 2004**

**President prescribes mass media to promote "civil security and discipline".** Starting 20 March, all printed and electronic media will have to introduce regular rubrics or series promoting "civil security and discipline". This is due to Directive 1 "About Measures to Improve Civil Security and Discipline" issued by Alexander Lukashenko on 11 March. **12 March 2004**

**Independent newspaper office invaded.** On 18 March, the police, called by an incidental witness, detained two men who were attempting to unlock with false keys the office of the private newspaper *Den* in Grodno around 10 p.m. Editor-in-chief Mikola Markevich reported that he recognized a Committee for State Security (KGB) officer among the detainees. The KGB Office for the Grodno region denied that any of its officers were involved in the attempted break-in. **19 March 2004**

**Executive authorities prescribe that businessmen subscribe to governmental editions.** Last week, the Glybokaje District Executive Committee issued a prescription to local private enterprises and single entrepreneurs indicating that they should subscribe to governmental editions by 19 March. Each enterprise must subscribe for at least three editions and this must include a subscription for every staff member for one national and one local newspaper. Executive authorities refer

to the instructions Alexander Lukashenko gave during the seminar on ideological activity on 27-28 March 2003. The letter also lists state-owned enterprises that are obliged to subscribe to the governmental press, that is: “every workshop, production section, farm, office, station, kindergarten, school, class, drugstore, dispensary, shop, etc.”  
**25 March 2004**

**Ministry of Information seizes Belarusian media market.** The Belarusian Ministry of Information put in force a new direction “On Distribution of Periodicals Registered Abroad on the Territory of the Republic of Belarus” on 25 March. The document prescribes a stricter control of the distributors of foreign media in Belarus. **26 March 2004**

**Public Prosecutor’s office suspends investigation of Dmitry Zavadsky case.** The investigation into the disappearance of journalist Dmitry Zavadsky was closed. International media observers are confident that those responsible have still not been found and the possible implication of the highest levels of government has still not been properly investigated. **6 April 2004**

**Print run of *Den* arrested.** On 7 April, the print run of the newspaper *Den* was seized while being transported from Grodno to Minsk. All 4,800 copies were confiscated due to “problems with transport documents”. In the police report, no reasons for the seizure were given. Two administrative protocols regarding the seizure were provided in May. The first protocol for the Denpres company was issued for violation of transport documents. The second protocol concerned Mr. Markevich personally. **8 April 2004**

**Prosecution warned editor-in-chief of *Birzha Informatsii*.** On 8 April, the Grodno Lenin district prosecutor’s office issued a warning to Mrs. Elena Ravbetskaya, the chief editor of the non-state paper *Birzha Informatsii*, for violation of article 5 of the Media Law. The chief editor was warned for publishing information on behalf of the unregistered political entity. **15 April 2004**

**Belarus censors Russian state TV.** The broadcast of the Russian TV channel *Rossiya* was interrupted on 17 and 18 April from 5 p.m. to 8:30 p.m. The cut-off clashed with the broadcast of the analytic shows *Zerkalo* and *Vesti Nedeli*. The Belarusian TV Centre explained the cut-off with the claim of “unplanned repair work” at the *Rossiya*

TV channel. However, *Rossiya* denies technical reasons for the incident. The presenter of *Zerkalo*, Nikolai Svanidze, told the Belarusian Service of *Radio Liberty* that the channel directors were indignant about the actions that the Belarusian side had undertaken. Mr. Svanidze thinks that the broadcast was interrupted because it had been announced that the above shows contained Belarusian-related stories. The show *Zerkalo* was to discuss the address of Alexander Lukashenko to the National Assembly and to the Belarusian nation. The show *Vesti Nedeli* was to talk about the Saturday cut-off. **21 April 2004**

**Court fines journalist of *Gazeta Dlia Vas* for slandering election committee chairman.** The Biazaw District Court fined journalist Tamara Schapioktina of the *Gazeta Dlia Vas* newspaper BLR 300,000 (about USD 150) for slandering the chairman of the divisional election committee. The suit was based on an incident that took place during the by-election to the Belaazersk Soviet of Deputies on 23 November 2003. **22 April 2004**

**Newspaper denied access to printing facilities.** Three publishing houses, Tytul, Palesdruk, and Svetoch, refused to print the Gomel regional newspaper *Volny Chas*. **27 April 2004**

**Radio Liberty reporter detained.** On 7 May, during the street action dedicated to the anniversary of the disappearance of the ex-Minister of Foreign Affairs Yuri Zakharenko, the police arrested *Radio Liberty* reporter Vincs Mudrow. On 10 May, along with seven arrested protesters, Vincs Mudrow went on trial for “participation in unsanctioned action.” However, the trial was postponed until 11 May since the witnesses for the police did not come to yesterday’s hearings. Today, the judges discharged all the participants of the street action. **11 May 2004**

**KGB interrupts issuing of *Den*.** On 11 May, in Grodno, searches were made in the offices of NGOs, one of which served as an editor’s office of *Den*. The KGB investigators were looking for places where the leaflets dedicated to 1 May were printed. In the leaflet, there was a poem in which the KGB found an insult of the president. As a result, PCs of the editorial offices of the *Den* newspaper were seized. By that time, the issue was 75 per cent prepared. **12 May 2004**

**Minsk printer refuses to print *Novaya Gazeta Smorgoni*.** The Minsk printing company Svetoch refused to sign a contract for printing the

independent newspaper *Novaya Gazeta Smorgoni*. Svetoch managers also declared that they would no longer print the Smorgon edition of *Mestnaya Gazeta*. *Mestnaya Gazeta* has been published since last autumn at which time the publication of *Novaya Gazeta Smorgoni* was suspended. In April 2004, Ramuald Ulan, the publisher of *Novaya Gazeta Smorgoni* renewed his business certificate and will now resume publication of his newspaper. **17 May 2004**

**Police arrest distributor of independent newspaper.** On 14 May, police in Mahileu took Uladzimer Shantsau, activist of the opposition United Civic Party, to a police station and detained him for distributing free copies of the independent newspaper *Vremya* without any authorization documents. **17 May 2004**

**Mikola Markevich fined USD 10.** On 26 May, a Grodno Court approved the confiscation of the newspaper *Den* and fined the newspaper's editor-in-chief, Mikola Markevich, USD 10. **27 May 2004**

**Censorship at Svetoch Publishers.** On 28 May, the Minsk publishing house Svetoch cancelled their agreement with *Mestnaya Gazeta*, a Volkovysk non-governmental newspaper. **27 May 2004**

**No mercy for *Narodnaya Volya*.** The panel of judges of the Supreme Court decreased the amount of the penalty imposed on Marina Koktysh, journalist of the newspaper *Narodnaya Volya*, and on the former broadcaster Eleanora Ezerskaya, to USD 500. The appeal to revise the amount of moral damage was initiated by the vice-chairman of the Supreme Court, Valery Vyshkevich. The appeal did not concern USD 25,000 in damage claims that *Narodnaya Volya* has to pay Egor Rybakov. **31 May 2004**

**Journalists kept out of Parliament.** On 3 June, a number of Belarusian and foreign journalists accredited at the Chamber of Representatives, were forbidden to enter the building of the Parliament. Valery Frolov, the deputy of the Respublika group, was expected to address the Parliament today. **4 June 2004**

**Journalists not admitted to the Parliament.** Several journalists of Belarusian and foreign media accredited by the Belarusian Parliament were not admitted in the Parliament building by men in civilian clothes who refused to identify themselves. The heads of Belarus' legislature

claimed that some media are biased in covering the work of Belarusian MPs. From 8 a.m. on, the access to the building was blocked by secret services, according to the press release distributed by the group Respublika. The disgraced journalists included Maryna Koktysh (*Narodnaya Volya*), Yury Patsiomkin (*BelaPAN*), Andrey Makhousky (*Reuters*) and Yuras Karmanau (*AP*). **8 June 2004**

**Journalist deported from Belarus.** On 21 June, Mikhail Podolyak, a Ukrainian freelance journalist, was expelled by the Committee for State Security (KGB) as a person responsible for allegedly biased coverage of social and political events in the country. In addition, the KGB accused Mr. Podolyak of violating regulations governing foreign citizens' stay in the country. **21 June 2004**

**Radio Liberty correspondent detained.** On 22 June, *Radio Free Europe/Radio Liberty* journalist Yuri Svirko was forcibly expelled from the Parliament building. Mr. Svirko's accreditation card and the tape recorder were taken away by a person in civilian clothes with intercom equipment claiming to represent security and the content of the recoded disc was erased. No reasons were given for the expulsion. A correspondent for the *Narodnaya Volya* newspaper was also barred from the Parliament, where a debate on the amendments to the Electoral Code proposed by the group Respublika was taking place. **23 June 2004**

**Narodnaya Volya to lose its title.** On 1 July, the Board of Appeal of the National Intellectual Property Centre upheld its December 2003 decision passing the trade mark *Narodnaya Volya* to the entrepreneur Syarhey Atroshchanka. Syarhey Atroshchanka can ask the editors of *Narodnaya Volya* to change the title at any moment. **6 July 2004**

**Ministry of Foreign Affairs shuts down RTR representatives.** On 30 July, the Ministry of Foreign Affairs deprived all four Minsk *RTR* office employees of accreditation. The Ministry considered that the Russian *RTR* channel inaccurately covered a street action which took place in Minsk on 21 July and was dedicated to the tenth anniversary of Alexander Lukashenko's presidency. But it was a reporter from Moscow who covered the event during his two-day visit to Belarus, not the Minsk *RTR* office. **2 August 2004**

**Narodnaya Volya's equipment distrained.** On 2 August, court officers distrained property worth USD 29,500 belonging to editors of

*Narodnaya Volya*. This distraint is meant to cover moral damage as defined in the suits *Sergey Atroshchanka vs. Narodnaya Volya* and *Egor Rybakov vs. Narodnaya Volya*. **3 August 2004**

***Rabochaya Solidarnasc ceases to exist.*** On 2 August, the Supreme Court of Belarus decided to liquidate the Belarusian Labour Party (BLP) which led to the close-down of a partisan newspaper called *Rabochaya Solidarnasc*. The Ministry of Information explained that *Rabochaya Solidarnasc* was closed because the BLP was registered as the newspaper's founder. **4 August 2004**

***Novaya Gazeta Smorgoni suspended.*** On 16 August, the Minister of Information, Uladzimir Rusakevich, signed the order to suspend a non-governmental newspaper called *Novaya Gazeta Smorgoni* and published by an entrepreneur named Ramuald Ulan. Mr. Ulan is accused of violating article 10 and article 12 of the Law on Press and other Mass Media. According to article 10, a newspaper must have a charter in order to register. Article 12 claims that an edition can only be founded by a legal entity. However, former rules of registration, according to which *Novaya Gazeta Smorgoni* was founded, don't presuppose those conditions. **19 August 2004**

***Executive authorities forbid shop owners to sell independent press.*** A number of large shops in Minsk refused to sell leading non-governmental editions, such as *Belorussky Rynok*, *Belorusskaya Delovaya Gazeta (BDG)*, *Belorusskaya Gazeta* and *Narodnaya Volya*. The owners of some shops didn't even notify the editors while cancelling the distribution agreements. **24 August 2004**

***Navinki suspended.*** On 27 August, the Minister of Information, Uladzimir Rusakevich, signed an order to suspend the *Navinki* newspaper for three months. The newspaper is accused of violating a number of articles of the Law on Press and other Mass Media. **30 August 2004**

***Police question origin of Vremya.*** On 31 August, the Zhlobin District Court charged local police with the task of "checking the origin" of the newspaper *Vremya*. On 12 August, policemen seized more than 1,000 copies of the newspaper from Uladzimir Katsora, a United Civil Party activist, as well as 15 packages of leaflets issued by the coalition 5+. The court imposed a fine of USD 270 on Mr. Katsora. The judge of the Zhlobin District Court, Alena Yarmolchyk, considering that the

transportation of these printed editions by Mr. Katsora was an activity on behalf of an unregistered political party or public organization, decided to destroy all the leaflets. The district police will additionally investigate the origin of *Vremya*. **1 September 2004**

***Vremya* and *Predpinimatelskaya gazeta* suspended.** The registration department of the Ministry of Information confirmed that a number of non-state editions including the newspapers *Vremya*, *Predpinimatelskaya gazeta*, *Luboy kapriz* and *Allo! Kuplyu, prodam, menyayu* were suspended for three months. The Ministry stated the intention of “establishing order” in the field of the press. **3 September 2004**

Reports by the Belarusian Association of Journalists, *Radio Liberty*, Reporters sans frontières, Charter 97 and [www.spring96.org](http://www.spring96.org) were used to prepare this compilation.

<[http://www.osce.org/documents/rfm/2004/09/3587\\_en.pdf](http://www.osce.org/documents/rfm/2004/09/3587_en.pdf)>

## **Annual Human Dimension Implementation Meeting, Warsaw 6 October 2004**

### ***Speaking Points***

The last time I visited this meeting, in 2003, I spoke on behalf of Hungary. In March this year, with the support of the participating States, I have replaced Mr. Freimut Duve. This Office owes a lot to this devoted and passionate fighter for freedom of the media. When trying to reshape our work, I can build in many respects on his.

Since March we did follow many of the paths my predecessor pioneered, and added some new ones.

We protested and protected whenever journalists or their working conditions were at risk. We urged investigations into issues of murders and disappearances of journalists, like the Gongadze case in Ukraine, or the more recent Khlebnikov case in Russia.

We raised issues of access to information as well as to the free flow of information. For example, these issues were of particular concern quite recently with the problems that occurred after the tragic events in Beslan, in Russia, or the case of the so-called “book embargoes” in the US.

We voiced concern given the fact that, in large parts of the OSCE region, radio and television pluralism still do not exist and therefore true freedom of the press is practically confined to the print press and a still “baby” Internet sector.

