

# ■ Yearbook 16

## 2014

THE REPRESENTATIVE ON FREEDOM OF THE MEDIA





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## Preface

## By Didier Burkhalter

It is a distinct pleasure to present the 2014 Yearbook of the OSCE Representative on Freedom of the Media.

Freedom of the media is a prerequisite for genuine democracy. Switzerland is convinced of this, which is why it is a strong advocate of Representative Dunja Mijatović's work in the OSCE region. Free and robust media are crucial for open societies and democratic development.

Switzerland wholeheartedly supports the wide-ranging efforts of the Representative on Freedom of the Media to assist the work of both offline and online journalists. New media and internet journalists clearly deserve the same protection as those of the traditional media. There should be no difference in people's rights and fundamental freedoms online and offline. The same rules and principles based on the rule of law must be applied.

The safety of journalists, particularly in cases where they are likely to experience physical violence, threats and harassment was a great concern of the 2014 Swiss Chairmanship. The Representative has worked tirelessly to bring the issue of violence to the forefront of government and public attention. Switzerland has long been engaged in efforts to get governments in the OSCE region to commit to ensuring an environment where free speech and its agents – in particular journalists – are effectively protected.

The OSCE devoted a great deal of attention to the Ukraine crisis in 2014. The Representative's steadfast commitment to promoting freedom of the media made a real difference; press releases, communiqués and projects exposed and spoke out against violations of media freedom and free speech. The Representative's work with journalists' union representatives from both Russia and Ukraine on issues of common interest was an important element of the OSCE's efforts to promote dialogue and mutual understanding in this conflict.

This Yearbook chronicles the activities of the Representative and the office throughout the year. It is a valuable contribution to the public's understanding of the role of the office in the protection and development of free media and free expression – and an important resource for those who want to keep up with the current issues.

I want to thank the Representative for her excellent cooperation during the Swiss Chairmanship. Ms Mijatović and her office can count on our further support to maintain their independence, their mandate and activities.

*Didier Burkhalter is the head of the Federal Department of Foreign Affairs (FDFA) and was the OSCE Chairperson-in-Office in 2014.*

# Foreword

## By Dunja Mijatović

This publication is a detailed account of the activities taken in 2014 to carry out the Mandate given to the Representative when the Office was established in 1997. This includes the requirement to monitor media developments and assist OSCE participating States to fulfill their commitments on free media and free expression while working in close co-operation with the Chairman-in-Office.

I would like to emphasize my gratitude to the Swiss Chairmanship for its support throughout the year. I continued working with participating States across the OSCE region to ensure favorable conditions for independent and pluralistic media. Although this year was filled with new challenges due to the conflict in and around Ukraine, I am pleased that my Office was able to fulfill its mission by providing participating States with detailed information on the threats to media freedom attendant to the conflict.

My Office had to report disappointing facts concerning the media landscape in the conflict area: Seven media members killed; at least 170 journalists attacked and injured; approximately 30 editorial offices and television stations vandalized. I recognized how critical the situation was for journalists and I visited Kyiv, Odesa, Kharkiv and Simferopol to work closely with Ukrainian journalists and officials to gather first-hand information about the situation and coordinate future activities.

During the year I devoted significant time and effort in order to improve co-operation and dialogue between Russian and Ukrainian journalists. My Office organized a series of roundtables attended by senior representatives of the Russian Union of Journalists, the Independent Media Trade Union of Ukraine and the National Union of Journalists of Ukraine, where participants engaged in frank discussions on ways to improve the situation with journalists' safety and maintain professional standards during the conflict period.

My Office's work concerning Internet and New Age issues continued in 2014 and included new projects. A critical analysis of Web-based journalism (or "Open Journalism") was another important objective as my Office sought to explore the growing phenomenon of participatory journalism.

My Office also continued its annual regional media conferences, meeting again with international experts, local journalists and government officials in Tbilisi for the 11th South Caucasus conference to discuss challenges and opportunities for public service broadcasters in the Digital Age and meeting in Bishkek for the Central Asia conference with participants from five Central Asian states and Mongolia.

Much work remains to be done in the area of pre-eminent importance for free media: journalists' safety. Physical violence, threats and harassment and the jailing of journalists simply for holding dissenting opinions remains a sad reality across the OSCE region. Once again I encourage participating States to end the indefensible practice of putting

## FOREWORD

people in prison for what they say and write.

Promoting and protecting free media and free expression is a matter of paramount importance for my Office and we will continue our work to help participating States comply with OSCE commitments in this area.

I hope this Yearbook will be of interest to media professionals, scholars and the public at large.

*Dunja Mijatović is the Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe.*

**M a n d a t e**

## **Decision No. 193: 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

137<sup>th</sup> 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 ap-

propriate 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.

## MANDATE

9. The OSCE Representative on Freedom of the Media will be an eminent international personality with long-standing relevant experience from whom an impartial performance of the function would be expected. In the performance of his or her duty the OSCE Representative on Freedom of the Media will be guided by his or her independent and objective assessment regarding the specific paragraphs composing this mandate.
10. The OSCE Representative on Freedom of the Media will consider serious cases arising in the context of this mandate and occurring in the participating State of which he or she is a national or resident if all the parties directly involved agree, including the participating State concerned. In the absence of such agreement, the matter will be referred to the Chairman-in-Office, who may appoint a Special Representative to address this particular case.
11. The OSCE Representative on Freedom of the Media will co-operate, on the basis of regular contacts, with relevant international organizations, including the United Nations and its specialized agencies and the Council of Europe, with a view to enhancing co-ordination and avoiding duplication.
12. The OSCE Representative on Freedom of the Media will be appointed in accordance with OSCE procedures by the Ministerial Council upon the recommendation of the Chairman-in-Office after consultation with the participating States. He or she will serve for a period of three years which may be extended under the same procedure for one further term of three years.
13. The OSCE Representative on Freedom of the Media will be established and staffed in accordance with this mandate and with OSCE Staff Regulations. The OSCE Representative on Freedom of the Media, and his or her Office, will be funded by the participating States through the OSCE budget according to OSCE financial regulations. Details will be worked out by the informal Financial Committee and approved by the Permanent Council.
14. The Office of the OSCE Representative on Freedom of the Media will be located in Vienna. Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations.

PC.DEC/193  
5 November 1997  
Annex

By the delegation of France:

“The following Member States of the Council of Europe reaffirm their commitment to the provisions relating to freedom of expression, including the freedom of the media, in the European Convention on Human Rights, to which they are all contracting parties. In their view, the OSCE Representative on Freedom of the Media should also be guided by these provisions in the fulfilment of his/her mandate.”

Our countries invite all other parties to the European Convention on Human Rights to subscribe to this statement.

Albania	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

## Declarations and Recommendations

## JOINT DECLARATION ON UNIVERSALITY AND THE RIGHT TO FREEDOM OF EXPRESSION

**The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,**

*Having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy;*

*Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011, 25 June 2012 and 4 May 2013;*

*Stressing, once again, the fundamental role of freedom of expression both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and as indispensable for advancing development goals;*

*Recognising the universal nature of freedom of expression, which is reflected in its inclusion in international and regional general human rights treaties and standards, as well as in national constitutions, in the ubiquitous adoption by States of democracy, which rests on freedom of expression, as a system of government, and in the recognition of freedom of expression as a core human value in all major cultural, philosophical and religious traditions around the world;*

*Mindful of the fact that, in the context of freedom of expression, universality implies both an obligation on States to refrain from unduly restricting this right and a positive obligation on States to ensure that all individuals and groups in society can enjoy and exercise this right without discrimination in terms both of seeking and receiving information and of imparting information and ideas;*

*Cognisant of the fact that, when freedom of expression comes under attack, it is often an early warning that all human rights are at risk and of a deteriorating security situation;*

*Recalling that freedom of expression is essential as an underpinning of sustainable development and for ensuring effective, transparent, accountable and democratic public institutions;*

## DECLARATIONS AND RECOMMENDATIONS

*Concerned* about the frequent attempts to justify violations of freedom of expression, often for purely political ends, by reference to culturally specific, traditional or community values, moral or religious beliefs, or claimed threats to national security or public order;

*Gravely concerned* about the fact that minorities and other groups which have suffered from historical discrimination are prevented from enjoying fully their right to freedom of expression with the result that they continue to be marginalised from the political, economic, cultural and social spheres;

*Noting* that freedom of expression, in concert with the right to protection from discrimination, which is a non-derogable human right, protects the rights of all individuals and groups in society to express viewpoints which differ, however strongly, from those of the majority, as long as these do not violate legitimate restrictions on free speech, for example those relating to incitement to hatred;

*Emphasising* that it is inherent in the overriding nature and importance of human rights that they require the modification or elimination of laws, regulations, customs and practices which lead to discrimination or other forms of human rights abuses, and noting that this is reflected in many leading human rights statements, including the 1993 Vienna Declaration and Programme of Action and the *Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities*;

*Aware of* the important positive role that open debate about different cultures, values, traditions, beliefs and practices can have in promoting understanding and peace, and in combating hatred, discrimination and violence;

*Adopt*, in Paris, on 6 May 2014, the following Joint Declaration on Universality and the Right to Freedom of Expression:

### **1. Recommendations for States**

a. States should take positive steps to ensure that all individuals and groups in society can realise their right to freedom of expression without discrimination. The specific steps that may be necessary will vary from State to State but the following measures should be considered:

i. Strengthening obligations on public broadcasters to serve the information and expressive needs of different individuals and groups in society, as well as to promote understanding and tolerance in society.

ii. Creating an enabling legal framework for community media, including so it can serve the information and expressive needs of different individuals and groups.

iii. Providing support, whether of a financial or regulatory nature, for media outlets or media content, for example in certain formats or languages, that serve the information and voice needs of different individuals and groups.

iv. Generally putting in place a legal and regulatory framework that promotes the rights of different individuals and groups to access and use media and digital technologies to disseminate their own content as well as to receive relevant content produced by others.

b. States should take concrete and effective steps to modify or eliminate harmful stereotypes, prejudices and practices, including traditional or customary values or practices, which undermine the ability of all individuals and groups in society to enjoy the right to freedom of expression.

c. States should not impose restrictions on freedom of expression unless they meet the minimum test for such restrictions under international law, including that they meet the standards of legality (provided by law), serve one of the legitimate aims recognised in the *International Covenant on Civil and Political Rights* (ICCPR), and are necessary and proportionate.

d. States have some limited flexibility under international law in deciding whether or not, and if so how, to restrict freedom of expression to protect legitimate aims while respecting the standards set out above, including to reflect their own traditions, culture and values. International law also recognises that different approaches towards restrictions on freedom of expression may be justified by the very different factual situations States may face. Neither of these variations in any way undermines the principle of universality of freedom of expression and restrictions on freedom of expression should

e. There is a core of freedom of expression in relation to which States have either no power or extremely limited power to adapt restrictions to take into account local traditions, culture and values, which particularly includes political speech, broadly defined, given the centrality of such speech to democracy and respect for all human rights, which also implies that public figures should accept a greater degree of scrutiny by society.

f. Certain types of legal restrictions on freedom of expression can never be justified by reference to local traditions, culture and values. Where they exist, such restrictions should be repealed and anyone who has been sanctioned under them should be fully absolved and be afforded adequate redress for the violation of their human rights. These include:

i. Laws which protect religions against criticism or prohibit the expression of dissenting religious beliefs.

ii. Laws which prohibit debate about issues of concern or interest to minorities and other groups which have suffered from historical discrimination or prohibit speech which is an element of the identity or personal dignity of these individuals and/or groups.

iii. Laws which provide for special protection against criticism for officials, institutions, historical figures, or national or religious symbols.

g. States should give special attention, as needed given local circumstances, to combating, including through programmes designed to counter them, historical discrimination, prejudices and/or biases which prevent the equal enjoyment of the right to freedom of expression by certain groups.

h. The global reach and effectiveness of the Internet, as well as its relative power and accessibility compared to other communication platforms, means that it plays a key role in realising the universality of freedom of expression. In this context, the following principles apply:

i. The right to freedom of expression, which applies regardless of frontiers, protects the Internet, as it does other forms of communication.

ii. Extreme caution should be taken in applying restrictions on freedom of expression to the Internet and other digital technologies, taking into account that such actions in one jurisdiction may affect other jurisdictions.

iii. States should actively promote universal access to the Internet regardless of political, social, economic or cultural differences, including by respecting the principles of net neutrality and of the centrality of human rights to the development of the Internet.

## **2. Recommendations for Other Actors**

a. International, regional and national human rights bodies should monitor and take steps to address restrictions on freedom of expression which are claimed to be justified by reference to specific traditions, practices, cultures and/or values, as well as situations where certain groups suffer from systematic barriers in terms of their ability in practical terms to exercise their right to freedom of expression.

b. The international community – including inter-governmental bodies and individual States – should take steps to promote more dialogue and debate about these issues with a view to promoting greater understanding about and collaboration to support universal respect for freedom of expression.

c. The media should play a positive role in countering discrimination, stereotypes, prejudices and biases, including by highlighting their dangers, by adhering to the highest

professional and ethical standards, by addressing issues of concern to minorities and by giving members of minorities an opportunity to speak and to be heard.

Frank LaRue  
UN Special Rapporteur on Freedom of Opinion and Expression

Dunja Mijatović  
OSCE Representative on Freedom of the Media

Catalina Botero Marino  
OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula  
ACHPR Special Rapporteur on Freedom of Expression and Access to Information

## 11TH SOUTH CAUCASUS MEDIA CONFERENCE

Tbilisi, Georgia

10-11 November 2014

### Public Service Broadcasting in the Digital Age

#### Recommendations

This document summarizes recommendations that were identified during the discussion of more than 70 journalists, representatives of government, civil society and academia from Armenia, Azerbaijan and Georgia, along with international experts and participants from Ukraine, Kyrgyzstan, Moldova and Kazakhstan at the 11th South Caucasus Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media on 10-11 November 2014 in Tbilisi, Georgia.

The conference focused on discussing values, content, financing, management, regulation and governance of public service broadcasting in the context of new media technologies.

The conference participants agreed that:

- Public service broadcasters should serve citizens, not government or political forces or commercial or other interests.
- Public service broadcasters' activities should always be guided by principles of accuracy, objectivity, balance, accountability and editorial independence.
- Public service broadcasters should do their best to be the most relevant and trusted source of information across all media platforms.
- Public service broadcasters should distribute their programmes via all possible means of communication and networks (satellite, Internet, cable and terrestrial) to ensure wide outreach.
- Public service broadcasters should regard the convergence of all broadcasting platforms into digital as a new opportunity to strengthen media pluralism.
- Governments should include provisions in legislation and regulations to facilitate public service broadcasters' digital switchover.
- The Internet and other platforms should not only provide access to traditional programming of public service broadcasters, but also operate as new content ser-

vices in their own right.

- The Internet and social media should be used by public service broadcasters to get feedback and to engage in debates and dialogue with the audience.
- Public service broadcasters should aim to measure the needs and satisfaction of their audience, paying attention to all parts of society.
- Public service broadcasters should give high importance to self-produced and local content, as well as to the diversity of programmes for all social groups to reflect the cultural, religious and language diversities of its audience.
- In multi-ethnic and multi-language countries, programmes should be produced in several languages and public service broadcasters should have a multi-ethnic employment policy.
- Special programmes for online distribution should be made to attract and involve younger audience into the realm of public service broadcasting.
- The financing of public service broadcasters should be sufficient, guaranteed, transparent and predictable in the medium term, and allow independence from both political and commercial interests and pressure.
- In view of increased competition in the audiovisual media, public service broadcasters should look into new technologies that would ensure wider public outreach.
- The process of appointing or election of members of public service broadcasters' boards and regulatory bodies should be transparent and reflect a broad spectrum of society.
- The integrity of editorial and operational decision making of public service broadcasters should be properly protected.
- All public service broadcasters' documents, policy papers, decisions and recommendations should be available online for public oversight. A system of interaction with the public should be in place. It should include an effective self-regulatory mechanism, including an ombudsman or similar institution within the structure of the broadcaster, which has the possibility to receive complaints, provide corrections and suggestions, and seek redress in conflict situations.

## 16TH CENTRAL ASIA MEDIA CONFERENCE

Bishkek, Kyrgyzstan  
22-23 May 2014

### **Best practice sharing on public service broadcasting models**

#### **Recommendations**

This document summarizes best practices and recommendations that were identified during the discussion of more than 70 experts from Estonia, Germany, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Tajikistan and Turkmenistan gathering in Bishkek to share their experiences on various models of Public Service Broadcasting (PSB).

The conference focused on various models of funding, management and ways to guarantee editorial independence, that programming fosters social cohesion and national identity and discussed experiences of six OSCE participating States that have transformed a state controlled broadcaster into public service broadcasters among them also the model of the Public Broadcasting Corporation of Kyrgyzstan (OTRK) established in 2010, as the first public service broadcaster in Central Asia.

The conference was organized in cooperation with the OSCE Centre in Bishkek, the nongovernmental media network Internews and OTRK.

#### **Session I: Funding models of Public Service Broadcasting:**

The funding mechanism is an essential element for the proper functioning of a public service broadcaster to secure political independence, maintain the quality, pluralism and universality of programming, and support accountability and build trust with the public.

The participants concluded that there is no universal solution to funding and models vary widely.

However there are principles and lessons learned from experiences with this various funding models.

#### **Best practices and recommendations**

A general feature is **public funding from the state budget**, the size of which varies: a percentage of Gross Domestic Product, a percentage of a certain tax, , government subsidies (Mongolia) or a fixed amount decreed on yearly bases in the State Budget

Act approved by Parliament (Estonia). Whatever method, the funding should be tied to a predictable mechanism in order to ensure independence.

A fixed method of funding is a prerequisite for sustainability and independence; a “not-less-than-last-year” funding principle should be guaranteed.

A **mix of funding sources** can raise additional revenues where public funds are scarce and state budgets low. It also can help to become more independent in countries where political decisions over budgets are or can be used as means to secure influence.

**Commercial advertising**, however, was found to be a double-edged sword because it could affect programming quality. It was noted that Lithuania recently transitioned to full state funding, following the example of Estonia. This decision was preceded by an extensive public debate on the impact of commercial advertising on content quality. The revenues generated through advertisement were, as a consequence replaced, by additional government subsidies.

While it was noted that many PSB funding models currently move away from the subscription fee model and in many countries PSB is funded through a media tax or through another similar instruments the introduction of a **subscription fee** in Mongolia was mentioned as a positive example. The modest monthly fee is fixed at \$0.40 in the provinces and \$0.56 in urban areas and is charged on electricity bills. Such a fee can provide an incentive to best serve the public interest and produce audience-oriented programmes in high quality. The model, however, often lacks both the support by the authorities and the audience as the experience of Lithuania and Kyrgyzstan showed. The Director General of the Kyrgyz broadcaster calculated that a yearly fee of only \$10 per family would generate \$11.5 million.

A subscription fee could replace advertising revenues.

State controlled media should be fully abandoned. In Kyrgyzstan that still maintains a large number of state controlled media outlets participants noted that PSB showed much better results and called it a waste of resources to continue to fund these media additionally to the publicly owned. All public investments should be redirected into the development of public broadcaster.

The members of the Supervisory Board should play an active role in seeking revenue.

Transparent, predictable funding mechanisms can help to avoid political pressure.

## **Session II: Best practices in administration and management of PSB**

Lean, cost effective structures as well as internal accounting and oversight systems are important so that public money is well spent. Administration and management structures and procedures of PSBs also have an effect on the quality, editorial independence

## DECLARATIONS AND RECOMMENDATIONS

and programming a broadcaster can offer. A special element in PSBs is the supervisory board and its influence on the management of a PSB.

Participants discussed 1) what procedures can ensure that the public has a role in what the PSB is offers, 2) how PSB models differ from state broadcasters and how can they avoid repeating their mistakes of lack of authority, editorial independence, quality and credibility of their programming; 3) how the legal framework, management and administrative structures best contribute to output, creativity, innovation and meeting the audience's needs and 4) how the entity's governance can ensure pluralism.

Participants concluded that the transition from a state broadcaster to PSB is a long-term endeavour and can take years to complete.

### **Best Practices and recommendations**

The reform and transformation process from a state broadcaster to a PSB must be set out by law and should be accompanied by a structural reform that raises the effectiveness of management; new rules and regulations may be needed; It might be needed to reduce the number of staff;

An Advisory Board needs to be dedicated to the PSB and should not assume other roles, such as regulating also commercial broadcasting (e.g. Latvia), because the mission and issues are different. The Advisory Board's responsibility is similar to the board of directors in a company, which is establishing general operating procedures and the mission of the entity, while management should concern itself with the daily operation of the entity.

The stability of management is the key to success of reforms. Rotation provisions for Advisory Board members should keep the institutional memory intact.

An Advisory Board member involved in politics or nominated by a political party should remain independent and professional while serving on the board.

An important function of the Advisory Board is to serve as a buffer between its director and the political elites' influence.

Transparency is imperative for public oversight; all documents, decisions and recommendations should be available online, especially those referring to the Advisory Board.

Government and party nominated representatives in a PSB Advisory Board should not have a predominant role and be balanced by a significant share of civil society representatives.

The tasks for the PSB could be formulated through a "public remit" on content (obsh-

estvennyi zakaz) in cooperation with a public council representing the whole spectrum of society.

Internet platforms should be used to provide access to all PSB components and products.

Training journalists is worthy of investment in order to improve quality of programming which, in turn, can legitimize and secure public support for (more) funding.

Public opinion research should be regularly conducted. Simple viewer ratings should not be the only criteria; they should go hand in hand with indicators measuring public trust.

The role of civil society and international organizations in monitoring compliance of the government to transform the state broadcaster into the public broadcaster is very important in order to minimize political interference with programming.

### **Session III: Content and Programming issues: Editorial independence – programme requirements and public input/audience interaction**

PSBs can boost programme quality and ethical standards if they strengthen the bonds with their audiences and the credibility they have as an independent, pluralistic, objective and trustworthy sources of information.

It is the task of a PSB to serve need for entertainment, education, art and culture of its audience. In newly independent countries, PSBs can play an important role in the nation-building process and the development of national identity, not by propagating state ideologies but with reports and discussions on national events, developments and politics that have meaning and affect the lives of viewers. Since a PSB is created, controlled and funded for the public it also needs to closely interact with its audience.

The participants discussed how public input and audience interaction can be ensured through feedback channels; how the basic needs of the population can be identified and filled; what role New Media plays for PSB; what are the essential differences in programme production and policy decisions among public, state and commercial broadcasters.

### **Best Practices and recommendations**

Achieving the trust of the audience should be a priority and is the most challenging task for a PSB that was a state broadcaster. There must be a clear and unambiguous policy showing that decisions are taken for the good of the society and in the public interest.

There is a need for constant monitoring of PSBs' activities to meet expectations and raise credibility.

## Communiqués

## On blocking television channels (No. 1)

27 March 2014

**Recently politicians, lawmakers and regulators in Ukraine have expressed concern about the influence of Russian television on information security or other national interests. These concerns are often followed by actions that effectively suspend or ban all or some programmes produced in Russia. In a similar development, de facto authorities in Crimea several weeks ago abruptly and brutally switched off almost all Ukrainian television channels and replaced them with channels originating from the Russian Federation.**

**While the OSCE Representative on Freedom of the Media has expressed her opinion on specific incidents in the recent weeks, she would like to summarize her position on the issue as a whole.**

In the Helsinki Final Act, participating States agreed to be bound by and fulfil their obligations as set forth in the international declarations and agreements in the area of free expression, including international agreements on human rights.

According to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), “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.”

However, the ICCPR also notes that this right carries special duties and responsibilities. It, therefore, may be subject to certain restrictions, but these shall only be ones that are clearly spelled out in national law and applied only when they are necessary to protect other fundamental values and rights.

If such restrictions are adopted by lawful institutions, such as legislatures, in accordance with the rule of law, and if the restrictions pursue a legitimate aim, and are necessary and proportional in scope, then they can indeed be recognized as appropriate.

An independent court system presents an appropriate venue to debate the restrictions to the right guaranteed by Article 19. A national court decision about the legality of such restrictions can be appealed and, in the case of many participating States, even challenged in the European Court of Human Rights as a violation of freedom of expression.

These are procedures that should be accepted and respected all across the region.

Arbitrary attempts to restrict media pluralism must be opposed. Media freedom is

dependent on a healthy and vibrant and competitive media landscape which includes voices that provide a variety of news and views in different languages coming from different countries. At all times, and especially in difficult times, blocking is not the answer; more debate is.

At the same time I see a danger to media pluralism in the very existence of state-owned and state-controlled media as they can be easily used to promulgate state propaganda – the evil all international media-freedom agreements aspire against. Therefore, I use these opportunities to call for the transformation of state media into public service broadcasters and private media across the OSCE region.

I call on all participating States to stop the information war, stop the manipulation with media and to ensure journalists' safety.

History has taught us more than once that limits on media freedom for the sake of political expediency leads to censorship and, when begun, censorship never stops.

As the OSCE Representative on Freedom of the Media I call on participating States to refrain from blocking media to avoid arbitrary and politically motivated actions which could impede the expression of alternative positions.

At the same time I recall the need to strengthen and further develop 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[1].

### **Dunja Mijatović**

OSCE Representative on Freedom of the Media  
Vienna

[1] Decision No 193 of the Permanent Council. 5 November 1997. Establishment of the Office of the OSCE Representative on Freedom of the Media, Mandate of the OSCE Representative on Freedom of the Media.

## On denial of entry of journalists from one OSCE participating State to another (No. 2)

3 April 2014

*Over recent years the OSCE Representative on Freedom of the Media has reacted on a number of occasions when an OSCE participating States denied entry to journalists from other countries. Following recent instances where journalists from Russia were denied entry into Ukraine, as well as reports of de facto authorities in Crimea denying entry to a number of journalists crossing the border of the peninsula, the Representative would like to restate her position on this issue.*

In the Helsinki Final Act, participating States agreed to improve the conditions under which journalists from one participating State practice their profession in other participating States. They, *inter alia*, committed to “ease, on a basis of reciprocity, procedures for arranging travel by journalists of the participating States in the country where they are exercising their profession, and to provide progressively greater opportunities for such travel, subject to the observance of regulations relating to the existence of areas closed for security reasons.” The participating States also affirmed that “the legitimate pursuit of their professional activity will neither render journalists liable to expulsion nor otherwise penalize them.”

Unfortunately, based on numerous examples, too many participating States are not honoring these words.

While respecting the sovereign right of participating States to control their borders, I have serious concerns about undue limitations on such travel which affects the free flow of information and free media.

Particularly worrying is the current situation related to the crisis in Ukraine. On several occasions I have addressed Ukrainian authorities and I also called on those responsible in Crimea to stop this unacceptable practice. Once again I call on all those responsible to consider their relevant policies and instructions and to stop using media and journalists for advancing their political agendas. They, instead, should facilitate the work of journalists from other countries and abstain from creating administrative obstacles to the entry.

The media plays a vital role during the times of crisis and it can also play a positive role by obtaining information, improving the understanding of the situation between nations and preventing further escalation of tensions. By arbitrary denying entry to journalists, governments are obstructing free media and the exchange of information.

I encourage participating States to fulfil their OSCE commitments and refrain from any

## COMMUNIQUÉS

steps to restrict the free flow of information. In addition, journalists negatively affected by denials of entry should be given the opportunity to appeal.

**Dunja Mijatović**

OSCE Representative on Freedom of the Media

Vienna

## On propaganda in times of conflict (No. 3)

15 April 2014

As the current crisis in and around Ukraine demonstrates, propaganda and deterioration of media freedom often go together to fuel a conflict, and once it starts they contribute to its escalation.

The need to stop propaganda is frequently being used as a reason for blocking and jamming television and radio signals or imposing other restrictions to freedom of expression and freedom of the media. Taking into consideration the broadness and vagueness of the term propaganda, and its direct link to political speech, its blank prohibition would violate international standards for the protection of free expression and free media.

To address these dangerous practices, the Representative issues this communiqué with the following recommendations to OSCE participating States:

- Stop manipulating media; stop information and psychological wars.
- Ensure media plurality and free media as an antidote to propaganda.
- Refrain from introducing new restrictions; existing laws can deal with extreme propaganda.
- Invest in media literacy for citizens to make informed choices.
- Reform state media into genuine public service broadcasting.

Freedom of expression, particularly of political speech, is a vital right in a democracy and implies the existence of a plural and diverse range of voices. Shocking, disturbing and offensive content should be combated with counter arguments and debate. The best and most effective mechanism to neutralize the impact of propaganda is the existence of an open, diverse and dynamic media environment. Propaganda is dangerous when it dominates the public sphere and prevents individuals from freely forming their opinion, thus distorting pluralism and the open exchange of ideas. No matter how loud certain outrageous voices are, they will not prevail in a competitive and vibrant circulation of ideas. Rather than engaging in censorship, States should protect and promote free and equal access to the marketplace of ideas regardless of format and technology.

No one should be restricted from expressing a certain view. Instead States should ensure that different views have an equal chance to be presented. If propaganda amounts to incitement to hatred and violence, proper and proportionate measures may be applied using existing international and national human rights instruments. According to the OSCE commitments, in particular, the Copenhagen (1990) and Moscow (1991) Documents, only those restrictions that pursue a legitimate aim and are clearly defined

by law are acceptable.

There are specific tools that already exist in the area of media regulation for dealing with biased and misleading information. These include rules on balance and accuracy in broadcasting; independence of media regulators; prominence of public service broadcasting with a special mission to include all viewpoints; a clear distinction between fact and opinion in journalism; transparency of media ownership, etc.

As an effective response, States should support and promote the existence and effective implementation of ethical standards by different media actors and invest in media literacy to empower citizens to make informed and sober choices. An understanding and respect for those standards by media actors, as well as transparency of the media, are essential to prevent and minimize the dangers of propaganda.

Today in the 21st century, as it was in the past, state media is the main vehicle of propaganda. As it is dangerous for peace and security, it should be transformed into true public service media or privatized.

**Dunja Mijatović**

OSCE Representative on Freedom of the Media

Vienna

## **On the ruling of the European Union Court of Justice – The “right to be forgotten” (No. 4)**

16 May 2014

### **The ‘right to be forgotten’ and its possible implications for investigative journalism and media freedom.**

The European Union Court of Justice in Luxembourg ruled on May 13 that search engines have an obligation to delete links to websites which publish “inadequate, irrelevant or no longer relevant” data.

The Court held that while search engines can be required to delete such links, websites that had published the data legally were not subject to the decision.

This decision might negatively affect access to information and create content and liability regimes that differ among different areas of the world, thus fragmenting the Internet and damaging its universality.

Adequate protection of personal data from public disclosure constitutes a basic right of every person and should be respected. However, information and personal data related to public figures and matters of public interest should always be accessible by the media and no restrictions or liability should be imposed on websites or intermediaries such as search engines. If excessive burdens and restrictions are imposed on intermediaries and content providers the risk of soft or self-censorship immediately appears.

Undue restrictions on media and journalistic activities are unacceptable regardless of distribution platforms and technologies.

The Office of the Representative on Freedom of the Media will closely monitor the effect and implementation of the decision by national authorities and will oppose any attempt to stifle the role of or diminish instruments available to investigative journalists.

The decision was adopted by the Court in the case of a Spanish citizen who sought to have Google delete search results to an electronic version of the newspaper “La Vanguardia” which 16 years ago published a public auction notice relating to one of his properties.

*Google Spain SL, et. al. v. Agencia Española de Protección de Datos, et. al. (Case C 131/12)*

## On Open Journalism (No. 5)

22 May 2014

The media landscape across the OSCE region is changing faster than ever before. While technological changes mean that journalism and media are irreversibly changing, our basic human rights remain the same.

Today there is a greater plurality of actors engaged in the media landscape. New platforms and tools equip practically everyone to create and share sound, text and images. The audience is now participating in the news-making and distribution and a growing number of alternatives to traditional media actors are all contributing to the public debate. They have the reach, impact and perform the role of a public watchdog, a role that is progressively been recognized by Council of Europe and other international organizations and institutions, including the OSCE Representative on Freedom of the Media.

In order to assist the OSCE participating States to take advantage of, and to tackle the challenges posed by these changes, the OSCE Representative on Freedom of the Media launches a series of Expert Meetings on Open Journalism. In the first meeting that took place on 5 May 2014 the discussion helped to define the issues we are dealing with when we talk about Open Journalism and to highlight some of the topics that will be the subject of more detailed discussions and recommendations at a future date.

Issues covered included:

How has the job of journalists changed, methods to support new forms of journalism, the way the public debate is now also shaped by other actors, applicability of international standards on freedom of expression and freedom of the media, how to make the mix of journalism and user generated content reliable and trustworthy, respect for ethical rules in the new environment, economic transformation of the media landscape and implications for pluralism.

As a conclusion to this session the OSCE Representative on Freedom of the Media issues the following recommendations to the participating States:

- The participating States need to acknowledge that journalism has irreversibly changed and that new actors are contributing to the public debate through the media.
- The participating States need to refrain from trying to define who is a journalist. It was difficult to define who is a journalist 25 years ago; it is even more complex today.
- The new media actors need to enjoy at least some of the protection and privi-

leges that were in the past only granted to traditional media.

- There is a clear need to improve ‘media and Internet literacy’ in order for the public to have a better understanding of the new environment and to enable to critically assess where the information is coming from.

The next meeting on the legal/regulatory aspects of Open Journalism is planned for September 2014.

**Dunja Mijatović**

Representative on Freedom of the Media

Vienna

## **On the impact of laws countering extremism on freedom of expression and freedom of the media (No. 6)**

7 October 2014

OSCE participating States are responding to threats from extremists by creating laws that include provisions which might seriously limit free expression and free media on-line and offline.

To address potential threats to free expression and free media, the Representative issues this communiqué with the following recommendations to OSCE participating States:

- Anti-extremism laws only should restrict activities which necessarily and directly imply the use of violence.
- Limits to free expression and free media imposed by anti-extremism laws should respect OSCE commitments and international law, notably article 19 of the International Covenant on Civil and Political Rights.
- Hate speech can be addressed if it directly incites to violence and leads to hate crimes, particularly targeting minorities and other vulnerable groups.

According to several international documents, extremist activities can be subject to legal restrictions by States when they imply the use of violence and represent a direct and imminent threat to basic constitutional pillars and, particularly, human rights, for the purpose of severe political upheaval.

Mere expression of controversial and provocative political views must therefore be respected and protected as part of pluralistic and democratic debates.

Anti-extremism laws can be particularly dangerous for free media when they fail to clearly define the notion of extremism, and use a heterogeneous, wide or open list of offences that are generally grouped as extremist. These offences may include “public explanation and justification of terrorism,” “agitation of social enmity,” “propaganda of religious superiority,” “libelous accusations of extremism against public officials,” “provision of information services to extremists,” and “hooliganism” motivated by hatred.

Anti-extremism laws also are problematic when they fail to properly define the criteria and safeguards which are necessary to guarantee their fair interpretation and enforcement. In several cases enforcement and interpretation of anti-extremism laws were put in the hands of politically controlled bodies without independent judicial oversight.

It is dangerous to empower public officials such as prosecutors or police officers to define an extremist act and exert leverage on the judicial system to impose their under-

standing of these “crimes against the State.” This opens the way to curtailing legitimate political debate and may have a chilling effect on journalists reporting on matters of public interest.

Calls for genocide and hate speech targeting minorities and vulnerable groups that may lead to hate crimes may be proscribed in line with international legal instruments and with full respect for OSCE commitments without imposing disproportionate limits on free expression. However, it should not be forgotten that controversial words are best fought with more factual, reasonable speech and not by repression and restrictions.

As stressed by the OSCE Ministerial Council in Bucharest in 2001, increased attention should be paid to manifestations of aggressive nationalism, racism, xenophobia, anti-Semitism and violent extremism. However, this should be always consistent with their commitments regarding freedom of expression and the free flow of information.

**Dunja Mijatović**

OSCE Representative on Freedom of the Media  
Vienna

## 2nd Communiqué on Open Journalism (No. 7)

28 November 2014

Online media covers a wide range of formats and languages. Today the Internet provides easy access to electronic or online-only versions of traditional print and broadcast media, as well as emerging New Media based on different and more participatory forms of expression.

Even in the case of traditional media, the Internet offers a method of distribution which enables access to information and resources as well as a more interactive framework for dialogue between media outlets and consumers.

Within this framework the phenomenon of Open Journalism has to be considered, of course, in light of already existing rights and other legal provisions in the field of free expression and media freedom. While technological changes mean that journalism and media are irreversibly changing, our basic human rights remain the same.

The latest expert debate on Open Journalism focused on how traditional and well-established media legal statutes should be applied or re-interpreted to protect innovation and media plurality.

As a conclusion to this session the OSCE Representative on Freedom of the Media issues the following recommendations to the participating States:

- The participating States need to recognise that the new participants in journalism act as public watchdogs, contribute to a free and open society, make systems of government more accountable, and foster democratic development by connecting people and building bridges between nations.
- The participating States need to ensure that the Internet remains an open platform for free flow of information and ideas, and that any proposals to regulate the Internet properly respect and promote freedom of expression and freedom of the media.
- Online content should be dealt with as any other form of expression, and there is therefore no need to create new principles of regulation to deal with illegal or harmful content.
- The new media actors should also enjoy some if not all of the privileges that were in the past only granted to traditional journalists. They might include, but not necessarily be limited to confidentiality of sources, media accreditation, information requests, and perishability of news.
- The existing national systems of media self-regulation should be open to new media actors.

The next meeting on legal/regulatory aspects of Open Journalism is planned for spring 2015.

**Dunja Mijatović**

OSCE Representative on Freedom of the Media

Vienna

# Regular Reports to the Permanent Council

## **Regular Report to the Permanent Council for the period from 28 November 2013 through 18 June 2014**

**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media Dunja Mijatović**

19 June 2014

### **INTRODUCTION**

Plus ça change, plus c'est la même chose. (The more things change, the more they stay the same).

