



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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Helsinki Commission Media Freedom Hearing
Thursday, December 13 at 10:00 a.m.

Mr. Chairman, Ladies and Gentlemen,

I would like to thank you for this opportunity to speak before the United States Helsinki Commission. This invitation is indicative of the importance you attach to media freedom issues in the OSCE region.

On a personal note, and as dictated by my background, I also would like to thank the Helsinki Commission for their work leading up to the democratization wave in Central Europe around 1989. The persecuted pioneers of freedom of speech, the makers of the free press that had no choice but to operate clandestinely in Poland, Czechoslovakia and Hungary, as well as in the Soviet Union, could always count on your vigilant support. I have since become a mandated operative of the still ongoing Helsinki process representing an OSCE institution devoted to free speech, but it is as a former Samizdat activist that I continue to be very much inspired by the work done by your Commission, work that began to bear fruit even before OSCE was created.

Ladies and Gentlemen,

First, allow me to provide you with a list of some of the gravest dangers looming for media freedom in the OSCE area.

- As danger number one, I would name violence against journalists. There is only one thing more intimidating for free speech than harassment, physical attacks and murder of media workers; this is when governments tolerate harassment, attacks and murders. I would like to pay tribute to the wonderful journalists, the best of their generation, the Huseynovs, Politkovskayas, Dinks, who have been falling victim to a war on journalism in peacetime. I do not claim that governments, those of Azerbaijan, Russia or Turkey for instance, were involved in these killings. But I do submit that governmental sins against the free media are encapsulated in the problem of violence against journalists as the root causes in its genesis and evolution. Some of these sins are: impunity for assaults against journalists, criminal

handling of journalism, and discrimination against the independent press. But this list is by no means exhaustive.

- In several participating States media pluralism is considerably, and in some cases increasingly, restricted by undue governmental influence over broadcasting; by favouritism towards the still existing state-owned press and by administrative discrimination against the non-governmental media.
- Many participating States still criminalize professional mistakes committed by journalists, such as defamation, libel, or insult. Criminalization of journalists' errors is nothing but criminalization of journalism itself. In 21st century democracies, these offences should be handled in the civil law domain for the sake of an uninhibited discussion of public issues. Criminalization of libel and insult is the most common ground for imprisonment of journalists in the OSCE area. Equally oppressive is the ongoing habit of lending elevated protection from verbal criticism to heads of state and public officials.
- Several governments punish journalists for unearthing governmental data, citing security concerns. In many new democracies, journalists are punished for 'breach of secrecy', while in many Western democracies journalists are forced to reveal their sources to law enforcement agencies. Both approaches endanger investigative journalism - one of the media's most precious services to society.
- In a world of dissolving boundaries, the otherwise legitimate expectation that the media should be culturally sensitive has resulted in increased attempts to label offending or critical views as criminally punishable 'extremism' or 'hate speech'.
- While the Internet is becoming the most important source for diverse information (indeed the only remaining source in several countries), it is under attack both legislatively and operationally, endangering not only the present but also the future of media freedom.
- A proliferation of arbitrary speech bans in connection with historical events weakens international standards on free debate, and creates new tensions between nationalities and countries.

During my four years in office, I have witnessed quite a serious drawback for media freedoms in several countries. Roughly since the so-called coloured revolutions, a veritable 'counter-revolution' is unfolding against the independent media.

This backlash against liberalization takes a particularly harsh form when outspoken print outlets, web platforms, or individual journalists decide to cover sensitive issues or criticize the lack of progress attained in democratic development. Its instruments are bureaucratic harassment, administrative

discrimination, overt criminalization and occasionally even violence. The new wave of repression sends intimidating messages to those who attempt to stray off the path of guided coverage.

Suppression of diversity is less overt but not less devastating in the case of the broadcast news media – the source of information on public affairs for most people. In the case of broadcasting, the preclusion of pluralism is already taking place at the legal and institutional levels: for example, by not allowing for the transformation into public-service media, independent from government; by not licensing out frequencies; or by guiding the licensing process so that the licenses land with family members, cronies, or business people sufficiently intimidated to go with the tide.

I acknowledge, of course, the necessity for a longer period of maturation in the delicate business of free speech. After all, many governments and societies in the OSCE area have emerged from dictatorships, and notably from the communicational dictatorships of the one-party states centred on ideology. It may take generations and several peaceful changes of government at the will of the electorate until self-restraint vis-à-vis the press becomes part and parcel of a nation's political culture. An equally long period is needed until the media learns to appreciate the enormous power of professionalism in gaining societal support for press freedom.

However, notwithstanding the belief in the educational force of time, the way forward in the OSCE region is clearly charted in the commitments that the participating States have agreed upon. The OSCE media freedom institution does not insist on overnight completion of generations' work. But we certainly reserve the right to protest when participating States abandon or violate their own commitments.