But in this report, I would like to focus on two general dangers that over the last period of time have become “fashionable” trends in suppressing the independent part of the media. Both “methods” use seemingly legal means. They are even presented as a “sticking” to the rule of law. One trend is to use libel, defamation and insult laws, and the other – let’s call it “administrative discrimination” – has used registration and other administrative regulations to hinder independent and non-governmental media.

## 1. Libel

I am continuing the work on libel: for several years now this Office has been actively lobbying for its decriminalization.

**Positive Developments.** Already, as of today, five OSCE participating States have abolished libel as a criminal offence, and turned to its civil-law based handling: USA (although 17 states within this country still retain their criminal libel provisions, albeit in the books only), Moldova, Ukraine, Bosnia and Herzegovina, and Georgia.

Also, on 1 July, President Robert Kocharian signed amendments to the Criminal Code partially decriminalizing libel in Armenia. In a letter to Foreign Minister Vardan Askanyan, I welcomed this as a step in the right direction. At the same time, libel remains a criminal offence and the existing provisions still offer more protection for public officials than ordinary citizens.

On 15 October 2004, the Parliament in Slovakia will have a debate on a new Criminal Code. To my knowledge, under the current proposal submitted by the Ministry of Justice, articles 331 and 384 still would retain criminal penalties for defamation or slander that exist in the current penal code as articles 154, 156 and 206. In a letter to Deputy Prime Minister and Minister for Justice Daniel Lipsic, I urged him to reconsider his original proposal.

Both Armenia and Slovakia should not miss this opportunity for reform and should join those countries that have decriminalized libel and have set a good example to be followed by other OSCE participating States.

Unfortunately, in June the Kyrgyz Parliament rejected for the third time in seven years an initiative by President Akayev to decriminalize libel.

**Cases Raised.** Here are some recent libel cases that I have raised. In Hungary, an appeals court in early July suspended a ten-month prison sentence against editor Andras Bencsik for two years. An eight-month suspended prison sentence against journalist Laszlo Attila Bertok was upheld. The case was brought by MP Imre Mecs after *Demokrata*, the weekly that Bencsik edits, alleged that testimony by Imre Mecs had played a role in the sentencing of four people to death after the 1956 revolution.

In Poland, the Warsaw Supreme Court upheld a three-month prison sentence against Andrzej Marek, editor-in-chief of the weekly *Wiesci Polickie* (Police News), for libelling a local official.

In another case in May 2004, Beata Korzeniewska, a journalist for the daily *Gazeta Pomorska*, received a suspended one-month prison sentence for libelling a judge from the city of Torun.

In Azerbaijan, we have been following several criminal libel cases. I was pleased to hear that on 24 June 2004, the Nizami District Court dropped the charges against Irada Huseynova, a journalist with *Bakinski Bulvar*. However, the case of Huseynova remains an exception to the rule and libel lawsuits against journalists are unfortunately still a regular occurrence in Azerbaijan. We were just informed that the editor-in-chief of *Baki-Khabar*, Mr. Aydin Quliyev, was sentenced to one year suspended imprisonment for reprinting an article from another newspaper. This case is particularly alarming since the same journalist was physically assaulted in July as is mentioned later in this report. We also heard that Elmar Huseynov, the editor of the weekly *Monitor*, is facing a trial in a libel suit filed by a Member of the Parliament from the ruling party.

Not only incarceration for libel can cause damage to the general state of media freedom. On 16 July 2004, in a suit brought by the Presidential Administration for libel, an Almaty district court in Kazakhstan ordered the weekly newspaper *Assandi-Times* to publish a retraction as well as to pay 50 million tenge in moral damages.

That sentence practically annihilated the newspaper, an important independent voice in the country. Nothing could be a clearer proof that criminal libel in all its forms is having a general chilling effect on press freedom.

**Legal Reform Urged.** In some of these cases, I do not question the independence of the judiciary and its adherence to the law of the country. However, even if libel is a criminal offence, I urge the countries, as a first step, to “de-prisonize” it, or as has been suggested by one Ambassador, to “de-incarcerate” it.

These ancient libel laws are inadequate, even detrimental, to a twenty-first century democracy where freedom of the press and uninhibited discussion of public issues could be diminished by the effect of a criminal libel sentence used against journalists for their work.

Some of the countries we approach about criminal libel refer to the older democracies of Europe. For example, the Justice Minister of Hungary pointed out that Germany, Austria, and Switzerland, countries the legal systems of which have traditionally served as a reference points for Hungary, also have criminal libel provisions. In these cases, we can hardly expect success by pointing to the fact that these countries do not use these ancient laws against journalists.

Why don't we go a step further, for the benefit of the whole OSCE region? Where criminal libel laws have not been utilized for decades, I see no reason why they should not be taken off the books. I urge all countries to do so.

**The EU Should Take the Lead.** The case of Hungary and Poland is also important because these new members of the European Union serve as further reference points for other new democracies. If, instead of reforming their legislation towards conditions favourable for freedom of the media, they stick to old patterns, what can we expect in countries where it is often the case that a journalist is sued for libel by a public official who is criticized, maybe even unjustly, in his or her official capacity?

As early as on 25 April 1999, a judgment by the European Court of Human Rights in the case of *Oberschlick v. Austria* adopted this guideline: "The limits of acceptable criticism are accordingly wider with regard to a politician acting in his public capacity than in relation to a private individual. The former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism."

I see it as imperative that the European Union, as an important group of countries within the OSCE region, take the long overdue reform initiative and jointly decide that all Member States of the EU should abolish criminal libel, defamation and insult provisions, and opt for civil-law based solutions instead.

I see that breakthrough as a prerequisite for a significant progress in journalists' working conditions in the whole of the OSCE area.

**Invitation.** My Office is currently in the process of developing a database matrix on libel legislation in the OSCE region. This matrix will also be accompanied by a legal analysis that will explain our findings, and help define the best ways to resolve the problem. I hope to present the matrix early next year. My Office is also currently reviewing libel legislation in Albania and Azerbaijan for its compliance with international standards, and we are planning a round table on this topic in Baku in October.

Here in Warsaw, this afternoon we will have a side-event that will present our initial findings concerning libel in all our participating States and I cordially invite you to take part in it.

## 2. Administrative Discrimination

There is a vivid fear among the journalists of the OSCE region from a wave of “legalistic” discrimination against the independent press.

The essence of the “new method”, as some called it, was a “strict” adherence by the authorities to “legality”, in a way that in reality leads to a basic violation not only of press freedom but also of equality under the law, that is, legality itself. Harsh, devastating measures are taken against these quite small media ventures, conducive to their closing, suspending, or crippling – but such measures are taken only against independents, never against state-owned or pro-governmental media.

Let me use only two very recent examples. In our Sixth Central Asian Media Conference an appeal raised the cases of the “missing titles” in Tajikistan. The participants urged the Tajik authorities to ensure a positive outcome of the dispute over “temporarily silent” independent publishing houses and newspapers. The journalists from the other Central Asian countries had many similar complaints.

It is a major shock for any democracy when six independent titles disappear from the market, supposedly for either not precisely disclosing the number of their printed copies or for other administrative errors.

In Belarus, over the past two months nine newspapers have been closed down for different administrative reasons. This is, in and of itself, a shock and to my knowledge never since the establishment of the OSCE has a similar development on this scale ever happened.

These two examples are only samples of a wide array of cases. There cannot be true freedom of the media without stopping the new fashion of administrative, “legalistic” discrimination.

The participating States ought to enforce true legality. That means equal handling of the two sectors: the taxpayer-paid governmental media and the civil self-sustaining media.

We understand that in the new democracies there is still a sizeable governmental media, even in the print press, a notion you don’t find in old civil societies. But even if we see the existence of the state-owned media as a transient fact of life, the States should make sure that the weak independent sector is not discriminated against.

[http://www.osce.org/documents/odihr/2004/10/3722\\_en.pdf](http://www.osce.org/documents/odihr/2004/10/3722_en.pdf)

## Regular Report to the Permanent Council of 16 December 2004

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

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

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

In **Belarus**, asking for a swift investigation into the murder of journalist Veronika Cherkasova;

In **Bulgaria**, regarding Romanian television journalist George Buhnici (Bucharest-based *Pro TV*) accused of using a “special technical device designated for tacit collection of information”;

In **Croatia**, on sentencing journalist Vladimir Matjanic to a suspended prison term for libel;

In **the Netherlands**, asking for a swift investigation into the murder of journalist Theo van Gogh;

In **Russia**, concerning the arrest of journalist Mikhail Afanasyev and the need to decriminalize libel;

In **Tajikistan**, urging the Government to help resume publication of five independent newspapers; also on the newspaper *Ruzi Nav* which was impounded by the tax police;

In the **US**, concerning regulations that require publishers and authors to seek a licence from the Treasury Department to publish literature from embargoed countries such as Cuba, Iran and Sudan;

In **Ukraine**, I voiced concern over several media outlets that were harassed in the regions during the post-election period;

In **Uzbekistan**, concerning the suspension of activities of *Internews* for six months for administrative violations.

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

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

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

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

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

- Moldova should be encouraged, both regionally and among all OSCE participating States, to publicize the fact that it is one of the few countries in the world that have decriminalized libel.
- There can be no true pluralism when there are no competing domestic nationwide channels. In this situation, a transparent tender is needed for another nationwide frequency.
- *TRM*, although legally transformed from state broadcaster into an autonomous public service institution, in reality continues to tilt towards the Government. Most of the political programming is reported to be news on and by the ruling party. In this situation, when *TRM* is the only domestic nationwide broadcaster, balanced coverage of political events is even more important. *TRM* still has to live up to its commitments as a public service broadcaster.

- Both *TRM* management and CADUP that represents journalists who were not hired as part of the transformation process from state to public broadcaster should agree on a compromise through negotiations.
- A new *TRM* selection commission should be created.
- The current *TRM* Supervisory Board (SB), although in theory its majority is formed by civil society, does not represent the whole spectrum of views prevalent in society, and in fact allows for political one-sidedness. The current law should be changed to allow for a different composition of the SB.
- Tenders for frequency allocations are offered at very short notice, and do not provide enough time for potential applicants to prepare all the necessary documents. The composition of the Audio-Visual Council does not guarantee its objectivity. Also, there is a lack of transparency in the decision process regarding the allocation of frequencies.
- Parliamentarians should be urged to refuse to pass a law that provides for the re-registration of newspapers.
- The Representative cannot recommend a forced privatization of all government-owned newspapers although the concept of a taxpayer supported print media is incompatible with advanced democracy. However, as a minimum requirement, the number of these newspapers should not grow, and there should be no administrative or advertising discrimination against the non-governmental print press. There is no need to re-establish the so-called *rayonnie gazetii*, that is, the district newspapers paid for by local governments.
- Civil defamation penalties remain high and are often misused by public officials. A reasonable ceiling could be introduced for such penalties. Courts should expose public figures to a higher degree of criticism, as endorsed by relevant rulings of the European Court of Human Rights (ECtHR).
- The Transdnistriean media are under severe pressure and international organizations should find ways to try to help independent journalists in the region.

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

This is an especially challenging exercise when it comes to information regarding public figures. The practice of the ECtHR established the standard that, for the sake of a free exchange of opinions, public figures have to endure more harsh criticism than “ordinary” citizens. In fact, at stake here is the recognition, both in old and new democracies, that the press should not be handled as an “organ” or “appendix” of the State; the media in a democracy serves as an institution of civil society, and journalists should not be treated as criminals when acting on behalf of civil society.

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

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

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

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

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

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

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

**Access to Information Cases in Participating States.** The high relevance of these principles was proven in several participating States during the last months.

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

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

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

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

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

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

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

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

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

I have gathered information about the legal situation and available statistics of court practices in 35 OSCE participating States. I would like to thank the 18 participating States whose authorities have already responded to my request for assistance in collecting

information for the project. Also, data on 17 countries and territories had been provided by OSCE field operations that were assisted by local media NGOs and independent experts. Their contributions are now being processed and translated, where needed, so that they can be included in the database. Our partner NGO Reporters sans frontières has assisted my Office in collecting information on six OSCE participating States. I plan to present the results of this survey to the Permanent Council in February 2005.

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

***The European Union Must Take a Bold Lead in Decriminalizing Libel.***

It is imperative that the European Union, as an important group of countries within the OSCE region, take the long overdue reform initiative and jointly advise that Member States of the EU should abolish criminal libel, defamation and insult provisions, and opt instead for civil-law based solutions. Most of these democracies avoid using criminal provisions for such offences; however, the mere fact that they are still on the books sends the wrong message across the OSCE area.

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

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

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

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

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

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

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

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

Apart from the Baku round table, the legal fund has presented seven legal reviews (two commissioned jointly with the Council of Europe) to **Albania** at the request of the Prime Minister, the Parliamentary Media Committee and the National Council of Radio and Television. I was glad to hear that the Albanian Parliament has postponed a final vote in order to incorporate the amendments proposed

by us. The OSCE Presence in Albania is closely working together with the local authorities on follow-up and further expertise. All the legal reviews can be found on our web page.

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

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

For instance:

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

I hope you will enjoy reading it.

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

I have been warning our participating States against the use of filtering and blocking software advocating rather education over restriction. Now, what we were preaching to the outside world suddenly hit home. I learned that the competent IT department of the OSCE introduced the *Safer Internet Access policy* for all OSCE Vienna

based staff effective 1 November. But besides the obviously meaningful security enhancements (filtering viruses, prohibiting large uploads, etc.) two items included in this package raised my concern:

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

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

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

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

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

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

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

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

I suggest that the OSCE IT should not hinder the free access to the Internet as long as it does not concern security issues directly. The

decision about what is “obscene” or unwanted should be left to the user. This is what I advocate in the region and this is what I will advocate at home here, in the OSCE.