When Frenchman Jean-Baptiste Alphonse Karr penned this epigram in 1849, he no doubt had in mind some of the typical madness displayed by mankind as it keeps repeating the mistakes of the past. Dressed up differently, perhaps, but, in reality, the same evil result being played out time and time again.

I think you will all agree that from the end of November last year, which was my last official report to you, what we have seen being played out in the OSCE region is just more of the same thing.

Please consider these facts:

During this reporting period I have intervened on media-freedom related matters about 120 times, including 40 on Ukraine issues alone.

Over the past six months I have come here several times to explain what is happening with freedom of the media in Ukraine and to ask for all the parties involved to show some degree of restraint and respect for the fundamental values of free expression that make democracy and civilized society work.

The problems fall into four broad categories: violence and threats of violence against journalists, the blocking and switching of broadcast signals, the denial of free passage to journalists to cover events, and, of course, the use of propaganda in times of conflict.

The scope of these problems has been so massive that I found it necessary to issue statements, which I call communiques, on several of these issues to make my Office's position absolutely clear. I consider my positions on these issues to be in line with international and OSCE standards on free media and free expression.

I will briefly spell out my views.

At the end of the day, there's no more effective way to restrict free media, free expression and the free flow of information than resorting to physical and emotional violence

and threats of violence against members of the media. And since the beginning of the Maidan demonstrations there figuratively has been a tide of violence perpetrated on members of the media.

Vesti journalist Vyacheslav Veremyi was killed in February. Italian photojournalist Andrea Rocchelli and his Russian assistant, Andrey Mironov, were killed in May. And on Tuesday Russian journalists Igor Kornelyuk and Anton Voloshin were also killed. Literally hundreds have been beaten and hospitalized. Equipment has been destroyed or confiscated at gunpoint.

Creating an environment for free expression is not easy when governments make it more difficult for journalists to report. The denial of entry to journalists based on a perceived bias by government officials is wrong – and runs counter to the express language of the Helsinki Final Act of 1975 which recognized the need for the authorities to facilitate international travel by media.

The use of propaganda in times of conflict has the effect of nothing less than throwing gasoline on an open flame. And, in my view, the behaviour of state-owned and state-controlled media in the conflict has been exceptionally reprehensible.

What can be done? Apparently calling on the “better nature” of those involved will not work. They continue to broadcast every day.

It leads us to making sure that there are several voices that can be heard and that there is more, not less information to work with. That, and an informed, media-literate population, that can make rational and not emotional choices may dampen the flames that the propagandists spew.

Let’s be honest with each other.

Electronic media – including television and radio – and, to a certain extent, social media – is the great shaper of public opinion. It is no wonder then that we have seen an unprecedented number of armed, hostile takeovers of broadcast facilities to switch off or change broadcast programs. And it is equally not surprising we are seeing attempts by regulators to block or switch programming from that produced in one state to programming from another.

The advocates and fighters in the conflict understand the role electronic media play and they are going to great lengths to make sure that their voice is the only voice being heard.

My Office has engaged in the problems, as observers and facilitators. Last month I invited leaders from Russian and Ukrainian journalists’ associations to sit down at a roundtable to debate and discuss the life-and-death issues they face. They agreed to a memorandum of understanding committing themselves to, among other things, professional standards in journalism and the need for media pluralism as a way of de-escalating tensions in conflict zones. The journalists will meet again next week at my

Office to continue their work.

I also have plans to assist journalists covering the conflict by holding sessions on safety issues and providing specialized training on covering conflicts.

The work of my Office will not slow down. It is my mandate to bring information to you on media violations in all countries. Though my message on these issues may be monotonous – hence the phrase which I began with – the more things change, the more they stay the same – I consider the job to be done too important to gloss over. The issues at stake in Ukraine are central to the issues of free media and free expression across the entire OSCE region. They have my full attention.

Allow me to move on to other issues.

I would be remiss not to mention matters that my Office also has addressed and will address in the next reporting period.

I note, with disappointment, that backsliding on journalists' rights continues in some of our participating States. Journalists are now routinely stopped on the street and taken in for questioning for no apparent reason. They are fined for not having state-imposed accreditation. They are thrown in jail for allegedly abusing drugs – when they aren't, of course. They face criminal charges and have been hit with criminal fines for defamation.

And they face possible jail time for contempt of court if they refuse to disclose the identity of confidential sources in criminal trials.

Laws have been passed in this last reporting period that, in essence, recriminalize defamation – and provide politicians with more, not less protection in the public square for comments made about them.

And across the region they are subject to, as they are in Ukraine, all types of violence, including attacks by law enforcement officials, especially when covering public demonstrations.

The assault on New Media continues, too. Websites continue to be blocked by participating States in the last six months, as do file-sharing sites such as YouTube and Twitter.

I also find it disturbing that the right to free expression is under assault, as governments find it necessary to pass laws criminalizing certain views of historical events.

Is all of the news bad? Perhaps not.

First, I am pleased to report that yesterday we learned that the public service announcement prepared for our Office and for the Commission for the Investigation of Murders of Journalists in Serbia, had been awarded the Cannes Bronze Lion in the category "Use of Media" for the OSCE 'Chronicles of Threats' campaign at the Cannes

Lions International Festival of Creativity, the world's biggest annual awards festival for creative communications. This award shows how important the campaign to raise awareness of the murders of journalists is as a step in achieving our goal of ending impunity for those who attack them.

As well, I am happy to note that I continue to work with participating States that are making a good-faith effort to adopt legal regimes beneficial to free media.

I note with pleasure that Ukraine adopted a new law in April on public broadcasting which contains provisions that take significant steps toward reinforcing media freedom. I am pleased that the Verkhovna Rada took into account major recommendations made by my Office regarding the draft law.

I continue working with international organizations on projects where we have a common interest and complement each other. I worked with three other international rapporteurs on free media for a joint declaration on the universality of the right of freedom of expression. My Office and I have worked with the UN Human Rights Council and the Council of Europe in recent months. Just last week I participated in the 26th session of the Human Rights Council in Geneva and, also last week, the Italian newspaper *Il Corriere della Sera* published a joint op-ed calling on Italy to fully decriminalize defamation, authored by the UN Special Rapporteur and the Council of Europe Commissioner for Human Rights and me.

Perhaps most importantly, my Office continues to organize training events that substantially increase the expertise of practitioners and government authorities in technical areas, including master classes on the digital switchover for South East Europe and classes on the conversion to public service broadcasting.

In the past 20 months alone my Office has conducted master classes in online media regulation for Central Asia and South Caucasus states, a seminar on Internet media in Belarus and we plan to train journalists and law enforcement officers in dealing with scenes of civil disobedience to avoid seeing police target the media during demonstrations.

In an exciting venture, we have embarked on a multi-year project to examine the effect of technological changes on media. With the generous support of Sweden, joined by the Czech Republic and Serbia, we launched an "Open Journalism" project in May, which many of you attended, with the purpose providing advice and guidance to participating States on the challenges posed by the new paradigm in media. From that, a series of master classes will be held in the regions to develop the skills of those involved in process, from representatives of media organizations, the online community, relevant government ministries, Internet intermediaries, legislators and lawyers.

The next expert meeting will focus on legislative and regulatory aspects of the issue and is scheduled for 19 September.

It is my hope that the Representative's Office can play a leading role in understanding what the next generation of media advancement holds for us.

I believe all of you are aware that our extensive training and project activities are funded in large part by extra-budgetary contributions. If we were to rely or attempt to depend upon funds provided in the unified budget, the projects would simply vanish. For long-term sustainability and viability, these events should be part of a rational, unified budget which is funded appropriately. Otherwise, nothing will change and nothing can change unless and until there is the political will mustered to make it happen.

Too many nations around the world know that, like democracy, free media and free speech do not come naturally and cannot be taken for granted. They must be constantly justified, reaffirmed and strengthened. That is the reason you created this Office and what you must consider to in order to make sure it functions properly and professionally in carrying out the mission.

## **ISSUES RAISED WITH PARTICIPATING STATES**

### **Albania**

Following an agreement with the government that my Office will provide advice on the ongoing transition from analogue to digital terrestrial television, on 27 November I wrote to Minister of Innovation and Public Administration Milena Harito specifying our planned steps in this process.

On 6 December I provided Minister Harito with a report, "Recommendations and examples for digital switch-over in Albania, especially regarding ownership and management of transmission facilities" commissioned by my Office.

(See Legal reviews)

On 18 December I received a letter from Genc Pollo, Chairman of the Education and Media Committee of the Parliament, expressing concern about the latest draft amendments to the audiovisual media law, particularly the proposed provisions on the Audiovisual Media Authority.

On 13 January I wrote to Chairman Pollo and Deputy Chairman Alfred Peza to share the conclusions of a round-table discussion on reform of the Public Broadcaster organized by the OSCE and the Albanian Media Institute. I expressed the importance of developing a public broadcasting system that will serve the needs of citizens and pointed out the need for a transparent reform of the nomination process of the Steering Board of the public service broadcaster, open for public debate and scrutiny, and in line with international standards and best practices. I offered to organize a follow-up discussion once the Steering Board was appointed.

On 15 January I replied to Chairman Pollo's letter of 18 December stating the impor-

tance of the Audiovisual Media Authority as a truly independent body and expressing readiness to provide a legal analysis of the latest proposed changes.

In a 17 January letter Chairman Pollo reiterated the need for continued co-operation between the Education and Media Committee and my Office.

On 14 March following an official request by the Speaker of Parliament Ilir Meta, I provided a legal review of the draft amendments to the audiovisual law. I stated that the independence of the broadcast regulatory authorities requires the independence of board members. I also said that a statutory provision to dismiss members of the regulatory authority without specifying legal reasons and underlying causes would violate the original mandate of the Audiovisual Media Authority. I called on various members of the legislative branch to reach a consensus, with the involvement of media and civil society, upon completion of current reforms.

In a 31 March letter Minister Harito wrote to me, Christian Danielsson, Director General for Enlargement at the European Commission and Thorbjorn Jagland, Secretary General of the Council of Europe, about developments in the digital switch-over process.

(See Activities planned for the next reporting period)

## **Armenia**

On 2 December I wrote to the authorities concerning the police detention and attack on Vardan Minasyan, a journalist with the newspaper Hraparak. I said that any attack by law enforcement on members of the media is unacceptable and, further, it is their responsibility to assist and protect them.

On 14 February I wrote to the authorities and issued a public statement condemning police obstruction of journalists' activities while covering a public demonstration in Yerevan on 12 February. Ani Gevorkyan and Sarkis Gevorkyan, journalists with the Chorrord Ishkhanutyun newspaper and iLur.am news portal, respectively, were assaulted and detained by police. While in custody, police officers searched the journalists and erased all recorded material from their cameras. I called on the authorities to conduct a thorough and transparent investigation of the incident and to take all necessary steps to avoid police misconduct toward members of the media in the future.

I received letters from the authorities on 19 February and 17 March regarding the incidents. I was pleased to learn that the Head of Police initiated an internal investigation into the police misconduct against Gevorkyan. Reportedly, the case is now in the hands of the Special Investigative Body. I look forward to receiving the results of the investigation.

On 28 March I presented to the authorities a legal review commissioned by my Office on draft amendments to the Civil Code concerning liability of media outlets for defamatory or insulting comments, especially when posted by anonymous users. While the draft law is a good starting point for combating the dissemination of offensive

statements, my Office noted that the proposed amendments lack clarity and contain a certain degree of vagueness. In addition, a number of provisions in the proposal may place difficult time limits on media to remove offending comments. I learned that consideration of the draft law in the Parliament was postponed until next year. I will continue monitoring the issue.

(See Legal reviews)

## **Austria**

On 27 January I issued a public statement addressing access restrictions placed on journalists covering the ball of academic associations in Vienna's Hofburg Palace. I noted that journalists should have been granted full access to this event.

## **Azerbaijan**

On 11 December I wrote to Minister of Foreign Affairs Elmar Mammadyarov regarding several worrying developments, including the sentencing of Nijat Aliyev, editor-in-chief of the azadxeber.org news website, on 9 December by the Baku Court to 10 years imprisonment for various crimes. I also raised the 22 November arrest of Abdul Abilov, an online activist and blogger, on drug-related charges and the 4 December interrogation of and official warning given to Natig Adilov, a correspondent with the newspaper Azadliq.

On 19 May I received a response from authorities informing me that Aliyev's criminal conviction was fully supported by valid evidence and that any allegations stating that he was prosecuted for expressing a critical viewpoint are entirely without merit. They also assured me that Abilov's arrest was not linked to his Facebook posts criticizing authorities. I will continue monitoring the situation involving these convicted journalists.

On 27 January I wrote to the authorities expressing concern about the arrest of Omar Mamedov, an online activist, on drug-related charges. I expressed hope that the allegations against him will be thoroughly investigated and requested more information on the case.

On 24 February I received a letter from the Administration of the President informing me that the detention of Mamedov is not related to his Internet activity, but rather based on concrete evidence. I will continue to follow Mamedov's case.

On 6 February I wrote to the authorities and expressed my concern about reports that, since January, Baku authorities have terminated the licenses of kiosk owners selling newspapers. Although this decision was reportedly due to the pending renovation of the kiosks, I expressed concern about the effect it might have on citizens to freely receive information through regular media distribution channels. I requested more information on the situation.

I received a response on 8 April informing me that the kiosks have been replaced by

modern newsstands in different residential areas and that the authorities are setting up a modern network for the sale of print media.

On 25 February I wrote to Minister Mammadyarov regarding reports that the Prosecutor's Office required Khadija Ismayilova, a RFE/RL journalist, to disclose confidential sources. I expressed hope that Ismayilova's right not to disclose the identity of her sources will be respected. I also brought his attention to the cases of online activists and bloggers Abilov and Mamedov.

On 8 April I was informed by authorities that Ismayilova had been treated in accordance with existing legislation and that her civil and professional rights had not been violated. I was also assured that both Abilov and Mamedov's arrests were not linked to their work as journalists and that their cases are being addressed in accordance with national legislation and in line with the country's international obligations. I will continue to follow the developments in these cases.

On 22 April I wrote to the authorities expressing my concern about the arrest of Rauf Mirkadyrov, a journalist from the newspaper Zerkalo, on charges of high treason. I expressed hope that such serious charges would be very carefully investigated and requested more information on the case.

In a response from the authorities on 19 May, I was told that Mirkadyrov's detention was not related to his role as a journalist, but based on evidence.

On 28 April I wrote to the authorities raising the issue of an attack on Farahim Ilgaroglu, a journalist from the newspaper Yeni Musavat. I stated that I was pleased that the police have initiated an investigation into the matter and expressed hope that the perpetrator will be identified and brought to justice. I also requested additional information on the case.

On 7 May I issued a public statement condemning the attack by police on Etimad Budagov, a journalist with Turan news agency, the detention of Mahammad Turkmen from Yeni Musavat, Khalid Garayev from Azadliq and Amid Suleymanov from the Mediaforum website and the attempted detention of Parvana Bairamova of the Turan news agency and a contributor to Voice of America, by law enforcement agencies on 6 May. I emphasized that attacks on journalists by law enforcement is especially unacceptable given their responsibility to protect members of the media.

I also condemned the attack on Huseyn Azizoglu, a journalist with Obyektiv TV, in the presence of police on 7 May, which resulted in injuries and damage to his camera. I expressed hope that these incidents will be subject to a swift and transparent investigation.

On 15 May I issued a public statement expressing my outrage by the eight year prison sentence handed down to Parviz Hashimli, a journalist with the newspaper Bizim Yol, and called on the authorities to stop imprisoning journalists for their work.

I also used the opportunity to bring attention to the lengthy sentences handed down to other journalists, such as Nijat Aliyev (mentioned above), Sardar Alibeyli, editor-in-chief of the P.S. Nota newspaper and Rashad Ramazanov, an independent blogger.

In addition, I expressed concern about the 14 May detention, seizure of materials and expulsion from the country of Laurent Richard and Emmanuel Bach, French journalists with Premières Lignes.

On 20 May I wrote to the authorities regarding the 16 May attack on Islam Shikhaliyev, a reporter for Azadliq Radiosu, in which assailants attacked the journalist and took his camera and mobile phone in the presence of police officers who, reportedly, did not intervene. I expressed hope that a speedy investigation would result in the perpetrators being brought to justice.

On 20 May I wrote to the authorities regarding the 26 May attack on another Azadliq Radiosu reporter, Elchin Ismail, in which assailants beat him and broke his camera. I again expressed hope that a speedy investigation would bring the perpetrators to justice. In the same letter I said that I was pleased to learn that journalists Faramaz Novruzoglu (Allahverdiyev) and Fuad Huseynov were granted amnesty.

On 29 May I wrote to the authorities concerning the five- and a half-year prison sentence handed down to blogger Abdul Abilov. I also mentioned the case of Parviz Hashimli and expressed hope that the Appeals Court would overturn both verdicts.

With Abilov's conviction there are now more than 10 members of the media in prison, convicted or awaiting trial, which is the highest number in the country my Office has observed since it was established. This troubling trend is a sign of a rapidly deteriorating media freedom environment, which discourages investigative journalism and contributes to a climate of threat and intimidation.

## **Belarus**

On 27 January I wrote to Minister of Foreign Affairs Vladimir Makei to express my concern that newly implemented changes in the law "on information, information technologies and protection of information" did not employ the majority of the recommendations presented in a legal review commissioned by my Office at the request of the Belarussian government.

On 11 March I wrote to the authorities regarding the short-term detention of Belsat TV journalists Siarzhuk Kruchkou, Nasta Reznikava and Aliaksandr Patseyeu on 5 February in the Vitebskaya oblast.

The journalists were released only after providing a written explanation for their presence in the area.

I also expressed concern about the detention for several hours of a group of journalists, including Vladimir Gridin (a contributor to Radio Liberty), Irina Orekhovskaya (Nasha

Niva newspaper), Vasiliy Semashko (BelaPAN news agency), Sergei Gapon (Komsomolskaya Pravda in Belarus newspaper), Artem Lyava (milinkevich.org), Inna Studzinskaya (Radio Liberty) and Yevgenii Yerchak (Tut.by news portal) on March 2 in Minsk.

In reply, I received a letter on 11 May stating that the journalists detained on 5 February did not have journalist licenses or any other accreditation documents. As for the incident on 2 March, I was informed that the journalists refused to provide adequate information or necessary identification documents and that police acted lawfully.

On 13 May I wrote to the authorities regarding the short-term detention of a crew from Radio Svoboda on 9 May near Minsk Arena. They were released after providing identification and a written explanation for their presence.

I noted that the harassment and short-term detention of journalists continues even though I was given assurances that the authorities would become seriously engaged in order to stop this unnecessary practice. I requested additional information on these events.

On 5 June I wrote to Minister Makei to express my concern about the growing number of warnings and fines issued to journalists who work without accreditation given their affiliation with media outlets not registered with the authorities. I said that because accreditation is not a work permit, the lack thereof should not deprive journalists of their ability to work. I urged the government to reform the accreditation requirements for journalists as part of the plans to liberalize media legislation and offered the assistance of my Office.

On 17 June I issued a public statement calling on the authorities to repeal accreditation requirements for journalists. I said that the requirements can effectively ban journalists from reporting and raised the case of Andrey Meleshko who was fined on 16 June for working for Polish-based Radio Racya without accreditation. I also noted similar cases of journalists who were fined or received warnings for their affiliation with media outlets not officially registered.

I look forward to visiting Minsk in autumn as my Office and the Ministry of Foreign Affairs plan to carry out a training course on the interaction between law enforcement agencies and members of the media. I also plan to meet with Minister Makei to discuss co-operation between my Office and the authorities aimed at further promoting media freedom in the country.

## **Belgium**

On 25 March I issued a public statement warning that a proposed law criminalizing certain forms of expression, most notably incitement to gender discrimination, would potentially endanger media freedom. According to the proposal, penalties for sexist and other discriminatory expressions based on gender include fines and prison sentences of up to one year. I stressed that these sanctions are too harsh and that the

vague wording can lead to broad interpretation. I also noted that all speech, even that considered offensive, painful or provocative and not in line with most basic democratic principles and values, must be allowed.

### **Bosnia and Herzegovina**

On 14 January I wrote to the Minister of Security to express my concern about a Distributed Denial-of-Service (DDoS) attacks on a number of news portals that resulted in a loss of service. I emphasized the importance of investigating such attacks and asked the Minister to keep me informed about the investigation.

On 27 January I issued a public statement condemning an attack on journalist Sinan Alić in Tuzla. According to media reports, Alić was hospitalized with head injuries. An investigation was launched. I stated that attacks on journalists must not go unpunished and expressed hope that the authorities would do everything possible to prevent future attacks.

On 5 February in a public statement I condemned a police attack on RTV Slon cameraman Branislav Pavičić. According to media reports, the incident took place while Pavičić, who was wearing media identification, was filming a protest in front of the Tuzla Canton Government building. I welcomed the fact that the authorities publicly condemned the attack and urged a full investigation.

On 14 February I issued a public statement condemning the intimidation of a journalist by law enforcement officers in Tuzla. According to media reports, two officers forced the journalist to hand over footage he recorded at recent protests and to testify against demonstrators. Police officers also demanded telephone numbers of Tuzla journalists to question them about the work of the BH Journalists Association. I called upon the authorities to ensure the safety of journalists and said journalists and editors should demonstrate the highest level of professionalism, particularly in situations of social and political unrest.

On 28 February I issued a public statement condemning the labelling of certain media outlets as “foreign agents” by politicians. The Alliance of Independent Social Democrats listed a number of nongovernmental organizations and media outlets on its website as allegedly engaged by foreign countries for “stimulating disturbances and undermining of the constitutional order.” I said that such acts represent a clear attack on media freedom and could jeopardize journalists’ safety, intimidate journalists and have a chilling effect on the media.

I am awaiting a response from the authorities to my long-standing proposal to pay an official visit to the country.

### **Bulgaria**

On 2 April I issued a public statement condemning a second arson attack on a car of television journalist Genka Shikerova. A similar incident occurred in September 2013

without prosecution. I emphasized the need to launch thorough investigations into both attacks because the failure to do so suggests impunity for assailants.

I hope to receive updates on the status of these investigations.

### **Croatia**

On 21 February I wrote to Vesna Pusić, First Deputy Prime Minister and Minister of Foreign Affairs, about potential criminal defamation charges against journalist Ernest Marinković. I said such charges can create a chilling effect on the media. I urged the government to decriminalize defamation and expressed the readiness of my Office to assist in this process.

On 20 March I wrote to Minister Pusić expressing concern about assaults on journalists Ante Tomić and Vinko Vuković and stating that both incidents represented clear attacks on free media. I called on the authorities to fully investigate and requested that they share with me any additional information.

On 7 April I again wrote to Minister Pusić and issued a public statement the following day to express my deep concern about recent convictions and pending charges against journalists Slavica Lukić and Vladimir Matijanić on criminal defamation and insult charges. I once again asked the authorities to initiate legal reforms to fully decriminalize insult and defamation.

On 5 June I received a reply from Minister Pusić in response to my earlier letters regarding several cases related to criminal defamation in Croatia. In her letter, Minister Pusić assured me that the government attaches great importance to free, independent and pluralistic media as an essential component of a free and open society and accountable systems of any government. She further noted that criminal offences against honour and reputation in the existing provisions on insult, defamation and libel in the Criminal Code, which went into effect on 1 January, are based on relevant recommendations of the Council of Europe.

### **Denmark**

On 13 May I issued a public statement concerning criminal fines for defamation handed down to Kåre Quist, Dorthe Vest Andersen, Sara Munck Andersen and Lisbeth Kølster, journalists with the Danish Broadcasting Corporation. They were fined for allegations in a 2009 radio broadcast in which they criticized Boligadministratorerne A/S, a housing association.

I also renewed my call during a visit to Copenhagen in November 2013 ([www.osce.org/fom/118508](http://www.osce.org/fom/118508)) to fully decriminalize defamation and for additional civil law reforms that would establish reasonable damage limits in civil defamation cases.

### **France**

On 14 January I wrote to Minister of Interior Manuel Valls requesting the annulment of a performance ban placed on comedian Dieudonné M'Bala M'Bala by local authorities. I stated that in free societies people must be allowed to express their opinions and views no matter how offensive and shocking they may be. I also said that only extreme and threatening cases of hate speech require an ex-post response by public authorities. Prior restraint and preventive prohibitions should always be considered a disproportionate and thus unacceptable restriction. I stressed that a broad notion of public order is not a legitimate basis for limiting freedom of expression in a democratic society.

On 21 February I received a reply from the authorities stating that the ban of the show in question was based on its anti-Semitic nature, his previous criminal convictions and the clear risk the shows pose for public disorder. It also stated that, having been confirmed by the Council of State, the ban was legitimate and in line with international commitments.

## **Georgia**

On 9 January I wrote to David Usupashvili, Chairman of the Parliament, expressing my disappointment that no new members had been elected to the Georgian Public Broadcaster's (GPB) Board of Trustees despite a number of competent applicants being nominated by the Public Selection Commission. I encouraged the authorities to work toward the timely election of a new board.

I was pleased to learn that as of May 21 the Board has a new Chairman and seven members and is now authorized to begin regular operations. I hope that the remaining two members will be selected soon.

On 16 May I replied to a 17 April letter from Maia Panjikidze, Minister of Foreign Affairs, regarding the detention of a Georgian TV 3 channel crew near Tskhinvali, stating that the detention constitutes a clear violation of the rights of the journalists and obstructs the free flow of information and media freedom. As the problems of crossing of the Administrative Boundary Line with South Ossetia are dealt with in the context of the Geneva International Discussions, my Office forwarded information on the case to Ambassador Angelo Gnaedinger, the Special Representative of the Swiss OSCE Chairmanship, for the next round of talks.

I was pleased to hear that the journalists were released the next day.

On 6 June I received a reply from Ambassador Gnaedinger about his personal involvement, along with EU and UN representatives, in the release of journalists. He said that the case was discussed at the 44th meeting of the Incident Prevention and Response Mechanism on 28 April in Ergneti and may be raised during the 29th Round of the Geneva International Discussions.

Also on 16 May I wrote to Minister Panjikidze to express concern regarding reports

that the office of Rustavi 2, one of the largest television news channels in Georgia, was under video and audio surveillance. I stressed that if these reports were confirmed, it would constitute a serious obstacle to media freedom and the work of journalists throughout the country. I noted that the Prosecutor's Office has launched an investigation into the matter and expressed hope that the proceedings would be transparent and thorough.

On 28 May I received a response from Minister Panjikidze stating that the Office of the Chief Prosecutor has launched an investigation into the case. The Minister forwarded me the interim findings of the investigation and assured me that the government attaches utmost importance to media freedom and will do its best to ensure media independence.

### **Greece**

On 13 December I wrote to Foreign Minister Evangelos Venizelos expressing my concern about an attack on Star TV reporter Panagiotis Bousis and his cameraman on 9 December. I called particular attention to the disconcerting fact that law enforcement officers present did not intervene. I urged authorities to publicly denounce all attacks on journalists and begin a thorough investigation.

On 20 January I received a response saying that because no official complaint or report of the alleged incident had been submitted, there would not be an investigation. I was also informed that, according to the competent authorities, police present at the event had not witnessed any such attack nor had any other evidence of the attack been presented to the authorities.

On 22 January I once again wrote to Foreign Minister Venizelos regarding blogger Filippos Loizos' 10-month suspended prison sentence for insulting religion. I emphasized that the free flow of ideas should not be restricted on the grounds of protecting religious sentiments and asked that the authorities consider reforming current legislation on blasphemy and insult to religion and offered my Office's assistance in this regard.

On 2 April I received a response saying that the sentence was handed down by an independent court and that an appeal had been filed. The letter also noted that the relevant article of the existing Penal Code might be reviewed by the newly established Special Legislative Drafting Committee, created by the Ministry of Justice to prepare a draft of a new Penal Code.

### **Hungary**

I closely followed the Constitutional Court's review of the Civil Code provision restricting criticism of public figures. A 5 March ruling found the provision to be unconstitutional, stating that opinions, including value judgments, expressed on public issues cannot give rise to civil liability.

I welcome this ruling as a pronouncement of the importance placed on freedom of

speech and trust that it will advance pluralism and public debate.

On 29 May in a public statement I warned that imposing unconditional and direct responsibilities on Internet content providers can stifle free debate on issues of public interest. On 28 May the Constitutional Court dismissed a complaint filed by the Association of Hungarian Content Providers concerning derogatory comments made by third parties on a website managed by a content provider.

I noted that the ruling could significantly curb free debate in the country, adding that the decision to place unconditional responsibility on content providers for all comments posted on their websites by third parties will make it very likely that several online comments will be restricted or blocked. I stated that international standards and best practices establish the need to hold content providers responsible for comments by third parties only if they were aware of the harmful nature of the comments and refuse to remove them.

I follow with concern the recent raids on NGOs, including the investigative website [www.atlatszo.hu](http://www.atlatszo.hu) ([www.transparency.hu](http://www.transparency.hu)). I also follow closely the imposition of a new advertising tax on the media, as it can negatively affect the media landscape and further decrease media pluralism in the country. I note with concern the lack of public consultations and the expedited procedure through which the new law was adopted on 11 June. On issues significantly affecting the media landscape, an open and informed debate is of crucial importance to democracy.

## Italy

In response to my letter of 11 November regarding proposed amendments to Law No. 925 on defamation, on 13 January I received a letter from Foreign Minister Emma Bonino assuring me that she would pass on my call for decriminalization of defamation to the competent authorities. She also informed me that Francesco Gangemi, editor of monthly newspaper *Dibattito News*, had been released from prison and is under house arrest.

The draft law is still pending approval by the Italian Senate.

On 6 February my Office's expert, Boyko Boev of Article 19 and author of the legal analysis on Law No. 925 of November 2013, participated in a discussion in Rome organized by the NGO *Ossigeno per l'Informazione* with the patronage of the Italian Senate on "Diffamazione: tutela della reputazione e liberta di stampa" (Defamation: protection of reputation and freedom of the press) in which he outlined the main points of the analysis. The object of the conference was to discuss the most problematic and sensitive areas of the draft law.

On 8 June the Italian newspaper *Il Corriere della Sera* published an op-ed article "Diffamazione: progetto di legge da rifare," signed by UN Special Rapporteur on Freedom of Opinion and Expression Frank la Rue, Council of Europe Commissioner for Hu-

man Rights Nils Muiznieks and me. This article stresses the need to fully decriminalize defamation in Italy in order to respect international standards in the areas of free expression and free media.

## **Kazakhstan**

On 13 February in a letter to Minister of Foreign Affairs Erlan Idrissov I voiced my concern about an announcement by Chair of the Agency for Religious Affairs Marat Azykhanov on 3 February that all television programs will require approval by the Agency before broadcasting. Azykhanov later clarified that he was referring to programs produced under public procurement contracts.

In the letter I questioned the scope and mechanisms of the screening procedures and the procedure to ensure how the Agency would protect editorial independence without engaging in censorship. I noted that editorial independence applies to all content, regardless of whether it is funded by private or public funds.

On 7 April I received a reply from Minister Idrissov informing me that the Agency for Religious Affairs is not empowered to pre-screen any media content. The Agency's role will be to provide expert theological reviews and give recommendations.

On 19 February in a letter to Minister Idrissov I raised the issue of website blocking, specifically ratel.su, a site that specializes in analytical and investigative reporting. I also requested information on the criteria applied by the authorities that resulted in blocks on 596 websites over the past three years for "propaganda of extremism and terrorism."

On 7 April I received a reply from Minister Idrissov stating that the measures were taken to protect citizens from "damaging extremist materials." He informed me that the blocking of the websites was the result of a court decision. He noted that 433 of the websites were blocked for promoting terrorism, 78 for religious extremism, 37 for nationalistic extremism and 48 for dissemination of information on the production of explosive devices.

With regard to ratel.su, the Minister clarified that the authorities have not blocked the site and it is still accessible to the public.

On 26 February I issued a public statement on the closure of the newspaper Pravdivaya Gazeta by a district court in Almaty on 24 February for a series of minor administrative offenses. The newspaper was found guilty of listing false figures related to published copies and an incorrect date of publication. I expressed concern that minor offenses and petty irregularities cannot be used to limit media freedom. I also expressed concern that this seems to be a growing trend and urged the authorities to take steps to reverse it.

A recent legal review of the Administrative Code of Kazakhstan commissioned by my Office also emphasized the need to remove disproportionate penalties against media

from the Administrative Code.

On 11 April I expressed concern about a series of changes in laws and regulations that could restrict media freedom and Internet access and result in the restriction of public debate. I called on the authorities to reconsider the following changes:

New rules giving the government greater control of media reporting during a state of emergency; a new article to the Criminal Code criminalizing the dissemination of false information online or through the media, punishable with a prison sentence of up to five years and amendments to the law “On Communications” which allow the prosecutor to temporarily shut down websites and entire communications networks for distributing information “harmful” to individuals, society or the state or for containing “extremist” rhetoric.

Terms are not clearly defined in all three proposals and allow for very broad interpretation. When combined with the added burden of harsh sentences in the Criminal Code, these changes might result in an extreme chilling effect for media in the country. I urged the authorities to take into account the recommendations of my Office’s latest legal review.

With regret, I learned that the President signed the communications law amendments and they went into effect on 5 May. I also learned that the Parliament has approved the changes to the Criminal Code and that they await the approval of the President.

On 17 April I wrote to the authorities to ask for more information following reports that police officers physically obstructed the work of a number of journalists on 15 April in Astana, resulting in injury to one of the journalists.

### **Kyrgyzstan**

On 23 April I presented a legal review on a bill amending an article in the Criminal Code on the false reporting of a crime and called on President Almaz Atambayev to veto the measure because it could de facto reintroduce defamation as a crime, in contradiction to the 2010 Constitution. I expressed particular concern about a provision in the amendment that would introduce stronger protection for public officials against accusations of corruption.

I noted with regret that on 17 May the bill was signed into law accompanied by a statement that the law only applies to those who knowingly disseminate false information. I will be closely following implementation of the law and hope that it will not lead to setbacks in the progress Kyrgyzstan has made in promoting media freedom and free expression.

(See Legal reviews)

## **Latvia**

On 14 February I issued a public statement expressing concern about proposed amendments to the Criminal Law that outlaw “the public denial or glorification of Soviet and Nazi actions against Latvia” and include prison terms for such offences of up to three years. I called on the authorities to carefully reflect on the proposed changes because the vaguely worded law could be interpreted in a way that would infringe upon the right to free expression, stifle pluralistic debate and negatively affect free media. I noted that while historical debates can be very sensitive, any legislative provisions criminalizing public expression and speech should be restricted to instances of intentional and dangerous incitement to violence only, in line with the international media freedom standards and principles.

On 27 March I wrote to Vineta Porina, a Member of Parliament, in reply to her letter of 24 February, which expressed concern about my statement on the draft law. I wrote that in democratic societies free expression must prevail, regardless of the controversial nature of the views expressed.

I was pleased to note that Foreign Minister Edgars Rinkēvičs also expressed concern about the draft law along the same lines, indicating that the proposed wording of the draft law restricts free speech. Unfortunately, on 15 May the Parliament adopted the law in a final reading, even extending prison terms for public denial for up to five years.

## **Lithuania**

As a follow up to my 15 November 2013 letter to the authorities regarding the mandatory disclosure of sources for Baltic News Service journalists, I was pleased to note that a Vilnius court revoked this requirement in December and found that the search of the editor’s property had been unlawful.

On 17 December I participated in the conference in Vilnius “Civic responsible media cultivation and society right to know” organized by the Lithuanian Journalists’ Union and Ministry of Culture and spoke on journalist’s rights, safety and decriminalization of defamation. The conference was held in the Seimas and brought together representatives from business, politics, media and civil society.

On 5 February I presented Loreta Graužinienė, Speaker of the Seimas, with a legal review commissioned by my Office on the draft law amending provisions of the Criminal Code and Administrative Code and issued a public statement on 10 February on the issue.

Overall, the review found that the proposed amendments would have a positive impact on free expression and media freedom, although some aspects of the Defamation Law required further attention. I learned that the draft law was approved by the Parliament in the first reading, but was sent to the Committee on Legal Affairs for further discussions after receiving negative feedback from the government. I will continue to

monitor the issue.

(See Legal reviews)

### **The former Yugoslav Republic of Macedonia**

On 20 January I wrote to Foreign Minister Nikola Poposki regarding a civil defamation judgment against a Fokus journalist and editor-in-chief for damaging the reputation and honour of Security and Counter-Intelligence Directorate Director Saso Mijalkov. I wrote that public officials need to endure a higher threshold of criticism and that judgments in any case need to be proportional so as to not bankrupt the media outlet, thus weakening media pluralism. I wrote that I will closely follow the additional civil libel lawsuits brought against Fokus.

On 10-12 February I visited Skopje upon the invitation of Minister of Information Society and Administration Ivo Ivanovski. I met with Prime Minister Nikola Gruevski and Minister Ivanovski to discuss media freedom in the country, in particular the newly adopted media laws and the conviction of journalist Tomislav Kezarovski.

I noted that the laws are a positive development that includes several features suggested by my Office's legal expert. I will continue to follow their implementation to ensure media independence and plurality are promoted.

During the visit I also had meetings with a number of media representatives, including heads of the Association of Journalists of Macedonia, the Macedonian Institute for Media, the Independent Trade Union of Journalist and Media Workers and the Macedonian Association of Journalists', as well as several journalists.

In co-operation with the authorities, I concluded my trip on 12 February with a visit to Kezarovski at his home, where he is under house arrest awaiting his appeal. I will continue to follow his case closely.