To give an example, it is clear that in a democracy there is no place for any government-owned news media, certainly not in the print press. And yet there are many such state-owned outlets in the new democracies, which is understandable given that hardly more than a decade ago their governments inherited a media sector that was 100 percent state-owned. We cannot insist on their immediate privatization. But we certainly expect the governments to support privatization, at least step by step, and to assist the start-up of media businesses both by virtue of sensible laws and an encouraging governmental behaviour. And we do 'take arms against a sea of troubles' faced by the independent press 'by the law's delay, the insolence of office', i.e. by the unfortunately growing rather than diminishing inventory of bad laws and arbitrary abuse.

Below is a list of problematic trends by country, 2006 – 2007 (see Annex for a complete list of interventions 2004-2007 by country). Only countries where the RFOM intervened at least three times during the last two years are included:

- Azerbaijan (6) – Imprisonment of journalists for criminal defamation
- Belarus (4) – Administrative harassment
- Bulgaria (3) – violence against journalists
- France (3) – protection of sources, hate speech
- Kazakhstan (5) – closure of independent media outlets, restrictive media legislation
- Moldova (3) – independence of public service broadcasting
- Russian Federation (13) – Violence against journalists, administrative harassment
- Serbia/Montenegro (4) – violence against journalists
- Turkey (3) – criminal laws against hate speech, in particular Article 301 of the Penal Code
- Turkmenistan (3) – detained journalists, death in prison of journalist
- United States of America (3) – access to information, protection of sources
- Uzbekistan (4) – Systematic censorship, lack of independent media, esp. post-Andijan, no access to information

Let me add to the above listing the terrifying fact that one out five interventions had to be issued in cases of physical violence against journalists.

My office responded to these challenges not only with interventions, but also by embarking on relevant project activities.

We continued reaching out to journalists and to media NGOs. Our annual Central Asia and South Caucasus Media Conferences – important venues of assembly and debate for the journalists in both regions – are in their 9th and 4th years, respectively. Let me express our gratitude for the continued U.S. financial contributions for these important events.

In order to assist governments to comply with their commitments, we served them with legal reviews. The reviews are compiled by cutting-edge media reform experts.

We undertook assessment visits, which were followed up with comprehensive reports on the media freedom situation in the countries visited. Among these were Ukraine, Moldova (including a special feature on Transdnistria), Italy, Bosnia and Herzegovina, Kosovo, Armenia, Belarus and the FYR Macedonia. We hope to continue this indispensable form of co-operation with governments whose invitation we still expect to arrive.

We produced special reports on quite a few typical danger areas, especially on administrative handling of the media, including: registration of the print press, handling of media during demonstrations and accreditation of journalists. Our office is about to prepare new special reports, notably on the governmental response to violence against journalists and on the proliferating extremism laws throughout the OSCE area.

We compiled reports focused on extraordinary events of media performance and handling of media in times of crisis. Such reports included the events of the Kosovo riots March 2004, the Beslan hostage taking tragedy in Russia 2004 and the events in the town of Andijan in Uzbekistan 2005.

My Office also did topical surveys, compiling existing legislation as well as administrative and court practice amongst the 56 participating States on libel and defamation, access to information, and self-regulation.

We always complement our reports with recommendations, offering down-to-earth, practical steps which are clearly relating to the relevant OSCE commitments and are not influenced by the politics of the day in those countries.

In addition, we continue to offer joint training programs for governmental spokespersons and media professionals in order to improve their interaction and to provide them with an understanding of modern, democratic standards of access to information.

My office also engaged in helping journalists to unite in their efforts to raise professional standards. We don't do this because we believe that journalistic quality is a pre-requisite for freedom of journalism. Quite to the contrary, we continue to point out that responsible journalism is only possible in conjunction with full freedom. But we also believe that professionalism strengthens the social standing of journalism. Such co-operation amongst journalists in the field of ethics is also a great training ground for their co-operation in demanding their legitimate rights from governments.

We continue to produce a variety of publications on media policy and advocacy. This year's production included 'Freedom and Responsibility', 'The Business of Media' and 'Governing the Internet'. A practical guide for journalists on media self-regulation is forthcoming.

Ladies and Gentlemen,

It will come as no surprise to you that I find shortcomings with media freedom also in your country. After the unimaginable happened, and several journalists in the United States were imprisoned (for

‘contempt of court’; in fact for refusing to disclose the confidential sources of their reporting), I have called several times on the Congress to pass a federal shield law, similar to one which exists in Belgium, to name but one good example.

It is precisely because of this deficiency on the federal level that I greeted the introduction into Congress of the Free Flow of Information Act by the House, and of a similar bill by the Judiciary Committee of the Senate on a bipartisan basis.