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

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

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

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

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

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

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

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

OMiK is also in the process of shifting priorities from projects that support individual journalists and media to interventions that

focus on the creation of an environment in which journalists and media can operate freely and in a responsible manner.

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

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

*<[http://www.osce.org/documents/rfm/2004/12/3994\\_en.pdf](http://www.osce.org/documents/rfm/2004/12/3994_en.pdf)>*

# Assessment Visit to Moldova

## Observations and Recommendations

### 16 December 2004

The OSCE Representative on Freedom of the Media Miklós Haraszti, accompanied by Adviser Alexander Ivanko, and Research Officer Ilia Dohel, visited Chisinau, Moldova, from 18 to 21 October 2004. This was the Representative's second assessment visit since taking over his post. The trip was made at the invitation of the Government of Moldova and was organized by the Ministry for Foreign Affairs and by the OSCE Mission to Moldova. The purpose of the trip was to assess the current state of media freedom in the country and to provide the authorities with recommendations. The Representative appreciates the co-operative approach of Moldova, and he has prepared this Report in the same spirit. The Report was prepared with the assistance of the OSCE Mission to Moldova.

Miklós Haraszti met with government officials, parliamentarians, journalists, and representatives of non-governmental organizations. Among those he had talks with were, in order of the meetings:

- Foreign Minister Andrei Stratan;
- Minister for Reintegration Vasile Sova;
- Former Prime Minister and Parliament faction leader Dumitru Braghis;
- Leader of the faction of the Christian Democratic Peoples Party Iurie Rosca;
- Chairman of the Audio-visual Co-ordination Council Ion Mihailo;
- Speaker of Parliament Eugenia Ostapciuc;
- Head of the Parliament Commission on Culture and Media Vladimir Dragomir;
- Leader of the Communist Party faction Victor Stepaniuc;
- Meetings with Parliamentarians;
- Meetings with journalists, editors and managers from different media outlets, including former and active journalists, the Board Chairman, and the CEOs of the TV and radio branches at *Tele-radio Moldova (TRM)*;

- Meetings with several NGOs, including the Committee for the Defence of Human and Professional Dignity (CADUP), and the Independent Journalism Centre, Union of Journalists;
- Meetings with journalists from Transdnistria.

## **Positive Developments – Pluralism and Decriminalized Libel**

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

Moldova, like few other OSCE participating States, has decriminalized libel. The Office of the Representative has been advocating libel decriminalization in the OSCE region for almost four years. Moldova was also one of the first countries in the region to transform its state broadcaster into a public service one.

Nevertheless, most interlocutors agreed that there were several outstanding media problems that needed to be dealt with in the foreseeable future. Some of the shortcomings, as parliamentarian opposition leader Braghis put it “were the result of a growing democracy.” In his view the OSCE needed to get more involved in media matters. The Foreign Minister also stated that “Moldova has some shortcomings in the media field, but these are not intentional. Other European States also have shortcomings. We do not want to take a wrong way and that is why we are grateful for any recommendations coming from the OSCE, and other international organizations.”

The purpose of this report is to offer such recommendations based on observations made during the visit.

## **The General State of Broadcasting**

**There can be no true pluralism when there are no competing domestic nationwide channels. In this situation, a transparent tender is needed for another nationwide frequency.** Currently,

there are only three nationwide broadcasters in Moldova, and only one of them – the public company *Teleradio Moldova (TRM)* – is a Moldovan channel in terms of content. The other two channels rebroadcast programming from neighbouring countries: Romania and the Russian Federation.

It seems to be clear that a fourth nationwide frequency exists; however the issuing of this frequency was stopped by the licensing authority in 2002. The tender for the third nationwide channel – the one rebroadcasting a Russian network – was announced on 15 October 2004; however, a tender for the fourth has not been re-announced. For additional information on problems of transparency in licensing, see the chapter on the Audio-Visual Council.

## **The Situation around TRM**

### **Too much Government, too few other voices**

***TRM, although legally transformed from state broadcaster into an autonomous public service institution, in reality continues to tilt towards the Government. Most of the political programming is reported to be news on and by the ruling party. In this situation, when TRM is the only domestic nationwide broadcaster, balanced coverage of political events is even more important. TRM still has to live up to its commitments as a public service broadcaster.***

No content monitoring is conducted by *TRM* itself despite the fact that it is prescribed by the new Law on the National Public Broadcasting Company Teleradio Moldova. The explanation given by *TRM* management was a lack of resources to produce the needed tapes. But in fact it was the Supervisory Board (SB) which at least should have tried to enforce such monitoring. The SB, explaining their lack of concern for monitoring, said that in the initial period when *TRM* has only started its public way of functioning, it would have been misleading to produce any monitoring.

As a result, only the NGO community did such monitoring. Their findings were heavily disputed by the *TRM* management, the SB, and ruling party officials. It is true that the NGO monitoring was done on a quantitative basis. The “stopwatch” method is unquestionably crude, and cannot reveal the nuances of programming. Still, this method is good enough, and the results were overwhelming enough to show that the news coverage at *TRM* since the transformation was disproportionately about the Government and by the Government.

## **Labour Dispute**

**Both *TRM* management and CADUP that represents journalists who were not hired as part of the transformation process from state to public broadcaster should agree on a compromise through negotiations.**

The OSCE Representative and his staff had several meetings with *TRM* management and with representatives of former *TRM* journalists who were not re-hired after *TRM* was officially transformed from a state to a public broadcaster. Alexander Ivanko observed the work of the Conciliation Committee of Teleradio Moldova that was established to deal with this labour dispute.

## **Background**

In February 2002 strikes and protests against alleged censorship at *TRM* supported by more than 300 *TRM* employees started a debate in Moldova on the need to transform *TRM* into a public broadcaster. The required legal framework was established under Council of Europe guidance.

The Law on the National Public Broadcasting Company Teleradio Moldova was adopted by Parliament on 26 July 2002. The Law was revised on 13 March 2003 after it was criticized by the Council of Europe. On 13 November 2003 the Law was changed again; this time with the aim of liquidating the previous state broadcaster. This meant that the newly established public company would not be under any obligation to hire all of the staff from the state broadcaster. According to several sources, there was fear among *TRM* staff that the selection process would make redundant those employees who had been most active during the February 2002 protests and who had campaigned for the transformation of *TRM* into an independent public broadcaster.

A selection commission formed by three members proposed by the Administrative Board, three members proposed by the Supervisory Board and one member elected by the staff of *TRM* was established on 30 April 2004. The commission selected new staff by 7 August 2004.

907 persons were offered contracts, 890 signed them. 140 positions are still vacant. The selection commission therefore has not concluded its work. Approximately 190 staff members have been laid off. After the selection results for the news departments had been announced on 27 July, discontent among *TRM* employees about the way the process was conducted turned into public protests. On 27 July a group of *TRM* employees founded the Committee for Protection of

Human and Professional Dignity and occupied the room in which the selection commission held its meetings. In response, *TRM* management suspended the contracts of 19 employees and on 30 July the police removed the protestors from the building.

These demonstrations, at one point involving thousands of people, started in protest against the results of the selection process. The main demand was therefore to rerun the process. This demand was later modified to “returning to the situation before the selection procedure started.” The modified demand could be theoretically satisfied without a rerun by offering contracts to all the 190 laid off staff.

All interlocutors agreed that the situation around *TRM* was the most pressing media issue in the country. All seemed to agree that the only way to proceed was through a negotiating process. As Foreign Minister Stratan put it: “We want the transformation of *TRM* to be done in a democratic way.” Nevertheless, several questions should be raised.

- The whole selection process seems to be marred by lack of understanding of the demands of such a process. Although it is clear that some of the staff would probably have to be made redundant, the selection criteria were not clearly defined, and the selection itself was not transparent. Charges of political bias cannot be refuted given the lack of transparency in the selection process.
- The attitude of the *TRM* management, at least initially, was not constructive and led to massive protests and to a stalemate that is still not resolved.
- On the other hand, CADUP, formed originally to defend the rights of the laid off staff, started adding political demands to their original labour ones.

In this situation, the OSCE Representative, together with the Head of the OSCE Mission in Moldova and the Special representative of the Secretary General of the Council of Europe suggested to the above-mentioned Conciliation Committee that a new selection commission should be created according to the following formula:

- Two members of the selection commission to be appointed by the administration of *Teleradio Moldova*;
- Two members of the commission to be appointed by CADUP;
- Three members of the commission to be appointed by consensus by the Conciliation Commission. Alternatively, one of these three members could be a foreign expert, seconded by the OSCE or the Council of Europe.

At time of writing, this issue is still pending. The Conciliation Commission at *TRM* held only two meetings in November. On both sessions the commission discussed the joint proposal on a new selection commission, put forward on 21 October by the Office of the Representative, the OSCE Mission and the Council of Europe. The Commission failed to come to a decision concerning this joint proposal. Referring to a lack of progress in the work of the Commission and having accused *TRM* management of “simulating a dialogue” the representatives of the protesting journalists withdrew from the Conciliation Commission on 25 November.

### **TRM Supervisory Board**

**The current *TRM* Supervisory Board (SB), although in theory its majority is formed by civil society, does not represent the whole spectrum of views prevalent in society, and in fact allows for political one-sidedness. The current law should be changed to allow for a different composition of the SB.**

Several opposition parliamentarians, journalists and NGOs complained about the current set-up of the SB which includes two representatives from Parliament (one from the opposition), two from Government, two appointed by the President, and nine from different organizations. However, the President, the Government and Parliament are controlled by one party, and so are the majority of civil organizations represented on the board.

The leader of the Communist Party faction Victor Stepaniuc acknowledged that not all civil society was represented on the board, but only “the main civic organizations” which leaves open the question of who and, more importantly, how defines an organization as being “main”. In the highly politicized climate in Moldova a highly politicized SB is seen as undermining the credibility of the public broadcaster. One of the proposals coming from opposition leader Braghis would provide for a 12 member SB, six people from the ruling party, six from the opposition, and the board working strictly on a consensus basis. Although this idea may sound appealing it might also lead to a stalemate where the board would not be able to agree on anything leaving *TRM* management without any supervisory control.

The OSCE and the Council of Europe should be encouraged to come up with a proposal on the structure of the SB that would have the approval of all political sides in Moldova. Several proposals, especially the one prepared by the Association of Electronic Media (APEL), should be carefully analysed.

## The Audio-Visual Co-ordination Council

**Tenders for frequency allocations are offered at very short notice, and do not provide enough time for potential applicants to prepare all the necessary documents. The composition of the Council does not guarantee its objectivity. Also, there is a lack of transparency in the decision-making process regarding the allocation of frequencies.**

Complaints about political bias in frequency allocation could not be substantiated. But when looking into these complaints, the Representative established that the process allows for subjectivity when evaluating and voting on tenders for frequency allocation.

Broadcasting licences are allocated by the Council. In a system that can only be described as “two-headed”, the actual frequencies to be used by the licensee are provided to the Council by the Ministry of Communications. As one senior official said: “We do not know when these frequencies become available.”

The Council, which consists of nine people, is appointed respectively by the Government, the President, and the Parliament. In a situation like today’s, when the majority in all the executive and legislative branches are controlled by one party, this system leads to total political control of the Council. Several interlocutors complained that they did not have any trust in the Council’s objectivity when issuing licences for channels.

It should also be noted that the tender for the very important fourth nationwide channel was not reissued after years when there was absolutely no movement on this matter. On the other hand, the tender for the third nationwide network, the licence of which was running out, had been issued on 45 days notice, and was only announced in three newspapers in a small print advertisement.

To ensure the independence of the Council, the election procedure should not be politically oriented, and should focus on employing as members of the Council individuals who are reputable experts in the broadcasting field.

The method of frequency allocation has to be changed. Only one agency should be in charge of both establishing and allocating the frequencies. This would correct the current “two-headed” system when the Council is at the mercy of the Ministry, not knowing when (and why) a frequency might be offered for tender.

## National Register for Periodicals

### **Parliamentarians should be urged to refuse to pass a law that provides for the re-registration of newspapers.**

Leader of the Communist Party faction Victor Stepaniuc informed the OSCE Representative that Parliament plans to pass a law that would require all print media to re-register. He explained that the reason for this new procedure would be “to distinguish pure commercial ventures from publishing ones.”

Several journalists and editors have voiced their concerns that such a procedure might lead to the “weeding out” of opposition newspapers.

The Representative questioned the mere reason for such a procedure and underlined that it was not the job of any state agency to “distinguish” between different media outlets. He called on Parliamentary Speaker Eugenia Ostapciuc, the leaders of the Communist majority faction, and the Commission for Mass Media not to go ahead with plans to force periodicals to re-register as non-profit organizations.

The distinction between commercial and journalistic activities is difficult and such a move might negatively affect the economic base of a newspaper. Such a move might be perceived as politically motivated, especially in a pre-election period.

## The Print Press in Moldova

**The Representative cannot recommend a forced privatization of all government-owned newspapers although the concept of a taxpayer supported print media is incompatible with advanced democracy. However, as a minimum requirement, the number of these newspapers should not grow, and there should be no administrative or advertising discrimination against the non-governmental print press. There is no need to re-establish the so-called *rayonnie gazetii*, that is, the district newspapers paid for by local government.**

Most politicians in Moldova agree that there was no censorship in the print media. But they also agree that there are no truly independent newspapers or magazines. As opposition leader Braghis put it “The print press is free, however since they depend on money, and the advertising market is too small in Moldova, there are no independent newspapers in the country... All are influenced by political figures.”

Government newspapers also exist in Moldova, financed through the budget and thus putting at a competitive disadvantage

the print press that is privately owned. Several journalists complained that advertising agencies were “encouraged” to direct ads to the government media. Also, government media benefited from not paying rent and from a monopoly on distribution by *Posta Moldova*. At the local level, authorities started re-establishing the old pre-democracy practice of the so-called *rayonnie gazetii* (local newspapers) that are funded from the local budget.

