



Supplementary Human Dimension Meeting

PROMOTION OF FREEDOM OF EXPRESSION: RIGHTS, RESPONSIBILITIES AND OSCE COMMITMENTS

**3-4 July 2014
Hofburg, Vienna**

ANNOTATED AGENDA

Background

The right to freedom of opinion and expression is enshrined in international and regional human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). As the UN Human Rights Committee has stated, “[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights” (General Comment No. 34 on Article 19).

OSCE participating States agree that human rights and fundamental freedoms, the rule of law and democratic institutions are the foundations of peace and security. They reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principle that they will safeguard this right (Budapest 1994).

There are numerous OSCE commitments that are aimed at ensuring freedom of expression, freedom of information and freedom of the media. Their thematic compilation can be found at <http://www.osce.org/fom/99565>. In particular, participating States have committed themselves “to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries” (Helsinki 1975). They have also reaffirmed that “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers” (Copenhagen 1990). Participating States also recognized “the essential role that the free and independent media can play in democratic societies” and encouraged “the adoption of voluntary professional standards by journalists, media self-regulation and other appropriate mechanisms” (Brussels 2006 and Madrid 2007). Moreover, the OSCE recognizes that independent media and freedom of expression are cornerstones for stable and peaceful societies.

The freedom of expression can be strengthened by concerted efforts to improve independent functioning of rule-of-law institutions. These efforts should aim to ensure full respect for human rights, fundamental freedoms, and democracy (Astana 2010). In particular,

independent media as part of the civil society should be empowered to perform a watchdog function so as to enhance the accountability of the government (Dublin 2012). It is a multifaceted process which requires efforts of different stakeholders – legislative, executive, judicial branches of government, local and regional authorities, ombudsman institutions, journalists, and civil society.

According to the Universal Declaration of Human Rights, “[e]veryone 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.” Undue restrictions on access to information can inhibit human rights activities in a number of ways. For example, national security is frequently used to justify the over-classification of information, thus limiting access by human rights activists and other affected parties to information of public interest and creating another obstacle for exposing corruption and human rights violations by state actors. The UN Human Rights Council has called upon states to ensure that “[i]nformation held by public authorities is proactively disclosed, including on grave violations of human rights, and that transparent and clear laws and policies provide for a general right to request and receive such information, for which public access should be granted, except for narrow and clearly defined limitations” (A/HRC/RES/22/6).

The Supplementary Human Dimension Meeting will provide a forum for the discussion of the developments regarding the rights, responsibilities and OSCE commitments with respect to freedom of expression. The topics will include the right to freedom of expression as envisioned in States’ national laws, as well as in international law and policy, the responsibilities within the framework of freedom of expression as set by international standards, and the role of the OSCE and civil society in safeguarding and promoting the commitments in this regard.

DAY 1: THURSDAY, 3 JULY 2014

15:00-16:00 OPENING SESSION

Opening remarks & key note speech

16:00-18:00 SESSION 1: The Right to Freedom of Expression

Freedom of opinion and expression is a universal human right which is crucial for a free, pluralist and independent society. Today freedom of the media has become a most important manifestation of freedom of expression. Without freedom of expression and freedom of the media, an informed, active and engaged citizenry is impossible. Pluralism in the media allows for the expression of different opinions and safeguards individuals’ abilities to express their opinions without interference. With media in the hands of society, and not the custody of the state, pluralism is a prerequisite for an open, diverse and vibrant marketplace of ideas.

Violence, persecution, harassment and intimidation of individuals, including journalists and other media actors, because of their exercise of the right to freedom of expression online and offline and attempts to stop impunity for such crimes are a growing concern for OSCE participating States. Such attacks and intimidation – often accompanied by a refusal by public authorities to effectively investigate and end impunity for such acts – represent an attack not only on the victim, but may also limit the ability to exercise freedom of expression. In her

2012 Joint Declaration with other international rapporteurs on freedom of expression the OSCE Representative on Freedom of the Media noted that State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.