On 24 February I wrote to Prime Minister Gruevski and Minister Ivanovski thanking them for the fruitful discussions and reiterating some main concerns and opportunities for future co-operation.

On 20 March I received a letter from Prime Minister Gruevski in response to my letter dated 24 February, in which I raised concern over the lack of transparency in how public bodies spend their advertising budgets. He assured me that advertising is used for information and education purposes and that the selection procedure is carried out by an independent agency. With regard to my concerns about civil defamation cases, to which I also raised attention in my letter, I was assured that only one non-final judgment for defamation has been imposed against media.

On 21 May I issued a public statement expressing concern regarding the coercive actions by law enforcement officers directed toward journalists covering demonstrations in Skopje. I called on the authorities to swiftly investigate this incident and to take

steps to ensure that law enforcement agencies respect the rights of the members of the media.

To support self-regulation in the country my Office has selected an expert to prepare a needs assessment, help draft a strategy paper, including an annual action plan and conduct two workshops for the members of the Press Council, the first of which is scheduled to begin on 14 July.

### **Moldova**

On 14 January I issued a public statement condemning the exclusion of three television channels from several cable networks. I called on the authorities and the regulatory body to immediately look into this matter in order to preserve media pluralism in the country.

I was pleased to learn that the cable networks resumed broadcasts on all three channels a short time later.

On 17-19 March I paid an official visit to the country at the invitation of the Ministry of Foreign Affairs where I met with authorities, representatives of the broadcasting regulator, public service broadcasters, civil society and journalists from both banks of the Dniester/Nistru River. Among other issues, I discussed the lack of transparency in media ownership, concentration of the advertising market, the slow digital switchover process and low public awareness regarding digitalization, as well as a weak and financially dependent public service broadcaster.

I expressed concern with the delay in launching the digital switch-over, which must be completed in 2015, and noted the need for taking specific steps, including introducing related technical regulations in the legislation. I noted that the majority of recommendations from the legal analysis of the Programme on the Transition from Analogue Terrestrial Television to Digital Terrestrial Television commissioned by my Office in 2012 were taken into account. The legal analysis is available at <http://www.osce.org/fom/92575>

(See Visits and participation in events)

On 8 May I presented authorities with a legal review commissioned by my Office regarding several proposed amendments to the audiovisual legislation. Despite some minor improvements, the review found that the proposed amendments lack clarity, overlap and fail to reflect the interests of all stakeholders.

(See Legal reviews)

### **Montenegro**

On 27 November I received a letter from Minister of Interior Rasko Konjevic in response to my previous interventions on the safety of journalists. He assured me that

the attacks on the newspaper Vijesti and on journalist Tufik Softic are strongly condemned by all relevant state institutions and that the government and ministry are working to create an environment in which free expression and the safety of journalists are foundations for democratic development.

On 17 December I wrote to Igor Luksic, Deputy Prime Minister and Minister of Foreign Affairs and European Integration, to reflect on our meeting at the OSCE Ministerial Council in Kyiv where we discussed the safety of journalists. I also requested an official visit to the country.

On 4 January in a public statement I condemned an attack on Dan newspaper journalist Lidija Nikčević and called on authorities to finally end impunity for assaults on journalists.

On 13 February I issued a public statement expressing concern about another attack on the daily newspaper Vijesti and noted that this event adds to the dangerous trend of violence and hostility toward members of the media.

On 19 February I wrote to Minister Luksic to reiterate my request for an official visit to Montenegro, the logistics of which my Office and the Permanent Representation of Montenegro are now planning.

On 27 May I issued a public statement on the 10th anniversary of the murder of journalist Duško Jovanović. I urged the authorities to ensure a thorough and transparent investigation to identify those behind the crime and bring them to justice.

On 4 June I met with State Secretary Vladimir Radulović to discuss my upcoming official visit to Montenegro and other media freedom related issues.

## **Romania**

On 12 December I wrote to the authorities and issued a public statement expressing concern about amendments that would re-criminalize defamation. The amendments have been widely criticized by civil society for their potential chilling effect on media.

I pointed out that civil society and other vital stakeholders were left out of the consultations on the new draft provisions. I called on Parliament to reconsider the amendments in order to ensure that journalists are able to report on issues of public interest without fear of criminal charges.

I was pleased to see that the new Criminal Code, which went into effect on 1 February, contained no provisions regarding “crimes against human dignity.”

## **Russian Federation**

On 11 December I received a response from the authorities to my letter of 8 November about the detention and interrogation of Øystein Bogen and Aage Aune from the Nor-

wegian TV2 channel who were detained on three separate occasions and interrogated six times in Southwest Russia.

I was informed that the incident was the result of a technical error on the part of representatives of the regional law enforcement authorities. The authorities assured me that the event was thoroughly investigated and all those responsible were duly penalized.

On 20 December I wrote to the authorities expressing concern regarding the conviction and sentencing of Sergei Reznik, a well-known investigative journalist and blogger in Rostov-on-Don, who was found guilty of insulting a public official, bribery and deliberately misleading authorities and sentenced to one and a half years in a work colony.

I asked for more information on the case and expressed hope that his imprisonment is not related to his work as a journalist known for his critical reporting.

On 15 April I learned that the appeals court upheld Reznik's conviction.

According to reports, on 11 June a new criminal case was filed against Reznik for insulting a government official. I will follow this case closely.

On 20 December I issued a public statement calling on the members of the State Duma to reconsider the proposed changes to the Law "On information, information technologies and on protection of information" which would allow the Prosecutor General and his deputies to block websites containing content such as calls to participate in public events held in violation of government regulations and for extremist activities, a concept broadly defined within the legislation.

I was disappointed to learn that the amendments were passed and then signed into law by the President of the Russian Federation on 30 December.

The same day I issued another statement welcoming the conviction of Pavel Sopot for ordering the murder of Igor Domnikov, a Novaya Gazeta journalist killed in 2000. I also welcomed the potential amnesty for members of the punk band Pussy Riot, who were convicted in 2012 on hooliganism charges and expressed hope that charges would be dropped against the journalists covering the Greenpeace action at Gazprom's Prirazlomnaya platform in the Barents Sea in 2013.

I was pleased to learn that on 23 December the members of Pussy Riot were released from prison.

On 9 January I issued a public statement expressing concern over the sentence handed down to journalist Aksana Panova, founder and former chief editor of the Ura.ru and chief editor of Znak.com news agency in Yekaterinburg, of 300,000 rubles on charges of extortion as well as a two-year ban on practicing journalism.

On 14 January I received a response from the authorities noting that the criminal in-

investigation of Panova's case was conducted in full compliance with existing legislation and had no correlation to her role as a journalist.

I was pleased to learn about an appeals court ruling of 7 May lifting the ban on Panova's professional work in the media and issued public statement on 8 May welcoming this decision.

On 15 January I wrote to the authorities conveying concern about the refusal to grant a visa and the subsequent decision barring David Satter, a well-known US journalist and adviser to Radio Free Europe/Radio Liberty, from entering the Russian Federation for five years for an administrative violation of the rules on entering and staying in the country.

On 17 January I received a reply from the Russian Foreign Ministry stating that Satter was barred entry to the country by a court decision based on non-compliance with established visa procedures.

On 5 February I issued a public statement expressing concern about the exclusion of the independent television station Dozhd by a number of major cable and satellite operators. I noted that both the Prosecutor's Office and Roskomnadzor, the federal telecommunications regulator, investigated Dozhd's activities but found no legal grounds for sanctions.

On 11 February I received a letter from the authorities informing me that the exclusion of Dozhd came as a result of a voluntary decision by privately owned media operators acting in response to their audience. I will continue following this case closely.

In the same letter of 11 February the authorities noted that my Office did not react to a 29 January briefing by the High Representative of the European Union for Foreign Affairs and Security Policy Catherine Ashton in Kyiv, to which several Russian journalists were denied entry.

On 19 February I replied to the authorities stating that my mandate does not necessitate intervention when it comes to the public relations policies of international organizations, such as the EU. At the same time, I fully agreed that journalists should have equal access to all public events.

On 27 March I wrote to Supreme Court Chair Vyacheslav Lebedev and issued a public statement welcoming the court's decision of 19 March to reinstate Rosbalt news agency's certificate of registration as a mass media outlet.

On 31 March I wrote to the authorities expressing concern regarding the detention of Valery Badmaev, the editor of the *Sovremennaya Kalmykia* newspaper and the confiscation of the newspaper's latest edition. Badmaev was released the next day, however the newspaper's print run has not been returned. I expressed hope that this incident would be thoroughly investigated and asked for more information on the case.

On 19 May I received a response from the Investigative Committee informing me that the newspaper's edition was confiscated for allegedly containing extremist materials and that Badmaev was fined by the administrative court for insulting police officers during the confiscation. The investigation into the newspaper's content apparently has not been completed.

On 3 April I wrote to the authorities expressing concern regarding the denial of entry to Russia of three crew members from Ukraine's Channel 5. I reminded the authorities that OSCE participating States should not hinder the work of foreign journalists and asked for more information on the case.

On 23 April I issued a public statement expressing extreme concern about the decision of the State Duma to adopt the amendments to the law "On information, information technologies and on protection of information" and calling on the President to veto these and other attempts to restrict free expression and free media. I said that, if enforced, the proposed amendments would curb free expression and freedom of social media, as well as seriously inhibit the right of citizens to freely receive and disseminate alternative information and express critical views.

Unfortunately on 5 May the President of the Russian Federation signed the amendments into law.

I was also disappointed to learn that on 23 April and 5 May respectively, the State Duma adopted and the President signed amendments to legislation criminalizing speech glorifying Nazism and dissemination of false information on Soviet Union actions during World War II, an issue on which I have previously expressed concern. See <http://www.osce.org/fom/103121>

On 20 May I wrote to the authorities regarding the May 17 detention of Yurii Mamon and Dmitriy Podenko, journalists from ICTV who were reportedly detained in Belgorod oblast and interrogated by the Federal Security Service officers for more than 17 hours. I urged the authorities to abstain from interfering in the work of foreign journalists and asked for more information on the case.

On 5 June I issued a public statement expressing concern about the detention of media freedom defender Anna Sharogradskaya, Director of the Regional Press Institute, who was barred from flying to the United States and held for several hours at the Pulkovo airport in Saint Petersburg without charges brought against her. All her files and electronic devices were seized.

On 10 June I issued a public statement welcoming the sentences handed down to five people for the murder of journalist Anna Politkovskaya in 2006. I called for the investigation to continue to bring the masterminds to justice.

## **Serbia**

On 29 November I received a letter from Slavka Draskovic, Director of the Serbian Gov-

ernment's Office for the Diaspora, regarding the pressure on the Serbian minority in Croatia and further enhancement of hate speech in the Croatian media.

On 12 December I informed Draskovic that, although my Office closely monitors developments regarding hate speech, such content related issues should be dealt with by a national judicial process.

On 13 December I issued a public statement expressing my concern about the blocking of access to online media content. Investigative news stories were deleted from some media websites after they were hacked. An article by journalist Miodrag Sovilj was removed from numerous websites, including the website of the Centre for Investigative Journalism of Serbia and [Autonomija.info](http://Autonomija.info). I urged authorities to do their utmost to protect the culture of free Internet that exists in the country.

On 16 December I wrote to the authorities regarding an attack on journalists from B92 and Prva TV in Bački Gračac in the municipality of Odžaci. I welcomed the fact that Minister of Justice Nikola Selaković condemned the incident and called for a full investigation and prosecution of those responsible. In my letter I joined the call to investigate these incidents.

On 14 January I issued a public statement welcoming the arrests made in the case of the murder of journalist Slavko Ćuruvija in 1999. I also reminded the authorities that the killings of journalists Dada Vujasinović in 1994 and Milan Pantić in 2001 remain unsolved and urged the continued investigation of these cases in order to bring those responsible to justice. I welcome the fact that the prosecution has raised indictments for the murder of Slavko Ćuruvija.

On 22 January I wrote to the authorities to request additional information on an incident in which police officers allegedly entered the home of Lily Lynch, a journalist and editor of [Balkanist.net](http://Balkanist.net), in the middle of the night for questioning. I expressed my trust that authorities would carefully investigate this case.

On 27 May I issued a public statement to express my concern about a worrying trend of online censorship and urged the authorities to nurture uncensored debate on issues of public interest, especially in times of crisis, such as the current situation with flooding in the region. I also brought to light the detention and police interrogation of persons for allegedly spreading panic. I stated that arresting individuals because of their blogs, comments or other written content is not acceptable. I urged the authorities to put an end to this trend and stop interfering with the work of online media outlets.

On 2 June I spoke with Prime Minister Aleksander Vučić regarding my statement and the issue of online censorship and informed him that the trend of removing websites and blocking online resources and comments must be reversed. He assured me that he and his government will tackle these issues. Prime Minister Vučić and I agreed to meet at the earliest possible time in order to discuss these and other media related issues.

On 5 June RTV Mladenovac journalist Dragan Nikolic was interviewed by the police because of a post on Facebook, allegedly insulting and damaging reputation and dignity of public figures and on the weekend of 1 June the website of Pescanik was attacked and unavailable. My Office stands ready to provide assistance to improve the current media situation.

## **Slovenia**

On 27 February I wrote to Foreign Minister Karl Erjavec to express concern about criminal charges that have been brought against Anuška Delić, an investigative journalist for the daily newspaper Delo in Ljubljana, for revealing classified information leaked from the National Intelligence and Security Agency, SOVA.

I also noted the case of Dejan Kaloh, owner and director of the web portal Politikus, who was also investigated by police for allegedly revealing classified information.

I received a reply dated 7 April from Minister Erjavec assuring me that the case of Delić would be decided by an independent and impartial court. I will continue to follow Delić's case.

I was also informed that the State Prosecutor had dismissed criminal proceedings against Kaloh.

## **Spain**

On 1 April I issued a public statement expressing concern about violence and intimidation by police against journalists covering demonstrations in Madrid on 29 March. According to media reports, journalists who clearly identified themselves as such were attacked and prevented from taking photographs or gathering information by police officers.

I called on the authorities to safeguard journalists when reporting on public demonstrations and to begin an investigation of these attacks.

On 15 May I received a reply from the authorities in which they fully agreed that any attempt to intimidate or attack journalists is unacceptable. They also informed me that, according to a report prepared by the Ministry of Interior, police officers had beaten journalists who had not identified themselves in an attempt to arrest violent protesters. They assured me of their commitment to protecting free expression and media freedom.

## **Sweden**

On 6 January I issued a public statement expressing my concern about an attack on journalist PeO Warring, editor-in-chief of Swedish newspaper Eskilstuna-Kuriren. I called on the authorities to swiftly and thoroughly investigate the incident.

## Switzerland

On 21 February I issued a public statement voicing my concern about a criminal case initiated on the basis of a 9 October 2012 article about drug sales, in which journalist Nina Jecker was subsequently ordered to reveal the identity of her sources. The order was upheld by the Federal Court on 31 January.

I called on authorities to protect journalists' right to keep sources confidential and to bear in mind the possible consequences this case could have on media freedom in the country.

The lawyer for the Basler Zeitung newspaper, in which the article was first published, said that the case will be filed with the European Court of Human Rights. I will continue to monitor progress on the case.

I was pleased to learn that on 23 May a regional court in the canton of Neuchâtel affirmed the search of the home and seizure of reporting material, including a computer, of photographer Ludovic Rocchi, as illegal.

Law enforcement authorities searched Rocchi's home in August 2013 and a court held the search unjustified a month later. I issued a public statement at that time noting the first court's decision as a positive sign for protection of journalists' sources.

## Tajikistan

On 26 December I issued a public statement condemning the arrest and beating of Abdurakhim Shukurov, a camera operator working for the Ozodagon News Agency, by law enforcement officials. I urged the authorities to take all steps necessary to prevent future arbitrary arrests of journalists.

Although local authorities said that Shukurov would be held for several days, he was released the same day.

On 26 February I issued a public statement voicing my concern over a 25 February civil court decision requiring journalist Olga Tutubalina to pay damages for defamation to three plaintiffs who claimed to have suffered "physical and mental suffering" even though they were not named in her article for the Asia Plus news website.

I pointed out that this case sets a dangerous precedent that could stifle public debate and dissuade journalists from critical reporting.

I was disappointed to learn that on 30 April a Dushanbe city court upheld the ruling against Tutubalina. My Office will continue to follow developments in the case.

On 11 June I issued a public statement urging the authorities to ensure unfettered access to the Internet after many service providers once again blocked access to YouTube. I said it was the government's responsibility to ensure Tajik citizens have unre-

stricted access and officials should indicate why it has been blocked, as it was during periods of time in 2012 and 2013.

On 18 June I wrote to the Minister of Foreign Affairs Aslov Sirodjidin and issued a public statement to express my concern about the disappearance of Alexander Sodiqov a blogger and contributor to Global Voices, the Central Asia-Caucasus Institute Analyst (The John Hopkins University) and the Eurasia Daily Monitor (Jamestown Foundation) focusing on politics in Central Asia.

According to a public statement on 17 June issued by the Department of the State Committee for National Security in the Badakhshan Mountainous Autonomous Region, Sodiqov was detained on 16 June in Khorog. Despite media reports of his release, his whereabouts remain unknown. The authorities in their statement suspected Sodiqov of spying for an unspecified foreign country. His employer, the University of Exeter, as well as Sodiqov's co-researcher, however, confirmed that he is in Tajikistan conducting research on conflict prevention methods for the University.

I asked the authorities to provide information on the whereabouts of Sodiqov and the circumstances of his disappearance.

## **Turkey**

On 10 January I warned in a public statement that blocking services of the video sharing website Vimeo, which was upheld on 9 January by the Criminal Court of Peace, further limits free expression and media freedom in the country. I noted that more than 30,000 websites are inaccessible for home users in Turkey and stated that the Internet Law has become an additional tool to silence critical voices online and requires urgent and thorough reform.

On 17 January I issued a public statement calling for justice to be served in the case of Hrant Dink, a prominent Armenian-Turkish journalist whose murderers are still at large seven years after his death. I asked authorities to double their efforts to find the perpetrators and noted the ongoing retrial surrounding his death, following a ruling by the Supreme Court of Appeals in May 2013 acknowledging a criminal conspiracy to silence the journalist.

On 20 January I wrote to Foreign Minister Ahmet Davutoğlu to express concern about pending amendments to the Internet Law, also known as Law No. 5651, that will enable authorities to remove content they disagree with. I recalled that even without these amendments the current law severely restricts freedom of expression and the citizens' right to access information and reiterated the need for fundamental reform of the law. I informed the Minister that my Office would provide a brief assessment of the amendments.

On 28 January I forwarded to Minister Davutoğlu an assessment of the draft amendments to Law No 5651, commissioned by my Office, asking that it be taken into consid-

eration during debates on the issue in Parliament.

(See Legal reviews)

On 31 January I issued a public statement calling for the amendments to the Internet Law to respect media freedom and the right to freedom of expression and warned that, if adopted, the new measures would place a disproportionate burden on Internet service and hosting providers. I also expressed concern about the right of the Telecommunications Communications Presidency (TIB) to request and collect data on Internet users without judicial oversight. I asked again that the concerns outlined in the assessment commissioned by my Office be considered by the authorities and called for an open and broad public discussion with all stakeholders. I also repeated my Office's readiness to assist in bringing the Internet Law in line with OSCE commitments on free expression and media freedom.

On 7 February I publicly condemned the deportation of journalist Mahir Zeynalov, an Azerbaijani national working for the daily Today's Zaman, for two of his tweets considered inappropriate by the authorities. I called for his immediate release and for all charges against him to be dropped.

On 14 February I wrote to President Abdullah Gül asking him to veto the new Internet Law and return it to Parliament for further deliberations. I noted that the new law contained several highly worrisome provisions that enable authorities to block free online discourse on issues of public interest. I noted again the lack of public consultations and the concerns voiced by many national and international media experts about the new law.

On 17 February I issued a public statement in which I repeated my call to President Gül to veto the Internet Law and initiate public consultation on the law.

On 28 February the President approved the new Internet Law.

On 11 March I received a reply from the Office of President Gül informing me that the President approved the new law with an assurance from the government that the most contentious articles within the bill would be immediately revised. The letter also informed me that the government had presented revisions to the Parliamentary commission, following the President's approval, and these revisions were passed by the Parliament on 25 February.

On 10 March I publicly welcomed the release of journalist Tuncay Özkan, the former owner of Kanal Biz television station arrested in 2008, and urged swift, fair and transparent trials for all imprisoned journalists in Turkey. I noted that the life sentence in solitary confinement handed down to Özkan in August 2013 was of unprecedented length and severity and a grave attack on free expression and free media.

On 21 March I issued a public statement calling for the immediate lifting of a Twitter ban in the country enacted by three court rulings and a prosecutorial decision by the

TIB. I called on the authorities to vacate the court decisions that allow the blocking of Twitter, adding that the government should protect and encourage pluralistic discourse both offline and online. I noted that while technology would always find ways to circumvent such bans, in the short run such prohibitory approaches from the highest authorities threaten the free flow of information and citizens' fundamental right to freely express themselves.

On 27 March I publicly called for an end to the censorship of social media platforms in Turkey, following the move by telecommunications regulator TIB to block YouTube. I said that by blocking access to social media platforms Turkey is deliberately disregarding the fundamental rights to free expression and media freedom. I repeated my call to the authorities to preserve media freedom both online and offline and to immediately restore access to Youtube and reinstate Twitter services without delay.

On 8 May in a public statement I welcomed the release of journalists Füsün Erdoğan and Bayram Namaz. They were arrested in 2006, convicted and sentenced to life in prison in November 2013 on charges that they were senior members of a Marxist organization banned under the Anti-Terror Law. I repeated my call for the release of all journalists from prison convicted under that law.

On 30 May I publicly welcomed the ruling made on 29 May by the Turkish Constitutional Court that the blanket ban on YouTube violated individual rights of Internet users and freedom of speech and called for the immediate implementation of the decision by the telecommunications regulator, TIB.

On 18 June my Office published an updated table of imprisoned journalists in Turkey. The document, available on the website of my Office at <https://www.osce.org/fom/119921>, shows that there are currently 22 journalists in prison.

I commend the fact that the number of imprisoned journalists has dropped significantly in the last three years. In April 2011, when my Office published the table for the first time, 95 journalists were in prison. I also express my appreciation to the authorities, including the Ministry of Justice, for continuously sharing their information with my Office on the status of imprisoned journalists.

I hope that soon all journalists will be freed in Turkey, and I repeat my calls to the authorities to carry out the much needed reform of the laws that allow for imprisonment for journalistic work, including the Anti-Terror Law and the Criminal Code.

My Office stands ready to assist Turkey in this very important endeavour.

## **Turkmenistan**

On 20 January in a letter to Deputy Chairman of the Cabinet of Ministers and Foreign Minister Rashid Meredov, I noted reports that a number of legislative changes had reduced criminal sanctions for libel. I was also pleased to note that the new criminal code allows for monetary penalties as an alternative to prison and that minor cases of

libel and insult have been moved from the Criminal Code to the Code of Administrative Wrongdoings.

Though these legislative changes do not fully decriminalize libel, I see them as positive first steps toward the total eradication of criminal defamation. I was also pleased to note recent reforms in media legislation that will improve Internet access and affordability in the country.

My Office continues the close co-operation with the Centre in Ashgabat in identifying suitable international experts in this field for a workshop on online media legislation planned for the summer in Ashgabat.

## **Ukraine**

On 29 November I issued a public statement condemning the attack on Dmitry Gnap and Yakov Lyubchich from Hromadske.tv who sustained injuries and damage to their equipment while reporting on the demonstrations in Kyiv. I also condemned attacks in Zhitomir on Vlad Puchich, Chief Editor of “20 Minutes” newspaper, who sustained various injuries.

On 2 December I wrote to the former Chairperson-in-Office and Foreign Minister and issued a public statement expressing concern about the magnitude of violence against members of the media at the demonstrations in Kyiv. In most of the cases, the beatings were conducted by the law enforcement officers who attacked journalists, regardless of their identification as members of the press. I called on the authorities to take urgent action to halt the violence and to swiftly launch investigations into these attacks.

I received a reply to this letter from the Ministry of Interior on 4 February stating that from November 21 to January 25 law enforcement units received 77 reports of “unlawful acts” against journalists. The Ministry also informed me of the production and distribution of press vests for media representatives as a preventive measure for possible conflict between police officers and journalists during public events.

On 20 December I received replies from the Administration of the President and the General Prosecutor’s Office to my letter of 23 October regarding the attacks on several journalists. I was assured that due consideration was being given to these cases and that investigations would be carried out when incidents were reported.

On 23 December I wrote to the authorities about attacks on Yurii Kot, a journalist with Inter TV channel and Svetlana Malitskaya, a photojournalist with Internet-based newspaper “Dorozhnyi Kontrol,” in Kyiv on 15 and 16 December, respectively. I also raised concern regarding the reported denial of entry to Ukraine to David Kakulia, a journalist with Georgian Rustavi-2 TV channel, on 20 December as well as law enforcement’s reported attempt to deport journalists from Georgia’s Tabula TV for allegedly participating in public protests in Kyiv.

On 22 January and 20 February I received replies from the authorities stating that law

enforcement had initiated criminal investigations into the attacks on Kot and Malitskaya. I was informed that Kakulia was banned from entering Ukraine for a period of two years for “activities aimed at harming state security of Ukraine.” The Security Service had no information about the expulsion of the Tabula TV journalists.

On 25 December I issued a public statement condemning the brutal attack on Tatyana Chernovil, a journalist with *Ukrainskaya Pravda*, in which she sustained serious injuries. I called on the authorities to conduct a swift and thorough investigation to bring those responsible to justice.

On 16 January I issued a public statement expressing concern about the amendments to the Criminal Code adopted by the Verkhovna Rada that recriminalized defamation, provided additional protection for public officials from critical speech and introduced criminal responsibility for distributing extremist materials through the media and the Internet. I called on then President Yanukovich to veto these legislative amendments.

Subsequently, my Office contributed to the OSCE/ODIHR Opinion on Amendments to Certain Laws of Ukraine upon request of the authorities.

On 28 January I welcomed the repeal of these provisions and called on the Verkhovna Rada to fully revoke all regressive provisions limiting media freedom.

On 22 January I wrote to the authorities regarding journalists’ safety and issued a public statement regarding cases of violence against more than 30 journalists from various media injured while fulfilling their professional duties during the public protests in Kyiv. In some cases, journalists were reportedly specifically targeted by law enforcement despite clear identification as members of the media. I called on authorities to take urgent action to stop all violence against members of the media.

On 19 February I issued a public statement condemning the violence in Kyiv during which Vesti journalist Vyacheslav Veremyi was killed and many other journalists were injured. I repeated my call to the authorities to ensure journalists’ safety and refrain from targeting members of the media.

I was pleased to learn about the 13 June General Prosecutor’s report on completion of the investigation into Veremyi’s murder. Reportedly, one suspect has been arrested and seven others are being sought.

On 26 February I wrote to Oleksandr Turchinov, then Acting President of Ukraine and Chair of the Verkhovna Rada, and issued a public statement expressing my concern about an initiative by a group of members of the Verkhovna Rada to ban the broadcast and rebroadcast of certain television and radio programs produced in countries not party to the European Convention on Transfrontier Television. I emphasized that banning broadcasts is an extreme form of censorship and called on the authorities to withdraw the proposed decree.

On 28 February I issued a public statement expressing concern about the presence of

armed people who had taken control of access to national TV and radio channel Krym in Simferopol.

On 3 March in a public statement I urged all responsible parties to stop the harassment of journalists following reports of interference in the work of journalists in Simferopol. I also condemned attacks on journalists in Donetsk and Kharkiv in the presence of police who did not intervene.

On 7 March I issued a public statement following a visit to Ukraine and meetings with media associations and local journalists in Simferopol and Kyiv, warning of the severity of the media freedom crisis in Ukraine. I called on all those responsible to stop the information war, ensure journalists' safety in Crimea and elsewhere and immediately start to deescalate the situation. I stated that the Tatar journalists at the state broadcaster Krym were under political pressure from the broadcaster's administration and that access to official information from local authorities was only being provided "loyal" journalists.

During my meetings in Kyiv with senior government officials I stressed that there must be no impunity for attacks against journalists and brought up the murder of Vesti journalist Vyacheslav Veremyi. I also expressed hope that the public service broadcasting law would be adopted in order to establish a politically and financially independent and impartial broadcaster, improve access to information and enhance the regulator.

(See Visits and participation in events)

On 8 March in a public statement I condemned the continued closure of a number television stations and attacks on journalists in Crimea. I again called on those responsible to re-establish law and order in Crimea and to bring an end to the deterioration of the free media environment.

On 10 March I wrote a letter to Acting Minister of Foreign Affairs Andrii Deshchytzia regarding the denial of entry to the country for members of Russian media outlets. I asked the authorities to abstain from creating obstacles barring country access to foreign journalists seeking entry in their professional capacities.

On 10 March in a public statement I called for the immediate release of Oles Kromplyas and Olena Maksimenko, journalists with the Glavkom and Ukrainskiy Tizhden news portals respectively, who were kidnapped on 9 March near Armyansk.

On 11 March I publicly expressed concern about the National Television and Radio Broadcasting Council's demands that cable operators in Ukraine stop transmitting Russian television channels Rossiya 24, ORT, RTR Planeta and NTV-Mir. I said that banning programming without a legal basis is a form of censorship and national security concerns should not be used at the expense of media freedom.

On 19 March I wrote to Acting President Turchinov and issued a public statement expressing outrage about the attack on the acting President of the National Television

Company of Ukraine, Aleksandr Panteleymonov, by a group of members of the Ukrainian political party “Svoboda,” forcing him to resign. I stressed the especially serious nature of the attack given that a number of the assailants represent not only the legislative branch but are also members of the freedom of speech and information committee of the Verkhovna Rada.

I also mentioned the 17 March case in which a group stormed the state television office in the Chernigov region and forced director Arkadiy Bilibayev to resign. I called on the authorities to launch swift and transparent investigations and bring all those responsible to justice.

On 28 March I issued a public statement welcoming the Verkhovna Rada’s adoption of amendments to legislation that improve implementation of the 2011 law on access to information and broaden the scope of information accessible to the public.

I was pleased to learn that on 1 April the authorities reconsidered the decision regarding the denial of entry for Yuriy Barabash, whose case I raised in a 16 July letter.

On 3 April I wrote to the authorities conveying concern regarding the denial of entry to Ukraine for members of Russian media outlets. I reiterated my call to abstain from denying entry to members of the foreign media.

On 7 April I wrote to the authorities to convey concern about the 4 April murder of Vasily Sergiyenko, a contributor to Nadrossia newspaper in Cherkasskaya Oblast. I asked the authorities to swiftly investigate this murder and provide more information on the case.

On 8 April I expressed my concern about the attacks on journalists and their offices in eastern Ukraine on 7 April. I urged law enforcement agencies to do everything in their power to ensure safe working conditions for journalists and prevent acts of violence against the media.

On 9 April I wrote to the authorities conveying concern regarding the denial of entry to Ukraine for members of Russian media.

On 16 April at the end of my three-day visit to Ukraine, in a public statement I alerted OSCE participating States about the deterioration of journalists’ safety in the country. I stressed that journalists are under attack, both physically and as part of ongoing psychological warfare. I also mentioned that journalists in Crimea face additional problems including media re-registration, possible eviction from the region for failure to change citizenship, vicious labelling, threats and denial of access to public information.

(See Visits and participation in events)

On 17 April I issued a public statement condemning the seizure of the television tower in Sloviansk in eastern Ukraine and the subsequent replacement of Ukrainian channels with channels originating in the Russian Federation.

On 22 April I issued a public statement expressing deep concern about new cases of detention and attacks on a number of domestic and international journalists in eastern Ukraine.

On 24 April I issued a public statement calling attention to the continuing attacks on journalists and deterioration of the media freedom environment in eastern Ukraine.

On 25 April I wrote to Arsen Avakov, Acting Minister of Internal Affairs and issued a press release regarding the disappearance of Julia Shustraya and Mikhail Pudovkin, a journalist and cameraman with LifeNews. I also expressed concern about the 24 April disappearance of Stepan Chirich, a producer with the NTV channel, in Dnepropetrovsk oblast.

On 29 April I issued a public statement denouncing new cases of kidnapping and attacks on journalists, the takeover of a regional television station in Donetsk and the illegal switching of Ukrainian television and radio broadcasts to those originating in the Russian Federation. I also noted a 28 April attack on Inter channel by protesters in Kyiv demanding that the broadcast of a Russian television series be stopped.

On 2 May in a public statement I renewed my call for all parties to respect media freedom following new report of intimidation of journalists, disappearances and a violent takeover of a regional television station in Luhansk by armed group.

On 9 May I issued a public statement denouncing 15 new incidents of kidnapping, assaults on journalists and attacks on the broadcasting infrastructure within the last week.

On 14 May I welcomed the adoption of a public broadcasting law as a significant step toward institutionally reinforcing media freedom in the country. I was pleased to note that recommendations made by my Office in a review of the law's draft were taken into account by the Verkhovna Rada deputies.

On 19 May I wrote to Acting Minister of Internal Affairs Arsen Avakov regarding the arrest of LifeNews journalists Marat Saichenko and Oleg Sidyakin who were detained by the Ukrainian military forces on 18 May and reportedly handed over to law enforcement authorities. I expressed hope the journalists will be released and that authorities will thoroughly investigate the case. I was pleased to learn that on 24 May both journalists were released.

On 19 May I also issued a public statement calling on all parties to stop targeting media professionals covering the crisis. I denounced new cases of journalists' detainment and denials of entry into Ukraine.

On 25 May I issued a public statement mourning the killing of Italian photojournalist Andrea Rocchelli and his Russian assistant, Andrey Mironov, in eastern Ukraine, noting that such deaths are horrible reminders that not enough is being done to protect journalists. I called on the authorities to swiftly and thoroughly investigate the circum-

stances of their deaths and to hold those responsible accountable.

On 30 May I issued a public statement condemning new acts of violence, detentions, blocking of television channels and refusing entry into Ukraine for members of the media.

On 3 June I issued a public statement condemning the continuing attacks on and mistreatment of members of the media in eastern and southern Ukraine following the detention and beating of the journalist and producer with the Centre for Journalistic Investigations in Simferopol and the raid on the offices of the Donbass newspaper and Vecherniy Donetsk by a group of armed men.

I appreciate receiving a letter from the authorities on 13 June with detailed updates on investigations undertaken in several matters raised during this reporting period. I look forward to receiving the results of these investigations.

On 17 June I issued a public statement mourning the killing of Russian journalist Igor Kornelyuk in eastern Ukraine, noting that his death is yet another horrible reminder that not enough is being done to protect journalists. I called on the authorities to swiftly and thoroughly investigate the circumstances of his death and to hold those responsible accountable. I also expressed deep concern about the deteriorating media freedom environment, denounced the latest incidents and again called on all parties to let journalists do their job in a free and safe manner.

I welcome the immediate reaction of President Petro Poroshenko, who instructed law enforcement authorities to thoroughly investigate the circumstances of Kornelyuk's death.

I was also deeply saddened to hear about the killing of Anton Voloshin, a sound engineer, who was earlier reported missing as a result of the same incident.

## **United States**

On 3 June I issued a public statement expressing disappointment that the United States Supreme Court declined to consider an appeal by a New York Times reporter, James Risen, who is being compelled to testify in a criminal case against a government employee accused of passing secrets. I initially wrote to U.S. Attorney General Eric Holder in July 2013 to express concern about attempts to force Risen to testify about a source in a theft of secret information case – which run counter to published Justice Department guidelines that compel reporters to testify only as an extraordinary measure and a last resort.

I reiterated my call for a shield law to protect journalists from revealing sources in court cases and also asked the Department of Justice to refrain from compelling Risen to testify at trial.

On 16 June I wrote to the Chairman of the Federal Communications Commission to

present a legal review commissioned by my Office on proposed net neutrality rules and issued a public statement on the issue. I noted that the proposed rules would allow broadband providers to discriminate against content which may conflict with their political, economic or other interests and that this would contradict international standards, OSCE commitments on free expression and free media and longstanding U.S. First Amendment principles. I also expressed my hope that the recommendations included in the review will be taken into consideration by the FCC when adopting the rules. I will continue monitoring the issue.

## **Uzbekistan**

On 30 January I issued a public statement on the disappearance of photojournalists Umida Akhmedova and her son, Timur Karpov, who were detained by police on 29 January. I also wrote to Foreign Minister Abdulaziz Kamilov requesting his assistance in locating the two journalists.

On 31 January my Office received word that during their period of detention, the two journalists had been ordered to pay a fine for their participation in an unsanctioned campaign. They were then released. On 23 February my Office received confirmation from the Permanent Mission of Uzbekistan to the OSCE that they had been fined for administrative offenses.

On 28 May I wrote to President Islam Karimov requesting a presidential pardon for Solijon Abdurakhmanov, a journalist who has served six years of a 10-year prison term. I expressed concern that his current conditions in prison could lead to a rapid deterioration of his health, given his age and numerous medical problems.

## **Communiqués and other documents issued**

In addition to public statements I issued four Communiqués, a Memorandum and a Report on specific issues related to freedom of the media and freedom of expression that require additional attention by OSCE participating States.