The fact of a government owning a newspaper is a questionable one. It is neither compatible with accountable democracy, nor with independent journalism, nor with market reform. This practice should be in the long-term abolished.

## Civil Libel Cases

**Civil defamation penalties remain high and are often misused by public officials. A reasonable ceiling could be introduced for such penalties. Courts should expose public figures to a higher degree of criticism, as endorsed by relevant rulings of the European Court of Human Rights (ECtHR).**

Although Moldova decriminalized libel, civil defamation suits remain a problem for privately owned newspapers. The amount of damage that a plaintiff can claim for defamation is not limited in Moldova. Excessive sums for moral damages cannot be paid by most newspapers that are not financed from the state budget.

Each year Moldovan courts adjudicate approximately 600 civil defamation cases. A considerable number of these cases are filed by public officials. A newspaper was recently sentenced to a 150,000 euro fine that has not been paid yet.

A reasonable ceiling should be introduced for such penalties. When reviewing civil defamation cases filed by public officials, courts, as endorsed by the ECtHR, must observe the principle of offering less protection to the latter than to private individuals.

## Media in Transdnistria

**The Transdnistrian media are under severe pressure and international organizations should define ways on how to try to help independent journalists in the region.**

The Representative, as part of his trip to Moldova, also planned to visit Transdnistria where he had arranged to have several meetings with journalists from the region. On his behalf, the OSCE Mis-

sion in Moldova approached the so-called “Transnistrian Ministry of Foreign Affairs” requesting also meetings with the authorities. A day before the planned visit, the Mission received a letter from “Deputy Minister” V. Yankovsky informing that according to information received from “the Ministry of State Security, the OSCE Representative on Freedom of the Media Miklos Haraszi plans to visit Transnistria on 21 October.” The letter holds that because “the meetings would exclude objectivity and a healthy debate we do not consider the above-mentioned visit advisable.”

Nevertheless, a meeting was organized with independent Transnistrian journalists in Chisinau. They described an atmosphere of repression that prevailed in the local media. The majority of the media was published by the authorities. According to a leading local independent editor Grigoriy Valovoi, only 10-15 per cent of all publications could be considered non-governmental. There was almost no debate on any issues of public interest.

The only existing independent newspapers are frequently harassed, their print runs arrested, they are sued for libel, their staff often threatened. A complete government monopoly exists in the electronic media. According to Transnistrian journalists, all contacts with Moldovan reporters are strictly forbidden.

Recently, broadcasts of the *Moldova 1* channel have been suspended in Transnistria. Journalists from both Moldova proper and Transnistria suggested that an exchange of programmes, information, etc., would be beneficial but warned that these exchanges would probably be curtailed by the Transnistrian authorities.

## **Background**

The official news agency *Olvia Press* and official newspapers such as *Pridnestrov'e* serve only as propaganda tools of the ruling authorities. Official Transnistrian television and radio stations are also under tight control by the so-called “Ministry of Information”. The private TV Company *TCB (TSV)*, which belongs to a private entity Sheriff, is also close to the region’s leadership.

Several journalists who were critical towards the authorities decided to leave the region in the beginning and the middle of the 1990s. In 2004 the only media outlets which have managed to establish a certain independence are *Profsoyuznye Vesti*, *Novaja Gazeta*, *Dobriy Den'* from Ribnita and *Celovek i ego prava* from Tiraspol. The owners of *Novaja Gazeta* plan to establish an independent radio station.

*Novaja Gazeta*, which was founded in 1998 and which is the most prominent independent paper in the region, has faced pressure from the Transnistrian authorities from the outset. In January 1999 the entire print run of *Novaja Gazeta* was confiscated by Transnistrian security services and the paper was forced to close down. The paper won a court case and restarted in August 1999, but the print run was confiscated again. The newspaper then started publishing under a new name and with a smaller print run, but remained under pressure. In March 2000 the print run of this new *Samaja Novaja Gazeta* was confiscated. The paper was eventually able to operate under its original name later that year, but continued to face pressure.

On 20 April 2004 the editors of *Novaja Gazeta* were questioned by an investigator from the Transnistrian Security Service. The subject of the interrogation was an article on freedom of consciousness published in the 11 February 2004 edition of *Novaja Gazeta*. The article was apparently critical to a leading official responsible for religion in the region.

The Ribnita based newspaper *Dobriy Den'* faced several libel cases in 2000, 2003 and 2004 that threatened its existence. All libel charges were made by local businessmen close to the authorities and the city council. However, no court decisions were enforced.

After the "Supreme Court of Transnistria" upheld earlier court decisions to liquidate the left wing opposition movement "Power to the People – for Social Justice", the newspaper *Glas Naroda* lost its legal "owner" and was forced to cease publication. The leader of Power to the People Alexander Radcenko managed eventually to start a new paper, *Celovek i ego prava*. However, the print run of this newspaper is much smaller and Radcenko himself as well as *Celovek i ego prava* are under constant pressure from Transnistrian authorities.

Journalists from outside Transnistria can operate in the region only when registered with the so-called Ministry of Information in advance. In case they operate without registration they face the threat of arrest. In 2003 Dutch and US journalists had been detained by the Transnistrian militia and on 6 September 2004 a cameraman from *TV Moldova 1* was arrested and convicted to a 15 day prison term for filming the takeover of the Moldovan railway station in Benderi by Transnistrian militia.

## Recommendations

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

print press. There is no need to re-establish the so-called *rayonnie gazetii*, that is, the district newspapers paid for by local government.

- Civil defamation penalties remain high and are often misused by public officials. A reasonable ceiling could be introduced for such penalties. Courts should expose public figures to a higher degree of criticism, as endorsed by relevant rulings of the European Court of Human Rights (ECtHR).
- The Transdnistriean media are under severe pressure and international organizations should find ways to try to help independent journalists in the region.

<[http://www.osce.org/documents/rfm/2004/12/3993\\_en.pdf](http://www.osce.org/documents/rfm/2004/12/3993_en.pdf)>

## International Mechanisms for Promoting Freedom of Expression

### JOINT DECLARATION

**By the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression**

6 December 2004

*Having* discussed these issues in London and virtually with the assistance of *ARTICLE 19, Global Campaign for Free Expression*;

*Recalling and reaffirming* their Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002 and 18 December 2003;

*Noting* the growing recognition of the key right to access information held by public authorities (sometimes referred to as freedom of information), including in authoritative international statements and declarations;

*Applauding* the fact that a large number of countries, in all regions of the world, have adopted laws recognising a right to access information and that the number of such countries is growing steadily;

*Recognizing* the fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency;

*Condemning* attempts by some governments to limit access to information either by refusing to adopt access to information laws or by adopting laws, which fail to conform to international standards in this area;

*Stressing* the need for informational 'safety valves' such as protection of whistleblowers and protection for the media and other actors who disclose information in the public interest;

*Welcoming* the commitment of the African Commission on Human and Peoples' Rights to adopt a regional mechanism to promote the right to freedom of expression and noting the need for specialised mechanisms to promote freedom of expression in every region of the world;

*Adopt*, on 6 December 2004, the following Declaration:

## On Access to Information

- The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.
- Public authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure.
- Access to information is a citizens' right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.
- The right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information. The burden should be on the public authority seeking to deny access to show that the information falls within the scope of the system of exceptions.
- Public authorities should be required to meet minimum record management standards. Systems should be put in place to promote higher standards over time.
- The access to information law should, to the extent of any inconsistency, prevail over other legislation.
- Those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints.
- National authorities should take active steps to address the culture of secrecy that still prevails in many countries within the public sector. This should include provision for sanctions for those who wilfully obstruct access to information. Steps should also be taken to promote broad public awareness of the access to information law.
- Steps should be taken, including through the allocation of necessary resources and attention, to ensure effective implementation of access to information legislation.

## On Secrecy Legislation

- Urgent steps should be taken to review and, as necessary, repeal or amend, legislation restricting access to information to bring it into line with international standards in this area, including as reflected in this Joint Declaration.
- Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control. Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information. Criminal law provisions that don't restrict liability for the dissemination of State secrets to those who are officially entitled to handle those secrets should be repealed or amended.
- Certain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label "secret" for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.
- "Whistleblowers" are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy. "Whistleblowers" releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in "good faith".

Ambeyi Ligabo

*UN Special Rapporteur on Freedom of Opinion and Expression*

Miklos Haraszti

*OSCE Representative on Freedom of the Media*

Eduardo Bertoni

*OAS Special Rapporteur on Freedom of Expression*



## Projects 2004

### **Guaranteeing Media Freedom on the Internet – Seminar with Experts in Vienna, 30 June 2004**

The use of the Internet by journalists and as a journalistic medium is increasing and will continue to do so. Consequently, the Internet is an important concern for the Office of the Representative on Freedom of the Media. The project *Guaranteeing Media Freedom on the Internet* will help to evaluate the positions of participating States, to identify and develop strategies for the Office regarding the Internet and will inform other OSCE bodies and institutions about these strategies.

An important challenge for the RFOM is to identify ways in which to prevent hate speech and crime without restricting freedom of expression on the Internet. A number of conferences and documents have shown that there is an urgent need to counter hate speech on the Internet, but that there is a considerable degree of uncertainty about how to tackle this problem. This seminar will evaluate the reasons for this uncertainty, provide detailed information, draw up strategy proposals and highlight best practices to guarantee freedom of the media on the Internet for the future.

This Office first addressed the Internet and media freedom at a workshop in Vienna in November 2002 and a two-day conference in Amsterdam in June 2003, where the Amsterdam Recommendations were issued. Results from the OSCE *Meeting on the Relationship between Racist, Xenophobic and anti-Semitic Propaganda on the Internet and Hate Crimes* in Paris will also be taken into account.

Five experts who participated in the Amsterdam Conference will be invited to this seminar to make a presentation about the current situation and answer questions of delegates from the Permanent Council, delegations and other OSCE institutions and fora.

A Follow-up Strategy Conference in Amsterdam in August 2004 will then evaluate the information acquired at this seminar and propose strategies for the Representative on Freedom of the Media. Feedback from this conference will be communicated to the Permanent Council and other OSCE fora to ensure a continuous exchange of information.

## **The Recipes**

### Recommendations of the OSCE

#### Representative on Freedom of the Media

#### from the 2004 Amsterdam Internet Conference

### **A. Legislation & Jurisdiction**

- The source for all legislation regarding the Internet should be basic constitutional values, such as freedom of expression and its interpretation in jurisprudence. These values form the foundations for tailor-made and non-restrictive regulation where necessary. New legislation should be limited to instances where it is absolutely unavoidable and then only in the least restrictive way in terms of freedom of expression and users' rights.
- The Internet is not in itself a guarantor of freedom of opinion and expression. The Internet is primarily a technology, a network enabling communications. States and new corporate gatekeepers have increasingly developed policies and technologies of control which go beyond the legitimate. Freedom of expression on the Internet must be protected, as elsewhere, by the rule of law rather than relying on self-regulation or codes of conduct. There must be no prior censorship, arbitrary control or unjustified constraints on content, transmission and dissemination of information. Pluralism of sources of information and media must be safeguarded and promoted including diversity among systems for information retrieval.
- Media presence on the Internet includes websites of traditional media outlets, but it also includes websites of individual desktop publishers who convey information or express their views through their own personal websites. Some of these sites enjoy significant readership; others do not. But when we speak of guaranteeing media freedom, it must be clear that we are not only speaking of freedom for traditional media outlets but also the freedom of the average citizen to voice his or her views through his or her own website.
- All Internet content should be subject to the legislation of the country of its origin ("upload rule"). Any legislation which imposes liability on an author or publisher for content wherever it is downloaded is too restrictive for freedom of expression.

- Most Internet legislation is aimed at the World Wide Web (WWW). Awareness should be raised about the negative impact this can have on different Internet-related communication systems such as chat environments, file transfer protocol servers (ftp) or peer-to-peer networks, Usenet discussion groups, audio and video streams (including live sound and image transmissions), and finally the ubiquitous e-mail communications. WWW content represents only a fraction of the whole of the Internet and different levels of privacy for different forms of communications must be observed. A provider must not be held responsible for the mere conduit or hosting of content.
- Search engines embody the core concept of the Internet: global accessibility and connectivity of content. Filtering or limiting their content searches would betray their basic mission which is to deliver comprehensive and reliable results. Automated search engines should not filter, and must not be held responsible for the content of the results they produce.

## **B. Self-regulation, Co-regulation, State Regulation**

### ***Regulation***

- Regulation of the Internet should be limited to fields where it is unavoidable. Preferably the Internet should be seen as a space that works best autonomously and without any intervention. If regulation appears unavoidable, it should be applied according to the principle of subsidiarity, meaning that regulation should be as close to the source of trouble as possible – close both in terms of geography and competence. Within regulatory and co-regulatory bodies, transparency, accountability and the right to appeal should be observed to at least the same degree as in classic media.
- Procedures and patterns of behaviour have evolved among users of the Internet. “Netiquette” was the first informal code of conduct that was not developed by lawmakers or industry representatives but users who wanted to utilize the Net for themselves in a civilized way. This logic should be extended and made popular among all Internet users. It should also serve as a blueprint for other forms of regulation.
- When structures or institutions for Internet regulation are being designed they should follow the multi-stakeholder approach of governance that includes “governors” from different segments of

society, geographical regions and genders, representatives from governments, NGOs, industry, users and citizens, etc. No sector should be allowed to dominate and the overall strategy should be based on compromise.