This Act would be an important building block in the legal framework that protects freedom of the media, and I encourage you to adopt this piece of legislation as soon as possible.

However, should the drafts undergo amendments, I hope two important principles will be considered:

1. Criminal proceedings in which journalists can be forced to disclose their sources as a matter of exception must be clearly limited to severe crimes.
2. The category of journalists who enjoy the right to protect their sources should be broad. We see more and more citizen-journalists at work as user-generated media content becomes a driving business force. As the traditional boundaries fall, citizen-journalists should also deserve the First Amendment protection, as they also supply society with public-interest information.

In my line of work, it is difficult to over-estimate the importance of adopting a U.S. federal shield law. As a staunch ally of free journalism, the United States cannot afford to be finger-pointed by governments who are not so keen on it. But beyond the image of a country defined by the First Amendment, the prosecutorial practice of the Justice Department during the tenures of the two last Attorney Generals has served as a negative inspiration to prosecutors in other countries.

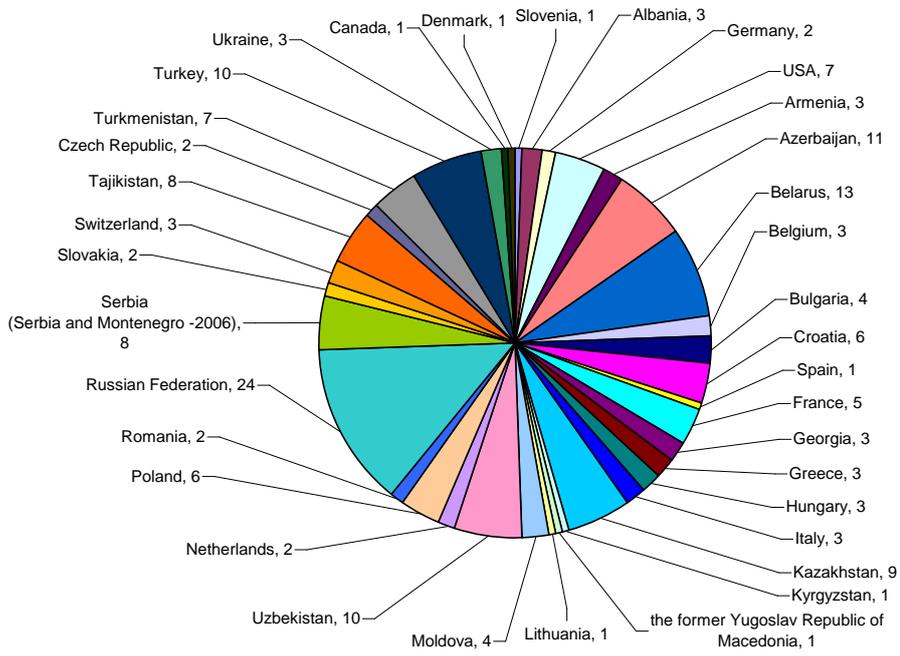
In our work, we had to witness several ‘bad fashions’ spread from country to country; international trends, if you wish, in the mishandling of journalism. One such trend is the contracted killing of journalists, to which I would add the seemingly religious but, from a moral standpoint, equally detestable *fatwas* which offer rewards for killing journalists. A similar international wave of repression is the repressive registration and re-registration practice which makes the lives of independent editors unbearable in several countries. Another example is the so-called extremism legislation – a loose collection of arbitrary speech bans that punish coverage of sensitive topics under the pretext of fighting terrorism or hate speech. Unfortunately, the list would be incomplete without the harmful prosecutorial habit of pursuing journalists in order to plug the leaking of governmental

data. And this is a 'fashion' to the proliferation of which, unfortunately, U.S. prosecutors and courts have substantially contributed.

I am sure in your questions you would be interested in individual trends in participating States. I look forward to the discussion.

Annex

Interventions by Country 2004-2007



Participating States	Total 2004- 2007
Slovenia	1
Albania	3
Germany	2
USA	7
Armenia	3
Azerbaijan	11
Belarus	13
Belgium	3
Bulgaria	4
Croatia	6
Spain	1
France	5
Georgia	3
Greece	3
Hungary	3
Italy	3
Kazakhstan	9
Kyrgyzstan	1
the former Yugoslav Republic of Macedonia	1
Lithuania	1
Moldova	4
Uzbekistan	10
Netherlands	2
Poland	6
Romania	2
Russian Federation	24
Serbia and Montenegro (Federal Republic of Yugoslavia- 2002)	8
Slovakia	2
Switzerland	3
Tajikistan	8
Czech Republic	2
Turkmenistan	6
Turkey	10
Ukraine	3
Canada	1
Denmark	1
TOTAL:	175