## **On blocking television channels**

On 27 March I issued a Communiqué on the blocking of television channels. I called on participating States to refrain from blocking media to avoid arbitrary and politically motivated actions which could impede media pluralism. Media freedom is dependent on a healthy, vibrant and competitive media landscape that includes a variety of voices and opinions. The document is available at [www.osce.org/fom/116888](http://www.osce.org/fom/116888)

## **On denial of entry of journalists from one OSCE participating State to another**

On 2 April I issued a Communiqué on the denial of entry of journalists to OSCE participating States. I reminded participating States that the Helsinki Final Act includes travel facilitation as one of the commitments agreed upon by participating States to improve working conditions for journalists throughout the OSCE region. While I recognize the

need for participating States to control their borders, I have serious concerns about undue travel limitations and their effect on the free flow of information and free media. The document is available at [www.osce.org/fom/117092](http://www.osce.org/fom/117092)

#### On propaganda in times of conflict

On 15 April I issued a Communiqué on propaganda in times of conflict. Propaganda and the deterioration of media freedom are a dangerous mixture that often serves to escalate and fuel conflict. To address this alarming trend, the Communiqué presents the following recommendations:

- Stop manipulating media; stop information and psychological wars.
- Ensure media plurality and free media as an antidote to propaganda.
- Refrain from introducing new restrictions; existing laws can deal with extreme propaganda.
  - Invest in media literacy so citizens can make informed choices.
  - Reform state media into genuine public service broadcasting.

The document is available at [www.osce.org/fom/117701](http://www.osce.org/fom/117701)

#### On the “right to be forgotten” and its possible implications for investigative journalism and media freedom

On 16 May I issued a Communiqué following a ruling by The European Union Court of Justice, that companies with search engines have an obligation to delete links to websites that publish “inadequate, irrelevant or no longer relevant” data; the so called “right to be forgotten.” I noted that this decision might negatively affect access to information and could stifle the role of or diminish instruments available to investigative journalists. Undue restrictions on media and journalistic activities are unacceptable regardless of distribution platforms and technologies. The document is available at [www.osce.org/fom/118632](http://www.osce.org/fom/118632)

#### Memorandum of representatives of the Russian and Ukrainian media organizations on the situation in and around Ukraine

On 19 May I organized and hosted a round-table discussion in Vienna among representatives of the Russian Union of Journalists, the Independent Media Trade Union of Ukraine and the National Union of the Journalists of Ukraine. The participants signed a Memorandum in which they outlined practical steps to improve the safety of journalists and also called for their respective governments to stop manipulating the media and engaging in propaganda. The Memorandum was sent to the Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation and Andrii Deshchytsia, Acting Minister of Foreign Affairs of Ukraine. It is available at <http://www.osce.org/fom/118692>

#### Report on media freedom in Ukraine

On 23 May I presented a 14-page report on the media freedom situation in Ukraine produced by my Office. The report covers events in Ukraine occurring between 28 November 2013 and 23 May including over 300 cases of violence against members of the media, including murder, physical assaults, kidnappings, detentions, imprisonments, threat and acts of intimidation. It lists a number of cases in which journalists' equipment was confiscated and/or destroyed. The report also includes a number of cases of repeated and illegal switching off of television broadcasts and reviews the difficulties of properly addressing the issue of propaganda in times of conflict.

The full text of the report is available at: <https://www.osce.org/fom/118990>

Projects and activities since the last report

Activities with international organizations

International Day Against Homophobia and Transphobia Joint Statement

On 17 May marking International Day Against Homophobia and Transphobia (IDAHO-T), I subscribed to the text of a joint statement (in as much as it refers to the areas covered by the scope of my mandate) "Free expression and association key to eliminating Homophobia and Transphobia" together with UN human rights experts, the Inter-American Commission for Human Rights and the African Commission on Human and Peoples' Rights. This declaration expresses concern about the existence and recent adoption of laws in several countries that ban the dissemination of information about sexual orientation or gender identity issues, among other things. The document is available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

### **Visits and participation in events**

On 2 December the Director presented a lecture on "legal conditions of freedom of the media for the sake of social progress: European experience and possible scenarios for the future" in Kyiv at a conference organized by the NGO StudRespublika.

On 3 December I spoke at the conference, Western Balkans: Highs and Lows, organized by the Friends of Europe in Brussels.

On 6-7 December I attended the OSCE Ministerial Council meeting in Kiev.

On 9 December my Office participated in a roundtable discussion in Tirana organized by the Albanian Media Institute and the OSCE Presence in Albania on the reform of the public broadcaster in Albania and spoke on "Public Service Broadcasting: European standards and models. Lessons learned from transition countries. What went right and what went wrong."

On 10-11 December I participated in the International Workshop on Freedom of Expression on the Internet in Berlin organized by the German Commission for UNESCO

and the Hans Bredow Institut on the topic of protecting freedom of expression and other human rights online.

On 10-11 December my Office participated in a roundtable in Budapest organized in cooperation by national media, the Infocommunications Authority and the Council of Europe to discuss issues related to public service broadcasting.

On 17 December my Office participated in the conference in Budapest “Current and New Challenges in European Media Regulation” organized by the Council of Europe.

On 17 December I participated in the conference in Vilnius “Civic responsible media cultivation and society right to know” organized by the Lithuanian Journalists’ Union and Ministry of Culture and spoke on journalist’s rights, safety and decriminalization of defamation.

On 20 December my Office participated in an international conference on “Establishing dialogue between regulatory authorities and the media community in securing a pluralistic environment for new audiovisual media” held in Kyiv and organized by the OSCE Project Coordinator in Ukraine and the National Council of Ukraine on Television and Radio Broadcasting.

On 20 December the Director moderated the annual roundtable devoted to the anniversary of the mass media law in Russia organized by the Faculty of Journalism at Lomonosov Moscow State University and held in Moscow.

On 20-21 January the Principal Adviser participated in a roundtable discussion on “Freedom of Expression and Political-Electoral Communication” organized by the UN Special Rapporteur on Freedom of Opinion and Expression and held in Madrid.

On 21-22 January my Office participated in the meetings of the Advisory Group created to develop OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders held in Warsaw and organized by ODIHR.

On 23-25 January I gave a presentation on setting and monitoring human rights standards at the conference “Addressing implementation gaps: improving cooperation between global and regional human rights mechanisms” held in London, and organized by the NGO Wilton Park.

On 10-12 February I visited Skopje at the request of the Minister of Information Society and Administration Ivo Ivanovski. The purpose of the visit was to discuss the media freedom situation in the country, in particular the newly adopted media laws and the conviction of journalist Tomislav Kezarovski.

On 19-20 February my Office participated in an international partnership mission to Kyiv, together with the National Union of Journalists of Ukraine, the Independent Media Trade Union of Ukraine, the Ukrainian Association of Press Publishers, the European and International Federations of Journalists, International Media Support, Open

Society Foundation, WAN/IFRA, Article19 and Reporters Without Borders. The objective of the trip was to gather first-hand information about current press freedom violations in Ukraine to show solidarity with journalists at risk and to coordinate future activities in the country.

On 25-26 February the Director and I participated in an expert meeting of the “Global Freedom of Expression and Information Project” organized by Columbia University and held in New York City where I spoke on “litigating the free flow of information in Europe and Central Asia” and the Director spoke on media-freedom related case law in Central Asia.

On 27 February I spoke on the demise of media freedom and presented an update of media developments in the OSCE region at a lecture organized by the Harriman Institute of Columbia University in New York City.

On 28 February – 1 March the Principal Adviser gave a keynote address on freedom of expression at an international conference in Vienna on “Freedom of information under pressure” organized by the University of Vienna.

On 3-4 March my Office participated in a meeting of the “Committee of experts on protection of journalism and safety of journalists” on the protection of journalists organized by the Council of Europe and held in Strasbourg.

On 4-7 March I visited Ukraine to meet with parliamentary representatives and government officials, including Vice Speaker of the Verkhovna Rada Ruslan Koshulynskyi, Head of Committee on Freedom of Speech and Information of the Verkhovna Rada Mykola Tomenko, Deputy Minister of Foreign Affairs of Ukraine Andrii Olefirov and Head of the General Prosecutor’s Department of Supervision regarding the observance of laws by the interior forces Yuriy Sevruk. I also met with the media representatives in Kyiv and Simferopol.

On 11-12 March the Principal Adviser gave a presentation on “Privacy, security and trust - how are regulators and policy makers responding to and managing expectations for data collection versus data use?” at the Telecommunications and Media Forum in Brussels organized by the International Institute of Communications.

On 13-14 March I participated in the opening panel of the conference “Shaping the Digital Environment: Ensuring our Rights on the Internet” organized by the Austrian Chairmanship of the Council of Europe and held in Graz.

On 17-19 March I visited Chisinau at the invitation of the Ministry of Foreign Affairs to meet with authorities, representatives of the broadcasting regulator, public service broadcasters, including from the autonomous territorial unit of Gagauzia, civil society and journalists from both banks of the Dniester/Nistru River. Among other issues, we discussed issues related to lack of transparency in media ownership, concentration of the advertising market, the slow digital switchover process and a lack of public aware-

ness about changes related to digitalization, as well as a weak and financially dependent public service broadcaster.

On 17-18 March my Office participated in the first meeting of the Committee of Experts on the cross-border flow of Internet traffic organized by the Council of Europe and held in Strasbourg.

On 18-19 March my Office participated in a conference in Dushanbe focusing on Tajikistan's membership in the World Trade Organization, specifically in the areas of telecommunications and broadcasting, organized by the Ministry of Development and Trade and the OSCE Office in Tajikistan.

On 26-27 March my Office attended a "National Seminar on Countering the Use of Internet for Terrorist purposes" in Astana organized by the Transnational Threats Department and the OSCE Centre in Astana.

On 27-28 March my Office gave a presentation on children's rights and free expression at a conference in Dubrovnik on "Growing with children's rights" organized by the Council of Europe and the Croatian Ministry of Social Policy and Youth to implement the Council of Europe Strategy for the Rights of the Child 2012-2015.

On 30 March the Director of the Office and the Principal Adviser participated in the Milton Wolf Seminar organized by the Diplomatic Academy of Vienna, the American Austrian Foundation and the Center for Global Communication Studies of the University of Pennsylvania on the topic "The Third Man Theme Revisited: Foreign Policies of the Internet in a time of Surveillance and Disclosure." The Director spoke on "Information regimes and the future of the media" and the Principal Adviser provided an update on the media situation in Ukraine.

On 30-31 March I attended and spoke at Cyber Dialogue 2014 on the topic "After Snowden, Wither Internet Freedom?" conference in Toronto organized by the Monk School of Global Affairs at the University of Toronto. My blog post for the conference, "It's Time for a Magna Carta for the Web," is available at [cyberdialogue.ca](http://cyberdialogue.ca).

On 31 March my Office took part in the Central Asia Regional Heads of OSCE Field Operations Meeting in Astana.

On 9-10 April my Office participated in discussions in Brussels on "Media freedom and media integrity" in EU enlargement countries organized by the European Commission.

On 14-16 April I visited Ukraine to meet with journalists from Kyiv, Kharkiv, Odesa, Donetsk, Mykolayiv and Crimea. I also met the Acting Foreign Minister Andrii Deshchytza and Deputy Interior Minister Mykola Velychkovych.

On 15 April I attended a seminar in Kyiv on the safety of journalists organized by the Council of Europe Office in Ukraine and the Embassy of Canada in Ukraine.

On 28-29 April my Office participated in a conference organized by the OSCE Chairmanship on counter-terrorism in Interlaken and gave a presentation on the implications that anti-terrorist legislation may have for freedom of expression, freedom of the media and freedom of information.

On 28-29 April I participated in a panel discussion at the fourth Freedom Online Conference in Tallinn on “Free and Secure Internet for All.” Recommendations from the discussions were adopted at the conference, reaffirming the commitment of the 23 member countries to a set of common values related to Internet freedom.

On 5-6 May I participated in the conference World Press Freedom Day 2014: Media Freedom for a Better Future in Paris in recognition of World Press Freedom Day on the media’s importance in development, the safety of journalists, the rule of law and the sustainability and integrity of journalism organized by UNESCO. While there I also launched, along with the three special rapporteurs on media freedom from the United Nations, the Organization of American States and the African Commission on Human and People’s rights, a joint declaration on the universality of the right to freedom of expression.

The joint declaration states clearly that legal restrictions on freedom of expression can never be justified by reference to local traditions, cultures or values and that certain forms of speech, such as political speech in its broader sense and opinions on religious and philosophical matters, should be protected according to a universal vision of freedom. The document is available at: <http://www.osce.org/fom/118298>

On 8-9 May I participated in an “International seminar on the rule of law and justice” in Istanbul organized by the Yüksel Karkın Küçük law firm, where we discussed separation of powers, freedom of media and press and accountability of the government under the law and how those principles promote transparency and ensure stability in democratic nations.

On 12-14 May my Office participated in the Human Dimension Seminar in Warsaw on “Improving OSCE effectiveness by enhancing its co-operation with relevant regional and international organisations” and spoke in Working Group Session IV on “Best Practices for Co-operation between the OSCE and Other Relevant Regional and International Organizations.”

On 14 May I participated in the conference “War and Peace in a Digital Age” in Vienna organized by the International Peace Institute and spoke on the panel, Diplomacy in a Digital Age.

On 16 May I participated in the conference “Journalists and Whistleblowers in an era of Mass State Surveillance” in Budapest organized by Central European University.

On 19 May my Office participated in a round-table discussion on “The safety of journalists: from commitment to action” in Strasbourg organized by the Council of Europe.

On 20 May I spoke at the meeting of the OSCE Human Dimension Committee in Vienna and presented the updated second edition of the OSCE Safety of Journalists Guidebook. The electronic version of the book is available in English and Russian at <http://www.osce.org/fom/118052>.

On 21 May my Office participated in consultation meetings for the 2014 country progress reports upon invitation of the European Commission DG Enlargement in Brussels.

On 27-28 May I attended the Stockholm Internet Forum centered on the topic “Internet – privacy, transparency, surveillance and control” organized by SIDA and the Ministry for Foreign Affairs and participated in a panel discussion on privacy, transparency and control issues related to the Internet.

On 30-31 May the Principal Adviser of participated in and gave a presentation at the event “Public policy and regulation of the press in Morocco” on the new press laws in Morocco, organized by the National Council of Human rights in Casablanca. The presentation focused on international standards of freedom of expression and freedom of the media.

On 5-6 June I attended the EPRA Meeting as an observer organized by the Agency of Electronic Media of Montenegro in Budva.

On 10 June my Office attended and spoke at the event “Panel Discussion BlogOpen-BlogClosed” in Belgrade.

On 11 June I participated in the 26th Session of the UN Human Rights Council on the safety of journalists in Geneva hosted by the UN. I also participated in a side event on the release of a report on “Freedom of Opinion and Expression in Electoral Contexts” prepared by Frank LaRue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

On the 11 June my Office participated as an observer at the Transparency Summit in Berlin on transparency around government surveillance and access to user data organized by Google, Global Network Initiative and the Center for Democracy and Technology.

On 12-13 June I participated in the conference in Tirana on “Media and journalism in South East Europe – Captured by particular interests or turning to serve the public?” organized by the South East Europe Media Observatory in Tirana.

On 12-14 June the Director participated in and gave a keynote speech on media freedom in Central and Eastern Europe at a conference “Changing media and democracy: 25 years of media freedom and public sphere in Central and East Europe,” organized by the Polish Communication Association together with University of Wroclaw in Wroclaw.

On 13 June I chaired the opening panel of the “Western Balkans Regional Conference

on Hate Speech” on “Defining and identifying hate speech” organized by the OSCE Mission in Kosovo in Pristina.

## **Conferences**

### **Open Journalism**

The media landscape across the OSCE region is changing faster than ever before. While technological changes mean that journalism and media are irreversibly changing, our basic human rights remain the same.

My Office actively promotes issues related to freedom of the media and freedom of expression on the Internet, most recently through a high-level expert discussion at the ‘Internet 2013’ conference in Vienna, and research and publications such as the 2013 Social Media Guidebook’ and ‘Online Media Self-Regulation Guidebook,’ as well master classes on regulatory and legal issues related to online media.

Today there is a greater plurality of actors engaged in the media landscape. New platforms and tools equip practically everyone to create and share sound, text and images. The audience is now participating in the news-making and distribution and a growing number of alternatives to traditional media actors are all contributing to the public debate. They have the reach, impact and perform the role of a public watchdog, a role that is progressively been recognized by Council of Europe and other international organizations and institutions, including the OSCE Representative on Freedom of the Media.

In order to assist the OSCE participating States to take advantage of, and to tackle the challenges posed by these changes, the OSCE Representative on Freedom of the Media is launching a series of Expert Meetings on Open Journalism.

On 5 May my Office organized and hosted the first event in a series of meetings of experts, policymakers and regulators touching on the practice and terminology of Open Journalism, legal issues, accountability and regulatory challenges. Information about the project is available at <http://www.osce.org/event/open-journalism>

The meetings will facilitate our understanding of the issues involved and best practices in the field. From that, a series of master classes will be held in the regions to develop the skills of those involved in process, from representatives of media organizations, the online community, relevant government ministries, Internet intermediaries, legislators, lawyers and others.

The first meeting, which took place in Vienna, was attended by experts from throughout the OSCE region as well as representatives from participating States.

The next expert meeting will focus on legislative and regulatory aspects of the issue and is tentatively scheduled for the end of September.

The recommendations of the Office on Open Media are available at <http://www.osce.org/fom/118873>

### **Central Asia Media Conference on Public Service Broadcasting Models**

On 22-23 May my Office organized the Central Asia Media Conference devoted to best practice sharing on public service broadcasting models in the region in Bishkek in which more than 70 experts from Estonia, Germany, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Tajikistan and Turkmenistan participated. The conference focused on various models of funding, management and ways to guarantee that programming fosters social cohesion and national identity. The conference showcased the Public Broadcasting Corporation of Kyrgyzstan (OTRK) established in 2010, as the first public service broadcaster in Central Asia. The conference was organized in cooperation with the OSCE Centre in Bishkek, the nongovernmental media network Internews and OTRK.

### **Publications**

During the current reporting period the Office produced the 15th edition of the Yearbook of the Representative on Freedom of the Media covering the year 2013.

It also commissioned and printed the Second Edition of the Safety of Journalists Guidebook and reprinted the Online Media Self-Regulation Guidebook and the 2013 Social Media Guidelines publications.

My Office supported research on access to information conducted by Almaty-based nongovernmental organization MediaNet. The resulting document reviews legislation governing access to information in Kazakhstan, stresses international principles on access to information and outlines recommendations for the media community. It is available at <http://medianet.kz/283>

My Office contributed support for and I authored the Foreword to the Safety of Journalists in Central Asia Guidebook published by the Russian Union of Journalists. Planned activities for the next reporting period

### **Conferences**

The next meeting of the journalists' associations from Ukraine and the Russian Federation is planned for 27 June in Vienna.

My Office plans to organize a one-day event in Vienna in September, focusing on tolerance, non-discrimination and freedom of expression. In the coming weeks my Office will prepare the proposal for the project, to be funded from extra-budgetary contributions by participating States.

**Training**

In the beginning of July I plan to visit Belarus to meet with authorities and journalists. Within the framework of the visit, my Office, in co-operation with the Ministry of Foreign Affairs, will hold a training course in Minsk on the interaction between the law enforcement agencies and members of the media.

**Extra-budgetary donors**

I would like to thank the governments of Sweden, the Czech Republic and Serbia for funding the Open Journalism project and Germany for funding The Safety of Journalists and Reporting During Crisis Ukraine projects.

I would also like to thank Finland and the Netherlands for funding the Central Asia Media Conference on Public Service Broadcasting Models in Bishkek.

I encourage all participating States to consider supporting my Office's efforts to improve the media landscape throughout the OSCE region.

## **Regular Report to the Permanent Council for the period from 19 June 2014 through 26 November 2014**

**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media Dunja Mijatović**

27 November 2014

### **Introduction**

I would like to start this morning by thanking the Swiss chairmanship, in particular Chairman-in-Office Foreign Minister Didier Burkhalter and Chairman of the Permanent Council, Ambassador Thomas Greminger, and his staff for their support of my Office's work throughout the year and its generous financial assistance for our work in Ukraine in 2015.

I would also like to say I look forward to co-operating with the 2015 Chairman-in-office, Serbia.

Finally, I would also like to thank participating States that have contributed extra-budgetary funds this year to support the work of our Office and I hope we can once again rely on your support next year.

Perhaps this happens when you get older, but watching the events on television commemorating the 25th anniversary of the dismantling of the Berlin Wall, a wave of recent history roiled my memories.

I know that for many of you in this room, the Berlin Wall was a dividing line and a defining time in your personal lives and professional careers. Some of you had seen the Wall go up in 1961, a thick, gray and unforgiving structure; the perfect testament to the gray and unforgiving way of life that it sought to protect.

For 28 years the Wall stood as the one, true symbol of the dysfunction of Europe and the classic example of how logic and language could be turned on its head. Ironically, as we all know, it was claimed by the ones in control to be built for one purpose when the opposite was true.

It certainly seemed like the Wall would always be there.

Remember the world's surprise, and the utter joy and anticipation of family and friends and colleagues when, in early November 1989, it just went away? Those were the days. No more lies; no more Orwellian doublespeak. Freedom of movement, freedom of expression, free media. It was all there on the horizon.

Even from the earliest days, we all knew that fundamental rights such as free media

and free expression were in our future – but they were “out there” on the horizon somewhere. Few of us knew how far that horizon was from us. Was it a one-day trip or would it take longer, much longer?

This organization – our organization – the OSCE, was much younger then, just feeling its way about the fractured landscape of Europe, with newly free nations making more and more boastful promises about co-operation and of becoming free, liberal democracies where people could speak openly and without fear about the issues of the day.

By 1989 the Conference on Security and Co-operation in Europe had touched upon issues that would lead to advancing relationships among media across borders. And in 1991 in Moscow the participating States recognized that independent media was essential to free and open societies. They reaffirmed “the right to freedom of expression, including the right to communicate and the right of the media to collect, report and disseminate information, news and opinions.”

And they also agreed to “adopt, where appropriate, all feasible measures to protect journalists engaged in dangerous professional missions, particularly in cases of armed conflict, and will co-operate to that effect. These measures will include tracing missing journalists, ascertaining their fate, providing appropriate assistance and facilitating their return to their families.”

But this is not a history lesson; it is a retrospective on where the OSCE has been going for 40 years since the Helsinki Final Act.

The decade of the 1990’s was one of hearty optimism, at least on paper. The reality on the ground was often quite different.

In many States, the much-desired free media and free expression simply never materialized. That horizon turned out to be far, far away. And for those who made it their calling to bring free and independent media to their countries, the future was dim and dangerous.

Murder was the method of choice to silence independent media in some participating States; jailing was preferred by others. Many journalists were beaten. Others still simply disappeared. And so it goes today, 25 years after the collapse of the Wall and 15 years after the establishment of my Office.

Across the OSCE region independent media faces challenges on many fronts, including government institutions on the local, regional and national level that appear to be taking a concerted effort to return to the days before the Wall fell.

How can I be so sure of this, you might ask? You only need to look east to the conflict in Ukraine.

Since events began a year ago on the streets of Kyiv, journalists and journalism ethics have been shown contempt on a massive scale. My reports detail it all – the killings,

beatings, harassment of every kind.

Since the conflict began, we have kept a close eye on media in the region. Here's what we have reported over the past year.

- 7 media members have been killed – 1 in Kyiv and 6 in eastern Ukraine;
- At least 170 journalists have been attacked and injured, though some sources put the number much higher;
- Approximately 30 editorial offices and television stations have been vandalized;
- About 80 journalists have been abducted and detained; and
- At least two journalists remain captive.

It may be a cliché to suggest that “truth is the first casualty of war” but, under the circumstances, which cliché would be more appropriate?

That brings me to one of the biggest issues we face today – the uncontrolled proliferation of propaganda. Last week I spoke at the annual meeting of the European Federation of Journalists. The meeting happened to be scheduled for Moscow. It was an appropriate forum and place for the discussion.

Propaganda is yet another ugly scar on the face of modern journalism, which is why I raise the issue today. It is not my responsibility as the Representative to teach anyone how to write and report. But I can ask questions – the tough questions that we should all be asking ourselves and one another.

I call on governmental authorities, wherever they own media outlets directly or by proxy, to stop corrupting the profession, to stop spreading propaganda, to stop presenting a world through the media that is as Orwellian as the era we lived through and came to an end 25 years ago. In the absence of real, critical journalism, democracy suffers and deliberate disinformation becomes the standard.

As I said in a Communique earlier this year, propaganda is dangerous when it dominates the public sphere and prevents individuals from freely forming their opinions, thus distorting pluralism and the open exchange of ideas. Today, in the 21st century, as it was in the past, state media is the main vehicle of propaganda. As it is dangerous for peace and security, it should be transformed into true public service media or privatized.

It is time for government to get out of the news business.

And I asked in Moscow at the European Federation of Journalists meeting last week, isn't it time for national professional organizations and self-regulatory bodies to evaluate the state of journalism? To take a long, hard look in the mirror?

I also called upon journalists' organizations, self-regulatory bodies and the owners and publishers of media outlets take a serious look at the content they are producing.

This propaganda evident in media today does a disservice to all credible, ethical journalists who have fought for and, in some cases, given their lives to produce real, honest journalism.

Twenty five years ago, when the Berlin Wall finally collapsed, we all could see a bright future – free of a trumped-up, Orwellian unreality. The sun was rising on that horizon. Today, 25 years later, I must ask – why have we returned to this? Why is that sun now setting?

Can't we do better? I think we can.

And what better time to start that than today – 25 years after the fall of the Berlin Wall, when we all were imbued with a sense that the golden days were ahead. This time, however, all interested parties, including international organizations, must stop simply committing and recommitting with high-sounding words on paper and just do it, in practice.

## **ISSUES RAISED WITH PARTICIPATING STATES**

### **Albania**

On 17 June I issued a public statement condemning an attack on journalists who were reporting on a police raid in a village in southern Albania. According to reports, a vehicle with a journalist, camera operator, broadcast technician and driver from A1 Report television was shot at by masked armed people and later set on fire. The car, marked with the station's logo, was destroyed along with the equipment inside it. Journalist Gerti Xhaja was briefly held hostage and released with the assistance of local residents.

On 21 October I issued a public statement calling on the authorities to investigate a hacker attack on the website of the Albanian Public Broadcaster that happened the previous week.

### **Armenia**

On 22 July I issued a public statement expressing concern about a court ruling that forced the Hraparak newspaper and Ilur.am news portal to disclose their sources as part of a criminal investigation involving a high-level police official of the Shirak region. I noted that the right of journalists to protect the identity of confidential sources is a key principle in investigative journalism. Unfortunately on 22 September the appeals court upheld the ruling.

On 10 September I wrote to the authorities about Marine Khachatryan, a journalist with A1+ television, who was attacked while reporting on a public protest near Parliament by the director of the Parliament's security services. The incident took place in the presence of police officers providing security. I expressed hope the incident would receive due attention.

On 29 September I wrote to Minister of Foreign Affairs Edward Nalbandian and issued a public statement on 30 September expressing concern about recent attacks on journalists and the lack of effective measures to end the climate of impunity. On 19 September Taguhi Hovhannisyan, a journalist with the newspaper Haykakan Zhamanak, was intimidated by the head of the Armenian diaspora in Kazakhstan, while covering a public event at the State Opera and Ballet Theatre in Yerevan. Bodyguards seized her phone and erased its memory.

It is of concern that the Special Investigative Service refused to open a criminal case in a recent attack on Khachatryan and that an investigation into the assault and detention of Ani Gevorkyan, a journalist with the newspaper Chorrord Ishkhanutyun, which I raised with the authorities on 14 February, was dropped.

On 14 October I received a response from the Press Secretary of the President indicating that criminal investigations have been launched in the Hovhannisyan and Khachatryan incidents on charges of obstruction of journalists in exercising their professional duties.

On 25 November I learned that the investigation into the 10 September attack on Marine Khachatryan was discontinued due to lack of evidence.

## **Austria**

On 21 July I wrote to the authorities welcoming plans to abolish the obligation of confidentiality for officials (Amtsverschwiegenheit) and to expand the right of access to information in Austria. I also provided a legal review examining two draft laws, one proposed by political parties and another put forward by the Chancellery.

(See Legal reviews)

## **Azerbaijan**

On 20 June I wrote to the authorities sharing my concern regarding developments involving several journalists including the following: On 5 June a criminal defamation lawsuit was filed against Zabil Mugabiloglu, chief editor of the news website Gunxeber.com and the newspaper Yeni Musavat by a local public official over an article alleging corruption. On 24 June I learned that the criminal suit against Mugabiloglu had been dismissed.

On 18 June freelance journalist Arshad Ibragimov was arrested for blackmail in Ganja stemming from an extortion case filed against him by a local public official. On the same day criminal defamation charges were filed in Baku against Elchin Zahiroglu and Intigam Valihoglu, both with the Aznews.az online portal, by singer Matanet Iskenderli who claimed she was insulted by articles on the portal.

I expressed hope that such serious charges would be carefully weighed.

On 25 June I learned that the Supreme Court upheld the conviction and 5-year sentence imposed on Hilal Mamedov, chief editor of the newspaper Tolishi Sado, on charges of drug possession, high treason and inciting hatred. I raised his case on 27 September 2013.

On 27 June I learned that the appeals court upheld the conviction and 10-year sentence imposed on Nijat Aliyev, editor-in-chief of the azadxeber.org news website, for various crimes, including drug possession and inciting hatred. I raised his case on 11 December 2013.

On 4 July I learned that the Supreme Court upheld the conviction and 8-year sentence imposed on Araz Guliyev, editor of the news website xeber44, for “illegal possession, storage and transportation of firearms,” “participation in activities that disrupt public order,” “inciting ethnic and religious hatred,” “resisting authority” and “offensive action against the flag and emblem of Azerbaijan.” I raised his case on 11 April 2013.

On 7 July I issued a public statement condemning jail sentences handed down to bloggers Omar Mamedov and Abdul Abilov.

On 20 August I learned that the appeals court rejected Mamedov’s request to review the case.

On 15 July I learned that a court had extended the pretrial confinement of Zerkalo journalist Rauf Mairkadyrov who was arrested in April 2014 on charges of high treason.

On 15 July I learned that a court had extended the pre-trial confinement of Mirkadyrov, who was arrested in April 2014 on charges of high treason. I raised his case on 22 April. On 20 November his confinement was extended for five more months.

On 5 August I issued a public statement voicing concern about the arrest of prominent free expression advocate Rasul Jafarov and called on the authorities to release him and stop the persecution of critical voices.

I also expressed alarm about criminal charges against activists of the NGOs supporting media freedom, effectively suspending their work. According to reports, in May 2014 the Prosecutor General’s Office froze the bank accounts and launched criminal investigations into the activities of Denmark-based International Media Support (IMS) and US-based IREX alleging abuse of power and forgery. Also frozen were the bank accounts of the Institute for Reporters’ Freedom and Safety (IRFS), an Azerbaijani media NGO.

I also expressed regret that Azadliq had been forced to suspend publication apparently due to ongoing financial difficulties. I was pleased to learn that the newspaper has since resumed publishing.

On 23 October I learned that upon the prosecutor’s request, Jafarov’s arrest had been extended for three more months.

On 6 August I wrote to Minister of Foreign Affairs Elmar Mammadyarov expressing concern about the travel ban imposed on Emin Huseynov, Chairman of the Institute for Reporters' Freedom and Safety. Huseynov was prevented from going to Istanbul for urgent medical care. Allegedly the ban was imposed by the Prosecutor's Office. Given Huseynov's health condition I asked the authorities to lift the ban.

On 8 August I issued another public statement detailing the continuing intimidation of journalists, media freedom activists and organizations, including the confiscation of the computer of Huseynov's mother.

I also noted that the bank accounts of the Media Rights Institute (MRI), a prominent Azerbaijani media NGO, and its Director Rashid Hajili had been frozen.

I said that these cases are further proof of a wide-scale deterioration of the media freedom situation and said that, while I do not challenge the lawful right of the authorities to scrutinize the activities of NGOs, such actions should not be pursued to silence critical voices.

On 13 August I wrote to Foreign Affairs Minister Mammadyarov asking for information about the arrest of Murad Adilov, the brother of Natig Adilov, a journalist with Azadliq newspaper. On 11 August police officers arrested Murad Adilov on drug possession charges.

In December 2013 the journalist was summoned to Baku police headquarters, interrogated on matters related to his work as a journalist and received an official warning.

I expressed hope that the incident with Murad Adilov is not linked to Natig Adilov's professional activities.

On 22 August I issued a public statement asking the authorities to investigate a brutal attack on Ilgar Nasibov, a journalist contributing to several media outlets, including the Turan News Agency and Radio Free Europe/Radio Liberty. He was assaulted on 21 August in his office at the Resource Centre for Development of NGOs and Democracy in Nakhichevan. He sustained serious injuries, including a concussion and a broken nose, cheekbones and ribs. The assailants also destroyed office equipment.

Nasibov has been prosecuted, threatened and physically attacked several times in the past.

I again expressed concern about the continuing intimidation of IRFS. In addition to frozen bank accounts and confiscation of property earlier in August, the IRFS office was closed by law enforcement authorities and its staff was interrogated.

On 19 September I received a Note Verbale from the Permanent Mission reacting to my statements of 5 August and 22 August regarding the cases of Rasul Jafarov and Ilgar Nasibov, respectively, and commenting on my assessment of the media freedom environment in the country.

On 29 August I wrote to the Foreign Affairs Minister Mammadyarov raising the detention of Seymur Hazi, one of the leading columnists for the newspaper Azadliq and a presenter on the web-based program "Azerbaycan Saati."

The police detained Hazi on hooliganism, but did not disclose the actions that led to the charges. Hazi had been threatened physically and assaulted several times. I publicly condemned an attack on him on 28 March 2011 and also wrote to the authorities about the incident on 5 April 2011.

On 30 August a district court ordered Hazi to remain in custody for two months. Although this period expired, the journalist remains under arrest for the court hearing that has started.

On 10 September I wrote to the authorities raising the refusal to grant a visa to Jutta Sommerbauer, foreign policy editor with the Austrian newspaper Die Presse.

Sommerbauer planned to report on the official visit to Baku by Austrian Foreign Minister Sebastian Kurz.

On 31 October I wrote to the authorities raising recent cases involving the prosecution of journalists and asking for additional information.

In July freelance journalist Arshad Ibragimov was sentenced to 11 years in prison for blackmail. I raised his arrest with the authorities in my letter on 20 June 2014. Reportedly, the case is currently in the appeals court. Ibragimov denies all allegations.

I also noted conviction on 30 October of Khalid Garayev, a correspondent for Azadliq and the technical director of the Internet television channel Azerbaycan Saati. Garayev was arrested on 29 October and sentenced to 25 days of administrative arrest on charges of hooliganism and disobedience to police for allegedly using obscene language.

I once again offered my Office's assistance to help Azerbaijan in achieving much-needed improvements to media freedom. On a number of occasions I also offered to visit Baku to help address the issues I raise. I hope such a visit will take place soon and that I would be able to meet high-level officials to seek a joint solution.

On 10 November I issued a public statement following the detention of Azerbaijani blogger Mehman Huseynov. He was detained at Baku Airport on 10 November when trying to depart for Tbilisi to attend the 11th South Caucasus Media Conference, invited by my Office. I said that practically all independent media representatives and media NGOs have been purposefully persecuted under various, often unfounded and disturbing charges. I repeated my call to the authorities to end this hostile attitude.

On 11 November the Permanent Mission issued a press release in reaction to my statement commenting on my assessment of the media freedom environment in the country.

On 18 November I was pleased to receive information that the Government has agreed to my request to visit the country. Plans for a December visit are being discussed.

## **Belarus**

On 2 July I received a reply from the authorities regarding the detention of a crew near Minsk Arena on 9 May while covering the Ice Hockey World Championship. I was told the group was detained because its members did not identify themselves as media while conducting polls on residents' attitudes toward the tournament. Also, none of them had appropriate accreditation. After producing identification, the journalists were released.

On 30 July I wrote to the authorities expressing concern about the 3-year sentence in a penal colony handed down to Aleksey Zhelnov, the son of blogger Oleg Zhelnov from Bobryusk, on the charges of violence against police.

He also was ordered to pay a fine of 50 million Belarusian roubles. Alexsey Zhelnov was found guilty stemming from an incident on 4 September 2013 when his father and he were detained while reporting on the improper parking of a police car.

I raised this issue because it seems to be a part of a larger pattern of continuing intimidation of Oleg Zhelnov, who is well-known for expressing critical views in on his blog. Oleg Zhelnov has been detained by police several times and has faced criminal and administrative charges.

On 11 September I received a reply from the authorities saying that Aleksey Zhelnov was sentenced for inflicting minor injuries on a police officer. It was also stated that the Interior Ministry does not have information about the affiliation of Aleksey Zhelnov and Oleg Zhelnov with media.

On 18 August I wrote to Minister of Foreign Affairs Vladimir Makei about factual blocking access to the independent news website Charter97.org. I encouraged the authorities to make sure citizens have unrestricted access to the Internet.

On 11 September I received a reply from the authorities stating that no restrictions were imposed on access to the website. The partial lack of access was due to the improper functioning of communication lines of one of the Russian partners of the Belarusian ISP, which had been repaired.

On 15-16 September I paid an official visit to the country.

I met with the Minister of Foreign Affairs Vladimir Makei and Minister of Information Liliya Ananich, civil society representatives and journalists and discussed the practice of short-term detention of media, the need to reform media legislation, media accreditation requirements for journalists and the need to introduce more effective ways to access information.

I reiterated the readiness of my Office to provide expert advice, in line with OSCE media freedom commitments and best practices, and insisted on the need to engage civil society in discussions on the reform process. I also expressed the readiness of my Office to facilitate a dialogue on joint activities of government institutions and media organizations and organize a workshop on accreditation of journalists, where international experts would share best practices.

(See Visits)

I opened a training seminar on “Improving Practices of Relations between Law Enforcement Agencies and Media Workers of Belarus”, jointly organized by my Office and the Ministry of Foreign Affairs, which was attended by Interior Ministry representatives and journalists from independent and state-run media.

(See Training)

With regret I noted that the repeated appeals of the Belarusian Association of Journalists to change accreditation requirements have failed.