### ***Self-regulation***

- Defending values of free expression should become a priority of global public policy. The Internet is based on technical designs that are mostly decided upon by hardware and software companies, not bodies of government or governance. The technical architecture of the Web must reflect values like openness, promotion of progress and knowledge, and easy access. It should also strengthen the intellectual commons and protect the public domain. Protecting these features and developing the courage to counteract any trends that could lead to the monopolization of Internet activities must be central tasks of any regulatory action.
- The Internet is not just threatened by certain state activities; it also faces the danger of “privatized governance”. This occurs when a few industrial actors become so powerful that they are able to take over the regulatory process and define the rules. Diversity and pluralism as values do not just refer to the content of the Internet; they are also values of utmost importance in the selection of regulators.
- Industrial “self-regulation” has an ambivalent and tense relationship with freedom of expression. It should be avoided because it tends to be non-transparent and there is also the risk of it being utilized for hidden business purposes. Because self-regulatory institutions are not public bodies, they may be less accountable and there may be less protection of fundamental rights than provided by the rule of law.
- Private bodies must not decide on the legality or illegality of content. This is the duty of courts with transparent mechanisms of appeal and accountability. The right to “put back” content after removal by private bodies should be regarded as a policy issue.

### ***Regulatory Schemes***

- Regulatory schemes must be able to command public confidence. There must be a high degree of external consultation and all relevant stakeholders should be involved in the design and operation of schemes. As far as practicable, the operation and control of schemes should be separate from the institutions of the industry.

- Regulatory schemes must be based on clear and intelligible statements of principles and measurable standards – usually in the form of a code – which address real consumer and user concerns. Reasons for interventions must originate from these objectives and intended outcomes should be identified. Schemes must be well publicized, with maximum education and information directed at users and publishers. Schemes must be regularly reviewed and updated in the light of changing circumstances and expectations.

### ***Filtering, Labelling and Blocking***

- In a modern democratic and civil society citizens should be allowed to decide for themselves what they want to access on the Internet. The right to disseminate and to receive information is a basic human right. State enforced mechanisms for filtering, labelling or blocking content are not acceptable.
- Unlike in television there is little future in filtering systems based on a rating system. It is highly unlikely that such proposed measures will in the long-term result in a safe Internet environment as the rating and classification of all information on the Internet is not feasible. Even if filtering technology is applied to the WWW, it is not clear what sort of content the regulators intend to rate. In most cases, the targeted category of Internet content is not illegal and remains well within the limits of legality. At the same time the rating of content is in itself a threat to free expression on the Internet.
- Family-based filtering and blocking software only works well if parents also discuss Internet content and habits with their children and update the filter regularly. If this is not the case, filtering software is not a solution.
- Another downside of relying on such technologies is that these systems are defective and in most cases result in the exclusion of socially useful websites and information. Originally promoted as technological alternatives that would prevent the enactment of national laws regulating Internet speech, filtering and rating systems have been shown to pose their own significant threats to free expression. When closely scrutinized, these systems should be viewed more realistically as fundamental architectural changes that may, in fact, facilitate the suppression of speech far more effectively than national laws alone ever could.

- Rating and filtering systems with blocking capabilities enable preliminary censorship and could allow repressive regimes to block Internet content, or such regimes could make the use of these tools mandatory. Laws or other measures prohibiting speech motivated by racist, xenophobic, anti-Semitic, or other related bias can be enforced in a discriminatory or selective manner or misused as a means of silencing government critics and suppressing political dissent. If the duty of rating were handed to third parties, this would be problematic for freedom of speech. Furthermore, as there are few third-party rating products currently available, the potential for arbitrary censorship increases.

### **C. Hate Speech on the Internet**

- Any definition of hate speech should be narrowly drawn. The differences between different sorts of content (e.g. hate speech and child pornography) should be clarified and differentiated. A precise definition of “hate speech” is a necessary prerequisite for further discussions about this issue on the Internet. At a minimum, it is imperative that speech restrictions, when they must be enacted, be clearly and precisely drawn so that they do not chill lawful speech.
- Words should not be confused with actions. A clear distinction must be maintained between what individuals say and think on the one hand, and what they do on the other. Only then can we have an equitable system of law in which individuals are assumed to be rational legal subjects, who are themselves responsible for their own actions and not some third party.
- Coherent policy cannot be developed on the basis of reacting to individual cases of extreme material. Instead, research and monitoring must form the foundations for any decision-making. Obviously there is distressing material to be found on the Internet. But the fact that something exists online tells you nothing about how widely read or widely accepted it is. There should be an understanding that some hate sites are just too small and insignificant to be prosecuted. They are in fact consigned to oblivion, despite being theoretically accessible to the general audience.
- Since the Internet is a high-tech environment, many battles here can be won through technical means. One good example is adding voluntary disclaimers to search engine results or the establishment of sponsored links to sensible keywords, as was demonstrated in the

Paris OSCE *Meeting on the Relationship between Racist, Xenophobic and anti-Semitic Propaganda on the Internet and Hate Crimes* in June 2004.

- A society with confidence in its values and ideals has little to fear from the expression of dissenting views, no matter how repugnant those views may be. Attempts by governments to stifle the exchange of views and the free flow of information in the competition of ideas must be resisted vigorously. Never before has so much information been accessible at the stroke of one's fingertips; never before has it been easier for people around the world to communicate with each other; and never before has it been easier for citizens to participate in public discourse and make their voices heard. Instead of focusing on ways to censor hate speech, we must concentrate on answering such expression with more speech. The battle against intolerance cannot be won through government regulation or mere legislative action. Instead, it is a fight that will be won or lost in the competition of ideas.

## **D. Education & Developing Internet Literacy**

### ***Personal and Parental Responsibility***

- Parents and other adults always have a role to play regarding children's access to the Internet. Adults should act responsibly towards children's Internet usage rather than relying on technical solutions that do not fully address problems related to Internet content. Parents and teachers and others who are responsible for children's Internet usage need to be educated in this regard.
- In this borderless media world of VCRs, DVDs, satellite TV, and the Internet, children and young people have increasing access to media products from around the globe. Rating and classification systems, legislation and industry codes and guidelines are no longer enough to protect children. Digital media are forcing a shift in responsibility from statutory regulators toward the individual household. The Internet does not work on the principles of censorship or control, but rather on principles of responsible decision-making and calculated risk-taking – and those are the kinds of skills the young should develop.
- Librarians and teachers should also have a role to play as far as access to the Internet is provided by public libraries and schools.

Any regulatory action intended to protect a certain group of people, such as children, should not take the form of an unconditional and universal prohibition on using the Internet to distribute content that is freely available to adults in other media.

- If “regulation” with an emphasis on self-regulatory or co-regulatory initiatives is addressed, then “self” should mean individuals rather than self-regulation by the Internet industry without the involvement of individuals and Internet users. There should be more emphasis on promoting the Internet as a positive and beneficial medium.

### ***Media Literacy***

- Media literacy is a necessary complement to traditional literacy. Young people today need to be able to read, understand and bring critical-thinking skills to information in all forms, including media. Media literacy should involve analysis, evaluation, production of and critical reflection about media products and should stress the positive and creative aspects of media and popular culture.
- Research is critical to understanding how technology is fundamentally transforming young people’s lives. Research involves and requires public Internet policy, government policy-setting and responsive national public education strategies on Internet use. Efforts should be made to increase co-operation between OSCE countries in this field.
- Stakeholders in government and industry should be encouraged to support public awareness initiatives to educate parents and other adults not only about the potential risks of the Internet, but also about the opportunities and resources that are available. This support can cover a wide variety of contributions including radio, television, print and Internet advertising, posters and brochures and online resources for parents.

### ***Journalist Training***

- There is still a shortage of academic courses for journalists with a special focus on the role of the Internet in journalism. Journalist training needs to be improved to allow students to acquire more specific knowledge and vocational skills on how to utilize the Internet.

- One of the major issues for local media in the OSCE area is Internet literacy for journalists who speak the language of that region. Journalists who can speak English have a distinct advantage over their colleagues in ICT, whereas journalists with other language backgrounds have limited opportunities to gain vocational training on using the Internet because of the lack of special courses and learning programmes in local languages. There is also a shortage of online information in local languages. Special on/off-line Internet training courses need to be arranged and the learning of foreign languages should be promoted.

## **E. Access to Networks and to Information**

### ***Freedom of Information***

- Governments should make more information available online. This would increase transparency and allow every citizen to obtain information from any computer connected to the Internet. Governments and intergovernmental organizations should support dissemination of official information online. Projects should be realized that foster citizens' freedom to receive and circulate online information about the activities of governments and state bodies.
- Universal access to information and knowledge, especially information in the public domain, is a prerequisite for broader participation in development processes and civil society. Access to quality education for all is a basic right and is essential for building the necessary skills and capacities for development, progress and social peace in all societies. ICTs provide immense opportunities to increase access to education and information.

### ***Access to Networks***

- Universal access to communication services and networks is essential for the realization of communication rights but will not be achieved, within the foreseeable future, by household access to the Internet alone. Access for all to the global communications environment requires investment in public access centres and in traditional communication technologies such as community radio and television. Public investment in communications facilities is one approach. Community-based initiatives should be encouraged and supported including legal and/or regulatory reforms where there are legislative or regulatory barriers.

- Participating States in the OSCE should aim to expand the reach of cyberspace by taking action to foster Internet access both in homes and in schools. They should also implement policies which aim to ensure that the Internet is an open and public forum for the airing of all viewpoints. To achieve this goal, it is imperative that government regulation is kept to a minimum, and the fundamental freedoms of speech, expression, and the press are respected.
- Another prerequisite is to significantly improve electric power supplies in countries in the OSCE region where this is required.

## **F. Future Challenges of the Information Society**

- Access to the public sphere is being rapidly democratized. The Internet, for example, has made it much easier for like-minded individuals to meet, join forces, and raise money in support of their political views. The principle of freedom of expression must apply not only to traditional media but also to new media, including the Internet. It is the basic premise of knowledge societies as laid out in Article 19 of the Universal Declaration of Human Rights. It is important to continue to mobilize energies and efforts to promote freedom of expression and its corollary, freedom of the press, as a basic right indispensable to the exercise of democracy. Freedom of expression is a major avenue through which creativity, innovation and criticism can be developed. The nature of knowledge societies should be conceived as plural, variable and open to choice, and freedom of expression is inseparable from this vision.
- The right to privacy faces new challenges and must be protected. Every person must have the right to decide freely whether and in what manner he or she wishes to receive information or to communicate with others, including the right to communicate anonymously. The collection, retention, processing, use and disclosure of personal data, no matter by whom, should remain under the control of the person concerned. Powers of the private sector and of governments to access personal data risk abuse of privacy and must be kept to a legally acceptable minimum and subject to a framework of public accountability. Encryption techniques and research should be supported.
- The Internet provides enormous scope for the sharing and development of the common pool of human knowledge but this potential is

increasingly held back by the reinforcement of private information property regimes in the Internet environment. There is a need for a fundamental review of international regulatory instruments governing copyright, patents and trademarks. The aim is to foster the development of global knowledge, and to safeguard the right of access to information and the right to creative reuse and to adaptation of information, which in turn should accelerate the social and economic benefits of freely available information.

- The fight against terrorism must not be used as an excuse to limit the free flow of information on the Internet. Prosecution of “cyber-crime” must only target illegal activities as such and must in no way endanger or limit the technical infrastructure of the Internet.

## **Twenty-First Century Challenges for the Media in Central Asia: Dealing with Libel and Freedom of Information Sixth Central Asian Media Conference Dushanbe, 23-24 September 2004**

On 23 and 24 September 2004, the annual Central Asian Media Conference was held in Dushanbe, Tajikistan. The conference was organized under the auspices of the OSCE Representative on Freedom of the Media, Miklós Haraszti, and the OSCE Centre in Dushanbe.

For the sixth time, more than 100 journalists from four Central Asian countries – Tajikistan, the Kyrgyz Republic, Uzbekistan and Kazakhstan – representatives of non-governmental media organizations, as well as experts and foreign guests came together to discuss the latest developments in the media field. As in previous years, the conference provided a unique opportunity for interaction and exchange of views among the participants.

This year the conference focused on Libel and Legislation on Freedom of Information as modern challenges for the media in the twenty-first century. The participants agreed that the obsolete libel laws which exist in four Central Asian countries are inadequate, even detrimental, to a democracy where freedom of the press and uninhibited discussion of public issues could be diminished by libel sentences used against journalists because of their work.

During the discussion, it was stressed that some Central Asian States have made certain steps towards freedom of information, but substantial problems remain. None have laws that meet international standards on access to information. State Secrets' Acts that undermine the right to access to information are often abused. Significant efforts are required to ensure that the region joins the rest of the OSCE in recognizing the right to access to information for the media and the public.

The conference ended with a declaration on libel and freedom of information, to which all participants subscribed. In addition to this declaration, participants formulated concrete proposals for action which the OSCE Representative on Freedom of the Media will submit to the respective authorities.

## **Dushanbe Declaration on Libel and Freedom of Information**

The debates at the Dushanbe Conference on the Media stressed the following conclusions:

### ***On Libel:***

- The possibility for governmental officials and politicians (public figures) to sue the media and journalists should be limited.
- Defamation should be decriminalized and replaced with appropriate and narrowly defined civil defamation laws, introducing a defence of “reasonable publication” and capping damages.
- If full decriminalization is not possible in the short term, the possibility to suspend temporarily the applicability of defamation articles should be considered. Laws envisaging the criminal and civil liability of journalists for insulting the honour and dignity of heads of state on behalf of third persons should be abolished.

### ***On Freedom of Information:***

- Comprehensive laws on Free Access to Information based on international standards should be adopted and their proper implementation ensured.
- Multilateral oversight over the observation of these laws and standards should be ensured and carried out by parliaments, parliamentary commissions open to the public, commissions of public hearings and independent ombudsmen.
- State Secrets’ laws should be amended in order to limit their applicability only to that information whose disclosure would significantly threaten the national security or territorial integrity of a nation.
- Rules by which information is classified should be made public.
- Limitations in time should be established for information classified as secret.
- Criminal liability for journalists connected with the disclosure of state secrets should be limited in cases of public interest.