Questions such as how to ensure freedom of expression on the Internet and how and to what extent the Internet should be regulated have been high on the agendas of many participating States across the OSCE region. As more people gain access to the Internet, it seems that more governments are trying to find ways to regulate certain aspects of the web. There are increasing calls for it to be protected from over-regulation along the lines of mass media laws. The discussion will highlight the basic connection between the development of new media and the level of freedom of expression: if the free flow of information is restricted, people's right to freedom expression will undoubtedly suffer.

Issues that can be discussed in connection with this topic are:

- How can we ensure that OSCE commitments are interpreted in the same way by all participating States?
- What are the best practices for promoting laws and policies that protect freedom of expression and freedom of the media?
- What is meant by and what are the indicators of “media pluralism”? What are the main regulatory aspects to be considered by the authorities to guarantee that the digitalisation of media enhances media pluralism?
- How can existing OSCE commitments on freedom of expression and freedom of the media be implemented better, particularly in view of the challenges posed by new communication technologies?
- How do newly adopted or amended laws aimed at regulating new technologies affect freedom of expression and the free flow of information? What are the responsibilities of the authorities of participating States in ensuring that the right to freedom of expression is protected both online and offline?
- How can we assess the efficiency and enforceability of international norms or treaties vis-a-vis regulating content?
- In what way does strong civil society support free expression and independent media, and vice versa?

DAY 2: FRIDAY, 4 JULY 2014

10:00-12:00 SESSION 2: The Responsibilities in the Framework of Freedom of Expression

OSCE commitments, international and regional human rights conventions, courts and mechanisms recognise that freedom of expression can be limited by law in certain, strictly defined ways and under specific circumstances. Restrictions on the exercise of freedom of expression may not put in jeopardy the right itself. The OSCE Representative on Freedom of the Media, the United Nations Human Rights Committee, and the UN Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression have repeatedly highlighted that the relation between the right and the restriction and between the norm and the exception must not be reversed.

Compliance with the principles of necessity and proportionality when restricting human rights that are not absolute in domestic legislation is a hallmark of a rule-of-law framework designed to best protect the core human rights and freedoms. The OSCE participating States have agreed that any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law (Copenhagen 1990).

However, recent years have seen laws passed in the OSCE participating States that aim to limit the exercise of fundamental freedoms or encourage self-censorship. However, the potentially disproportionate extent of restrictions thus imposed is a cause for concern. Public authorities should understand the dangers of unwarranted interference with impartial and critical reporting.

The right to freedom of opinion and expression and of information continues to be unduly restricted in a number of OSCE participating States. In some states laws that allow for disproportionate and unreasonable limitations on the grounds of protecting public order and/or national security (in particular in relation to the fight against terrorism and extremism), public health and public morals are applied in order to curb freedom of expression and thus present a cause for concern. Likewise, in several countries, political activists and defenders of the human rights of certain vulnerable groups have been prevented from conducting their activities on the premise of vague and arbitrarily laws protecting public morals and shielding minors from harm. In a number of OSCE participating States, defamation laws are reportedly used to silence, and sometimes even imprison, human rights activists and independent journalists, while protection of private life of public officials and public figures does not take into account public interest in disclosure of their corruption, immoral conduct and clientilism.

The OSCE decided in 2002 “to take strong public positions against hate speech” (MC Decision 6/02) and called in 2009 “on the participating States to seek opportunities to cooperate and thereby address the increasing use of the Internet to advocate views constituting an incitement to bias-motivated violence including hate crimes and, in so doing, to reduce the harm caused by the dissemination of such material, while ensuring that any relevant measures taken are in line with OSCE commitments, in particular with regard to freedom of expression” (MC Decision 9/09). Recent decisions in various participating States show that relevant measures taken are often not in line with existing OSCE commitments.

The right to freedom of expression is intertwined with the right to privacy and the protection of personal data, which may suffer violations as a result of unlawful or arbitrary surveillance, interception of communications or collection of personal data, in particular when carried out on a mass scale. Participating States must ensure that any measures taken to protect certain information gathered and processed in the interest of individual, national or public security are in accordance with their OSCE commitments.