I also noticed that the practice of short-term detention continues. On 20 October freelance journalists Mariya Artsibasheva and Alexander Lyubenchuk were held briefly while conducting an interview in Minsk.

On 30 September I wrote to the Minister of Foreign Affairs Vladimir Makei expressing my concern about the continued practice of short-term detention and persecution of journalists due to lack of accreditation, the issues I raised with the authorities during my visit to Minsk on 15-16 September.

On 16 September Sergei Satsyuk and Alexander Borozenko with BelaPAN news agency and freelance journalist Natalya Volokida were detained by police while covering judicial proceedings in Minsk and released after three hours.

On 25 September journalist Marina Molchanova with Bobruiskii Courier was fined 4.8 million Belarusian roubles for the illegal production and dissemination of media products in co-operation with Belsat TV.

On 8 October I issued a public statement renewing my call on authorities to reform accreditation requirements for freelance journalists working with foreign media. The statement followed new cases where journalists received administrative sentences because of lack of accreditation.

On October 8 a district court in Mogilev ruled that freelance journalist Aleksandr Burakov was guilty of “the illegal production and distribution of media products” for Deutsche Welle. Burakov was fined 6 million Belarusian roubles. On 16 September police searched the homes of Burakov and his parents and confiscated computer equipment.

On October 7 the Grodno district court fined freelance journalist Andrey Meleshko 5.25 million Belarusian roubles for working for Polish-based Radio Racya. Meleshko also received fines on the same charges on 16 June this year which I raised with the authorities.

In 2014 alone approximately 10 administrative cases have been launched against journalists for co-operating with foreign media without accreditation. The journalists have been fined and issued warnings.

On 17 November I received a reply from the authorities on the cases raised in my interventions of 30 September and 8 October informing that all journalists were prosecuted and detained for having no accreditation.

### **Bosnia and Herzegovina**

On 23 June I issued a public statement condemning an attack on a television crew in Busovaca. Journalist Sanela Kajmovic-Sojaric and cameraman Nihad Karic from Federation Television were attacked while covering a homecoming event for a person previously convicted of war crimes by the International Criminal Tribunal for the former Yugoslavia.

On 24 June I issued a public statement condemning the assault on prominent writer and columnist Slavo Kukić, who was hospitalized with head injuries. I also expressed concern over an attempted break-in at the BiH Press Council, following a string of incidents targeting the organization.

On 10 October I issued a public statement calling on the authorities to end impunity for attacks against journalists following a death threat on Siniša Vukelić, editor of the online portal Capital.ba, at a petrol station in Banja Luka.

On 21 October I issued a public statement calling on the authorities to investigate hacker attacks on the websites of the FENA news agency and BUKA magazine.

On 22 October I issued a public statement calling on the authorities to investigate threats against all media representatives, following death threats against cameraman Emir Hrnčić and reporter Omer Hasanović of Federation Television. In my statement, I also recalled previous attacks against members of the media this year that remain unsolved.

I welcomed the decision on 6 November by the District Court of Banja Luka to overturn a ruling of 11 October 2013 finding Ljiljana Kovacevic, a journalist for the Beta news agency, liable for defaming the president of Republika Srpska. On 18 October 2013 I had issued a public statement expressing serious concern over the lower court decision. (See Regular Report to the Permanent Council of 28 November 2013).

## Canada

On 24 June I issued a public statement expressing concern about a ruling by the Supreme Court of British Columbia ordering Google to take down URLs worldwide of a company found liable for copyright and trademark infringement in Canada.

The court's decision, in essence, expands the territorial application of Canadian law and forces Internet search engines to police their sites worldwide for illegal Internet content.

I said it was unsettling to see a provincial court expand its power and authority worldwide on what should be a local or national matter and that search engines such as Google and Internet service providers should not shoulder the burden of enforcing private property rights.

## Croatia

On 13 August I issued a public statement condemning an attack on journalist Domagoj Margetic, who sustained head injuries when assaulted close to his home in Zagreb.

On 11 July in a public statement I called on the authorities to respect free speech on social media platforms, following a case in which the police in Đakovo in eastern Croatia arrested and fined an individual for offending police officers on Facebook.

## Estonia

On 30 July I wrote to the authorities for information about two Russian journalists who were deported from the country. According to media reports, reporter Maxim Gritsenko and cameraman Vyacheslav Amelyutin, from Zvezda state television were detained at the Tallinn airport passport control unit on 25 July for five hours, after which they were deported to Russia.

In a 6 August response the authorities said the journalists were denied entry because the "information filed about the purpose of their stay in Estonia was inaccurate" and that it had nothing to do with their journalistic activity.

## Georgia

On 2 October I wrote to the authorities to express my concern about an assault on Zaza Davitaia, a journalist with the newspaper Asaval-Dasavali. On 30 September Davitaia was attacked on his way to work in Tbilisi. He suffered multiple injuries, including a broken rib and a concussion.

On 24 October I received a response from the authorities informing me that an investigation was launched and two suspects had been identified. Unfortunately, I learned that on 22 October Davitaia was attacked again. Reportedly, the perpetrator was identified and arrested.

On 10-11 November I visited Tbilisi for the 11th South Caucasus Media Conference: Public Service Broadcasting in the Digital Age. During the visit I met Chair of the Parliament David Usupashvili and discussed current media freedom issues in Georgia, including the future of the Georgian Public Service Broadcaster (GPB) and the challenges faced by Rustavi 2 television channel.

I said that the developments around GPB remain among the issues I continue to follow closely and urged the Parliament to elect the remaining two members of its Supervisory Board soon to make the GPB fully operational. I also expressed hope that the investigation into reports that the office of Rustavi 2, one of the largest television channels in Georgia, was under video and audio surveillance will soon bear results and the perpetrators will be brought to justice.

### **Germany**

On 12 September I issued a public statement taking note of a recent series of acts of vandalism against the editorial offices of the daily German newspaper Lausitzer Rundschau, including marking the walls of their regional offices in Spremberg and Lübbenau with graffiti containing threats as well as fascist and anti-Semitic symbols. The newspaper was the target of similar attacks in 2012.

I said that these threats and acts must be stopped and that I was confident that the authorities would take the necessary precautions to ensure the journalists' safety. I also welcomed the fact that the attacks had been publicly condemned by the Prime Minister of Brandenburg.

### **Greece**

On 27 August I wrote to the authorities about a change in the appointment procedure of the supervisory board of the Public Service Broadcaster making it possible for its members to be elected by a simple majority, following the Government's recommendations of candidates. It has also been reported that such candidates will not be voted by the entire Parliament but by a specific commission comprised of representatives of legislative groups and other organs of the chamber.

I said that these amendments may raise questions about possible political interference and a lack of independence of the supervisory board, and that the legislative changes were carried out quickly, not allowing time for public debate. I asked the authorities to share a copy of the amended legislation with my Office.

On 10 November I received an English translation of the amendments and which my Office is currently assessing.

On 5 September I wrote to Minister of Foreign Affairs Evangelos Venizelos regarding the draft anti-racism law. I said that Article 2 of the draft law would criminalize denial of genocide and incitement to hatred and discrimination, provisions which may be used to excessively limit free expression. I said that efforts to fight racism and combat

racially motivated violence are indispensable in every democracy. I also noted that the right to freely express ourselves does not stop at topics deemed proper or respectful, but also extends to issues that parts of the society may find offensive, shocking or disturbing. I also pointed out the reservations of more than 100 historians and academics in Greece who were greatly concerned with the freedom of expression implications of the draft law. I asked the authorities to provide my Office with the draft legislation.

On 7 October I was pleased to receive a detailed reply from Minister Venizelos. He informed me that the draft law was adopted on 9 September and assured me that the scope of Article 2 fully complies with both the Constitution of Greece, and, among others, with Article 10 paragraph 2 of the European Convention on Human Rights. He added that the criminalization in question concerns only intentional conduct, the details of which are carefully defined in the law, and an expression of opinions and views does not suffice per se to criminalize such behaviour. The Minister stated that the freedom to discuss all issues of public importance or interest is not limited by the law and reiterated the readiness of his Government to continue co-operating with my Office.

### **Hungary**

On 17 July I received a reply from the authorities to my remarks in the Regular Report to the Permanent Council of 19 June 2014 welcoming the Constitutional Court decision of 5 March 2014, stating that opinions, including value judgments, expressed on public issues cannot give rise to civil liability. The authorities said that the Constitutional Court did not view opinions regarding public figures as generally non-actionable. If opinions are expressed about the personal and family lives of public figures or what is said goes beyond damaging their honour and harms their human dignity, they said it is the responsibility of the courts to develop a judicial practice consistent with these principles.

The authorities also reacted to my comments on a 28 May Constitutional Court ruling regarding content providers' liability for comments posted on their websites by third parties, which also was in my report of 19 June. According to the authorities, the provider's liability for comments only can be determined following detailed examination and this decision is consistent with the judgment of the European Court of Human Rights in the *Delfi v. Estonia* case.

### **Kazakhstan**

On 22 August I issued a public statement expressing disappointment at a Supreme Court decision upholding the closure of *Pravdivaya Gazeta* for minor administrative violations such as stating erroneous imprint data.

The court's decision effectively makes the newspaper the latest in Kazakhstan to be closed by the authorities. More than 30 media outlets have been closed since late 2012 with authorities citing administrative code violations or publishing of extremist views as the reasons.

I pointed out to the authorities that media should not be punished disproportionately for minor administrative violations. My Office provided Kazakh authorities with a legal review of the administrative code in 2013 that advised removing the excessive penalties for administrative missteps.

On 22 October I wrote to Foreign Minister Erlan Idrissov regarding reports of the blocking of the websites of CA-News.org and medusa.io.

CA-News.org, a popular Central Asian News portal in Kyrgyzstan, said its site has been blocked without explanation since July by a majority of providers, including Kazakhtelecom.

Meduza.io, a Russian-language Latvian-based news site, went online on 20 October and was reported inaccessible shortly thereafter. It remains blocked.

I requested the authorities to inquire and help re-establishing access to these sites. Limitations on access to information must not be applied cavalierly or opaquely.

On 26 November I issued a public statement saying that an injunction to stop the distribution and publication of the weekly magazine ADAMBOL further endangered media pluralism in the country. The Almaty City Department for Internal Policies claimed that an article published three months earlier contained extremist war propaganda. I said that these drastic and disproportionate measures did not correspond to the claim and contributed to an atmosphere of fear in the media. I also noted that webpages carrying reports and comments on the closure of the magazine, including webpages on adilsoz.kz, azattyk.org and vlast.kz, were not accessible in Kazakhstan.

## **Kyrgyzstan**

On 17 October I issued a public statement asking the Parliament to reconsider its decision to criminalize the dissemination of LGBT-related information.

I noted that the law is so vaguely worded and open for interpretation that, if adopted, it would have consequences for free expression and media freedom and could make criminals out of those who even just report on instances of LGBT discrimination.

I noted that this legislation as well as the recent de facto reintroduction of criminal defamation also runs contrary to notable achievements in media law reform in recent years.

On 30 September – 1 October I visited Kyrgyzstan to participate in the 80th PEN International Congress in Bishkek and met with the heads of the parliamentary committees on Education, Science, Religion and Sport and on Human Rights, Constitutional Legislation and State Structure to discuss recent legislative initiatives of the parliament. I touched upon the draft laws on “On propaganda of non-traditional sexual relationships” and the law “On non-commercial organizations” and their potentially negative affect on freedom of expression. I took note of the reasoned discussion in Parliament

that led ultimately to the rejection of introducing an administrative liability for insult and expressed hope that this openness for the arguments from media representatives and civil society will also be shown in the upcoming debate on the two laws.

I also offered support in the preparing for the digital switchover and agreed that my Office would review draft legislation.

(See Visits)

### **Latvia**

On 1 August I issued a public statement expressing concern about the Riga Central District Court decision to freeze assets worth almost €23,000 of Cits Medijs, publisher of the public affairs magazine Ir. The court order followed the filing of a civil lawsuit by insolvency administrator Maris Spruds who claimed that he had been libeled in investigative articles published by the magazine. I welcomed Prime Minister Laimdota Straujuma's call on the court to justify its decision and to dispel concern about pressure on independent media.

### **Lithuania**

On 29 August I issued a public statement welcoming a ruling from the Vilnius Regional Court which found illegal the wiretapping of the telephone conversations of 10 current and former employees of the Baltic News Service (BNS), one of the largest news agencies in Lithuania.

In July the same court upheld complaints by three BNS editors over wiretapping in the same case. The court also ruled that other law enforcement actions, including secret surveillance, searches and an order to reveal sources of information, were unlawful. In July the Parliament also adopted amendments to the Law on the Provision of Information to the Public that provide additional protection to journalists' sources, which I welcomed in the statement as well.

On 29 October my Office attended the conference in Vilnius "Television and Radio: Current challenges," organized by the Radio and Television Commission of Lithuania.

(See Visits)

### **The former Yugoslav Republic of Macedonia**

On 15-17 July my Office, together with the OSCE Mission in Skopje, organized a two-day workshop on media self-regulation for members of the Council of Media Ethics, held in Mavrovo. The workshop was moderated by Dieter Loraine, OSCE commissioned independent expert who was assigned to prepare a strategy and annual action plan following this first training and needs assessment visit.

On 19 August I received a letter from the Minister of Information Society and Admin-

istration Ivo Ivanovski, in which he informed me of the proceeding dialogue and consultation with relevant parties and stakeholders following the enactment of two media laws which my Office had reviewed. In his letter, Minister Ivanovski also reiterated his support for the expertise provided by my Office toward the establishment of an independent Press Council, and stressed the importance of engaging both journalists associations of the country in this process.

On 29 August I replied to Minister Ivanovski providing information about future plans related to the engagement of my Office in assisting to the Council of Media Ethics on running the organization. I also assured him that all members of the Press Council had been invited to participate in the workshops.

On 4 September following the first workshop I sent the draft strategy and annual action plan to the president of the Council of Media Ethics for their comments.

On 6 October I wrote to the authorities to call attention to a civil defamation judgment against Fokus journalist Vlado Apostolov and its Editor-in-chief Jadranka Kostova, which was upheld by the appellate court. The judgment ordered them to pay €6,000 in damages and €3,000 in court costs for damaging the reputation and honour of Security and Counter-Intelligence Directorate Director Saso Mijalkov. This was another example of the urgent need for an established ceiling on damages in civil defamation cases to prevent the bankruptcy of media outlets.

On 7-8 October my Office, together with the OSCE Mission in Skopje, organized a second workshop for the Council of Media Ethics, held in Skopje, to further discuss strategy and an annual action plan.

On 16 October I submitted a two-year strategy, including action points, to the Council on Media Ethics. The handover of the strategy followed two workshops in July and October where codes of ethics, working structures and complaints procedures and a budget were agreed upon.

On 24 October I wrote to Prime Minister Nikola Gruevski to again raise the trial of journalist Tomislav Kezarovski. (See Reports to Permanent Council of 19 June 2014 and 28 November 2013).

I have drawn attention to this case on several occasions, including his initial arrest and the lengthy pre-trial detention. After his conviction, he has been placed under house arrest. I will follow his appeal closely and hope that he will be exonerated.

## **Moldova**

On 29 August I wrote to Chairman of the Parliament Igor Corman sharing concern about the delay in electing new members of Supervisory Board of the National Public Service Broadcaster – Teleradio Moldova.

The Supervisory Board, a key managerial body responsible for strategic decision-mak-

ing, has not functioned since December 2013. After the terms of six of its nine members expired, the Broadcasting Coordinating Council proposed 12 candidates to the Parliament, which has failed to follow up on it.

I stated that further delays may seriously affect the broadcaster's operations.

On 21 July I wrote to Chairman Corman and on 2 September I issued a public statement raising concern about draft amendments to an anti-extremism law that could pose a threat to freedom of expression on the Internet.

The amendments to the Law on Countering Extremist Activities, approved by Parliament in the first reading in July, would give the Information and Security Service of Moldova the power to order Internet service providers to temporarily block access to online content of an extremist nature.

I said that while I agree that the fight against extremism is an important security issue and a universal challenge affecting all OSCE participating States, I was worried that such practice might be arbitrarily interpreted and could lead to undue and disproportionate restrictions, thus limiting free media in the name of countering extremism without proper judicial procedures and oversight. I called on the authorities to eliminate these provisions. The amendments are still pending in Parliament.

## **Mongolia**

On 10 July I issued a public statement expressing concern about the blocking of the popular news website Amjilt.com by the Mongolian Communications Regulatory Commission (CRC). According to Amjilt, the blocking followed the CRC's informal request to remove a critical investigative article mentioning the Prime Minister. Amjilt.com management did not take down the story. Even though CRC did not claim responsibility for this action and Amjilt.com did not receive an official request to take down the story, the CRC placed the website on its list of conflicting domains which are blocked for violation of intellectual property rights.

I noted that such a measure could also have a chilling effect on investigative journalism, one of the pillars of free media and urged the authorities to encourage pluralistic discourse on all issues of public importance.

On 26 August I issued a public statement on the imposition of a 3-month prison sentence on Ts. Bat, a blogger, for defaming a high-ranking political figure through social media. Bat became the first person in Mongolia to be found guilty of defamation by social media. I said that prison is a disproportionate and unacceptable measure for defamation.

On 1 September I wrote to the Foreign Minister regarding a draft regulation of the CRC on "General Requirements and Conditions for Digital Content Service."

I noted that, in line with OSCE commitments and international standards, restrictions

on free expression, whether through online or traditional media, should be very narrowly defined. Government regulations should not lead to undue and disproportionate restrictions or grant powers to the regulator that could amount to censorship.

I look forward to paying an official visit to Mongolia in May 2015.

## **Montenegro**

On 2 July I paid an official visit to the country where I met with President Filip Vujanović, Prime Minister Milo Đukanović, and President of the Supreme Court Vesna Medenica. I also met with Igor Lukšić, Minister of Foreign Affairs, Raško Konjević, Minister of Interior, members of the Parliament, civil society, journalists and media representatives.

Among other issues, I discussed the issue of journalists' safety and the lack of unity among members of the media. I welcomed the establishment of a joint commission to monitor investigations of cases of threats and attacks against journalists was a positive step, but stressed it cannot replace state institutions in investigating and prosecuting perpetrators and masterminds of such crimes.

(See Visits)

On 9 July I wrote to Prime Minister Đukanović thanking him and Deputy Minister Lukšić and Minister Konjević, for the excellent organization of the visit, the commitment for co-operation and reiterating some main concerns and opportunities for future co-operation.

On 17 July in a public statement I welcomed the readiness of the media community to improve self-regulation and begin confidence building measures, an initiative agreed on during my visit on 2 July.

On 14 October I issued a public statement announcing the beginning of roundtable discussions held in Vienna and organized by my Office, for media members to review the professional code of ethics as a first step to improve media self-regulation in the country.

On 15 December the working group on the amendments to the Montenegro journalists' Code of Ethics will have its first meeting in Podgorica. This meeting is a direct result of the meetings during my official visit on 2 July, the follow-up visit on 17 July and the meeting of media owners and editors in my Office on 14 October. In addition to the modernization of the Code, it is expected that his process will also improve media self-regulation in the country and start the process of confidence-building among members of the media.

## **Netherlands**

On 15 August I wrote to the authorities to convey my concern about recent attacks on three journalists covering an anti-Islamic State demonstration in The Hague. I ex-

pressed my trust that those incidents would be thoroughly investigated.

On 20 August I received a reply from the authorities saying that the police were investigating the attacks and that two suspects had been apprehended who would face appropriate judicial procedures.

On 3 September I wrote to the authorities to express concern over criminal defamation and insult charges brought against journalist André Hoozeboom arising from his blog Go!72 in December 2013.

Criminal defamation charges should not be used against journalists dealing with critical and delicate topics. I took the opportunity to call on the government to initiate legal reforms that would fully decriminalize defamation.

### **Norway**

On 30 September I welcomed a decision by the Norwegian Data Protection Authority (DPA) finding that the Armed Forces registration of nine investigative journalists was illegal. Following an investigative story in a daily newspaper in 2011, an army unit collected information on the journalists, which became available to the armed forces' intelligence service. The DPA ruled that even though the files did not contain comprehensive nor particularly sensitive information, the journalists' right of privacy was violated. In my statement, I said that registration and monitoring of journalists has a negative effect on journalists' ability to get information and build confidence with their sources and therefore cannot be justified.

### **Poland**

On 19 June I expressed concern in a public statement about attempts by law enforcement to confiscate materials and force journalists of Wprost magazine to reveal confidential sources. On 18 June the editorial office of Wprost was raided by the Prosecutor's Office and Internal Security Agency officers, without a court order, to confiscate recordings of alleged private conversations between the head of the Central Bank and the Interior Minister. I said that these kinds of investigation methods are unacceptable as they have a chilling effect on investigative journalism and could stifle media freedom. I called upon the authorities to act in compliance with international standards and OSCE commitments.

On 27 October I wrote to the authorities to learn why the credentials of Russian journalist Leonid Sviridov, a correspondent for the news agency Rossiya Segodnya, had been withdrawn. The response in a letter of 29 October indicated that denying Sviridov's foreign correspondent credentials was "due to his activities in the field of foreign economic relations," and not connected with professional activities. According to later news reports, I learned that the authorities also have started the procedure to withdraw his residence permit.

## **Romania**

On 13 November I issued a public statement condemning the attack on a journalist by law enforcement officers in Bucharest and called for an investigation. I said that journalists must be able to do their work in a free and safe manner. Attacks on journalists are especially worrying, since the police should ensure the safety of members of the media.

## **Russian Federation**

On 23 June I received a letter from Ambassador-at-Large Konstantin Dolgov, the Foreign Ministry Commissioner for Human Rights, Democracy and the Rule of Law, concerning violations of freedom of expression and freedom of the media in Ukraine, in particular with regard to Russian journalists there. Ambassador Dolgov raised concern over the arrest of LifeNews journalists Marat Saichenko and Oleg Sidyakin who were detained by Ukrainian military forces on 18 May; the deaths of journalists Igor Kornelyuk and Anton Voloshin on 17 June and the banning of television broadcasts. On 25 June I responded informing him that I act in strict compliance with my Mandate and use the means provided in it.

On 25 June I issued a public statement criticizing amendments to the Criminal Code that could further increase government control of the Internet. The amendments, adopted on 20 June, increase criminal liability to up to 5 years in prison for online calls for extremist activity.

I urged the authorities to reconsider because these changes threaten free media and compromise online pluralism in the name of fighting extremism. The anti-extremism law is vaguely worded and could impose disproportionate restrictions on fundamental rights.

I reiterated restrictions on free expression should be carefully defined, as imprecise wording in anti-extremism legislation results in individuals not knowing whether their actions are legal.

I noted with regret that the President of the Russian Federation signed the amendments into law at the end of June.

On 7 July I issued a public statement calling on the President of the Russian Federation to veto proposed amendments to the Law on Advertising. On 4 July the State Duma approved amendments which prohibit commercials on cable television channels that do not hold a terrestrial broadcasting license or are not on the list of must-carry programmes.

These amendments could lead to cutting off private small- and medium-scale channels from their principal source of revenue, which is advertising. That could further limit media pluralism and the free flow of information in Russia and lead to undue media concentration in the hands of a few, including the state broadcast monopolies.

I also noted that the proposed amendments would negatively affect media plurality with the coming digital switchover, when hundreds of regional broadcasters will lose their terrestrial licenses.

I noted with regret that the President signed the amendments into law on 21 July.

On 9 July I issued a public statement on the 10th anniversary of the murder of Forbes magazine editor Paul Klebnikov. I called on the authorities to end impunity for crimes committed against journalists in the Russian Federation.

On 21 July I issued a public statement calling on the authorities to immediately release Yevgeny Agarkov, a journalist with the Ukrainian 2+2 television channel.

On 18 July Agarkov was arrested in Voronezh for working without accreditation. On 30 July he was fined 2,000 roubles (then approximately €42) and expelled from the country.

I said that accreditation should not be, in effect, a work permit, such that the failure to obtain one would bar journalists from working.

On 4 August I issued a public statement mourning the violent death of journalist and blogger Timur Kuashev, whose body was found in a suburb of Nalchik, Kabardino-Balkaria.

Kuashev, a journalist with Dosh magazine, covered events in the North Caucasus. He was well known for his critical reporting on human rights issues. He reportedly went missing on 31 July and was found dead the next day. He had complained about threats from social network users and law enforcement representatives.

I expressed hope that the authorities would conduct a thorough investigation into the case.

On 21 August I wrote to the authorities and issued a public statement regarding an attack on the chief editor of the Derbentskie Izvestiya newspaper, Magomed Khanmagomedov, in Dagestan.

On 20 August Khanmagomedov was attacked in his office by two people who beat him and fled. He was also violently attacked in 2010 and 2012.

On 25 August I wrote to the authorities expressing concern about an attack on Arseniy Vesnin, a journalist with the Ekho Moskv radio in St. Petersburg. He was attacked on 24 August while reporting on a pro-Ukrainian demonstration, suffering a traumatic brain injury and a concussion.

I welcomed the immediate detention of the assailant by police and the public condemnation of the attack by the acting governor, Georgy Poltavchenko. On 6 October I received a response from authorities saying the case was being investigated.

I was disappointed to note that a clear violation of the journalist's rights was characterized as mere "petty hooliganism" and the perpetrator was released shortly thereafter.

On 27 August I wrote to the Minister of Foreign Affairs Sergey Lavrov and issued a public statement condemning several attacks on journalists in the Pskov region.

On 26 August Vladimir Romensky (Dozhd TV), Ilya Vasyunin (Russkaya Planeta), Nina Petlyanova (Novaya Gazeta), Irina Tumakova (Fontanka.ru), Sergey Kovalchenko and Sergey Zorin (both with Telegraph agency) were assaulted and intimidated while reporting on issues related to the conflict in eastern Ukraine.

I urged the authorities to thoroughly investigate these attacks and bring those responsible to justice.

I also noted that investigative journalist Alexander Krutov with Obschestvennoye Mneniye magazine was brutally beaten on 26 August close to his home in Saratov. Krutov has been attacked several times before without the assailants being brought to justice.

On 23 October I received a response from authorities informing me that the attack on Krutov was being investigated.

On 30 August I issued a public statement calling on authorities to fully investigate and prosecute all attacks on journalists following an attack on journalist Lev Schlosberg in Pskov.

Schlosberg, a journalist with the Pskovskaya Guberniya newspaper and an active blogger, was beaten on 29 August near his house. Schlosberg had been reporting on the death of soldiers who might have been killed in the conflict in eastern Ukraine.

On 17 September I wrote to the authorities expressing concern about assaults against journalists in Novosibirsk.

On 10 September a crew of the Pretsedent television programme, which contributes to Ren-TV and Region TV, was attacked by two people. Journalist Yelena Maltseva and cameraman Alexander Molchanov were investigating allegations about the quality of services provided by a local employment agency. The attackers destroyed the crew's camera and hit Molchanov in the face.

On 11 September the same people reportedly threatened and attempted to attack a crew of the State Television and Radio Company Novosibirsk at the same site, while a representative of the employment agency threatened to break the journalists' camera.

On 18 September I issued a public statement condemning the growing violence against journalists in Russia following an attack on a BBC crew in Astrakhan.

On 16 September two members of a BBC TV crew were confronted and attacked by

at least three people in Astrakhan while reporting about killed Russian servicemen. The attackers smashed the crew's camera and beat the camera operator. Meanwhile, somebody broke into their car and erased video material and computer data from the journalists' equipment.

I said that we were witnessing a clear sign of harassment of free media in Russia. This incident was the latest in a spate of recent attacks against journalists who investigated issues related to the conflict in eastern Ukraine.

I also expressed concern about the 10-11 September attacks on the crews of the Pretsedent television programme and the State Television and Radio Company in Novosibirsk, the issues I raised with authorities on 17 September.

On 2 October and 23 October I received responses from the authorities saying that the attack on the BBC crew was being investigated. I was also told that law enforcement is trying to identify suspects in the attack on the Pretsedent television crew.

On 24 September I issued a public statement calling on the authorities to carefully consider proposed changes to legislation on media ownership requirements.

On 23 September the State Duma approved amendments to the Law on Mass Media lowering foreign ownership share in media outlets from 50 percent to 20 percent. The amendments extend to all media, including broadcast, print and online outlets.

I expressed concern that the proposed changes would limit media pluralism.

With regret, I learned that on 14 October the President signed the amendments into law.

On 3 October I wrote to the authorities expressing concern about an attack on Maxim Zakharov, chief editor of Smolenskaya Narodnaya Gazeta.

On 2 October Zakharov was attacked by two people. Zakharov had reportedly informed the police about threats several weeks before this incident.

On 23 October I received a response from authorities informing me that the attack was being investigated.

On 29 October I learned with regret that Aleksander Tolmachev, chief editor of the Novocherkasskie Novosti newspaper and owner of two other print periodicals, Upolnomochen Zayavit and Pro Rostov, whose case I raised with the authorities on 13 January 2012, was sentenced to 9 years in prison for extortion. I hope that the Appeals Court will overturn this harsh sentence.

On 13 November I wrote to the authorities expressing concern about the detention of Oleg Potapenko, editor of the Amurburg online newspaper, by representatives of security services in Khabarovsk.

Potapenko was detained for several hours at Khabarovsk Airport on 12 November as he was preparing to leave for Hong Kong. His mobile phone, laptop and tablet were seized and searched. The grounds for his detention were unclear.

Earlier in July, Potapenko was reportedly detained for four hours at the same airport while returning from Tbilisi. His luggage was searched and his tablet and mobile phone were briefly seized, allegedly in search of extremist materials.

On 14 November I learned that the district court in Saint Petersburg denied a request of Anna Sharogradskaya, Director of the Regional Press Institute, to have her files and electronic devices returned that had been seized at the Pulkovo airport. I raised this case on 5 June 2014.

I also noted that the Ministry of Justice included the Regional Press Institute on the government's list of non-governmental organizations acting as a foreign agent. I hope this decision will not prevent the NGO to continue its important work for the benefit of the media and society.

On 19-21 November I visited Moscow to participate in the annual meeting of the European Federation of Journalists. In the course of the visit I met with editors of independent media outlets: Mikhail Zygar with the television channel Dozhd, Dmitry Muratov with the Novaya Gazeta newspaper, and Aleksey Venediktov with the radio station Echo Moscow. I also met with other civil society representatives at a roundtable "New Internet-related legislation in Russia as it relates to bloggers and online media."

On 19-21 November I visited Moscow to address EFJ members as a keynote speaker in the annual meeting of the European Federation of Journalists titled "Journalism in Times of Conflict: Impunity, Safety & Ethics." I said that ensuring journalists' safety and breaking the cycle of impunity remain the biggest challenges to overcome for free media. I also addressed the growing phenomenon of propaganda, which poses a threat to journalism as a profession, not least with the rising influence of state-run media outlets.

To express my support for independent media outlets, I met with editors Mikhail Zygar with the television channel Dozhd, Dmitry Muratov with the Novaya Gazeta newspaper and Aleksey Venediktov with the radio station Echo Moscow. During the meeting with Venediktov I agreed to provide assistance in drafting guidelines for station's journalists on using social media platforms. I also attended a roundtable "New Internet-related legislation in Russia as it relates to bloggers and online media" in Moscow.

## **Serbia**

On 3 July I issued a public statement condemning the brutal attack of the editor of the FoNet news agency, Davor Pašalić, who sustained serious head injuries. I welcomed the immediate condemnation of the attack by officials and their assurances that everything would be done to bring the perpetrators to justice.

On 16 July I issued a public statement regretting the ruling by the appeals court in Belgrade against the media outlet B92 for defamation in connection with reporting involving a former Serbian official. This ruling may have a chilling effect on media freedom as it restricts reporting on matters of public interest. International standards call for public officials to endure a higher threshold of criticism by the media.

On 28 August I wrote to Foreign Minister Ivica Dačić raising a number of issues of concern.

I welcomed the prompt response by the authorities following an attack on Darko Cvetanović, a photojournalist with the Serbian daily newspaper Informer. However, I also raised a number of attacks on journalists that have still not been solved, including the 3 July attack on Pašalić and the attempted murder of Dejan Anastasijević, a former journalist of the Vreme weekly, which took place in April 2007. As far as I am aware the attackers have not been identified.

I also expressed concern that the Danas daily newspaper was fined 5 million RSD (€42,000) for failing to employ 2 persons with disabilities in accordance with a 2009 law on employment, despite Danas already having 2 people with disabilities on their payroll. Such a disproportionate fine and punitive action could be seen as pressure on this newspaper. I will continue to closely follow this case.

I called attention to the continued blocking and content alteration of online media portals. On 27 August the website of Peščanik was again subject to a DDoS attack, its online content was obstructed and the page was unavailable to the public. The previous week the online web portal autonomija.info also came under hacker attacks. In June, the Kurir daily newspaper stated that their website was subjected to several DDoS attacks.

On 21 October I issued a public statement indicating that the media outlets 24sata.rs, Blic, e-novine, Kurir and Telegraf had been the victim of hacker attacks. I said that attacks are a threat to cyber security, which is vital to free media and the free flow of information.

On 31 October I met with Foreign Minister Dačić to discuss media freedom issues in the country and issues I have raised in the past.

On 25 November I received a letter from Foreign Minister Dačić informing me about the progress of investigations into hacking attacks on media websites and also wrote that the Ministry of Internal Affairs is working on resolving cases of attacks on journalists that I have raised.

The Minister also said that Serbia highly respects freedom of the media and expression and that the government and its officials condemn in the strongest possible terms any attempt to violate freedom of the media and free expression and violence against journalists. He also reassured me that the competent institutions would continue to

work on solving all reported cases of attacks on the media and their representatives.

He also pointed out the readiness of Serbia, as the incoming OSCE Chairperson-in-Office, to work intensively with my Office and me.

### **Slovakia**

On 24 June I issued a public statement expressing concern about a recent ruling in which a district court ordered the newspaper *Nový Čas* to publish an apology to a plaintiff, who was one of three members of the Slovak judiciary suing a daily newspaper for defamation. I said that international standards call for public officials to endure a higher threshold of criticism by the public, including members of the media.

On 8 September I issued a public statement saying that criminal libel charges filed against journalist Dušan Karolyi pose a threat to free media. Karolyi was brought to court for an article published in August 2013 in the weekly magazine *Trend*, about a court case against a former police employee. If convicted, Karolyi faces up to 5 years in prison. I called for the full decriminalization of defamation since criminal charges can be used to protect public officials from criticism.

On 1 October the charges were dismissed.

### **Slovenia**

On 10 October I issued a public statement calling attention to the criminal trial against Anuška Delić, an investigative journalist with the daily newspaper *Delo*, who is being prosecuted for publishing classified information, allegedly leaked from the National Intelligence and Security Agency in November 2011. A preliminary hearing on the case started on 15 October. If convicted, Delić faces up to three years in prison. The trial is continuing.

I originally raised her case in a letter to Foreign Minister Karl Erjavec on 27 February. (See Regular Report to the Permanent Council of 19 June 2014).

I welcome the 14 October tweet of Prime Minister Miro Cerar that stated that, because of this case, there is a need to reconsider legislation to ensure journalists can report on issues of public interest free from the threat of criminal prosecution.

On 14 November I wrote to Foreign Minister Erjavec to express concern over possible criminal charges against two journalists. According to information available to me, Peter Lovšin and Meta Roglič, journalists for the daily newspaper *Dnevnik* in Ljubljana, also have been subject to charges brought forward by the Slovene Intelligence and Security Agency. I have asked the authorities to provide additional information on this case.

## Tajikistan

On 22 July I issued a public statement calling on the authorities to ensure unrestricted access to the Internet after Odnoklassniki, one of the most popular social platforms in the country with more than 300,000 users, was blocked.

I said undue and arbitrary restrictions could have a chilling effect on Internet freedom and may lead to censorship. I also noted that video-sharing website YouTube has been blocked since early June.

I offered my Office's assistance on self-regulation mechanisms and the protection of media freedom in the Digital Age.

On 23 July I issued a public statement welcoming the release of Alexander Sodiqov, a Tajik blogger and political commentator on Central Asian politics, from a pretrial detention centre in Dushanbe and expressing hope that the criminal charges would

be dropped. He was detained on 16 June and later charged with high treason and espionage after an interview with an activist in Khorog. The University of Exeter, as well as Sodiqov's co-researchers, confirmed that Sodiqov was in Tajikistan to conduct research for the university's project on conflict prevention. On 10 September Sodiqov was allowed to leave Tajikistan to continue his university studies.

I welcomed this decision, but remain concerned that the serious criminal charges against him continue to put a chill on others researching, commenting and writing on Tajik affairs.

On 7 October I again issued a public statement regarding website blocking. A large number of websites and social media platforms including Vkontakte social network, YouTube and Facebook were blocked beginning 3 October. Severe limitations on mobile Internet services in northern Tajikistan were also reported by the media. The authorities have officially denied any involvement.

During the entire month of October my Office received the following reports: On 10 October the website news.tj of Asia Plus, a major Tajik online news portal, was blocked, then unblocked the following day, then blocked again for two days. After most social websites were unblocked on 13 October, media reported on 31 October on a third wave of blockings – including Facebook, Vkontakte, and Topnews.tj and the Yandex search engine.

This repeated blocking sets a disturbing trend, and I stated that the authorities have a responsibility to ensure that all citizens enjoy unhindered access to information.

## Turkey

On 8 August I issued a public statement expressing concern over the targeting of journalist Amberin Zaman by high-level authorities. The previous day, during a campaign

rally in the southern province of Malatya, the then Prime Minister severely criticized the journalist, which spurred a smear campaign on social media that threatened her safety. I said that the right to criticize is an indispensable element of democratic debate that needs to be safeguarded by the authorities.