Dushanbe, 24 September 2004

# **Twenty-First Century Challenges for the Media in South Caucasus: Dealing with Libel and Freedom of Information First South Caucasus Media Conference Tbilisi, 25-26 October 2004**

On 25 and 26 October 2004, the First South Caucasus Media Conference was held in Tbilisi, Georgia. The conference was organized by the OSCE Representative on Freedom of the Media, Miklós Haraszti, in co-operation with the OSCE Mission to Georgia.

For the first time journalists and NGOs from Armenia, Azerbaijan and Georgia, as well as international experts came together to discuss their common problems. The conference focused on Libel and Legislation on Freedom of Information as modern challenges for the media in the twenty-first century.

The conference heard that obsolete defamation laws are detrimental to democratic reforms when freedom of the press and uninhibited discussion of public issues are chilled by the use of these laws. There was also a discussion of the positive developments in three countries. Earlier this year Georgia became one of the six OSCE participating States decriminalizing defamation. Armenia also took an important step forward by reducing criminal penalties for libel. The process of elaboration of the new Law regulating defamation, libel issues and protection of honour and dignity has started in Azerbaijan.

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

Participants encouraged the OSCE Representative on Freedom of the Media to continue the South Caucasus Media Conferences in the future.

The conference ended with a Declaration on libel and freedom of information, to which all participants subscribed.

## **The Tbilisi Declaration on Libel and Freedom of Information**

**On Defamation:** Executive and legislative authorities at all levels should systematically review all legal norms including laws, regulations, decrees and other legal instruments, that impose criminal and civil sanctions for defamation. This review should be in consultation with the judiciary, media and civil society organizations. The changes should include:

- In Armenia and Azerbaijan, criminal defamation laws should be eliminated and replaced with appropriate and narrowly defined civil defamation laws. As a first step, at least prison sentences should be abolished including suspended ones. If decriminalization is not possible in the short term, all current cases should be stopped and a moratorium on further cases should be imposed. All persons imprisoned for these offences should be released and rehabilitated.
- Public bodies should not be eligible to use defamation laws. Under the law, public officials and elected representatives should be prohibited from using defamation laws to suppress legitimate criticism of their activities or limit political debate.
- Specific criminal and civil laws for insulting heads of state should be abolished.
- Civil defamation laws should be revised based on established international standards and best practices. The burden of proving falsehood should always be placed on the person who is complaining. Even in cases of factual inaccuracies, there should be a defence of “reasonable publication” available.
- In parallel to decriminalization, civil damages should be limited to what is clearly necessary only to repair the harm done by the defamatory statement and take into account the effect of the award on the ability of the defendant to continue to exercise their profession. Laws should define an upper limit for damages.
- Media should develop, promote and observe professional and ethical standards.
- Governments should not obstruct efforts by media to establish professional bodies and create self-regulatory mechanisms.
- Specialized non-governmental organizations should conduct ongoing monitoring and regularly report on the use of these laws. They should provide training to media on their legal rights and obligations.

***On Freedom of Information:*** Executive and legislative authorities at all levels should systematically review all legal norms including laws, regulations, decrees and other legal instruments, that affect access to information held by public bodies. This review should be in consultation with the judiciary, media and civil society organizations. The changes should include:

***Regarding Freedom of Information and Related Laws:***

- The adoption of a comprehensive law on Free Access to Information based on international standards should be finalized in Azerbaijan.
- All three countries should develop a strategy jointly with the media and NGOs and a comprehensive strategy for the implementation of the laws.
- All public institutions and government departments should establish procedures and mechanisms (training, public hours, appointment of information officers, setting up information management systems, creating and maintaining official websites) to effectively enable the media and the public to access information held by the institution.
- Official websites should be established, maintained and regularly updated.
- Oversight over the observation of these laws and standards should be ensured and carried out by parliaments, parliamentary commissions open to the public, commissions of public hearings and an independent information commission.
- Laws should be developed to create an independent review mechanism to provide protection for “whistleblowers”.

***Regarding State Secrets:***

- The State Secrets Acts and regulations should be amended in order to limit their applicability only to that information whose disclosure would significantly threaten the national security or territorial integrity of a nation.
- Rules by which information is classified should be made public. Information should be classified within a short period of being created. Information classified as secret should be reviewed periodically and be declassified no later than 20 years after it was classified. Independent bodies which review classification decisions should be created, such as ombudsmen or information commissioners.

- Criminal liability connected with the disclosure of state secrets should be limited in cases of public interest. Journalists should not be required to disclose their sources.

*The Judiciary:*

- The independence of the judiciary has to be strengthened in order to effectively enforce the right to freedom of information.

*The Media and NGOs:*

- Should promote awareness of access to information laws and monitor their use.
- Investigate all illegal restrictions on freedom of information, attacks on journalists, cases of punishment of journalists for seeking and publishing information regarded to be of public interest.
- The media should know their rights to access information under existing legislation and use those rights. Unlawful denials should be challenged and publicized.

Tbilisi, 26 October 2004

## Legal Assistance

In 2004, the Office of the Representative on Freedom of the Media continued to provide legal assistance to the OSCE field presences and participating States for the fourth year. This is done as a part of the activities under the mandate to assist the participating States to fulfil their OSCE commitments in the sphere of freedom of the media and freedom of expression.

By the end of October, the Office had commissioned a total of 18 legal reviews from independent international media experts. Seven of the reviews were on draft legislation (one of the seven on two alternative drafts), and eleven on current legislation in force in the OSCE region. All reviews include recommendations on how to bring the legislation in line with OSCE commitments and other international standards.

Most reviews focus on one or more particular laws or draft laws, but there have also been some analyses on themes, mainly on libel. These tackle all legislation in force and aim to provide an overview of the situation in the country.

In each instance, co-ordination with the Council of Europe is crucial to avoid overlap between the two institutions. As in the past, some reviews are done in co-operation with the Council of Europe. This year three reviews were issued as joint documents: on the two alternative draft laws on access to information in Azerbaijan and on the two alternative draft laws related to terrestrial digital broadcasting in Albania.

In October, a joint round table with the Council of Europe was also organized in Baku as a follow-up to the legal reviews on libel and freedom of information with the aim of bringing together international and local experts and providing an opportunity for a more detailed discussion on the recommendations.

In Georgia three legal reviews were prepared in early 2004. After a new media law was adopted mid-year, the Office furthermore commissioned a handbook for legal practitioners advising on the application of the new law.

Six OSCE participating States benefited from the assistance in 2004: Albania, Azerbaijan, Belarus, Georgia, Kazakhstan and Uzbekistan. Responding to a request for assistance from the Albanian Prime Minister to review all media legislation, eight of the eighteen reviews are linked to this country.

*All legal reviews can be found on the webpage of the Representative:  
<<http://www.osce.org/fom/documents.html>>*

## **Libel and Insult Laws: A Matrix on Where We Stand and What We Would Like to Achieve**

**Background.** Probably the single most prominent excuse for oppressing individual journalists in the OSCE region is the existence of criminal libel and insult laws. The fact that courts that misuse these laws are often far from independent is only one part of the problem. The other “justification” making abuse easier is the fact that these ancient, inadequate legal provisions are still on the books in most OSCE participating States (even if they are unused in most old democracies).

Campaigning against criminal libel and insult laws and disproportionate damages under civil libel provisions has been a priority of the Office of the Representative on Freedom of the Media for the past four years. This campaign has evolved into a long-term strategy.

**The Pioneering Database.** The first stage of the strategy has been underway since June 2004, when the Office of the OSCE Representative on Freedom of the Media started the compilation of a matrix – a database – on criminal and civil provisions and court practices in the OSCE area related to defamation and insult. This pioneering database is being compiled as a source of reference for the OSCE participating States who would like to adapt their libel legislation to twenty-first century standards.

At time of writing, detailed reports have been received from 42 countries. Partial information is available about defamation provisions in ten OSCE participating States. No data is available on this matter in three participating States.

Information for the matrix was commissioned from governments of the OSCE participating States, OSCE field operations and media NGOs.

Suggestions on the decriminalization strategy and recommendations to the OSCE participating States are being produced by a legal expert contracted by the Representative.

**Where We Stand and What We Would Like to Achieve.** Progress was achieved in decriminalizing libel in Georgia and Moldova in 2004. In this they joined Bosnia and Herzegovina, Cyprus, Ukraine and the

United States (there is no federal law that makes libel a criminal offence, but 17 states and two territories still have criminal libel laws on the books).

However, regular application of criminal libel and insult laws in the OSCE area and increasing demands for exorbitant financial damages by public officials remain major challenges faced by the media in the twenty-first century. Besides, the mere fact that these laws are still on the books creates a chilling effect: it generates fear of prosecution for speech, therefore impeding free discussion of important public issues, criticism of government officials and transparency of the political process.

The results of this survey show that there is growing understanding in the OSCE area of the problematic nature of criminal defamation and insult laws. One third of the surveyed participating States have attempted to change or at least revise their approach to criminal libel laws. Remarkably, it is new democracies who have taken the lead in this reform and their growing number may soon set a standard which could be used to instil decriminalization throughout the OSCE area.

The results of this survey will be presented to the OSCE Permanent Council in March 2005.

## Visits and Interventions

October 2003 – 14 February 2005<sup>1</sup>

The Office of the Representative on Freedom of the Media visited or corresponded with the following governments of the OSCE participating States:

### Albania

#### *Interventions*

- 10 September 2004: Letter to Speaker of the Assembly of the Republic of Albania Servet Pellumbi regarding relevant Albanian institutions to assist in aligning the local media legislation with European standards and requesting a postponement of the plenary debate so as to provide requested and adequate assistance.

### Armenia

#### *Interventions*

- 23 July 2004: Letter to Minister of Foreign Affairs Vardan Oskanyan concerning amendments to the Criminal Code partially decriminalizing libel.

### Azerbaijan

#### *Visits*

- International Freedom of Expression Exchange (IFEX) meeting, Baku 13-17 June 2004, attended by assistant research officer Ana Karlsreiter
- Round table *Legal Aspects Affecting Freedom of the Media in Azerbaijan*, Baku 28 October 2004

#### *Interventions*

- 10 November 2003: Letter to Minister of Foreign Affairs H.E. Vilayat Gouliyev on the arrest of Azerbaijani journalist Rauf Arifoglu, editor-in-chief of the country's leading opposition newspaper *Yeni Musavat*.
- 19 November 2003: Letter to Minister of Foreign Affairs H.E. Vilayat Gouliyev regarding the fact that six leading daily

---

<sup>1</sup> This list is a selection of our activities during the year.

newspapers in the country (*Azadliq*, *Yeni Musavat*, *Baki Khabar*, *Hurriyyet*, *Yeni Zaman* and the Russian-language paper, *Novoye Vremya*) had been forced to suspend publication due to printing problems.

- 3 December 2003: Letter to Minister of Foreign Affairs H.E. Vilayat Gouliyev concerning Azerbaijani journalist, Rauf Arifoglu, editor-in-chief of the country's leading opposition newspaper *Yeni Musavat* who was arrested in connection with the protest riots that occurred in Baku following the October presidential election and who was in extremely poor health.
- 28 July 2004: Letter to Minister of Foreign Affairs Elmar Mammadyarov concerning reported acts of violence against two journalists, Mr. Aydin Quliyev, editor-in-chief of *Baki-Khabar* and Mr. Eynulla Fatullayev, a journalist with the magazine *Monitor*.
- 15 September 2004: Letter to Deputy Minister of Foreign Affairs Mammad Guliyev regarding media legislation, the cases of Aydin Quliyev and Eynulla Fatullayev.
- 7 January 2005: Letter to Minister of Foreign Affairs Elmar Mammadyarov asking for more information on the case of Mr. Alim Kazimov, reporter and photographer with the daily *Yeni Musavat*, who was allegedly beaten up.

## **Belarus**

### *Visits*

- 9-10 February 2005 visit to Belarus.

### *Interventions*

- 12 December 2003: Letter to Minister of Foreign Affairs Sergei Martynov regarding actions taken against the country's largest non-state newspaper *Narodnaya Volya*.
- 22 June 2004: Letter to Minister of Foreign Affairs Sergei Martynov regarding the deportation of Mikhail Podolyak, a Ukrainian citizen and a writer for *Vremya* newspaper from Belarus.
- 22 October 2004: Letter to Minister of Foreign Affairs Sergei Martynov regarding the murder of Veronika Cherkasova as a condemnable attack against a free press.

## **Belgium**

### *Interventions*

- 26 March 2004: Letter to Minister of Justice Laurette Onkelinx concerning the fact that the Belgian police searched the house and office of Hans-Martin Tillack, the Brussels correspondent for the German weekly *Stern*.
- 7 December 2004: Meeting with Minister of Foreign Affairs, i.a. concerning the fact that the case of Hans-Martin Tillack, the Brussels correspondent for the German weekly *Stern*, is still pending and should be solved in the spirit of the protection of journalistic sources as defined by the legislation pending in Belgium's second chamber of Parliament (Senate).

## **Bulgaria**

### *Interventions*

- 29 November 2004: Letter to Minister of Foreign Affairs Solomon Passy regarding Romanian television journalist George Buhnici (Bucharest-based *Pro TV*) accused of using a "special technical device designated for tacit collection of information".

## **Croatia**

### *Interventions*

- 1 December 2004: Letter to Vesna Skare Ozbolt, the Minister of Justice of the Republic of Croatia on sentencing journalist Vladimir Matjanic to a suspended prison term for libel and encouraging further reform of Croatian libel legislation.

## **Czech Republic**

### *Interventions*

- 20 January 2004: Letter to Minister of Foreign Affairs Cyril Svoboda concerning the physical attack against Tomas Nemecek, editor-in-chief of the political weekly *Respekt* in Prague on Saturday 17 January 2004 and expressing worry over the growing number of physical attacks on investigative journalists.

