



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

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 pro-active 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 organised 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 criticised 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 decriminalise 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 re-broadcasting 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 work-shop 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 percent 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 anti-monopoly 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 16th-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 re-drafting 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 *decriminalisation* of this offence, but, if I may misuse the English language, especially about *de-prisonisation*.

Ukraine, as I have already mentioned, and **Moldova** have just decriminalised libel, a step which I applaud, and **Croatia** has a vibrant on-going 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 organised 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 organise a study trip for Georgian journalists to Vienna and Sofia this summer. In September we are planing the annual **Central Asian Media Conference** and in October we hope to be able to organise our first **Caucasus Media Conference**. For these projects we will need voluntary contributions and I ask for your generous support.

Thank you.