I was pleased to learn that on 3 October Prime Minister Ahmet Davutoğlu said that any threat directed at Amberin Zaman would be considered a threat directed at him. Public condemnation by high level officials in such and similar cases like these is welcomed and needed.

On 3 October I issued a public statement welcoming a ruling by the Constitutional Court to decrease the power of the country's telecommunications authority, TİB, to block websites and monitor Internet users. A day earlier the court ruled that the authority of TİB to close websites within four hours without a court decision on the grounds of protecting national security, public order or prevention of crime, was unconstitutional. The court also ruled against TİB's right to store Internet data for up to two years.

I recognized that protecting national security is the prerogative of governments but the authorities also must ensure that these measures do not curb the fundamental right of free expression and the right of the media to freely report.

## **Ukraine**

On 28 June I issued a public statement condemning steps by the self-proclaimed "Donetsk People's Republic" to control media in the Donetsk region of Ukraine. On 26 June the self-proclaimed authorities issued a "decree" demanding that all media outlets register with the "Ministry of Information and Mass Communication" within 10 days or be prohibited from media activities. The decree also applies to bloggers and print media distributors.

I noted the attack on the editorial office of the ProGorod newspaper in Torez in the Donetsk region on 26 June during which the separatist perpetrators destroyed and seized equipment and threatened journalists.

I also noted the abduction of Boris Yuzhik, the editor of the newspaper Druzhkovskiy Rabochii on 27 June and Sergei Dolgov, the editor of the Vestnik Priazovya newspaper in Mariupol on 18 June. I called on the authorities to investigate these attacks and bring the perpetrators to justice. Later Yuzhik was set free.

On 30 June I wrote to President Petro Poroshenko and issued a public statement in relation to the death of Anatoliy Klyan, a cameraman with Russian Perviy Kanal, and expressing concern about the very worrying situation with security of journalists in eastern Ukraine.

Klyan was shot dead on 30 June after his film crew, along with other Russian journalists, including from LifeNews and Ren-TV, and a group of civilians came under fire while filming near a Ukrainian military compound in Donetsk region. The same day a film

crew of Mir 24 channel reportedly also came under fire in Donetsk.

contributor to the Turkish television channel TRT, was barred from entering Crimea for a period of five years. No reasons were given.

I called on those responsible in Crimea to stop intimidating members of the media and refrain from arbitrarily stifling critical voices.

On 19 August I wrote to Chairman Yuriy Artemenko of the National Television and Radio Broadcasting Council expressing concern about some of the National Council's initiatives and proposals, which might have a chilling effect on free media and media pluralism.

I said that the National Council, an institution in charge of broadcasting regulation, should not engage in banning members of the media from crossing national borders.

I also expressed concern about attempts by the National Council to get cable operators to stop the broadcasts of Russian language or Russian produced programmes. Moves by a national authority to ban broadcasts without an adequate and clear legal basis is censorship. I offered my Office's assistance to secure free media in line with OSCE commitments and international standards.

On 10 September Chairman Artemenko responded saying the call to stop retransmission of programmes and channels produced in the Russian Federation was based on their violations of Ukrainian broadcasting law and the European Convention on Trans-frontier Television. He said the programs were inciting ethnic hatred, propaganda of exclusivity, superiority or inferiority of people on the grounds of ideology or a particular ethnicity.

On 19 August I wrote to the authorities and on 20 August issued a public statement denouncing attacks on media across Ukraine.

On 15 August tents hosting a Spilno TV video-streaming hub at Maidan Square in Kyiv were destroyed. Spilno TV team members Maxim Prasolov, Alexey Isayev and Alexey Poltorak were attacked and suffered concussions and leg injuries. Yuriy Bibik, a journalist with the 112 Ukraina TV channel, reportedly was prohibited from reporting on the incident. Some reports indicate that police who were present at the square failed to respond to the incident.

Lyudmila Voloshina, a journalist with the Iskra Prostykh Lyudei newspaper, allegedly was assaulted on 13 August by Poltava Mayor Oleksandr Mamai and his deputy, Vyacheslav Stetsenko, while she was covering a car accident involving Mamai. Voloshina sustained bruises and her camera was damaged.

I also noted that a television tower in Sloviansk came under heavy fire and was demolished on June 30. The tower transmitted Ukrainian television and radio channels covering several towns and villages in the Donetsk region.

On 8 July I issued a public statement condemning an attack on the editorial office of the newspaper Vesti in Kyiv with smoke grenades and rocks. On July 5 a group wearing masks assaulted an office guard, shattered windows and damaged equipment.

I called on the authorities to carry out a full investigation to identify and bring those responsible to justice, noting that in late June a group attempted to invade Vesti's editorial office.

On 31 July and 11 September I received letters from the authorities informing that law enforcement had launched a criminal proceeding and pre-trial investigation.

On 11 July I issued a public statement expressing concern about the continuing attacks by separatist forces against television stations in Luhansk and Crimea, which endanger the safety of journalists and violate the right of people to freely receive information.

On 9 July a group of armed separatists forced the staff of Luganskoye Kabelnoe Televideniye (LKT) to leave the station. The transmission of LKT was replaced by broadcasts of Russian 5 Kanal. On 4 July broadcasting was suspended when separatists seized the office of the Luhansk Regional State Television and Radio Company.

I noted reports about the exclusion of the largest independent broadcaster on the Crimean peninsula, Chernomorskaya TV, from several cable networks in Crimea. Chernomorskaya TV and a number of other Ukrainian television channels were taken off leading cable networks on June 28.

I said that the unilateral decision to stop retransmission of Chernomorskaya TV can further curb media freedom and limit media pluralism in the region, not least since the channel is known for its balanced and objective reporting. I encouraged those responsible for broadcasting regulations on the Crimean peninsula to immediately look into this matter.

I also noted with deep concern reports on 10 July about death threats against a group of Ukrainian journalists and owners of media outlets by the so-called "Russian Liberation Front."

On 23 July I issued a public statement condemning the abduction of freelance journalist Anton Skiba in Donetsk and calling for his immediate release. Skiba was abducted on 22 July by armed separatists at a hotel in Donetsk. He had been assisting a CNN film crew.

I expressed concern about other cases of media intimidation by the separatist groups in eastern Ukraine, including the detention, confinement and harassment on 19 July of 10 foreign journalists in Donetsk including representatives of Dagens Nyheter, BBC, The Daily Beast, Nieuwsuur, Time and Russia Today. The journalists were attempting to report on the Malaysia Airlines plane crash; the 15 July attack on Natalia Filatova, a journalist with the Novosti Donbassa news portal, who sustained minor injuries; the 6 July abduction of journalist Darya Shatalova and an attack on and abduction of editor

Sergei Sakadynskiy, both with Politika 2.0 news portal in Luhansk. The same day an armed group robbed the news portal's office, stealing all the equipment. Both journalists were released the next day. I said that these actions cannot be tolerated and must stop immediately.

Further, I expressed concern about plans announced on 21 July by the self-proclaimed defense minister of the so-called "Donetsk People's Republic" to effectively ban all media representatives from working in the conflict zone and the territories next to military compounds.

I also noted reports that on 15 July the self-proclaimed authorities announced the switching off of all Ukrainian television channels in Donetsk.

I was pleased to learn that Anton Skiba was set free on 26 July, but also noted that Sergei Sakadynskiy was again abducted on 28 July. His current location remains unknown.

On 25 July I received a letter from the authorities in response to my statement of 17 June providing information on several incidents which involved media representatives.

On 25 July I issued a public statement demanding the immediate release of journalists who were reported missing in eastern Ukraine.

On 23 July Graham Phillips, a freelance journalist with Russia Today, and Vadim Aksyonov, a cameraman with Anna-News, went missing near the Donetsk Airport. Reportedly, Aksyonov, along with Phillips and another media representative, was held by Ukrainian military forces.

Aksyonov was found the next day, while Phillips was reportedly deported to the United Kingdom on 25 July.

Yury Lelyavsky, a freelance journalist with ZIK, also went missing on 23 July after reportedly he had been detained in the Luhansk region. I learned that Lelyavsky was set free on 8 October.

On 4 August I issued a public statement condemning the seizure of the property of the Chernomorskaya Company, the largest independent broadcaster on the Crimean peninsula.

On 1 August representatives of the Russian federal bailiff service, accompanied by self-defense militants, seized the channel's property in Simferopol, citing debts owed to the Broadcasting Centre of the Autonomous Republic of Crimea. All employees were banned from entering the channel's premises. While seizing Chernomorskaya's property, the bailiffs also seized the equipment of the Information and Press Centre, the hub for independent media in the region, as well as property of the Crimean Centre for Investigative Journalism, which rented office space there.

I said that the continuing attempts to pressure independent media which provide an

outlet for critical voices is censorship and cannot be tolerated. I again called on those responsible to refrain from steps that further endanger media freedom and seriously limit media pluralism.

I expressed concern over the fate of Chernomorskaya company on several occasions, first when the channel's terrestrial broadcasting was cut off in early March and replaced with the channel Rossiya 24 and when the channel was also taken off major cable networks in Crimea, along with a number of Ukrainian channels, at the end of June. (See Regular Report to the Permanent Council of 19 June 2014).

*(In the public statement of 8 August the Russian Foreign Ministry said that it was puzzled with the support shown by me to Chernomorskaya TV and expressed regret that I operate on the basis of unverified information, thus lowering the high working standards of my Office.)*

I learned that despite considering the accusations unfounded, the station paid all debts and a court in Crimea released the hold on the property on 11 August. However, no equipment was returned to the three organizations.

On 5 August I issued a public statement noting reports that more journalists had gone missing in eastern Ukraine.

According to reports, journalists Sergey Belous with the Serbian weekly Pecat, Roman Gnatyuk of the 112 Ukraina TV channel and freelance journalist Sergey Boyko went missing on 1 August in eastern Ukraine. Yevgeny Shlyakhtin and Yevgeny Tymofeyev, who contributed to various Ukrainian media, went missing on 31 July in the Luhansk region.

I again called on those responsible to immediately release all media members and let them carry out their professional activities.

I expressed concern over injuries suffered by Espresso TV journalist Bianka Zalewska who was seriously hurt on 27 July while covering events in the Luhansk region.

I also noted reports that on 4 August, Mikhail Andreyev, a cameraman for Anna-News, suffered injuries from shrapnel when the crew came under attack in Luhansk.

I was pleased to learn that Belous, Gnatyuk and Boyko were released on 6 August. Shlyakhtin and Tymofeyev reportedly had been released at the end of August.

On 11 August I issued a public statement expressing concern about reports that Andrey Stenin, a photojournalist with the Russian state-run Rossiya Segodnya International Information Agency, had gone missing on 5 August in eastern Ukraine. I called for Stenin's immediate release.

On 12 August I wrote to the Chair of the Verkhovna Rada Oleksandr Turchynov and issued a public statement expressing concern about a draft law on sanctions pending

before the legislature.

The draft law allows the authorities to prohibit or restrict television and radio channel retransmission; restrict or terminate media activities, including the Internet; restrict or prohibit the production or distribution of printed materials; and restrict or terminate telecommunication services and public telecommunications network usage.

I called on the deputies of the Verkhovna Rada to drop the provisions of the law endangering media freedom and pluralism and running against OSCE commitments on free expression and free media. I said that the national security concerns expressed by the Government in relation to the ongoing conflict should not justify a disproportionate restriction on free expression and free media. The measures included in the draft law represent a clear violation of international standards and thus directly curtail the free flow of information and ideas that lie at the heart of free expression and free media.

I learned that the law went into effect on 12 September. Although most of the provisions concerning free flow of information and free media were lifted, it still allows for restricting or terminating telecommunication services and public telecommunications network usage.

On 13 August I wrote to the authorities conveying concern about a number of attacks on media outlets and violations of journalists' rights across Ukraine.

On 25 July a Molotov cocktail was thrown at the office of the 112 Ukraina TV channel in Kyiv causing property damage; on 3 August, Bogdan Osinsky, a journalist with the Vzgljadiz Odessa news website, was injured in clashes involving police in Odesa; on 5 August Radmela Aliyeva, a journalist with the website Prestupnosti.net, was attacked during a rally in Odesa; on 6 August the editorial office of the Molod Cherkashchyn newspaper in Cherkasy was attacked causing property damage; on 8 August a group of unidentified people obstructed journalist Dmytro Shinkarchuk and photo correspondent Stanislav Baranets with the UNN news agency at the International Convention Center Ukrainian House in Kyiv, demanding that their recordings be erased; and on 10 August a crew of the 1+1 TV channel was obstructed on Independence Square in Kyiv.

I expressed hope that all of these incidents would be given due attention and thoroughly investigated.

On 14 October I received a response from the authorities.

I learned with regret that on 14 August the General Prosecutor's Office closed an investigation regarding the attack on the acting President of the National Television Company of Ukraine, Aleksandr Panteleymonov, by a group of members of the Ukrainian political party Svoboda, forcing him to resign (See PC report of 19 June 2014). Reportedly, the investigation was closed because Panteleymonov had not filed a proper complaint with police.

On 18 August I issued a public statement expressing concern about the deteriorating media freedom situation in Crimea following the decision of the de facto Crimean authorities to ban journalist Ismet Yuksel from entering the peninsula.

On 9 August Yuksel, the General Coordinator of QHA Information Agency and contributor to the Turkish television channel TRT, was barred from entering Crimea for a period of five years. No reasons were given.

I called on those responsible in Crimea to stop intimidating members of the media and refrain from arbitrarily stifling critical voices.

On 19 August I wrote to Chairman Yuriy Artemenko of the National Television and Radio Broadcasting Council expressing concern about some of the National Council's initiatives and proposals, which might have a chilling effect on free media and media pluralism.

I said that the National Council, an institution in charge of broadcasting regulation, should not engage in banning members of the media from crossing national borders.

I also expressed concern about attempts by the National Council to get cable operators to stop the broadcasts of Russian language or Russian produced programmes. Moves by a national authority to ban broadcasts without an adequate and clear legal basis is censorship. I offered my Office's assistance to secure free media in line with OSCE commitments and international standards.

On 10 September Chairman Artemenko responded saying the call to stop retransmission of programmes and channels produced in the Russian Federation was based on their violations of Ukrainian broadcasting law and the European Convention on Trans-frontier Television. He said the programs were inciting ethnic hatred, propaganda of exclusivity, superiority or inferiority of people on the grounds of ideology or a particular ethnicity.

On 19 August I wrote to the authorities and on 20 August issued a public statement denouncing attacks on media across Ukraine.

On 15 August tents hosting a Spilno TV video-streaming hub at Maidan Square in Kyiv were destroyed. Spilno TV team members Maxim Prasolov, Alexey Isayev and Alexey Poltorak were attacked and suffered concussions and leg injuries. Yuriy Bibik, a journalist with the 112 Ukraina TV channel, reportedly was prohibited from reporting on the incident. Some reports indicate that police who were present at the square failed to respond to the incident.

Lyudmila Voloshina, a journalist with the Iskra Prostykh Lyudei newspaper, allegedly was assaulted on 13 August by Poltava Mayor Oleksandr Mamai and his deputy, Vyacheslav Stetsenko, while she was covering a car accident involving Mamai. Voloshina sustained bruises and her camera was damaged.

I called on the authorities to swiftly investigate these attacks and said that it was unacceptable behavior for police officers and high-ranking officials to contribute to endangering journalists' safety instead of protecting and assisting them.

On 3 September I issued a public statement mourning the death of Russian photographer Andrei Stenin. I called on the Ukrainian authorities to investigate his death, as well as of all attacks on media. Stenin, a photographer with the state-run Rossiya Segodnya International Information Agency, was reported missing on 5 August while covering the armed conflict in eastern Ukraine. His remains were discovered later in the month near Snizhne in the Donetsk region.

Following continued intimidation of media, on 5 September I issued a public statement calling to stop attacks on journalists.

Espresso TV journalist Yegor Vorobyov was abducted near Ilovaisk in the Donetsk region at the end of August. He was reporting from an area surrounded by separatist forces.

Further, freelance journalist Roman Cheremsky was abducted by separatist forces in the Luhansk region on 17 August. His whereabouts remain unknown until now.

I was relieved to learn that journalist Anna Ivanenko and camera operator Nazar Zotsenko, both with 112 Ukraina channel, were released on 3 September after being held for more than two weeks by separatists in the Luhansk region.

I was also pleased to learn that Yegor Vorobyov was released on 7 October.

On 9 September I issued a public statement condemning the continued intimidation of free voices in Crimea following the detention and interrogation of Yelizaveta Bohuts-kaya, a blogger and contributor to various media outlets, including Radio Free Europe/Radio Liberty's Crimean desk, in Simferopol.

On 8 September law enforcement representatives searched Bohutskaya's apartment and seized equipment and material relating to her work. The blogger was detained for about six hours at the Russian Counter Extremism Centre where police questioned her about reports strongly criticizing the Russian authorities.

I also noted the continued pressure on the Crimean Centre for Investigative Journalism whose staff had been summoned to the Federal Security Service and Prosecutor's Office. Previously, the media outlet's office was raided and later its property seized.

I reiterated my call on the de facto authorities in Crimea to refrain from hindering media in doing their work.

*On 2 October I received a letter from the Russian authorities informing me that Bohutskaya is a suspect in the case initiated by the Russian Investigative Committee on the charges of committing violence against a representative of authorities. As part of this investigation her apartment was searched and she was interrogated.*

On 12 September I issued a public statement calling on the authorities to respect media freedom following a raid by law enforcement officers on the editorial office of Vesti, a newspaper in Kyiv.

On 11 September representatives of the Security Service of Ukraine (SBU) searched Vesti's editorial office, confiscated equipment and materials as well as journalists' personal belongings. The SBU reportedly conducted the search as part of its criminal investigation into the newspaper's publications, which allegedly contained information infringing Ukraine's territorial integrity.

On 11 September the SBU also searched the Mega Polygraph printing house, where Vesti is printed, which resulted in printing delays.

I again said that national security concerns related to the current challenges should not justify disproportionate restrictions on freedom of expression and freedom of the media.

I also expressed concern about reports that the SBU has banned 35 Russian journalists and media functionaries from entering Ukraine at the request of the National Television and Radio Broadcasting Council of Ukraine.

On 19 September I issued a public statement expressing concern about the fate of Avdet, the weekly newspaper of the Mejlis of the Crimean Tatar People, following acts of intimidation by de facto authorities in Crimea.

On 17 September editor Shevket Kaibullayev was given an official warning by the Russian security services (FSB) for "actions that might incite extremist activities." A day earlier, the paper's offices in Simferopol were searched and on 18 September the security services reportedly forced all tenants, including Avdet's staff, to leave their premises. Kaibullayev reportedly received a written warning in June and an oral warning in July related to the newspaper's reporting.

I said that this hostile behavior against members of the media in Crimea must stop.

I also noted the announcement of national post operator Ukrposhta on 10 September that it was unable to continue deliveries of Ukrainian press publications to subscribers and retail outlets in Crimea due to hurdles created by the de facto authorities.

On 25 September in the course of my visit to Kyiv to participate in the Global Forum for Media Development's conference, I met with First Deputy Foreign Minister Nataliia Galibarenko and Chairman of the National Television and Radio Broadcasting Council of Ukraine Yuriy Artemenko. Among other things, I discussed the issues related to the safety of journalists, public service broadcasting and banning of media.

I also met with Chief Monitor of the Special Monitoring Mission to Ukraine (SMM) Ambassador Ertuğrul Apakan and discussed ways to enhance co-operation between our offices.

(See Visits)

On 31 October I issued a public statement condemning the abuse of a press insignia in eastern Ukraine. On 30 October Russian actor Mikhail Porechenkov visited Donetsk and was shown on local TV firing a machine gun at Ukrainian positions while wearing a helmet clearly marked with a PRESS insignia.

I said that this abuse puts journalists in conflict zones at grave risk and hurts efforts to protect members of the media. Journalists' safety is paramount and the use of a PRESS insignia is one of the few measures to ensure their safety in conflict zones.

On 14 November I wrote to the authorities noting a statement issued by the National Union of Journalists of Ukraine on 10 November pointing out that the authorities should help in releasing journalists Serhiy Sakadynskiy (Politika 2.0) and Roman Chermesky (a freelance journalist from Kharkiv). I expressed hope the authorities would urgently address the cases of these two journalists with due attention.

I also expressed concern about reports that the activists of the Right Sector movement in Kherson have publicly threatened to punish media which disobey their order to repudiate information about the closure of the movement's branch in Kherson. The threat was posted on 10 November on the "Right Sector Kherson's" page in the social network VKontakte. I called on the authorities to investigate this incident and bring those responsible for such threats against the media representatives to account.

### **United Kingdom**

On 26 September I issued a public statement calling on the authorities in the UK to re-launch a criminal investigation into the murder of investigative journalist Martin O'Hagan, a reporter for the Sunday World, who was shot in September 2001 while walking with his wife near his home in Lurgan, Northern Ireland. No one has been charged with the murder. In seeking to start a new investigation, I said that the failure to prosecute can create an environment of impunity for those who might attack journalists. The Sunday World, the National Union of Journalists and Mike Nesbitt, a journalist who is now leader of the Ulster Unionist Party are also calling for a new investigation.

On 29 October I visited the U.K. and met with Joyce Anne Anelay, Baroness Anelay of St Johns, Foreign Office Minister for Human Rights and International Organisations, to discuss media freedom issues across the OSCE region, such as the need to improve the situation surrounding the safety of journalists and media legislation. I also raised the issue of recent revelations that police have been obtaining journalists phone records in the UK without court order, which I said goes against the fundamental right of confidentiality of reporters' sources. I noted the swift response from civil society and politicians and condemnation of these actions, as well as bringing legislation forward to prevent similar actions.

I also stressed that human rights, especially freedom of expression and freedom of the media, must be at the top of the agenda when governments deal with sensitive issues such as the fight against terrorism and extremism.

While at the FCO I also spoke to ministry officials on the implications of the Ukraine crisis on freedom of expression.

(See Visits)

### **United States**

On 14 August I issued a public statement indicating the arrests of two reporters covering civil disturbances in Ferguson, Missouri, was a clear violation of the right of the media to report news. Washington Post reporter Wesley Lowrey and Huffington Post reporter Ryan J. Reilly were taken into custody while filing reports with their employers on demonstrations triggered by a police shooting. I said that summarily rounding up journalists while they are doing their jobs sets a dangerous precedent.

On 19 August I issued another public statement on events in suburban St. Louis in light of reports that three additional journalists were arrested while covering civil disturbances. Getty Images photojournalist Scott Olson was taken in, as well as German journalists Ansgar Graw and Frank Herrmann. They were released without being charged with crimes.

I stated that while I fully recognized the sensitive situation in the area, the right of media to cover public protests must be taken into account when law enforcement officials are maintaining public order. Journalists should not be intimidated by police.

Overall, at least 11 journalists were detained in some fashion covering the events, in addition to the ones above, they include Robert Klemko of Sports Illustrated; Rob Crilly of The Telegraph; Neil Munshi of the Financial Times, Kerry Pickett of Breitbart News, Ryan Devereaux of The Intercept and Coulter Loeb of The Cincinnati Herald.

### **Uzbekistan**

On 8 September I issued a public statement regarding recent amendments to the law "On informatization." I said that the amendments further limit free expression and free media by introducing a broad definition of the term blogger and imposing a wide array of sanctions, including a ban on untrue posts and reposts. Bloggers now have an obligation to report only verified and truthful information and to remove posts upon demand of government authorities or face website blocking and administrative liability.

I noted that the restrictions are far more limiting than could be allowed and they violate OSCE commitments and international standards on free media and free expression.

I also used the opportunity to call for the release from prison of Solijon Abdurakhmanov, Dilmurod Saiid and Hairullo Khamidov.

On 31 October I received a reply from the authorities indicating that the definition of a blogger was included in the amendments to the information law because people who use the Internet were subject to media laws. They also pointed to similar regulations in Germany, Russia and the United States.

I was informed that the amendments would not violate free media principles and were intended to ensure the rule of law and protection of human rights.

On 4 July I wrote to Foreign Minister Abdulaziz Kamilov to convey my concern about a fine levied against Said Abdurakhimov, a journalist for fergananews. On 28 June he was fined 9.6 million soms by a court in Tashkent for the administrative offenses of “Carrying out activities without a license and other permits” and for “Creation or possession of materials with the aim to distribute them, containing a threat to public security and public order.”

Abdurakhimov had been reporting critically on the local authorities’ compensation policies for families whose houses were to be removed because of road construction plans.

I expressed my concern that working as a journalist should not be subject to a special license or per se cause a threat to public security and public order.

On 10 September I received a reply stating that the court determined Abdurakhimov had carried out interviews to gather materials that constituted a threat for public order and had the intent to cause panic among dwellers without identifying himself as a journalist. The authorities said the district court judgment had been affirmed by an appeals court.

## **Communiqués and other documents issued**

On 7 October I issued a Communiqué on the impact of laws countering extremism on freedom of expression and freedom of the media. I set forth principles that should be observed when participating States attempt to respond to extremist threats:

- Anti-extremism laws only should restrict activities which necessarily and directly imply the use of violence.
- Limits to free expression and free media imposed by anti-extremism laws should respect OSCE commitments and international law, notably article 19 of the International Covenant on Civil and Political Rights.
- Hate speech can be addressed if it directly incites to violence and leads to hate crimes, particularly targeting minorities and other vulnerable groups.

I said that mere expression of controversial and provocative political views must there-

fore be respected and protected as part of pluralistic and democratic debates. I also said, inter alia, that it is dangerous to empower public officials such as prosecutors or police officers to define an extremist act and exert leverage on the judicial system to impose their understanding of these “crimes against the State.”

The Communiqué is available here: <http://www.osce.org/fom/125186>.

## **Projects and activities since the last report**

### **Activities with international organizations**

#### **UNHRC resolution on journalists’ safety**

Following my participation in a high-level panel discussion on journalists’ safety at the 26th Session of the UN Human Rights Council on 11 June 2014, on 29 September on the occasion of the adoption of a new resolution by the United Nations Human Rights Council on the issue of journalists’ safety, I issued a public statement commending the action, calling it “...an important step forward toward a proper safeguard of journalists’ safety against all forms of attacks and violence. It reiterates and reinforces previous statements made by several national and international bodies. It is urgent that States take note of this resolution and adopt all the measures and decisions to promote a safe and enabling environment for media and journalists, as well as ensure accountability for all those involved in these unacceptable acts.”

The resolution, sponsored by the Republic of Austria, called on states to “promote a safe and enabling environment for journalists to perform their work independently” and to fight impunity by ensuring “impartial, speedy and effective investigations” into acts of violence against journalists.”

On 17 September I participated with a written address in a high-level panel discussion convened by Article 19 on protection of journalists during the UN Human Rights Council’s session.

#### **Joint Statement on stronger protection of journalists covering conflicts**

On 1 September I launched a joint statement with three international freedom of expression rapporteurs, the UN Special Rapporteur on Freedom of Opinion and Expression David Kaye; The Organization of American States Special Rapporteur on Freedom of Expression, Catalina Botero Marino; and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information Faith Pansy Tlakula.

The Joint Statement is available here: <http://www.osce.org/fom/123084>.

**UN counter-terrorism workshop**

On 9-11 July my Office participated in a regional workshop in Bishkek on the media's role in counter-terrorism, organized by the United Nations Counter-Terrorism Implementation Task Force, the United Nations Regional Centre for Preventive Diplomacy for Central Asia and the Transnational Threats Department of the OSCE.

The workshop brought together security sector representatives, law enforcement agents and media experts from all five Central Asian countries, as well as members of regional and international organizations and institutions to discuss media strategies used by terrorists, choices and responsibilities of the media, political and legal responses and options for co-operation. The workshop also included capacity-building training for representatives of the media and government press agencies, including topics such as developing counter narratives, reporting on victims and preparing and dealing with the stress and trauma of reporting on terrorism.

**UN anti-corruption conference**

On 9 September my Office participated in a panel discussion on the importance of access to information in fighting corruption in Vienna organized by the UN Convention against Corruption Coalition.

**CoE experts committee on journalists' safety**

On 6 October the Principal Adviser of my Office participated in a meeting of the Committee of Experts on protections of journalism and safety of journalists held in Strasbourg and organized by the Council of Europe.

**UN/CoE protection of journalists' seminar**

On 3 November the Director of my Office spoke at the "Seminar and Inter-regional Dialogue on the protection of journalists in the European Court of Human Rights" held in Strasbourg and organized by the Council of Europe, UNESCO, the Centre for Freedom of the Media and the European Lawyers Union.

**UN/CoE journalists' safety meeting**

On 4 November I spoke at the 3rd UN Inter-Agency Meeting on the Safety of Journalists and the Issue of Impunity at the Council of Europe in Strasbourg. The meeting was convened by UNESCO and co-hosted by the United Nations Office of the High Commissioner for Human Rights and the Council of Europe.

**CoE steering committee meeting**

On 18-21 November my Principal Adviser participated as an observer in the 7th meeting of the Steering Committee on Media and Information Society (CDMSI) in Strasbourg to discuss Council of Europe actions to strengthen the protection of free expres-

sion and human rights of Internet users.

### **UNCAC Access to Information and Technical Assistance**

On 9 September my Office participated in a panel discussion on the importance of access to information in fighting corruption in Vienna organized by the UN Convention against Corruption Coalition.

### **Legal reviews**

#### **Austria**

On 21 July I presented to the authorities a legal review commissioned by my Office regarding two proposals on access to information.

The legal review was carried out by Professor Bernd Holznagel, Director of the Institute for Information, Telecommunication and Media Law at the University of Münster, and an expert on European public law and media regulation and freedom of information legislation. He found that both amendments were well grounded but suffer from a lack of specificity that could lead to an erosion of the rights and obligations sought as well as uneven application across the federal states.

I expressed hope that the recommendations could contribute to the discussion on these comprehensive reforms with the aim to ensure free flow of information in accordance with international standards and OSCE commitments.

The review recommends:

- to formulate more precise constitutional requirements that ensure laws or regulations implementing the amendment would, indeed, meet the desired goal of simplifying and widening access to information;
- that the amendment should require the immediate processing of requests;
- to require that original documents be made available;
- that reasons for denial of requests be narrowly drawn and stated clearly;
- that a proportionality standard be implemented which would balance the public's right to know with administrative burdens and security concerns; and
- to introduce an independent commissioner on access to information to watch over access rights and develop related implementation standards.

The review is available at <https://www.osce.org/de/fom/126716>.

### **Visits and participation in events**

On 20 June I travelled to Brussels to address the EU Council Working Party on the Council of Europe and the OSCE. This provided an opportunity to discuss with representatives from the EU capitals issues that I have raised both in the EU Member States and

the rest of the OSCE region. Some of the key issues included the conflict in Ukraine, the safety of journalists, propaganda and freedom of expression online. While in Brussels I also met with officials in the European Commission Directorate General for Competition on ways to strengthen co-operation.

On 30 June the Director of my Office participated in an international workshop on the “Measureability of Diversity in Press and Broadcasting” in Berlin organized by Westfälische Wilhelms Universität Münster. The workshop identified and examined common criteria for a framework of free and independent media.

On 30 June – 2 July the Principal Adviser of my Office participated in the Annenberg-Oxford Media Policy Summer Institute in Oxford, organized by the Center for Global Communication Studies at the Annenberg School for Communications of the University of Pennsylvania and lectured on international standards on freedom of expression and freedom of the media. A member of the staff took part in the Institute.

On 1-2 July I paid an official visit to Montenegro and met with President Filip Vujanović, Prime Minister Milo Đukanović and the president of the Supreme Court, Vesna Medenica. I also met with Igor Lukšić, Minister of Foreign Affairs, Raško Konjević, Minister of Interior, members of the Parliament, civil society, journalists and media representatives. In my meetings I said that I remain concerned about the lack of progress in investigations into attacks on journalists and about the lack of unity among members of the media in the country. While some progress has been made, most notably by establishing a commission to monitor investigations of cases of threats and attacks against journalists, this cannot act as a substitute for authorities and institutions in investigating and prosecuting perpetrators and masterminds of the attacks.

On 3-4 July together with the 2014 Swiss Chairmanship and ODIHR, my Office organized the second Supplementary Human Dimension Meeting of the year, “Promotion of freedom of expression: rights, responsibilities and OSCE commitments.”

The event in Vienna provided an important forum for OSCE institutions, participating States, field operations and international organizations and civil society to review the current status of freedom of expression in the OSCE region. Recalling the numerous OSCE commitments in the field of freedom of expression and media freedom, the event focused on efforts required by the legislative, executive and judicial branches of governments, local and regional authorities, media NGOs, journalists and other segments of civil society to ensure that freedom of expression, both online and in traditional media, is protected and strengthened. In the discussions of the three working sessions participants identified specific challenges and threats to freedom of expression and shared good practices to strengthen this fundamental right.

On 8 July the Principal Adviser of my Office lectured on “International standards on freedom of expression and the role of the Representative on Freedom of the Media” at Central European University in Budapest.

On 15-17 July as a follow-up to the official visit I returned to Montenegro on to discuss ways to strengthen self-regulation with owners, managers and editors from local media outlets: the Pobjeda, Dan, Vijesti and Dnevne Novine newspapers; the Monitor weekly; the portals Analitika, Cafemontenegro and PCNEN, as well as the Secretary General of the Media Council for Self-regulation. We agreed on the urgent need to rebuild trust in the media community by working on a set of common professional interests and respect for ethical standards and basic journalistic principles. It was agreed that the next meeting to discuss the principles of self-regulation and an action plan would take place in autumn at my Office.

On 23 July I participated in a debate “European scenario and Italy pending reform” at the Court of Justice in Rome, organized by the Order of Advocates of Rome and the National Council of the Order of Journalists of Italy, on amendments to Law No. 925 on defamation. The debate was prompted by the approval of the draft law by the Justice Commission of the Senate. I pointed out the shortcomings of the draft law and called on the authorities again to fully decriminalize defamation.

On 24 July I met with Msgr. Paul Tighe, Secretary of the Council for Social Communication, in the Vatican City to discuss issues of mutual interest.

On 6-8 August the OSCE Mission in Skopje and my Office organized a second workshop for the Council of Media Ethics, held in Skopje, to discuss their strategy and action plan.

On 13 August I spoke at the European Law Student Association Summer Law School in Sarajevo on media freedom issues across the OSCE region.

On 2-5 September my Office participated in the Ninth annual Internet Governance Forum in Istanbul with the theme of “Connecting Continents for Enhanced Multistakeholder Internet Governance” was the topic discussed.

On 2-3 September my Office took part in the 2014 South Caucasus Regional Meeting of OSCE Heads of Field Operations in Yerevan.

On 3 September the Principal Adviser of my Office participated in a roundtable discussion in Vienna on the challenges to press freedom and media independence in Egypt organized by the International Press Institute.

On 9 September my Office participated in a panel discussion on the importance of access to information in fighting corruption in Vienna organized by the UN Convention against Corruption Coalition.

On 9 September my Office took part in the 2014 Eastern Europe Regional Meeting of OSCE Heads of Field Operations in Kyiv.

On 22-23 September I addressed the opening plenary session of the 2014 Human Dimension Implementation Meeting in Warsaw and I introduced a working session. I summarized my Office’s work over the past year and discussed the areas that will re-

ceive most of our attention in the coming months. The session provided an important forum to discuss the major threats to freedom of expression with the active participation of the representatives of civil society and delegations of participating States.

I emphasized that media freedom is vital to every one of us, because it is through the work of journalists that we get information about issues that directly affect our lives; that this freedom is not to be taken for granted and, once given up, it is difficult to regain. I said that each year journalists put themselves in grave danger while they provide information to the rest of us, and some of them lose their life while doing so; and that impunity of perpetrators of violence against journalists has become the norm, and successful and transparent investigations remain occasional. I also repeated that much of the danger and limitations that journalists face come from government policies themselves, and that without resolute political will by the governments to protect free expression, our right to free speech will further suffer.

At the session I also drew attention to the fact that the types of assault on free expression, as well as the lack of physical and legal safety for journalists, have also remained similar over these five years and they fall in these main categories: violence and threats of violence against journalists, and impunity of perpetrators; legislative restrictions leading to the obstruction of freedom of expression both offline and online; and limitations to the rights of journalists.

I noted with concern that this year my Office has witnessed propaganda as a tool of warfare dominating the landscape, as well as an extraordinary frequency and scope of assaults against journalists, matched with the continued lack of consolidated efforts by the OSCE participating States' governments to value and protect their work.

On 23 September the Principal Adviser of my Office participated as a panellist and expert on the main challenges facing the Romanian press at an international media conference in Bucharest organized by the South East Europe Media Organization.

On 24 September I delivered the opening statment and participated in the Eurasia Forum for Media Development conference in Kyiv on the development of independent media in the digital age in Eurasia organized by the Global Forum for Media Development.

On 30 September – 1 October I delivered the keynote speech at the 80th PEN International Congress in Bishkek and participated in a panel discussion on criminal defamation organized by the Writers in Prison Committee of PEN International. On this occasion I also met with the heads of the parliamentary committees on Education, Science, Religion and Sport and on Human Rights, Constitutional Legislation and State Structure to discuss recent legislative initiatives of the Kyrgyz Parliament.

On 1 October my Office participated in the Russian Union of Journalists 18th festival in Sochi.

On 2-3 October my Office took part in the Journalism Festival “All Russia – 2014” in Dagomys, Krasnodar region, at the invitation of the Russian Union of Journalists.

On 6 October the Principal Adviser of my Office participated in a meeting of the Committee of Experts on protections of journalism and safety of journalists held in Strasbourg and organized by the Council of Europe.

On 7-8 October I held a second workshop on ethics with media representatives of Montenegro in Skopje as a first step to improve media self-regulation in the country.