## **France**

### *Interventions*

- 14 April 2004: Letter to Minister of Economy Nicolas Sarkozy concerning the Bill to Promote Confidence in the Digital Economy that was under discussion in the French Parliament.

## **Georgia**

### *Visits*

- First South Caucasus Media Conference *Twenty-First Century Challenges for the Media in South Caucasus: Dealing with Libel and Freedom of Information*, Tbilisi 25-26 October 2004

### *Interventions*

- 19 December 2003: Letter to Foreign Minister Tedo Japaridze concerning Andrei Babitsky, a correspondent for *Radio Liberty*, who had not received a visa to Georgia to cover the Presidential elections scheduled for 4 January 2004.

## **Greece**

### *Interventions*

- 8 February 2005: Letter to Petros G. Molyviatis, the Minister of Foreign Affairs of Greece, about sentencing Austrian author Gerhard Haderer for blasphemy to a suspended six-month prison term. The reason was Haderer's comic book *The Life of Jesus*.

## **Hungary**

### *Interventions*

- 15 November 2004: Letter to Foreign Minister Ferenc Somogyi regarding indictment of journalist Rita Csik for "the deliberate breach of a state secret".

## **Ireland**

### *Interventions*

- 14 October 2003: Letter to Minister of Foreign Affairs H.E. Brian Cowen T.D. on the statutory Press Council and several other proposals for changes in the defamation law made by a Legal Advisory Group set up by the Government.

## Italy

### *Interventions*

- 1 March 2004: Letter to Roberto Antonione, Under-Secretary of State at the Ministry of Foreign Affairs concerning a Trieste court sentencing journalist Massimiliano Melilli to 18 months' imprisonment and a 100,000 euro fine for defamation.
- 15 November 2004: Letter to Ambassador Francesco Bascone, asking to make the Italian Senate (second chamber debating legislation) aware of RFOM's strategic goal to completely decriminalize libel.

## Kazakhstan

### *Interventions*

- 18 November 2003: Letter to Minister of Foreign Affairs H.E. Kasymzhomart Tokayev concerning Mr. Ermurat Bapi, editor-in-chief of the newspaper *SolDAT* who was convicted to a one-year suspended prison sentence for "deceitful business activity" and tax evasion.

## Moldova

### *Interventions*

- 3 December 2003: Letter to Minister of Foreign Affairs Nikolae Dudau regarding two cases concerning *TeleRadio Moldova (TRM)*. One case was the cancellation of the evening talk show *Buna Seara*, another concerned the fact that Valentina Ursu, head of the News Department of *Radio Moldova*, has been replaced as the presenter of the radio programme *Morning Wave*.
- 8 September 2004: Letter to Minister of Foreign Affairs Andrei Stratan regarding protests in Moldova by journalists from the national broadcaster *TeleRadio Moldova (TRM)* and expressing concern over the arrest of cameraman Dinu Mija.

## Netherlands

- 3 November 2004: Letter to Minister of Foreign Affairs Bernard Bot commending the Dutch Government for quickly and strongly condemning the murder of filmmaker Theo van Gogh as an attack against freedom of expression, and asking for swift investigation.

## **Poland**

### *Interventions*

- 17 December 2003: Letter to Foreign Minister Włodzimierz Cimoszewicz on charges by the Prosecutor's Office of the Ochota District in Warsaw against Maciej Łukasiewicz, editor-in-chief of the daily *Rzeczpospolita*.
- 13 February 2004: Letter to Secretary of State Adam D. Rotfeld concerning the confirmation of the imposition of a three-month sentence on Mr. Andrzej Marek, editor-in-chief of the weekly *Więści Polickie*.

## **Romania**

### *Interventions*

- 8 December 2003: Letter to the Minister of Foreign Affairs Mircea Geoana concerning the physical attack of the journalist Ino Ardelean, who reports on local politics and corruption cases for the daily *Evenimentul Zilei* in Timisoara.
- 15 January 2004: Letter to Minister of Foreign Affairs Mircea Geoana regarding the case of the physical attack of the journalist Ino Ardelean, the issue of pressure on or intimidation of the media, and the case of assault on the journalist Csöndy Szoltan, a journalist for *Harghat Nepe* in Meircuread-Ciuc (Csikszereda).

## **Russian Federation**

### *Interventions*

- 6 February 2004: Letter to Deputy Foreign Minister Vladimir Chizhov concerning an explosive device that detonated outside the apartment of the well-know journalist Elena Tregubova, former Kremlin correspondent for *Izvestia*, *Kommersant* and *Russkiy Telegraf*.
- 6 September 2004: Letter to Minister of Foreign Affairs Sergei Lavrov concerning reports of journalists who were allegedly prevented from covering the tragic events in Beslan, North Ossetia.
- 8 September 2004: Letter to Minister of Foreign Affairs Sergei Lavrov concerning the arrest of cameraman Dinu Mija on 6 September by police in Tighina in the self-proclaimed Transdnies-trian republic in Moldova and his sentencing to 15 days in prison.
- 14 December 2004: Letter to Minister of Foreign Affairs Sergei Lavrov about the arrest and release of Mikhail Afanasyev, a journalist from Abakan, Khakassia.

## **Serbia and Montenegro**

### *Visits*

- Seminar on the information society at the Centre for Internet Development, Belgrade 26-29 February 2004, attended by senior advisor Christiane Hardy

### *Interventions*

- 15 October 2004: Letter to Zoran Stojkovic, the Minister of Justice of the Republic of Serbia on the Draft Criminal Code encouraging Serbia to decriminalize libel and insult.
- 16 December 2004: Letter to the Committee for Judiciary and Administration of Parliament of the Republic of Serbia, encouraging MPs to support the decriminalization of defamation and insult.
- 8 February 2005: Letter to Vojislav Kostunica, the Prime Minister of Serbia encouraging the Government to change criminal libel provisions following the outcome of meetings with the Ministers of Culture and Justice of Serbia.
- 8 February 2005: Letter to the participants of the round-table discussion on decriminalization of defamation in the Republic of Serbia which took place at the OSCE Mission to Serbia and Montenegro on 21 January 2005. The letter encouraged them to participate in the process of amending the Serbian criminal libel and insult provisions.

## **Slovak Republic**

### *Interventions*

- 23 July 2004: Letter to Deputy Prime Minister and Minister for Justice Daniel Lipsic concerning the new Criminal Code proposed to Parliament.

## **Tajikistan**

### *Visits*

- Sixth Central Asian Media Conference *Twenty-First Century Challenges for the Media in Central Asia: Dealing with Libel and Freedom of Information*, Dushanbe, Tajikistan, 23-24 September 2004.

## ***Interventions***

- 30 September 2004: Letter to First Deputy Foreign Minister Sirodjidin Aslov and Presidential Advisor Karomatullo Olimov on suspension of publication of five independent newspapers.
- 30 November 2004: Letter to Foreign Minister Nazarov about *Ruzi Nav* printed in Kyrgyzstan but impounded by tax police upon return on 4 November.
- 7 February 2005: Letter to Foreign Minister Nazarov about confiscation of a print run of the *Nerui Sukhan* newspaper and closing down the printing house Kayhon for alleged administrative violations.

## **Turkmenistan**

### ***Interventions***

- 30 March 2004: Letter to Foreign Minister of Turkmenistan Rashid Meredov regarding two journalists Rakhim Esenov and Ashyrguly Bayryev who were arrested by the National Security Ministry on 26 February and 1 March 2004 respectively and who worked for *Radio Free Europe*.

## **Ukraine**

### ***Interventions***

- 18 December 2003: Letter to Minister of Foreign Affairs Kostyantyn Gryshenko concerning the death of Volodymyr Karachevtsev, chairman of the Independent Regional Union of Journalists and acting editor-in-chief of *Kuryer* newspaper.

## **United States of America**

### ***Interventions***

- 30 September 2004: Letter to Secretary of State Colin Powell calling on strict implementation of Berman amendment to fully abolish regulations that require publishers and authors to seek a licence from the Treasury Department to publish literature from embargoed countries, such as Cuba, Iran and Sudan, in the US.
- 13 October 2004: Letter to Attorney General of the US Department of Justice John Ashcroft asking for additional information on why the prosecution questioned the validity of Ms. Miller's "protection of sources" defence. Judith Miller, a journalist for the *New York Times* was sentenced to jail for contempt of court.

## **Uzbekistan**

### *Interventions*

- 22 January 2004: Letter to Minister for Foreign Affairs Sadyk Safayev concerning Sergei Yezhkov, a journalist for *Pravda Vos-toka*, who was laid off, and expressing worry that his dismissal was related to his criticism of the situation related to human rights and freedom of expression and media.
- 30 September 2004: Letter to Minister for Foreign Affairs Sadyk Safayev concerning suspension of Internews media NGO for administrative violations.
- 6 January 2005: Letter to Minister for Foreign Affairs Sadyk Safayev concerning the statement “On violation of the legislation of the Republic of Uzbekistan” which the Ministry of Justice sent to the international media NGO Internews Network based in Tashkent.

## Visits of the Representative

Assessment visit to Ukraine, 6-8 April 2004

IPI Conference, Warsaw 15-17 April

OSCE Conference on Anti-Semitism, Berlin 28-29 April 2004

May 2004 visit to Kosovo to present a report on the behaviour of the media during the mid-March Kosovo riots

International Press Institute's *Annual World Congress*,  
Warsaw 15-18 May 2004

Fifth International Writers in Prison Committee's Conference  
*Dialogue – the Value of Word*, Barcelona 19-20 May 2004

OSCE Meeting on the *Relationship between Racist, Xenophobic and Anti-Semitic Propaganda on the Internet and Hate Crimes*,  
Paris 15-17 June 2004

Annual Heads of Mission Meeting, Vienna 28-29 June 2004

Seminar *Guaranteeing Freedom of the Media on the Internet*,  
Vienna 30 June 2004

Annual Session of the OSCE Parliamentary Assembly,  
Edinburgh 4-6 July 2004

Visits to Writers in Prison, ARTICLE 19 and Index on Censorship,  
London 7-8 July 2004

Meeting with Stability Pact, 12 July 2004

Ministerial Troika, Brussels 12-13 July

Meeting with International Federation of Journalists,  
Brussels 13 July 2004

Conference *Guaranteeing Media Freedom on the Internet*,  
Amsterdam 27-28 August 2004

Alpbach Media Symposium, Austria 2-4 September 2004

OSCE Conference on *Tolerance and the Fight against Racism, Xenophobia and Discrimination*, Brussels 13-14 September 2004

Sixth Central Asian Media Conference, Dushanbe 23-24 September

Human Dimension Implementation Meeting,  
Warsaw 4-15 October 2004

Assessment visit to Moldova, 18-21 October

First South Caucasus Media Conference and Baku Round Table,  
25-27 October

First visit of the Representative to the Council of Europe bodies,  
Strasbourg 4-5 November 2004

OSCE Ministerial Council, Sofia 6-7 December 2004

Meeting with media NGOs and Special Rapporteurs of the UN and  
OAS in London, 21 November 2004; adoption of a joint Declaration  
on *International Mechanisms for Promoting Freedom of Expression*.  
The declaration was published on 6 December 2004.

Chairman-in-Office and Heads of Mission Meeting,  
Vienna 13-14 January 2005

Visit to Belgrade to participate in the round-table discussion on  
decriminalization of defamation in Serbia, 24-25 January 2005.

Participation in the UNESCO *International Conference on Freedom  
of Expression in Cyberspace*, Paris 3-4 February 2005.

## **The Office participated in the following OSCE and other international meetings and conferences:**

### **OSCE meetings:**

Chairman-in-Office and Heads of Mission Meeting,  
Vienna 15-16 January 2004

OSCE/ODIHR Media Monitoring Guideline Workshop,  
Warsaw 26-28 January 2004

Winter session of the OSCE Parliamentary Assembly,  
Vienna 19-20 February 2004

Regional Heads of Mission Meeting, Tashkent 2-4 March 2004

Workshop on the *Protection of Human Rights While Countering Terrorism*, Copenhagen 15-16 March

Seminar on *Democratic Institutions and Democratic Governance*,  
Warsaw 12-14 May 2004

Regional Heads of Mission Meeting, Baku 4-5 October 2004

HCNM meeting on the *Use of Minority Languages in Electronic Media*,  
Amsterdam 15 October 2004

### **Other international meetings and conferences:**

*Principles of Guaranteeing Editorial Independence*, meeting at Leipzig  
University, 27-28 January 2004

Meeting with the Minister of Justice of Croatia and Croatian  
journalists after the parliamentary elections, 2-4 February 2004

Seminar on European Audiovisual Policy,  
Belgrade 17-19 March 2004

European Commission *Safer Internet Action Plan*,  
Luxembourg April 2004

Conference *When freedom of the press slightly changes direction*,  
Tihany 25-26 May 2004

Conference on media concentration, Bled, Slovenia 10-11 June 2004

Presentation of the annual Reporters sans Frontières' *Internet Under Surveillance* report, Paris 22 June 2004

Third Frankfurt Days of Media Law, Viadrina University,  
Frankfurt/Oder 20-21 October 2004

*Internet, Human Rights and Culture*, National UNESCO Commission  
of the Netherlands, Oegstgeest 4-5 February 2005

## **Books Published by The OSCE Representative on Freedom of the Media**

Most of these publications are available for download at  
<<http://www.osce.org/fom/publications.html>>

### **Yearbooks**

- Freedom and Responsibility. Yearbook 1998/1999* (Vienna, 1999)  
*Freedom and Responsibility. Yearbook 1999/2000* (Vienna, 2000)  
(also in Russian)  
*Freedom and Responsibility. Yearbook 2000/2001* (Vienna, 2001)  
*Freedom and Responsibility. Vol. 4, Yearbook 2001/2002* (Vienna, 2002)  
(also in Russian)  
*Freedom and Responsibility. Vol. 5, Yearbook 2002/2003* (Vienna, 2003)  
*Freedom and Responsibility. Vol. 6, Yearbook 2004* (Vienna, 2005)