As the participating States have the obligation to respect the right to freedom of expression, it is required to ensure that this right is given effect in domestic law. Any legislation restricting the right to freedom of opinion and expression, or the flow of information, must be applied by a body which is independent of any political, commercial or other unwarranted influence in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse. Media self-regulation and other appropriate mechanisms remain important for ensuring increased professionalism, accuracy and adherence to ethical standards among journalists.

Issues that can be discussed in connection with this topic are:

- What are the mechanisms to enforce positive obligations of the States in safeguarding freedom of expression?
- What is the appropriate balance between freedom of expression and other human rights, such as the right to reputation and to privacy? How it is best served?
- What are the challenges to freedom of expression and freedom of the media caused by recent instances of arbitrary mass surveillance?
- What are the best practices to take into account public interests when restrictions are imposed on media freedom aimed to protect private life of officials and other public figures?
- What are the best ways to keep political speech free while respecting the need to fight terrorism and violent hate speech?
- How to ensure that the media, both mass and social, recognize and respect the rights of the child, as protected in the UN Convention on the Rights of the Child?
- How to develop voluntary, self-regulatory initiatives and mechanisms such as media ethic codes, which enhance accountability?
- What are the best modalities of interaction between civil society and independent media to promote freedom of expression?

12:00-14:00 Lunch break

14:00-16:00 WORKING SESSION 3: The Roles of the OSCE and the Civil Society

OSCE participating States have acknowledged the vital role that civil society actors play in furthering democracy and the respect for human rights. They have pledged to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms (Istanbul 1999).

In this regard the OSCE, and the Representative on Freedom of the Media in particular, assist participating States in developing participatory mechanisms involving media actors in law-making, professional standards and promoting free media and freedom of expression. Discussion will look into ways to strengthen the capacity of the OSCE Representative on Freedom of the Media in observing violations of freedom of expression and freedom of the media in participating States.

The OSCE Office for Democratic Institutions and Human Rights provides support, assistance and expertise to participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. In promoting respect for human rights and fundamental freedoms, ODIHR monitors governments' compliance with their human dimension commitments. The Office provides states with advice and assistance, and supports individuals and civil society with targeted training and education.

The OSCE field missions are usually mandated to assist participating States in media development keeping in mind their relevant commitments. They co-operate with the autonomous OSCE institutions in promoting human rights and freedoms. They provide an input in capacity building of the civil society and its mechanisms to safeguard OSCE values and principles.

The role of civil society is to support of the activity of human rights defenders, journalists and other media actors as well as individuals fighting for the respect for freedom of expression online and offline.

The session will provide a possibility to discuss ways and exchange good practices on the promotion and protection of freedom of expression with relevant stakeholders including civil society, politicians, human rights defenders, journalists, and academics.

Issues that can be discussed in connection with this topic are:

- What are the current challenges for the OSCE Representative on Freedom of the Media and for the Office for Democratic Institutions and Human Rights in reporting on specific matters related to freedom of expression, and free, independent and pluralistic media?
- What are the roles and capacities of the OSCE missions to promote freedom of expression and freedom of the media?
- How might the role of the civil society be increased to more strongly advocate freedom of expression and freedom of the media?
- How can civil society report on abuses of this right that can have adverse and disproportionate effect on affected individuals and communities?
- How to advocate against restrictive legislation shrinking the space for civil society and human rights defenders as well as citizen journalists in promoting and protecting freedom of expression and their access to funding and ensure that human rights are protected?
- What are the ways to encourage and facilitate coordination and consultation with and between *bona fide* international and local civil society, journalists and OSCE institutions and field missions which monitor the situation of freedom of expression on the ground?

16:00-16:30 Break

16:30 -17:30 CLOSING SESSION
Reports by the moderators of the working sessions

17:30 Closing of the meeting