On 9 October I participated in the International Institute of Communications Annual Conference in Vienna centered on the issue of “Trends in Global Communications: Breaking down silos to embrace convergence” and was a keynote speaker on the topic “Data protection, cyber security and human rights: Balancing and managing policy responses, network operator responsibilities and risks.”

On 9 October my Office took part in the roundtable discussion “Practical Mechanisms for Cooperation between Law Enforcement and Media Professionals in Times of Crisis” in Odessa organized by the OSCE Project Coordinator in Ukraine.

On 13 October I hosted and organized a roundtable discussion in Vienna with media representatives in Montenegro designed to improve self-regulation and begin the process of confidence-building among members of the media.

On 17-18 October the Principal Adviser of my Office participated in a conference in Milan organized by the Università Bocconi on Internet law and protection of fundamental rights and spoke on the role of the Representative’s Office and the European Court of Human Rights in the protection of free expression.

On 17 October my Office addressed the annual congress of the Association European Journalists in Neusiedl am See. The main issues under discussion were journalists’ safety and media freedom in the OSCE region, with a special focus on the situation in Ukraine.

On 20 October I sent a video message to the public hearing on the media freedom in Hungary held at the European Parliament in Strasbourg.

On 29 October my Office attended the conference in Vilnius “Television and Radio: Current challenges,” organized by the Radio and Television Commission of Lithuania. The conference brought together regulators of audiovisual media, media law experts and the media from Lithuania, Latvia, Estonia, Poland and Ukraine. The aim of the conference was to encourage co-operation between countries and different authorities, to share opinions, experiences and insights and look for methods for the prevention of possible propaganda of a foreign country within the sector of electronic media. The conference offered an opportunity to present my Communique of 16 May on propaganda in times of conflict.

On 29 October in London I met with the United Kingdom Foreign Office Minister for Human Rights and International Organisations, Baroness Anelay and other senior officials to discuss media freedom issues in the UK and the OSCE region.

We exchanged views on media issues in the United Kingdom, journalists' safety and media legislation across the OSCE region. I said there is a pressing need to address and improve these issues in several OSCE participating States. With regard to the United Kingdom, recent revelations that the police have been obtaining journalists' telephone records to identify confidential sources without judicial oversight are troublesome. This contravenes one of the fundamental elements of free media, confidentiality of sources.

On 3 November the Director of my Office spoke at the "Seminar and Inter-regional Dialogue on the protection of journalists in the European Court of Human Rights" held in Strasbourg and organized by the Council of Europe, UNESCO, the Centre for Freedom of the Media and the European Lawyers Union.

On 3-4 November my Office participated in the international symposium in Vienna "Enhancing Women's Share in Peace and Security" and spoke on the panel on "Information Gathering and Priorities for Action – the Role of the Media." The conference was organized by the Austrian Parliament, the Austrian Federal Ministry of Defence and Sports, the Austrian Federal Ministry for Europe, Integration and Foreign Affairs, the Austrian Development Cooperation, the Bruno Kreisky Forum for International Dialogue, the Austrian Federal Chancellery, the Austrian Federal Ministry of Education and Women's Affairs, the International Peace Institute, the Diplomatic Academy Vienna and the UN Women National Committee Austria.

On 4 November I spoke at the 3rd UN Inter-Agency Meeting on the Safety of Journalists and the Issue of Impunity at the Council of Europe in Strasbourg. The meeting was convened by UNESCO and co-hosted by the United Nations Office of the High Commissioner for Human Rights and the Council of Europe.

On 10 November my Office participated in a training organized by the OSCE Centre in Astana and the NGO Adilsoz in Almaty discussing new media-related provisions of the Penal Code and the Code of Administrative Offenses and their implications for members of the media.

On 10 November the Director of my Office delivered a public lecture at the University of Graz on the consequences of the fall of the Iron Curtain for human rights in Eastern Europe.

On 12-13 November the Director of my Office participated in the civil society conference and the High-Level Commemorative Event on the 10th anniversary of the OSCE Berlin Conference on Anti-Semitism.

On 13 November I delivered the keynote address in Budapest at the international con-

ference Bridging the Digital Divide” organized by SEE TV-WEB.

On 13 November my Office spoke in Vienna at the Fourth Aspire Congress about the work of the Office of the Representative on Freedom of the Media.

On 17 November I spoke at the Wilton Park conference “Privacy, security and surveillance: tackling international dilemmas and dangers in the digital realm.”

On 17-18 November my Office participated in the conference “The abuse of defamation laws in Croatia – Defense strategies for journalists and lawyers” on the impact of defamation laws on media freedom in Zagreb organized by the International Press Institute, the Media Legal Defence Initiative and the Croatian Journalists’ Association.

On 18 November the Principal Adviser to my Office participated in the 7th meeting of the Steering Committee on Media and Information Society in Strasbourg to discuss Council of Europe actions to strengthen the protection of free expression and human rights of Internet users.

On 18 November my Office participated in a conference on “Further strengthening the guarantees of freedom of the media in the framework of the economic market and within a competitive information world” in Tashkent organized by the Foundation for the Support of Printed Media and Information Agencies of Uzbekistan and the OSCE Project Co-ordinator in Uzbekistan.

On 19 November my Office participated in the EU – Tajikistan Civil Society Seminar on Freedom of Media which examined key political, social and legal factors affecting free expression and free media and ways to promote access to information and safeguard fundamental human rights in the country.

On 19-21 November I visited Moscow to participate in the annual meeting of the European Federation of Journalists at which I delivered a keynote speech.

In the course of the visit I met with editors of independent media outlets: Mikhail Zygar with the television channel Dozhd, Dmitry Muratov with the Novaya Gazeta newspaper, and Aleksey Venediktov with the radio station Echo Moscow. I also met with other civil society representatives at a roundtable “New Internet-related legislation in Russia as it relates to bloggers and online media” organized at the Moscow State University School of Journalism.

On 21 November I participated in and delivered a keynote speech in Moscow at the annual meeting of the European Federation of Journalists.

On 21-23 November my Office will participate in the conference “Gaining a Digital Edge: Journalists, Watchdogs and Freedom of Expression (2.0)” in Budapest organized by the School of Public Policy’s Center for Media, Data and Society, OSCE and the SHARE Foundation.

On 25 November my Office will participate in a conference on “Terrorism and the Internet” organized by the Committee for Religious Affairs of the Ministry of Culture and the OSCE Centre in Astana. The event explored terrorism and counter-terrorism on the Internet.

On 25 November the Director of my Office spoke at an international conference in Bratislava “Freedom of Media 25 years after: A need to remove legal obstacles” where participants will discuss decriminalization of defamation, damage awards and the regulation of fines in EU member states. The conference is organized by Slovak Committee of the International Press Institute, the Institute for Public Affairs and the Bratislava City Council.

## **Training**

### **Workshop on the interaction between law enforcement and media**

On 15 September my Office organized a workshop in Minsk on the interaction between law enforcement and media. Approximately 20 representatives of Belarusian law enforcement agencies, state media and private media learned about the Belarusian legal framework and the specifics of each other’s work. A consultant on journalism safety and conflict-sensitive journalism, Susanna Inkinen, and the Acting Head Strategic Police Matters Unit at OSCE, Marco Kubny, shared their experiences on international standards and best practices. They suggested specific steps to prevent and resolve conflicts.

## **Conferences**

### **Roundtable discussions between Ukrainian and Russian media trade unions**

On 19 May, 27 June and 26 September my Office organized three roundtable discussions among a dozen senior representatives of the Russian Union of Journalists, Independent Media Trade Union of Ukraine, and the National Union of Journalists of Ukraine. Participants discussed ways to improve journalists’ professional standards and safety in Ukraine. Topics also included common monitoring of journalists’ rights violations, promotion of respect of ethical standards and the issue of propaganda in the media.

Representatives of the European Federation of Journalists, the International Press Institute and Reporters without Borders also participated in the meetings.

As a result of each roundtable, the representatives successively adopted three documents:

- Memorandum on the situation in and around Ukraine, available at: <http://www.osce.org/node/118692>;
- Action Plan to improve media freedom situation in and around Ukraine, avail-

able at: <http://www.osce.org/fom/120451>;

- Common statement condemning the incidents of killing, beating and detention of journalists in the zone of armed conflict in eastern Ukraine, available at: <http://www.osce.org/fom/124537>.

## **Open Journalism**

On 19 September my office held the second expert meeting on Open Journalism in Vienna focusing on the issues of legal implications of Open Journalism, protection of media freedom online and how the new voices of Open Journalism are recognized and safeguarded as basic human rights.

Online media covers a wide range of formats and languages. Today the Internet provides easy access to electronic or online-only versions of traditional print and broadcast media, as well as emerging New Media based on different and more participative forms of expression. Even in the case of traditional media, the Internet offers a method of distribution which enables complementary and more interactive platforms to facilitate access to information and resources as well as an easily accessible framework for dialogue between media outlets and consumers.

This new framework, or Open Journalism, has to be considered, of course, in light of already existing rights and other legal provisions in the field of free expression and media freedom. While technological changes mean that journalism and media are irreversibly changing, our basic human rights remain the same.

The latest expert debate on Open Journalism focused on how traditional and well-established media laws should be applied or re-interpreted to protect innovative contributions and media plurality.

The conclusion to this session is that the new participants in journalism act as public watchdogs and contribute to a free and open society and accountable systems of government.

Any regulations must safeguard freedom of expression to ensure that the Internet remains an open platform for free flow of information and ideas.

Freedom of expression is a universal human right, the new media actors need to enjoy at least some of the protection and privileges that were in the past only granted to traditional media such as the protection of sources and the pre-publication process, presentational and editorial freedom, perishability of news and others.

Online content should be dealt with as any other form of expression therefore there is no need to create new principles to deal with illegal or problematic content.

The next meeting on Open Journalism is planned for Spring 2015.

## **11th South Caucasus Media Conference**

On 10-11 November my Office held the 11th South Caucasus Media Conference in Tbilisi for more than 60 participants representing media, government and civil society from Armenia, Azerbaijan and Georgia. Public service broadcasting in the digital age was the focus of the conference. Participants also discussed the latest media freedom developments in the region. Four international experts on public service broadcasting from Belgium, Latvia, Switzerland and the United Kingdom were invited to talk about the current challenges, opportunities and strategic dilemmas public service broadcasters are facing in relation to financing, governance, management and content.

Participants adopted a list of recommendations to support the further development of PSB in the region. It is available at <https://www.osce.org/fom/126986>.

## **Planned activities for the next reporting period**

### **Conferences**

#### **Roundtable discussions**

On 11 December my Office will organize the 4th roundtable discussion in Vienna between Ukrainian and Russian media trade unions.

On 18 December my Office will hold a one-day conference in Vienna to improve awareness and understanding of the relationship between freedom of expression and tolerance and non-discrimination and stimulate a debate on this issue among the participating States of the OSCE. The event is made possible by extra-budgetary contributions from Norway, Turkey and the United States.

#### **Extra-budgetary donors**

I would like to thank the governments of Azerbaijan, the Czech Republic, Finland, Germany, Ireland, Luxembourg, the Netherlands, Norway, Serbia, Sweden, Switzerland, Turkey and the United States for funding projects, training and media conferences during this reporting period.

I encourage all participating States to consider supporting my Office's effort to provide classes and regional meetings to improve the media landscape.

# Legal Reviews

# LEGAL ANALYSIS OF DRAFT AMENDMENTS TO THE CIVIL CODE OF THE REPUBLIC OF ARMENIA

Commissioned by the Office of the OSCE Representative on Freedom of the Media from Oreste Pollicino, Associate Professor of Media Law, Bocconi University, Milan

March 2014

## Executive summary

The present analysis aims at exploring draft amendments to the Civil Code of the Republic of Armenia concerning liability of media outlets for defamatory or insulting comments, especially when posted by anonymous users.

Whereas the law should be regarded as a good initiative for combating the dissemination of offensive statements that is perceived, not only in the Republic of Armenia, as one of the most common problems that have arisen out of the development of the Internet, some critical points have to be made regarding the content of this proposal.

The mechanism established under the amendments to the Civil Code provides for a liability exemption in favour of media outlets in case they provide data identifying the author of the publication. Such a provision may pose a threat to protection of personal data and is likely to be determined to be a violation of Article 8 of the European Convention on Human Rights.

Furthermore, the amendments shift the liability for defamatory or insulting comments on media outlets where the owner of the website does not comply with a request of removal of defamatory or insulting comments within the very short term of 12 hours as of receiving the same. This is very problematic since, depending on the structure and the organization of the media under scrutiny, such a term would prove inappropriate, requiring efforts that cannot be fulfilled by the owners of certain websites.

From a general point of view, apart from the merits of the aforesaid provisions, the amendments seem to be affected by lack of clarity and a certain degree of vagueness.

The implementation of the supplements is likely to discourage Internet operators from carrying out business in the Republic of Armenia, since the risk of being charged with liability for defamation is apparently doomed to increase.

Specific recommendations

1. The Republic of Armenia should carefully reconsider the scope of application of the provisions under examination, which presents certain degree of vagueness. The definition of implementer of media activity seems to leave room for discussion. Even the Justification provided in addition to the amendments mentions, among others, social network (to which posting of fake users' comments is common), while the attached provisions seems to refer to media outlets and, therefore, to (although not expressly mentioned) the performing of editorial control. A similar point can be made with respect to the notion of "anonymous content", which seems to rely on the efforts that the concerned person, depending on his/her ability or other skills. The identification of the scope covered by these provisions should be more accurate.

2. The exemption clause afforded to media outlets should be revisited. There is no connection between the revelation of personal data relating to the (supposed) author of a message and the immunity of the relevant media outlet from liability. The assumption behind it is that a sort of "exchange" of personal data is capable of removing liability of the website, whereas the revelation of personal data should be ordered by the competent administrative or judicial authority.

3. The term of 12 hours upon the receiving of a specific request established for websites to remove defamatory or insulting comments is not reasonable. We suggest extending it to an actually reasonable one.

4. The amendments seem to be driven by the purpose of granting "at any costs" more protection to victims of defamation or insults by shifting the liability for the same, in case of anonymous messages, on the owner of the website. This approach should be rejected and, even taking into consideration the role played by media outlets and Internet providers in respect of freedom of information, legislators should refrain from extending the liability of such operators. In fact, burdening media with such a liability would "via the back door" rely on the unverified assumption that all the websites considered actually exercise editorial control over contents posted by users and discourage these actors from carrying out their activity that qualifies as an essential part of freedom of information.

### **Analysis**

#### **1. Introduction**

The proposed amendments do pose some critical issues with respect to the standard of protection of fundamental rights set by international law, especially freedom of expression and individual right to personal data.

With regard to the right of freedom of expression, it is protected by international instruments like the Universal Declaration of Human Rights to which OSCE participating States have declared their commitment<sup>1</sup>. This right is further specified and made legally binding in Article 19 of the International Covenant on Civil and

Political Rights<sup>2</sup> and in Article 10 of the European Convention on Human Rights.<sup>3</sup>

With regard to right of personal data, it should be recalled, on the one hand, the “static” dimension of privacy, related to respect for private life, enshrined in Article 8 of the European Convention of Human Rights<sup>4</sup> and, on the other hand, the “dynamic” dimension with specific regard to data protection encapsulated in the Council of Europe’s Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which went into effect on 1 October 1985 and whose purpose is “to secure in the territory of each Party for every individual [...] respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him” (Article 1), such personal data being defined as “any information relating to an identified or identifiable individual” (Article 2).

The proposed amendments are designed to combat the dissemination of insulting or defamatory content through public websites. It is worth noting at the outset that whereas the amendments expressly refer to public electronic sites, meant as “those websites which are available to unlimited number of persons via internet”, the attached opinion labeled as “justification on the necessity to adopt draft amendments” seems to define a broader scope of application, including comments posted on social networks. Or at least it seems to refer to a problem which is common to both “public electronic sites” and social networks, i.e. the posting of anonymous comments, even by fake users.

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1 Article 19 of the Universal Declaration says: “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.”

2 According to which: “Everyone shall have the right to hold opinions without interference.2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

3 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprise 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

4 According to Article 8 ECHR: 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

As a recent statement of Armenian journalism association has pointed out<sup>5</sup>, despite the positive effects that may arise from the regulation of users' behavior, the proposal is bringing threats first of all for the protection of freedom of expression. In this connection, besides the international obligations before mentioned which bind Armenia, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE<sup>6</sup> should be considered. On this occasion the participating States reaffirmed that "[E]veryone will have the right to freedom of expression.... 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. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards."

The proposed amendment seems problematic also for the development of communication technologies. Internet operators, in fact, which are part of one of the most dynamic business nowadays, may reasonably be discouraged by the potential negative impact that such a legal framework would have because of its ambiguity and the recurrent lack of clarity in the proposed amendments. This is the reason why it is worthy, although Armenia is not member of the EU, to look at the legislation in question also in light of the legal framework adopted herein.<sup>7</sup>

## 2. Definitions and scope of application

The proposed supplement to Part 9 of Article 1087.1 of the Civil Code sets forth the conditions upon which the author of information shall be considered unknown. Notwithstanding the legislature's discretion to regulate such aspects, the aforesaid provision does not contain criteria that properly circumscribe the scope of the definition. An author of information is regarded as unknown, in fact, when "the person concerned, after making reasonable efforts, is not able to identify the author."

Thus, the qualification of a comment as anonymous (which is the ground for determining significant consequences in terms of liability of the media outlets) is depending

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5 Statement of Journalistic Associations in Armenia, regarding the Amendments to the Article 1087<sup>1</sup> "Order and Conditions of Compensation of Damage to the Honor, Dignity and/or Business Reputation" of the RA Civil Code, March 14, 2014.

6 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990.

7 Even though it is not binding legislation to Armenia, Directive 2000/31/EC adopted by the European Union establishes common principles governing liability of Internet service providers and it could be considered to be a proper source of inspiration.

upon the concerned persons' ability to make attempts to identify the author of the defamatory or insulting comment.

This way, the legal obligation for the website owner to communicate personal data arises in connection to the ability of the aggrieved person and with no specific reference to the "efforts" that are to be made by him/her for the author of information to be considered anonymous. This provision is likely to bring consequences for media outlets, which are exposed to the risk of being charged with unlawful disclosure of personal data that they carry out on the grounds of unreasonable and unclear criteria.

The proposed supplement to Part 9.1 introduces a very critical provision which affords an exemption from liability to the "implementer of media activity" which reproduces information containing insult or defamation in case it produces "data identifying the author of information which contains insult or defamation." This amendment is likely to raise a number of legal issues as it considers the "exchange" of personal data as a condition for the websites' owners to avail themselves of a liability exemption.

It should be noted that the definition refers to "implementer of media activity" without specifying any criteria or requirement to be met for operators. The legal background of the Republic of Armenia in force leads to consider this definition limited to the subjects disseminating media products, but a further clarification should be desirable. Then, it is not clear whether this immunity covers only the owner of the websites where defamatory or offending contents are posted or even those which performs some activities, including a search engine.

The definition of "public electronic sites" established under the amendment to Part 9.3 relies upon certain criteria, including the availability to an unlimited number of persons, the fact that the site has a specific address and that it contains news and other type of information. This way it is circumscribed the scope of application of the relevant provisions, but the provision fails to adopt a key factor in this regard: the amendments, in fact, do not mention at all the exercise of editorial activity that occurs when the owner of the website has control over the contents thereof.

Nor does it support, indirectly, the existence of said requirement the text of the supplement to Part 9.4 where the owner of a public electronic site corresponds to "those persons who have the right and technical possibility for removing comments." This definition, on the contrary, is likely to trigger very problematic consequences, as it potentially includes even the providers which only supply the owner of the website with the services necessary for the publication of the same (hosting services, e.g.). Hosting providers, of course, have, from a technical point of view, the material possibility of removing comments from a website. But it is clear that requiring an ISP to remove a comment from the content of the web pages owned by the recipient of its services would amount to requiring an unreasonable obligation and even to a serious interference with the freedom of expression of the owner of the site. Clarification of

this definition is desirable.

### 3. The unjustified nature of the liability exemption

The very critical point of the amendment concerns the condition upon which the implementer of media activity benefits of the liability exemption: the implementer is required to provide “data identifying the author of information”. Several problems may rise in this respect:

Since the provision refers to “data identifying the author of information,” it is assumed that personal data are at stake, meaning “any data permitting, even indirectly, the identification of the concerned person.” Although the Republic of Armenia is not a member state of the European Union, the Directive on Data Protection in force constitutes a sound legal parameter to which refer for evaluating any legislative effort in this area. Despite the Republic of Armenia is not legally bound by Directive 95/46, there is a reasonable expectation that such data, which of course amount to “personal data” benefit from a special protection compared to other types of information.<sup>8</sup> This requirement is consistent, among others, with the participation of the Republic of Armenia to the Council of Europe. As a contracting state, in fact, it must provide protection of an appropriate degree to personal data as an essential part of the right to private life enshrined to Article 8 of the European Convention on Human Rights.<sup>9</sup> The right to anonymity of internet users is also enshrined in the Council of Europe Declaration on the Freedom of Communication on the Internet, adopted on 28 May 2003<sup>10</sup>. The amendment does not consider that personal data must be processed in accordance with certain basic principles. Disclosure of personal data to third parties should be allowed, normally as an exception, upon request of the competent judicial authority and for the purpose of permitting the aggrieved person of the defamatory or insulting conduct to bring a lawsuit against the offender. However, the concerned amendment does not specify these requirements and considers the sole communication in question as a “safe harbor” which is ensuring the media platform is exempt from liability. Nor do these provisions specify which personal data must be revealed.

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<sup>8</sup> See, for instance, the judgment rendered by the Court of Justice of the European Union in the Case C-275/06, *Productores de Música Española (Promusicae) v Telefónica de España SAU*, 29 January 2008. The problem at stake, in the case in question, was that third parties’ personal data shall not be communicated in the absence a legal provision that expressly authorizes the data controller, as third parties’ rights must be balanced with the right to data protection.

<sup>9</sup> See ECtHR, 26 March 1987, no. 9248/81, *Leander v Sweden*; 16 February 2000, no. 27798/95, *Amann v Switzerland*; 2 December 2008, no. 2872/02, *KU v Finland*. Particularly, the last case concerned the lacking of a provision that in Finland authorized judges to order an ISP to communicate to the aggrieved person the personal data of the author of an unlawful message posted on the Internet in order to start a separate lawsuit against the same.

<sup>10</sup> See CoE Committee of Ministers Declaration on <https://wcd.coe.int/ViewDoc.jsp?id=37031>: Principle 7: Anonymity: In order to ensure protection against online surveillance and to enhance the free expression of information and ideas, member states should respect the will of users of the Internet not to disclose their identity. This does not prevent member states from taking measures and co-operating in order to trace those responsible for criminal acts, in accordance with national law, the Convention for the Protection of Human Rights and Fundamental Freedoms and other international agreements in the fields of justice and the police.

- Additionally, apart from a strict legal perspective, it is not desirable to allow operators to benefit of an exemption from liability under the condition that it “exchanges” personal data. Even assuming that the communication of personal information is aimed at permitting the aggrieved person to file a lawsuit, it could be questionable whether the data disclosed by the implementer of media activity corresponds to the person who is the actual author of the information.

- Finally, there is no connection between the liability exemption afforded to media outlets and the communication of personal data. It should be questioned whether such an act does constitute a sound basis for exempting the implementer of media activity from the liability arising in connection to defamatory or insulting expressions.

#### 4. Lack of respect of the proportionality principle with regard to the notice and take down procedure

The amendment to Part 9.2 provides that the owner of a website shall promptly remove, within 12 hours as of receiving the request, the relevant subject, defamatory or insulting comments. If not, according to the amendment to Part 9.5, the media outlet shall bear responsibility for those comments.

The provision only refers to a “request” noticed by the concerned individual to the owner of the website. Even though this notice and take down procedure constitutes in theory a proportionate remedy, since it provides the removal of specific contents to the extent the same are defamatory or insulting, in this case at stake, due to the vagueness of the proposed provision, the envisaged mechanism is able to lead to a disproportionate restriction of freedom of expression on the Internet.

It should be taken in consideration, as a main benchmarking parameter, the Joint Declaration on Freedom of Expression and the Internet adopted on 1 June 2011<sup>11</sup>. According to art, 1, lett. a and b of the above mentioned Declaration: a) Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognized under international law (the ‘three-part’ test). b. When assessing the proportionality of a restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighed against its benefits in terms of protecting other interests.

I suggest requiring the applicant to substantiate his claim by indicating certain mandatory requirements, including e.g. the time the comment was posted, the author (or the “nickname” thereof). Especially in those websites hosting a number of comments, which may not provide for a “flagging systems” which automatically gives notice to the owner that an improper comment has been posted, the mandatory

provision of these elements would facilitate the removal.

These requirements would appear all the more appropriate in light of the obligation imposed on the owner to remove the comment immediately and “not later than within 12 hours following” the request. The provision of such term seems to be inappropriate and disproportionate. I understand that the assumption behind the choice of a very short term is that the more the comment remains accessible on the website, the more the harm to reputation and honor is perpetrated on the aggrieved person. However, since even from a technical perspective blocking certain contents, especially in

the more popular websites, could request some steps, such a short term could in certain cases turn unreasonable. I therefore suggest extending this to a more reasonable one.

#### 5. Remedies for the aggrieved person

Finally, I also note that the amendment to Part 9.6 entitles the aggrieved person to bring a lawsuit against the owner of the site to request certain measures. Although it falls within the discretion of the legislature to determine which remedies are to be provided to the victims of defamation and insults, a request of public apology could raise several legal concerns. First, it should not be for the owner of the website to publically apologize (although it did not comply with the obligation to promptly remove defamatory or insulting comments), rather for the author of a comment that is supposed to be, in certain cases, anonymous. The provisions is deemed to be inappropriate attempt to shift on the owner of the site the responsibility for the harm suffered by the victim of defamation or insults in cases the comment has not been removed (or removed in a timely manner?). Rather, the owner of the site could be charged with a request of rectification, that is quite common in most of the EU countries but this remedy normally applies to inaccurate facts, not to other possible attacks on reputation. An obligation to publish the Court’s decision can also be a good remedy.

#### 6. Finding someone guilty at any costs?

Shifting on media outlets the responsibility for defamatory and insulting comments in the cases where the author is anonymous, attaching to media an “objective responsibility” (e.g. a liability which does not depend on the voluntary or negligent causation of a harm to reputation, but on the sole circumstance that such harm has occurred) by virtue of the sole fact that the comment has been posted on a website. The legislation seems to be in search of someone guilty to grant the victims of defamation or insults legal redress.

In the enclosed Justification, additionally, there are improper the references to the mentioned cases of the European Court of Human Rights. In the cited Renaud case,<sup>12</sup> the Court found that some defamatory and insulting comments posted by the owner of a website in the context of a political debate did fall within the scope of protection

granted by Article 10 of ECHR and then declared the conviction for defamation delivered in France to conflict with the applicant's right to freedom of expression. The case proves that not all the allegedly defamatory or insulting expressions actually constitute an offence and then a judicial assessment concerning whether an unlawful conduct has actually occurred may in certain cases turn a necessary stage.. Also the case of *Delfi v. Estonia* does not offer any argument to support the legislation in question. First, the judgment rendered by the Court has been appealed before the Grand Chamber on 17 February 2014, and the decision may likely be reversed.

Apart from that, the case was very specific and concerned the media responsibility for having failed to remove several defamatory comments which had been accessible for about six weeks. The Court found that the order to pay damages (€320) issued by the domestic judge did not constitute a disproportionate interference with the right to freedom of expression. The amendments to the Civil Code that the Republic of Armenia is going to implement, instead, would lead media to bear a responsibility in case of failure to remove comments within 12 hours as of the receiving of a claim; provided that the owner does not communicate to the victim the personal data of the offender, that is likely to amount to a significant interference with individuals' right to personal data.

12 ECtHR, 25 February 2010, no. 13290/07, *Renaud v France*.

## КОММЕНТАРИИ К ПРОЕКТУ

### **ЗАКОНА КЫРГЫЗСКОЙ РЕСПУБЛИКИ «О ВНЕСЕНИИ ИЗМЕНЕНИЙ В НЕКОТОРЫЕ ЗАКОНОДАТЕЛЬНЫЕ АКТЫ КЫРГЫЗСКОЙ РЕСПУБЛИКИ» (Comments on the draft law of the Kyrgyz Republic “On the introduction of changes to certain legislative acts of the Kyrgyz Republic”)**

Подготовлено Дмитрием Головановым, экспертом Института проблем информационного права (г. Москва), руководителем юридического департамента ОАО «ВебТВ» (г. Москва), по заказу Бюро Представителя ОБСЕ по вопросам свободы средств массовой информации

2014

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#### **РЕЗЮМЕ, КРАТКОЕ ИЗЛОЖЕНИЕ РЕКОМЕНДАЦИЙ**

Проведя анализ положений предоставленного проекта новой редакции статьи 329 Уголовного Кодекса Кыргызской Республики в части содержания положений, которые могут затрагивать свободу выражения мнения и информации, в контексте положений международных договоров, Конституции Кыргызской Республики, действующего национального уголовного и уголовно-процессуального законодательства, эксперт приходит к следующим общим заключениям.

Проект новой редакции статьи 329 Уголовного Кодекса Кыргызской Республики, допускает введение ограничений свободы выражения мнения,

которые могут рассматриваться как несоизмеримые целям охраны ряда конституционно-значимых ценностей. Наличие указанных рисков следует как из непосредственной формулировки законопроекта, ориентирующей его на применение положений статьи 329 Уголовного Кодекса в отношении средств массовой информации, действующих в публичном пространстве, так и из того понимания правоприменительной практики, которое закладывается на стадии разработки и принятия проекта. В этой связи представляется необходимым отказаться от принятия законопроекта на текущем этапе и доработать его текст с учетом рекомендаций, основанных на стандартах международного права. Переработка должна иметь существенный характер, быть нацеленной на исключение толкований, носящих репрессивный (подавляющий) характер по отношению к средствам массовой информации.

Основным позитивным аспектом законопроекта можно назвать устранение в ходе принятия парламентом страны из его содержания положений, однозначно и недвусмысленно противоречащих действующей конституции и законодательству. Представляется, что та правовая аналитическая работа, которая была проведена парламентариями, будет способствовать снижению уровня угроз для свободы слова, которые содержались в первоначальной версии законопроекта.

Вместе с тем, представляется, что устранив формальные противоречия законодательству при доработке законопроекта, законодатели не обеспечили нейтрализацию угрозы свободе выражения мнения, заложенной в содержании и направленности законопроекта. Эксперту представляется, что в существующей формулировке законопроект подменяет цель защиты интересов независимости и полноты правосудия целью введения уголовно-правовой защиты репутации третьих лиц. В этом смысле законопроект, по сути, криминализирует диффамационный деликт, тем самым вступая в противоречие с международно-правовыми стандартами охраны свободы слова и свободы выражения мнения, а также с прямыми требованиями Конституции Кыргызской Республики.

В качестве основных рекомендаций эксперт предлагает:

1. Отказаться от принятия законопроекта в редакции, одобренной в третьем чтении парламентом Кыргызской Республики, как содержащего потенциал ограничения свободы выражения мнения, противоречащего конституционным принципам и действующему законодательству Кыргызской Республики.
2. Выполнить доработку законопроекта с тем, чтобы обеспечить защиту с одной стороны независимого и полного осуществления правосудия, а с другой стороны гарантировать неприкосновенность свободы выражения мнения. Как представляется, распространение СМИ информации не должно в принципе подпадать под действие статьи 329 Уголовного

Кодекса Кыргызской Республики. Иное будет означать применение двойной ответственности за одно и то же деяние.

3. В рамках доработки проекта отказаться от введения квалифицированного состава преступления, предусмотренного статьей 329 Уголовного Кодекса Кыргызской Республики, состоящего в заведомо ложном сообщении о совершении тяжкого или особо тяжкого преступления.

## **ВВЕДЕНИЕ**

Настоящее исследование содержит анализ представленного проекта закона, основным предметом которого является изложение в новой редакции статьи 329 Уголовного Кодекса Кыргызской Республики, а равно исследование действующего конституционно-правового регулирования, законодательства о СМИ,<sup>1</sup> а также международных норм о свободе выражения мнений и возможных случаях ограничения такой свободы и практики. При анализе положений законопроекта принималась во внимание дискуссия, которая существует в профессиональном сообществе Кыргызской Республики.

Рассматриваемый проект закона об изложении в новой редакции статьи 329 Уголовного Кодекса был инициирован депутатами Жогорку Кенеш - Парламента Кыргызской Республики Кочкаровой Э.А., Кадыровым Б.С., Тиленчиевой М.Б., Мадалиевым Н.А., Иманкожоевой Э.Б., Жамгырчиевой Г.О., Сакебаевым Э.А., Карамушкиной И.Ю., Измалковой А.Н., Мадеминовым М.Г., Мадылбековым Т., Бакир уулу Т., Алтыбаевой А.Т., Султанбековой Ч.А.

Целью принятия нового законодательного акта, по задумке его инициаторов, должно стать приведение формулировки состава преступления в соответствие с современными требованиями по обеспечению защиты прав и законных интересов граждан.<sup>2</sup> Реализации данного подхода должны способствовать как перефразирование формулировки состава преступления, так и ужесточение ответственности за его совершение.

Кроме того, изначально законопроектом предусматривалось внесение изменений в процессуальное законодательство, результатом которых должно было стать расширение круга должностных лиц, уполномоченных производить следственные действия в рамках расследования преступлений, предусмотренных статьей 329 УК, а именно включение в состав уполномоченных лиц представителей прокуратуры.

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1 Исследовались тексты законов, нормативно-правовых актов Кыргызской Республики и законопроектов на русском языке, являющемся официальным языком Кыргызской Республики (часть 2 статьи 10 Конституции Кыргызской Республики).

2 Справка-обоснование к проекту закона размещена на сайте Парламента Кыргызской Республики <http://www.kenesh.kg/lawprojects/lps.aspx?view=projectinfo&id=103335>.

Положения законопроекта получили в целом позитивную оценку от профильных комитетов Парламента Кыргызской Республики по законности, правопорядку

и борьбе с преступностью и по судебно-правовым вопросам и законности, и проект был принят в трех чтениях парламентом. Необходимо оговориться, что в ходе рассмотрения в парламенте указанными комитетами к проекту были предъявлены некоторые претензии. В частности, было указано на несоответствие предлагаемого изменения процессуального законодательства Кыргызской Республики Конституции страны, кроме того, было отмечено, что выделение в отдельный квалифицирующий признак преступления заведомо ложного сообщения о совершении коррупционных преступлений не является оправданным, так как такие преступления относятся к категории тяжких, и их отдельное упоминание не требуется в рассматриваемом законопроекте. Критика была действенной и к третьему чтению из проекта были изъяты положения об изменении подследственности по делам о заведомо ложном сообщении о совершении преступления органам прокуратуры, а также упоминание о коррупционных преступлениях.

Раздел 1 настоящего исследования посвящен международным обязательствам Кыргызской Республики в области прав человека, и в нем также излагаются международные стандарты, касающиеся права на свободу выражения мнения и рассматриваются вопросы установления пределов ограничения свободы выражения мнения. Указанные стандарты установлены в международном праве, в том числе в Международном пакте о гражданских и политических правах, Конвенции о правах ребенка, а также в различных соглашениях в рамках ОБСЕ и ООН, стороной которых является Кыргызстан. Они содержатся в рекомендательных актах международных организаций и их уполномоченных органов, решениях международных судов по правам человека, в заявлениях представителей международных органов и организаций, а также в конституционном праве в части исследования вопросов свободы выражения мнения. Кроме того, в разделе 1 приводятся основные принципы регулирования свободы слова, а также фундаментальные принципа защиты прав и свобод человека и гражданина, закрепленные в Конституции Кыргызской Республики.

В разделе 2 исследования проведено исследование действующего законодательства Кыргызской Республики на предмет регулирования свободы выражения мнения и деятельности СМИ, обзор действующего уголовного и уголовно-процессуального законодательства в части, имеющей отношение к свободе выражения мнения.

В разделе 3 содержится анализ положений анализируемого проекта закона о внесении изменений в Уголовный Кодекс учетом вышеуказанных стандартов, места законопроекта в структуре законодательства Кыргызстана, и изложены замечания в отношении этого законопроекта в редакции, одобренной в третьем

чтении и опубликованной на сайте Парламента Кыргызской Республики и доступной для исследования.

## **1. МЕЖДУНАРОДНЫЕ И КОНСТИТУЦИОННЫЕ СТАНДАРТЫ В ОБЛАСТИ СВОБОДЫ ВЫРАЖЕНИЯ МНЕНИЯ, ВКЛЮЧАЯ ТРЕБОВАНИЯ К ВОЗМОЖНЫМ ОГРАНИЧЕНИЯМ ТАКОЙ СВОБОДЫ**

### **1.1. Значение свободы выражения мнения**

Право на свободу выражения мнения признается одним из важнейших прав человека.

Оно имеет основополагающее значение для функционирования демократии, является необходимым условием осуществления других прав и само по себе представляет неотъемлемую составляющую человеческого достоинства. Всеобщая декларация прав человека (далее именуемая «ВДПЧ»),<sup>3</sup> основополагающий документ о правах человека, принятый Генеральной Ассамблеей Организации Объединенных Наций в 1948 году, защищает право на свободу выражения мнения в следующей формулировке статьи 19:

«Каждый человек имеет право на свободу убеждений и на свободное выражение их; это право включает свободу беспрепятственно придерживаться своих убеждений и свободу искать, получать и распространять информацию и идеи любыми средствами и независимо от государственных границ».

Международный пакт о гражданских и политических правах (далее именуемый «МПГПП»)<sup>4</sup>— договор, имеющий обязательную юридическую силу для Кыргызстана и вступивший в силу для республики 07 января 1995 года,<sup>5</sup> гарантирует право на свободу убеждений и их выражение в формулировке, весьма близкой к ВДПЧ, также в статье 19:

«1. Каждый человек имеет право беспрепятственно придерживаться своих мнений.