### **In Defence of the Future**

- Verteidigung der Zukunft. Suche im verminten Gelände.* Freimut Duve und Nenad Popovic (Hg.), (Wien-Bozen: Folio Verlag, 1999)  
*In Defence of the Future. Searching in the Minefield.* Freimut Duve and Nenad Popovic (eds.), (Vienna-Bolzano: Folio, 2000)  
*Kaukasus – Verteidigung der Zukunft. 24 Autoren auf der Suche nach Frieden.* Freimut Duve und Heidi Tagliavini (Hg.), (Wien-Bozen: Folio Verlag, 2001)  
*Caucasus – Defence of the Future: Twenty-four Writers in Search of Peace.* Freimut Duve und Heidi Tagliavini (eds.), (Vienna-Bolzano: Folio, 2001)  
*Zashchita budushego. Kavkaz v poinskah mira.* Pod redaktsiei Fraimuta Duve i HaidiTal’iavini (Moscow: Glagol Publishing House, 2000)

### **mobile.culture.container (discontinued)**

- In Defence of our Future. Odbrana nase buducnosti.*  
*Verteidigung unserer Zukunft*, n.d.  
*Verteidigung unserer Zukunft. mobile.culture.container 2001.*  
Freimut Duve, Achim Koch (Hg.), (Vienna, 2002)  
*Balkan – die Jugend nach dem Krieg. Verteidigung unserer Zukunft.*  
*Das Projekt mobile.culture.container.* (Wien-Bozen: Folio, 2002)

*In Defence of our Future. mobile.culture.container* Mitrovicë/a.  
September/October 2002 (Mitrovicë/a, 2002)

*We Are Defending Our Future. mobile.culture.container* 2001-2003.  
Freimut Duve and Achim Koch (eds.), (Vienna, 2003)

### **Central Asia**

*Mass Media in Central Asia: Present and Future.* Second Regional Conference, Dushanbe 14-15 November 2000 (Vienna, 2001) (also in Russian)

*Media Freedom in Times of Anti-Terrorist Conflict.* Third Central Asian Media Conference, Almaty, 10-11 December 2001 (English/Russian), (Vienna, 2002)

*The Media Situation in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.* Five Country Reports (English/Russian), (Vienna, 2002)

*Freedom of the Media and Corruption.* Fourth Central Asian Media Conference, Tashkent, 26-27 September 2002, (English/Russian), (Vienna, 2003)

*Central Asia - In Defence of the Future. Media in Multicultural and Multilingual Societies.* Fifth Central Asian Media Conference, Bishkek 2003 (Vienna, 2003) (also in Russian).

*21st Century Challenges for the Media in Central Asia: Dealing with Libel and Freedom of Information.* Sixth Central Asian Media Conference, Dushanbe, 23-24 September 2004, (English/Russian), (Vienna, 2004)

### **Reports and Books**

*Slovenia, Croatia, Bosnia and Herzegovina, Macedonia (FYROM) and Kosovo. International Assistance to Media.* Mark Thompson (Vienna, 2000)

*U obranu Nase Buducnosti.* Freimut Duve (urednik), (Zagreb: Durieux, 2001)

*Freedom of Expression, Free Flow of Information, Freedom of Media.* CSCE/OSCE Main provisions 1975-2001 (English/Russian), (Vienna, n.d.)

*Freedom of the Media in Belarus.* Public Workshop with Belarusian Journalists Vienna, 31 May 2001 (English/Russian), (Vienna, 2001)

*Ya shimau voinu... Shkola vzhivaniya,* Yurii Romanov, Prava Cheloveka (Moscow, 2001)

*From Quill to Cursor: Freedom of the Media in the Digital Era.*

Papers from the Workshop on Freedom of the Media and the Internet, Vienna, 30 November 2002 (Vienna, 2003)

*The Spiegel Affair* (Moscow: Glagol Publishing House, 2003)  
(only in Russian)

*Spreading the Word on the Internet. 16 Answers to 4 Questions.*

Reflections on Freedom of the Media and the Internet, Amsterdam Conference, June 2003. Christiane Hardy and Christian Möller (eds.), (Vienna, 2003).

*Media in Multilingual Societies: Freedom and Responsibility.*

Ana Karlsreiter (ed.), (also in Serbian, Albanian, Hungarian and Romani) (Vienna, 2003).

*The Impact of Media Concentration on Professional Journalism.*

Johannes von Dohnanyi and Christian Möller (Vienna, 2003).

*Letters to a Man of Letters.* A Tribute to Freimut Duve.

OSCE Representative on Freedom of the Media 1998 – 2003.  
(Vienna, 2003).

*Ending the Chilling Effect.* Working to Repeal Criminal Libel and Insult Laws. Ana Karlsreiter and Hanna Vuokko (eds.)  
(Vienna, 2004).

*The Media Freedom Internet Cookbook.*

Christian Möller and Arnaud Amouroux (eds.) (Vienna, 2004).

*21st Century Challenges for the Media in South Caucasus: Dealing with*

*Libel and Freedom of Information.* First South Caucasus Media Conference, Tbilisi, 25-26 October 2004, (English/Russian),  
(Vienna, 2004)

## Media NGOs in the OSCE Region

Note: This is a list of NGOs with which we have established contact or whose materials have proven useful to our work during the past years. However, this is not an exhaustive list of all those NGOs which are doing valuable work on freedom of media issues in the OSCE region.

Accuracy in Media (AIM)

Alternativna Informativna Mreza (AIM)

American Society of Newspaper Editors (ASNE)

Amnesty International (AI)

Andrei Sakharov Foundation (ASF)

Article 19

Association of Independent Electronic Media (ANEM)

Association of Journalists (Gazeteciler Cemiyeti)

Azerbaijan Journalists Confederation (AJK)

Balkanmedia Association

Belorussian Association of Journalists (BAJ)

Canadian Civil Liberties Association (CCLA)

Canadian Journalists for Free Expression (CJFE)

Center for Journalism in Extreme Situations of the Russian Union of Journalists (CJES)

Central Asian and Southern Caucasus Freedom of Expression Network (CASCFEN)

Committee to Protect Journalists (CPJ)

Commonwealth Press Union (CPU)

Cyber-Rights and Cyber-Liberties (UK) ([cyber-rights.org](http://cyber-rights.org))

Czech Helsinki Committee

Derechos Human Rights  
Electronic Frontier Canada (EFC)  
Electronic Frontier Finland (EFFI)  
European Alliance of Press Agencies (EAPA)  
European Ethnic Broadcasting Association (EEBA)  
European Institute for the Media (EIM)  
Fairness & Accuracy in Reporting (FAIR)  
Feminists for Free Expression (FFE)  
Freedom Forum  
Freedom House  
Glasnost Defence Foundation (GDF)  
Global Internet Liberty Campaign (GILC)  
Greek Helsinki Monitor (GHM)  
Human Rights Centre of Azerbaijan (HRCA)  
Human Rights Watch (HRW)  
Independent Journalism Centre, Moldova (IJC)  
Index on Censorship  
International Centre for Journalists (ICFJ)  
International Consortium of Investigative Journalists (ICIJ)  
International Federation for Information and Documentation (FID)  
International Federation of the Periodical Press (IFPP)  
International Foundation for Protection of Freedom of Speech  
“ADIL SOZ”  
International Freedom of Expression eXchange (IFEX)  
International League for Human Rights (ILHR)  
International Media Support  
International Press Institute (IPI)  
Internews International

IREX – Media Development Division (IREX)  
Journalist Safety Service (JSS)  
Journalists’ Legal Environment Centre ERINA  
Journalists’ Trade Union (JuHI)  
Kuhi Nor  
Media Centre Belgrade  
Medienhilfe  
National Freedom of Information Coalition (NFOIC)  
Norwegian Forum for Freedom of Expression (NFFE)  
Norwegian People’s Aid Media Office in Belgrade (NPA)  
Open Society Institute Network Media Program  
Soros Foundation (OSI/NMP)  
Press Now  
Progressive Journalists Association (Cagdas Gazeteciler dernegi)  
Reporters sans frontières (RSF)  
RUH Azerbaijani Committee for Protection of Journalists (RUH)  
Statewatch  
The International Federation of Journalists (IFJ)  
The Reporters Committee for Freedom of the Press (RCFP)  
Turkish Press Council (Basyn Konseyi)  
Women Journalists Association of Azerbaijan  
World Association of Community Radio Broadcasters (AMARC)  
World Association of Newspapers (WAN)  
World Press Freedom Committee (WPFC)

## The Authors

### **Arnaud Amouroux**

Arnaud Amouroux is Assistant Project Officer at the Office of the Representative on Freedom of the Media, which he joined in February 2004. He was an OSCE long-term electoral observer in Georgia in 2003. He holds a master's degree in Political Sciences and a postgraduate diploma (DESS) in International Administration Law from the Université Panthéon-Sorbonne of Paris. He has studied in Cardiff and Milan.

### **Ilia Dohel**

Ilia Dohel is a Research Assistant at the Office of the Representative on Freedom of the Media, which he joined in June 2004. He previously worked as an assistant to the Editor of the Annual Report at the OSCE Secretariat, and as a radio journalist in Minsk, Belarus.

### **Dardan Gashi**

Dardan Gashi is a Kosovo Albanian and Austrian journalist, writer and human rights activist. He served as a Special Representative of the OSCE Representative on Freedom of the Media. Currently he is employed by the Kosovo Government.

### **Miklós Haraszti**

Miklós Haraszti is a Hungarian writer, journalist, human rights advocate and university professor, who was appointed OSCE Representative on Freedom of the Media in 2004. He was born in Jerusalem in 1945 and studied Philosophy and Literature at the University of Budapest. He received in 1996 an honorary degree from Northwestern University in the United States. In 1976, Mr. Haraszti co-founded the Hungarian Democratic Opposition Movement and in 1980 he became editor of the samizdat periodical *Beszélo*. In 1989, he participated in the roundtable negotiations on transition to free elections. A member of the Hungarian Parliament from 1990 to 1994, he then became a lecturer on democratization and media politics at various universities. Mr. Haraszti has written several essays and books, including *A Worker in a Worker's State* and *The Velvet Prison*, both of which have been translated into several languages.

**Gus Hosein**

Gus Hosein is a Senior Fellow at Privacy International (PI), a London-based watchdog organization. At PI he directs a programme that researches international anti-terrorism policies and their implications for civil liberties. He also advises a number of non-governmental organizations on issues relating to censorship, surveillance, and governance. He is a Visiting Fellow at the London School of Economics and Political Science where he lectures on topics related to the Information Society, data protection and privacy, regulation and technology. He holds a B.Math from the University of Waterloo and a PhD from the University of London.

**Ronald Koven**

Ronald Koven is European Representative of the *World Press Freedom Committee*.

**Morris Lipson**

Morris Lipson is a lawyer currently working for ARTICLE 19, an international NGO campaigning for free expression by providing legal analysis and consultation. He was external consultant for the UN Office of the High Commissioner for Human Rights in Geneva. He produced a study for OHCHR on Racism and the Internet, published by UNESCO. He also worked on a compilation of anti-racism practices.

**László Majtényi**

László Majtényi was Chief Counsellor at the Constitutional Court of the Republic of Hungary (1990–95), head of the Department of Law at the Technical University of Budapest (1992–95) and associate professor at Eötvös Loránd University Faculty of Law, Győr (1995–2002) and Pécs University Faculty of Law (2003). He is a member of the editorial boards of *Fundamentum*, a human rights journal, and *Világosság*, a review of social sciences, and is also on the board of the Budapest Review of Books. Majtényi was chairman of the Eötvös Károly Public Policy Institute in 2003. He is a specialist in constitutional law. He was elected by Parliament as a special ombudsman for data protection and freedom of information (1995–2001).

**Toby Mendel**

Toby Mendel is the Law Programme Director of ARTICLE 19, United Kingdom.

**Christian Möller**

Christian Möller has been Project Officer at the Office of the OSCE Representative on Freedom of the Media in Vienna since 2003. From 1999 to 2002 he worked for the *Unabhängige Landesanstalt für das Rundfunkwesen* (ULR) in Kiel, one of Germany's federal media authorities. He holds an M.A. in Media Studies, German Language and Public Law from Christian Albrechts University, Kiel. His publications include *The Media Freedom Internet Cookbook* (2004, ed. with Arnaud Amouroux) and *The Impact of Media Concentration on Professional Journalism* (2003, with Johannes von Dohnanyi).

**Peter Noorlander** is a legal officer with ARTICLE 19, Global Campaign for Free Expression. Having joined the ARTICLE 19 Law Programme in 2001, he specializes in issues of freedom of expression and privacy, freedom of information, broadcasting and new technologies, and has contributed to many ARTICLE 19 publications. Before joining ARTICLE 19, he worked with JUSTICE, the UK section of the International Commission of Jurists, where he was part of the privacy and EU criminal policy team.

**Solomon Passy**

Solomon Passy is Foreign Minister of Bulgaria and was Chairman-in-Office of the OSCE in 2004.

**Cathy Wing**

Cathy Wing is Director of Community Programming at Media Awareness Network (MNet), a committed Canadian NGO in the field of educating young Internet users and developing online literacy. She manages partnerships with parent and community organizations, as well as creating resources for these sectors. Cathy's career includes working in the film and television industries as project manager and television news producer.

Arnaud Amouroux  
Ilia Dohel  
Dardan Gashi  
Miklós Haraszti  
Gus Hosein  
Ronald Koven  
Morris Lipson  
László Majtényi  
Toby Mendel  
Christian Möller  
Peter Noorlander  
Solomon Passy  
Cathy Wing