2. Каждый человек имеет право на свободное выражение своего мнения; это право включает свободу искать, получать и распространять всякого рода

<sup>3</sup> Всеобщая декларация прав человека. Принята резолюцией 217 А (III) Генеральной Ассамблеи ООН от 10 декабря 1948 года, См. полный официальный текст на русском языке на сайте ООН: [http://www.un.org/ru/documents/decl\\_conv/declarations/declhr.shtml](http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml)

<sup>4</sup> Международный пакт о гражданских и политических правах. Принят резолюцией 2200 А (XXI) Генеральной Ассамблеи от 16 декабря 1966 года. Вступил в силу 23 марта 1976 года. См. полный официальный текст на русском языке на сайте ООН: <http://www.un.org/russian/document/convents/ractpol.htm>.

<sup>5</sup> Постановление Жогорку Кенеша Кыргызской Республики от 12 января 1994 года № 1406-ХII «О присоединении Кыргызской Республики к международным договорам по правам человека». Текст на русском языке доступен в сети Интернет по адресу: <http://cbd.minjust.gov.kg/act/view/ru-ru/50679>.

информацию и идеи, независимо от государственных границ, устно, письменно или посредством печати или художественных форм выражения, или иными способами по своему выбору.

3. Пользование предусмотренными в пункте 2 настоящей статьи правами налагает особые обязанности и особую ответственность. Оно может быть, следовательно, сопряжено с некоторыми ограничениями, которые, однако, должны быть установлены законом и являться необходимыми:

- а) для уважения прав и репутации других лиц;
- б) для охраны государственной безопасности, общественного порядка, здоровья или нравственности населения».

В соответствии со статьей 40 Пакта участвующие в нем государства обязуются представлять в Комитет ООН по правам человека доклады о принятых ими мерах по претворению в жизнь прав, признаваемых в Пакте, и о прогрессе, достигнутом в использовании этих прав. Комитет изучает доклады, представляемые участвующими в Пакте государствами, и препровождает государствам - участникам свои доклады и такие замечания общего порядка, которые он сочтет целесообразными.<sup>6</sup>

Часть 3 статьи 6 Конституции Кыргызской Республики от 27 июня 2010 года включает международно-правовые обязательства в систему национального права:

«Вступившие в установленном законом порядке в силу международные договоры, участницей которых является Кыргызская Республика, а также общепризнанные принципы и нормы международного права являются составной частью правовой системы Кыргызской Республики.

Нормы международных договоров по правам человека имеют прямое действие и приоритет над нормами других международных договоров».

Статья 31 Конституции гарантирует каждому право на свободу выражения мнения, свободу слова и печати, устанавливает запрет на принуждение к выражению своего мнения или отказу от него. Статья 33 Конституции провозглашает право каждого свободно искать, получать, хранить, использовать информацию и распространять ее устно, письменно или иным способом. Статья 49 Конституции гарантирует каждому свободу литературного, художественного, научного, технического и других видов творчества, преподавания. Каждый имеет право на участие в культурной жизни и доступ к ценностям культуры.

<sup>6</sup> Кыргызской Республикой такой доклад последний раз был предоставлен, Комитетом были представлены замечания, в том числе, касающиеся свободы выражения мнения. Обзор см. далее, при освещении национальных стандартов.

Также необходимо отметить основные фундаментальные принципы защиты прав человека и гражданина, сформулированные в Конституции. Часть 1 статьи 16 провозглашает, что права и свободы человека неотчуждаемы и принадлежат каждому от рождения, являются высшей ценностью, действуют непосредственно, определяют смысл и содержание деятельности законодательной, исполнительной власти и органов местного самоуправления.

Части 2 и 3 статьи 16 гарантируют принципы равенства всех перед судом и устанавливают запрет любой дискриминации.

Статья 17 Конституции объявляет неисчерпаемость и неограниченность прав человека, указывая, что «права и свободы, установленные настоящей Конституцией, не являются исчерпывающими и не должны толковаться как отрицание или умаление других общепризнанных прав и свобод человека и гражданина».

Наконец, в соответствии со статьей 18 основного закона Кыргызской Республики каждый вправе осуществлять любые действия и деятельность, кроме запрещенных Конституцией и законами.

Свобода выражения мнения гарантируется и различными ключевыми документами ОБСЕ, согласие с которыми выразил Кыргызстан, став государством-участником организации в 1992 году, такими как Заключительный акт общеевропейского совещания в Хельсинки,<sup>7</sup> Заключительный документ копенгагенского совещания Конференции ОБСЕ по человеческому измерению,<sup>8</sup> Парижская хартия, согласованная в 1990 году,<sup>9</sup> Декларация встречи на высшем уровне в рамках ОБСЕ в Стамбуле.<sup>10</sup>

Парижская хартия, в частности, гласит:

«Демократия является наилучшей гарантией свободы выражения своего мнения, терпимости по отношению ко всем группам в обществе и равенства возможностей для каждого человека... Мы подтверждаем, что без какой-либо дискриминации каждый человек имеет право на свободу мысли, совести, религии и убеждений, свободу выражения своего мнения, свободу ассоциации и мирных собраний, свободу передвижения (...)»

7 Заключительный акт Совещания по безопасности и сотрудничеству в Европе, Хельсинки, 1 август 1975 года. См. текст на русском языке на сайте ОБСЕ по адресу: <http://www.osce.org/ru/mc/39505?download=true>.

8 Копенгагенское совещание Конференции ОБСЕ по человеческому измерению, июнь 1990 года. См., в частности, пункты 9.1 и 10.1, 10.2. Документ доступен на русском языке на сайте ОБСЕ по адресу: <http://www.osce.org/node/14305>

9 Парижская хартия для новой Европы. Встреча на высшем уровне в рамках ОБСЕ, ноябрь 1990 года. См. текст на русском языке на сайте ОБСЕ по адресу: <http://www.osce.org/ru/mc/39520?download=true>.

10 Встреча на высшем уровне в рамках ОБСЕ в Стамбуле, 1999 год, пункт 27. Текст документа на русском языке доступен в сети Интернет по адресу: <http://www.lawmix.ru/abrolaw/8646>.

Аналогичное заявление содержится в Стамбульской хартии европейской

безопасности ОБСЕ:

«Мы [государства-участники] вновь подтверждаем значение независимых средств массовой информации и свободного потока информации, а также доступа общественности к информации. Мы обязуемся принять все необходимые меры для обеспечения основных условий для функционирования свободных и независимых СМИ и беспрепятственного трансграничного и внутригосударственного потока информации, который мы рассматриваем как существенную составляющую любого демократического, свободного и открытого общества».

Международные организации, их органы и международные суды ясно указывают, что право на свободу выражения мнения и свободу информации является одним из важнейших прав человека. На своей самой первой сессии в 1946 году Генеральная Ассамблея Организации Объединенных Наций приняла резолюцию 59 (I),<sup>11</sup> которая, касаясь свободы информации, гласит:

«Свобода информации является фундаментальным правом человека и критерием всех остальных свобод, которым посвящена деятельность Организации Объединенных Наций».

Под свободой информации в этой и во всех последующих резолюциях высший орган ООН понимал «право повсеместно и беспрепятственно передавать и опубликовывать информационные сведения» во имя мира и мирового прогресса. Основным принципом свободы информации с точки зрения этой резолюции ООН является «обязанность стремиться к выявлению объективных фактов и к распространению информации без злостных намерений». Как видно из Резолюции 59 (I), свобода выражения мнения имеет основополагающее значение сама по себе, а также служит основой для осуществления всех других прав.

Комитет Организации Объединенных Наций по правам человека – орган, созданный в качестве вспомогательного органа Генеральной Ассамблеи для осуществления надзора за соблюдением МПГПП, – определил:

«Право на свободу выражения мнения имеет важнейшее значение в любом демократическом обществе».<sup>12</sup>

Заявлениями такого рода изобилуют прецедентные решения судов и трибуналов по правам человека. Европейский суд по правам человека (орган действующий в 11 Организация Объединенных Наций. Шестьдесят пятое пленарное заседание, 14 декабря 1946 г. Официальный текст на русском языке опубликован на сайте ООН по адресу: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/035/16/IMG/NR003516.pdf?OpenElement>  
12 Дело «Дэ Хун Пак против Республики Кореи» (Tae-Hoon Park v. Republic of Korea, 20 October 1998, Communication No. 628/1995, para. 10.3).

рамках Совета Европы), например, подчеркнул в одном из своих решений,

что «[с]вобода выражения мнения является одной из основных составляющих [демократического] общества и необходимым условием для его прогресса, а также для развития каждого человека».<sup>13</sup> Как отмечается в этом положении, свобода выражения мнения имеет основополагающее значение как сама по себе, так и в качестве основы для всех других прав человека. Полноценная демократия возможна только в обществах, где допускается и гарантируется свободный поток информации и идей. Помимо этого, свобода выражения мнения имеет решающее значение для выявления и изобличения нарушений прав человека и борьбы с такими нарушениями.

Гарантия свободы выражения мнения особенно важна применительно к средствам массовой информации. Европейский суд по правам человека неизменно подчеркивает «исключительную роль прессы в правовом государстве».<sup>14</sup>

В продолжение этой мысли суд отмечает:

«Свобода печати дает общественности непревзойденный инструмент, позволяющий ей знакомиться со своими политическими лидерами и получать представление об их идеях и позициях. В частности, она позволяет политикам размышлять и высказывать свою точку зрения по вопросам, заботящим общественное мнение; таким образом, все получают возможность участвовать в свободной политической дискуссии, которая находится в самом центре концепции демократического общества».<sup>15</sup>

выражения» принятом на сто второй сессии, играют существенную роль в политическом процессе:

«Свободная, не подлежащая цензуре и ограничениям пресса, или другие средства информации в любом обществе являются важным элементом обеспечения свободы мнений и их выражения, а также реализации других предусмотренных Пактом прав. Она является одним из краеугольных камней демократического общества. В Пакте закреплено право, в соответствии с которым средства массовой информации могут получать сведения, на которые они опираются при выполнении своих функций. Особое значение имеет свободный обмен

13 Дело «Хендисайд против Соединенного Королевства» (Handyside v. the United Kingdom, 7 December 1976, Application No. 5493/72, para. 49). Текст решения на английском языке доступен на сайте Европейского суда по правам человека по адресу: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57499>.

14 Дело «Тогьер Торгерсон против Исландии» (Thorgeir Thorgeirson v. Iceland, 25 June 1992, Application No. 13778/88, para. 63). Текст решения на английском языке доступен на сайте Европейского суда по правам человека по адресу: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57795>

15 Дело «Кастеллс против Испании» (Castells v. Spain, 24 April 1992, Application No. 11798/85, para. 43). Текст решения на английском языке доступен на сайте Европейского суда по правам человека по адресу: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57772>.

информацией и мнениями по государственным и политическим вопросам

между гражданами, кандидатами и избранными представителями народа. Это предполагает свободу прессы и других средств информации, которые могли бы комментировать государственные вопросы без контроля или ограничений и информировать о них общественность. Широкая общественность в свою очередь имеет право получать продукт деятельности средств информации».<sup>16</sup>

Европейский суд по правам человека также заявлял, что на СМИ лежит обязанность распространения информации и идей, касающихся всех сфер общественных интересов:

Хотя пресса и не должна преступать границы, установленные для [защиты интересов, изложенных в статье 10(2)]... на нее, тем не менее, возложена миссия по распространению информации и идей, представляющих общественный интерес; если на прессе лежит задача распространять такую информацию и идеи, то общественность, со своей стороны, имеет право на их получение. В противном случае пресса не смогла бы выполнять свою основную функцию «сторожевого пса общественных интересов».<sup>17</sup>

Несмотря на то, что Кыргызстан не входит в Совет Европы, и не принимал обязательства исполнять решения органов данной международной организации, со стороны правительства страны исходило несколько заявлений о приверженности ценностям Совета Европы, и были предприняты шаги, направленные на расширение взаимодействия. В частности, в 2011 году Кыргызстан запросил, а в апреле 2014 года страной был получен статус партнера Парламентской Ассамблеи Совета Европы по развитию демократии,<sup>18</sup> страна является участником Европейской комиссии за демократию через право (Венецианская комиссия). При направлении запроса о получении статуса партнера по развитию демократии Парламентской Ассамблеи Совета Европы Кыргызстаном было подтверждено твердое намерение участвовать во всех соглашениях и конвенциях Совета Европы в сфере прав человека и обеспечения верховенства права и демократии, которые открыты для подписания и ратификации странами, не являющимися членами Совета Европы.<sup>19</sup>

16 Замечание общего порядка № 34 Комитета Организации Объединенных Наций по правам человека, 12 сентября 2011 года. Текст документа на русском языке доступен в сети Интернет по адресу: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR%2fC%2fGC%2f34&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR%2fC%2fGC%2f34&Lang=en)

17 См. дело “Кастеллс против Испании” (Castells v. Spain, note 25, para. 43); «Обсервер» и “Гардиан” против Соединенного Королевства» (The Observer and Guardian v. UK, 26 November 1991, Application No. 13585/88, para. 59); и «Санди таймс» против Соединенного Королевства (II)» (The Sunday Times v. UK (II), 26 November 1991, Application No. 13166/87, para. 65).

18 Информация о получении соответствующего статуса содержится на официальном сайте МИД Кыргызской Республики: [http://www.mfa.kg/mews-of-mfa-kr/v-g.-strasburg-franciya-prinyata-rezoluciya-po-prisvoeni-ki-rigizskoi-respublike-statusa-partner-po-demokratii-pase\\_ru.html](http://www.mfa.kg/mews-of-mfa-kr/v-g.-strasburg-franciya-prinyata-rezoluciya-po-prisvoeni-ki-rigizskoi-respublike-statusa-partner-po-demokratii-pase_ru.html).

19 См. информацию (на английском языке) о запросе Парламента Кыргызской Республики о получении статуса партнера по развитию демократии на сайте Парламентской Ассамблеи Совета Европы в сети

ПАСЕ заявило о намерении отслеживать в рамках процесса налаживания работы в статусе партнера по развитию демократии движение страны по ряду направлений, одним из которых должно стать «гарантирование и развитие свободы выражения мнения, независимости и плюрализма средств массовой информации; введение норм права, которые обеспечат действенные гарантии свободы прессы и защиты СМИ от политического давления».

## **1.2. Международно-правовые и конституционные стандарты решения вопроса об ограничении свободы выражения мнения**

Право на свободу выражения мнения не является абсолютным: в определенных и немногочисленных обстоятельствах оно может подвергаться ограничениям. Однако в силу основополагающего характера этого права ограничения должны быть точными и четко определенными в соответствии с принципами правового государства. Более того, ограничения должны преследовать законные цели; право на свободу выражения мнения не может быть ограничено только из-за того, что какое-то конкретное заявление или выражение рассматривается как оскорбительное или потому, что оно подвергает сомнению признанные догмы. Европейский суд по правам человека подчеркнул, что именно такие заявления достойны защиты:

«[Свобода выражения мнения] применима не только к “информации” или “идеям”, которые встречаются благосклонно или рассматриваются как безобидные либо нейтральные, но и в отношении тех, которые задевают, шокируют или беспокоят государство или какую-либо часть населения. Таковы требования плюрализма, терпимости и либерализма, без которых нет “демократического общества”».<sup>20</sup>

В статье 19(3) МПГПП установлены четкие пределы, в которых допустимы законные ограничения свободы выражения мнения. Она гласит:

Пользование предусмотренными в пункте 2 настоящей статьи правами налагает особые обязанности и особую ответственность. Оно может быть, следовательно, сопряжено с некоторыми ограничениями, которые, однако, должны быть установлены законом и являться необходимыми:

- а) для уважения прав и репутации других лиц;
- б) для охраны государственной безопасности, общественного порядка, здоровья или

нравственности населения.

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Интернет по адресу: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20568&lang=en>.  
20 Дело «Хендсайда против Соединенного Королевства» (Handyside v. the United Kingdom, 7 December 1976, Application No. 5493/72, па. 49).

Вмешательство должно преследовать одну из целей, перечисленных в статье 19(3); этот перечень является исчерпывающим, и, следовательно, иное вмешательство представляет собой нарушение статьи 19. Вмешательство должно быть “необходимым” для достижения одной из этих целей. Слово “необходимый” в данном контексте имеет особое значение. Оно означает, что для вмешательства должна существовать “насуточная общественная потребность”;<sup>21</sup> что причины, приводимые государством в качестве обоснования вмешательства, должны быть “относящимися к делу и достаточными” и что государство должно показать, что вмешательство соразмерно преследуемой цели. Как заявил Комитет по правам человека, “требование о необходимости предполагает наличие элемента соразмерности в том смысле, что масштаб ограничения свободы выражения мнения должен быть соразмерным с той ценностью, на защиту которой направлено данное ограничение”.<sup>22</sup>

Статья 10 Конвенции о защите прав человека и основных свобод (часть 2) гласит: «Осуществление этих свобод, налагающее обязанности и ответственность, может быть сопряжено с определенными формальностями, условиями, ограничениями или санкциями, которые предусмотрены законом и необходимы в демократическом обществе в интересах национальной безопасности, территориальной целостности или общественного порядка, в целях предотвращения беспорядков или преступлений, для охраны здоровья и нравственности, защиты репутации или прав других лиц, предотвращения разглашения информации, полученной конфиденциально, или обеспечения авторитета и беспристрастности правосудия».

Это интерпретируется как установление тройственного критерия, требующего, чтобы любые ограничения были 1) предписаны законом, 2) преследовали законную цель и 3) были необходимыми в демократическом обществе.

Расплывчатые или нечетко сформулированные ограничения или ограничения, оставляющие чрезмерную свободу действий для исполнительной власти, несовместимы с правом на свободу выражения мнения.

Необходимо отметить, что Конституция Кыргызской Республики также устанавливает дополнительные правила и критерии ограничения прав и свобод человека и гражданина, соответствующие системе, принятой в международном

21 См., например, дело «Хрико против Словакии» (Hrico v. Slovakia, 27 July 2004, Application No. 41498/99, para. 40). Текст решения на английском языке доступен на Интернет-сайте Европейского суда по правам человека по адресу: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61930>.

22 Решение Комитета ООН по правам человека по делу “Рафаэль Маркиш ди Мораис против Анголы” (note 31, para. 6.8). Текст решения на английском языке доступен на Интернет-сайте Европейского суда по правам человека по адресу: [http://www.worldcourts.com/hrc/eng/decisions/2005.03.29\\_Marques\\_de\\_Morais\\_v\\_Angola.htm](http://www.worldcourts.com/hrc/eng/decisions/2005.03.29_Marques_de_Morais_v_Angola.htm)

праве и получившие высокую оценку от международного сообщества.<sup>23</sup>

Основной закон Кыргызстана в статье 20 разделяет права человека на две базовые категории. Права первой категории не могут быть ограничены ни при каких обстоятельствах. К ним, в частности, относится свобода мысли и мнения, являющиеся личными и неотчуждаемым правами человека. Свобода выражения мнения и свобода информации могут подвергаться ограничениям при соблюдении следующих императивных требований к вводимым ограничениям:

- 1) Такие ограничения могут устанавливаться исключительно законами в определенных целях: защиты национальной безопасности, общественного порядка, охраны здоровья и нравственности населения, защиты прав и свобод других лиц.
- 2) Вводимые ограничения должны быть соразмерными указанным выше целям.
- 3) Запрещается принятие подзаконных нормативных правовых актов, ограничивающих права и свободы человека и гражданина, а равно принятие законов, умаляющих или отменяющих права.

Кроме того, статья 20 Конституции Кыргызской Республики предусматривает целый ряд гарантий прав и свобод человека и гражданина, которые являются незыблемыми и не подлежат изменению. Важными для свободы слова и выражения мнения гарантиями выступают запреты:

- на уголовное преследование за распространение информации, порочащей честь и достоинство личности;
- на принуждение к выражению мнения, религиозных и иных убеждений или отказу от них.

Уважение и охрана прав третьих лиц, как уже указывалось ранее, является той ценностью, в интересах защиты которой допускается ограничения права на свободу выражения мнения. В ряде рекомендательных решений органов европейского сообщества, а равно в практике Европейского суда по правам человека, сформулированы критерии соразмерности вводимых ограничений защищаемым ценностям. Помимо общих принципов толкования документов в сфере прав человека, приведенных выше, в контексте исследуемых законопроектов релевантными являются позиции, сформулированные в отношении критики должностных лиц (т.н. публичных фигур) и в отношении

<sup>23</sup> См. пункт 18 Заключения по проекту Конституции Кыргызской Республики (Принято Венецианской комиссией на ее 83 пленарном заседании (Венеция, 4 июня 2010 года)), доступно на русском языке в сети Интернет по адресу: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)015-rus](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)015-rus)

допустимости применения уголовно-правовых мер для охраны прав и интересов третьих лиц.

Весьма проработанным и четко выраженным в практике Европейского суда по правам человека является принцип допустимости широкой критики в отношении лиц, чей статус или общественное положение «обрекает» их на более пристальное внимание к своей фигуре. В частности, при формировании своей позиции по целому ряду дел, Суд сформулировал описанный принцип следующим образом:

«пределы допустимой критики в отношении политического деятеля как такового шире, чем в отношении частного лица. В отличие от последнего, первый неизбежно и сознательно оставляет открытым для пристального анализа журналистов и общества в целом каждое свое слово и действие, а следовательно, должен проявлять и большую степень терпимости. Нет сомнения, что репутация политика подлежит защите, даже когда он выступает и не в личном качестве; но в таких случаях противовесом подобной защиты выступает интерес общества к открытой дискуссии по политическим вопросам».<sup>24</sup>

Исходя из позиций, сформулированных выше, можно говорить о том, что уровень защиты против диффамационных форма выражения мнения, у политических и государственных деятелей не может быть, по крайней мере, выше, чем у любых других граждан.

Существенным является и вопрос о декриминализации диффамационных деликтов (посягательств на честь, достоинство и репутацию личности путем распространения порочащих сведений либо утверждений оскорбительного характера), который неоднократно становился предметом рассмотрения и обсуждения международных организаций и их органов.

Комитет по правам человека ООН в пункте 49 Замечания общего порядка № 34 «Статья 19: свобода мнений и их выражения» сформулировал свое видение основных принципов создания законодательства, направленного на противодействие диффамации:

«Необходимо тщательно подходить к разработке законов, касающихся клеветы, обеспечивать их соответствие положениям пункта 3 [статьи 19 МПГПП], а также не допускать, чтобы они на практике использовались для ограничения права на свободное выражение мнений. Во все такие законы, в частности уголовные законы, касающиеся клеветы, следует включить такие формы защиты, которые отвечают интересам правдивости, и они не должны применяться по отношению к таким формам выражения мнений, которые по своей природе не могут быть

<sup>24</sup> См., например, дело «Гринберг против России» (Greenberg v. Russia, 21 July 2005, Application No. 23472/03, para. 25). Текст решения по делу на русском языке доступен на Интернет-сайте по адресу: [http://mmdc.ru/praktika\\_evropejskogo\\_suda/praktika\\_po\\_st10\\_evropejskoj\\_konvencii/eurup\\_practice37/](http://mmdc.ru/praktika_evropejskogo_suda/praktika_po_st10_evropejskoj_konvencii/eurup_practice37/)

проверены. По крайней мере, в отношении комментариев, затрагивающих

интересы общественных деятелей, следует стремиться не допускать установления наказаний за высказывания, которые стали достоянием общественности по ошибке и без злого умысла, или их перевода в разряд незаконных. В любом случае наличие общественного интереса к объекту критики следует рассматривать в качестве элемента защиты. Государствам–участникам

следует принимать меры во избежание чрезмерных мер наказания и штрафов. Там, где это необходимо, государствам–участникам следует вводить умеренные ограничения на требование, в соответствии с которым защита обязана возместить расходы стороны, выигравшей дело. Государствам–участникам следует рассмотреть возможность исключения клеветы из разряда преступлений, но в любом случае уголовное законодательство должно применяться лишь в связи с наиболее серьезными случаями, а лишение свободы ни при каких условиях не должно считаться адекватной мерой наказания. Государство–участник не должно допускать ситуаций, когда после предъявления лицу обвинения в клевете судебное разбирательство в отношении этого лица не проводится скорейшим образом, поскольку такая практика оказывает сковывающее воздействие, неправомерно ограничивающее осуществление таким лицом или другими лицами права на свободное выражение мнения».

Столь же категорическая позиция была занята Парламентской Ассамблеей Совета Европы, которая в ходе своего 34 заседания, которое состоялось 4 октября 2007 года, приняла Резолюцию ПАСЕ 1577 (2007)<sup>1</sup> «На пути к отмене уголовной ответственности за диффамацию».<sup>25</sup> В указанном документе Ассамблея, исходя из того, что законы об ответственности за диффамацию преследуют законную цель по защите репутации и прав граждан, тем не менее, призвала государства–члены Совета Европы крайне осторожно применять эти законы, так как это может серьезно ущемить свободу выражения мнений. По мнению Ассамблеи, в ряде государств преследование за диффамацию сопровождается злоупотреблениями, которые можно рассматривать как попытки властей подавить критику со стороны СМИ. В частности, в качестве примера такой ситуации в Резолюции была приведена Российская Федерация, законодательство которой о клевете на момент принятия Резолюции в значительной степени было сходно с формулировками рассматриваемого проекта Уголовного Кодекса.

В развитие положений Резолюции Ассамблея с большой озабоченностью отметила, что во многих государствах–членах за диффамацию законодательно предусмотрено наказание в виде тюремного заключения, и что некоторые из них, до сих пор применяют его на практике. По мнению Ассамблеи, каждый случай тюремного заключения работников СМИ является недопустимым препятствием в реализации свободы выражения мнений и приводит к тому, что общество в 25 Текст документа на английском языке доступен на Интернет-сайте ПАСЕ по адресу: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17588&lang=en>

целом страдает от того, что посредством такого давления журналистов заставляют молчать.

В качестве вывода Резолюция содержит следующее положение:

«13. Поэтому Ассамблея полагает, что наказание в виде тюремного заключения за

диффамацию должно быть незамедлительно отменено».

Данная общая рекомендация нашла развитие в рекомендациях странам-участникам Совета Европы осуществить ряд мер правотворческого характера, а равно направленных на корректировку правоприменительной практики, в частности:

- незамедлительно отменить наказание за диффамацию в виде лишения свободы;
- дать более точное определение диффамации в своем законодательстве во избежание произвольного применения закона и для обеспечения эффективной гражданско-правовой защиты человеческого достоинства лиц, затронутых диффамацией;
- исключить из своего законодательства о диффамации нормы, обеспечивающие усиленную защиту общественных деятелей;
- обеспечить законодательно, чтобы лица, преследуемые за диффамацию, располагали надлежащими средствами для своей защиты, в частности, средствами, позволяющими подтвердить достоверность своих утверждений и их соответствия интересам общества.

## **2. АНАЛИЗ НОРМ ЗАКОНОДАТЕЛЬСТВА КЫРГЫЗСКОЙ РЕСПУБЛИКИ О СМИ И СВОБОДЕ ВЫРАЖЕНИЯ МНЕНИЯ, УГОЛОВНОГО И УГОЛОВНО-ПРОЦЕССУАЛЬНОГО ЗАКОНОДАТЕЛЬСТВА В КОНТЕКСТЕ ПРЕДЛАГАЕМОГО РЕГУЛИРОВАНИЯ**

Национальное законодательство Кыргызстана включает действующие нормативные правовые акты, формирующие сферу уголовного права и уголовного процесса. Система нормативно-правовых актов, гарантирующих свободу слова и регулирующих деятельность СМИ, является сложившейся и действует.

Конституционно-правовое регулирование, как уже было указано выше, устанавливает те критерии для поиска баланса охраняемых ценностей, которые должны приниматься законодателями во внимание в рамках их деятельности.

Общие гарантии права на свободу выражения мнения, установленные Конституцией Кыргызской Республики, находят отражение в законодательстве о средствах массовой информации. Так, преамбула Закона Кыргызской Республики

от 02 июля 1992 года «О средствах массовой информации»<sup>26</sup> указывает, что этот нормативный акт направлен на «на свободное функционирование средств массовой информации» и «определяет общие правовые, экономические

и социальные основы организации *сообщений* через средства массовой информации». <sup>27</sup> Статья 1 Закона запрещает цензуру, статья 20 гарантирует право журналиста собирать и распространять информацию.

При этом, предусматривая определенный объем прав, Закон формирует существенный объем обязанностей и устанавливает ответственность за их нарушение. Так, в соответствии с уже приведенной выше статьей 20, журналист обязан проверять достоверность информации. Статья 17 гарантирует право гражданина или организации требовать от органа средства массовой информации опровержения обнародованных сведений, не соответствующих действительности или порочащих их честь и достоинство. В случае отказа СМИ в реализации указанного права гражданина (организации), он вправе обратиться в суд.

Статья 8 Закона «О средствах массовой информации» предусматривающая возможность приостановления и прекращения выпуска средства массовой информации, указывает, что соответствующие меры ответственности могут быть применены к СМИ по решению суда за нарушение соответствующего закона. При этом законом не конкретизируется, за какие именно нарушения могут последовать санкции.

При этом статья 25 Закона, содержащаяся в главе, посвященной ответственности, устанавливает перечень информации, не подлежащей распространению в публичном информационном поле. В соответствии с приведенным законоположением, в СМИ, среди прочего, не допускаются: посягательство на честь и достоинство личности; и **обнародование заведомо ложной информации**. Важно подчеркнуть и то, что за нарушение норм Закона могут быть привлечены к ответственности как учредитель средства массовой информации и орган средства массовой информации (в лице редактора), так и лицо, представившее информационный материал.

Сходные принципы установлены в Законе Кыргызской Республики от 2 июня 2008 года «О телевидении и радиовещании».<sup>28</sup> Регулируя более подробно условия и порядок реализации прав на свободу деятельности телевизионных и радиовещательных организаций обозначенный закон при разрешении вопросов

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<sup>26</sup> Закон РК от 2 июля 1992 года № 938-XII «О средствах массовой информации». Текст закона на русском языке доступен в сети Интернет по адресу: <http://cbd.minjust.gov.kg/act/properties/ru-ru/819/30>.

<sup>27</sup> Здесь и далее выделенные курсивом положения законодательства отмечены экспертом.

<sup>28</sup> Закон КР от 2 июня 2008 года № 106 «О телевидении и радиовещании». Текст закона на русском языке доступен в сети Интернет по адресу: <http://cbd.minjust.gov.kg/act/view/ru-ru/202317/40?mode=tekst>

обязанностей и ответственности телерадиовещательных СМИ расширяет число оснований, по которым к ним может быть применена ответственность.

Таким образом, необходимо констатировать, что массово-информационное законодательство Кыргызстана содержит необходимые механизмы, обеспечивающие предупреждение распространения заведомо ложно информации, и в частности, информации, порочащей честь, достоинство и деловую репутацию.

Действующий Уголовный Кодекс Кыргызской Республики<sup>29</sup> содержит такой состав преступления, как заведомо ложный донос, формулируя состав преступления следующим образом:

«Статья 329. Заведомо ложный донос (1) Заведомо ложный донос о совершении преступления - наказывается привлечением к общественным работам на срок от восьмидесяти до ста шестидесяти часов или публичным извинением с возмещением ущерба, или штрафом в размере от пятисот до одной тысячи расчетных показателей либо исправительными работами на срок до одного года.

(2) То же деяние, совершенное с обвинением в совершении тяжкого или особо тяжкого преступления либо с искусственным созданием доказательств обвинения, - наказывается штрафом в размере до двух тысяч расчетных показателей или исправительными работами на срок до двух лет либо ограничением свободы на срок до пяти лет, либо лишением свободы до двух лет.»

Следует подчеркнуть, что указанное преступление рассматривается именно как посягающее на осуществление правосудия, о чем свидетельствует нахождение статьи 329 УК в соответствующей главе Уголовного Кодекса.

При анализе действующего уголовного законодательства Кыргызской Республики важно отметить, что из него было ранее изъято положение, устанавливающее уголовную ответственность за клевету.<sup>30</sup> Статья 127 Уголовного Кодекса была отменена в процессе приведения кодекса в соответствие со статьей 20 Конституции Кыргызской Республики, которая, как уже указывалось, устанавливает в качестве базового принципа неизменность запрета «на уголовное преследование за распространение информации, порочащей честь и достоинство личности».

При этом, действующий Уголовный Кодекс сохранил уголовную ответственность за оскорбление (статья 128), предусмотрев следующие составы преступления:

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29 Уголовный Кодекс Кыргызской Республики от 01 октября 1997 года № 68. Текст документа на русском языке доступен в сети Интернет по адресу: <http://cbd.minjust.gov.kg/act/view/ru-ru/568>

30 Закон Кыргызской Республики от 11 июля 2011 года № 89 «О внесении изменений в некоторые законодательные акты Кыргызской Республики». Текст документа на русском языке доступен в сети Интернет по адресу: <http://cbd.minjust.gov.kg/act/view/ru-ru/203332?cl=ru-ru>

«(1) Оскорбление, то есть умышленное унижение чести и достоинства другого лица, выраженное в неприличной форме, - наказывается штрафом в размере от пятидесяти до ста расчетных показателей.

(2) Оскорбление в публичном выступлении, публично выставленном

произведении или средствах массовой информации, - наказывается штрафом в размере от ста до трехсот расчетных показателей.»

В этой связи также немаловажно упомянуть следующие факты: в марте 2014 года Кыргызская Республика предоставила комментарии по вопросам, заданным Комитетом по правам человека в рамках рассмотрения доклада страны, предоставленного в порядке, предусмотренном статьей 40 Международного пакта о гражданских и политических правах. В составе вопросов Комитета, в частности, было пожелание предоставить пояснения в отношении того, насколько принятие статьи 128 Уголовного Кодекса совместимо с принципом свободы выражения мнения. В комментариях Кыргызстана не содержалось позиции по обозначенному вопросу. В итоговых замечаниях Комитета указывалось на существенную озабоченность в связи с преследованием журналистов и иных лиц, выражающих свое мнение, в особенности, критикующих правительство и должностных лиц в связи с событиями июня 2010 года.<sup>31</sup>

При анализе законодательства Кыргызской Республики следует также отметить, что действующий Уголовно-процессуальный кодекс в статье 150 предусматривает следующие поводы для возбуждения уголовного дела:

- 1) заявления граждан;
- 2) заявление о повинной;
- 3) **сообщение** должностного лица организации;
- 4) **сообщение** в средствах массовой информации;
- 5) непосредственное обнаружение органом дознания, следователем, прокурором признаков преступления.

Как представляется, исходя из приведенных выше положений законодательства, следует, что при толковании статьи 329 УК Кыргызской Республики составом преступления охватываются любые заведомо ложные по содержанию формы сообщения информации о преступлении, будь то заявление гражданина, сообщение должностного лица и информационное сообщение СМИ. Все эти формы неправомерного сообщения ложной информации определяются термином «донос».

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<sup>31</sup> Информация о докладе Кыргызстана о выполнении положений Международного пакта о гражданских и политических правах доступна в сети Интернет по адресу: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=625&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=625&Lang=en)

### 3. АНАЛИЗ ПРОЕКТА УГОЛОВНОГО КОДЕКСА КЫРГЫЗСКОЙ РЕСПУБЛИКИ

Анализируемый законопроект<sup>32</sup> предлагает изложить в следующей редакции статью 329 Уголовного Кодекса Кыргызской Республики:

«Статья 329. Заведомо ложное сообщение о совершении преступления

(1) Заведомо ложное сообщение о совершении преступления, - наказывается штрафом в размере от пятисот до одной тысячи расчетных показателей либо лишением свободы на срок до одного года.

(2) То же деяние:

- 1) совершенное с обвинением в совершении тяжкого или особо тяжкого преступления;
- 2) соединенное с искусственным созданием доказательств обвинения;
- 3) совершенное из корыстных побуждений;
- 4) совершенные в интересах организованной группы или преступного сообщества (преступной организации), – наказывается штрафом в размере от одной до двух тысяч расчетных показателей или лишением свободы на срок от одного до трех лет.»

Различия проекта и действующего закона кроются в разном формулировании состава преступлений, и в определении санкций за указанные правонарушения. Первое существенное отличие состоит в использовании вместо словосочетания «заведомо ложный донос о совершении преступления», конструкции «заведомо ложное сообщение о совершении преступления». Также предлагаемый на рассмотрение законопроект ужесточает санкции, вводя в качестве меры ответственности лишение свободы сроком до одного года даже за неквалифицированный состав преступления и увеличивая максимальную санкцию за совершение преступления с двух до трех лет лишения свободы.

Как представляется, предлагаемые изменения дефиниции состава преступления неизбежно приведут к нарушению принципа формальной определенности и возможному применению положений статьи 329 дискриминационно по отношению к средствам массовой информации.

Во-первых, такой вывод может быть сделан при непосредственном анализе терминологии законопроекта. Слово «сообщение», как уже было указано при

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32 Цитируется текст из файла «Законопроект на официальном языке-2-3 чтение», предлагаемого к загрузке на сайте Парламента Кыргызской Республики в сети Интернет по адресу: <http://www.kenesh.kg/lawprojects/lps.aspx?view=projectinfo&id=103335>

анализе положений законодательства о СМИ и процессуального законодательства Кыргызской Республики относится к информации, распространяемой средствами массовой информации (в случае процессуального законодательства также должностными лицами организаций). Граждане в понимании процессуального законодательства не сообщают, а заявляют о преступлениях, то есть не должны подпадать под действие статьи 329 Уголовного Кодекса, даже в том случае, если их заявление будет намеренно и заведомо ложным. Исходя из логики законопроекта, иное толкование будет означать либо возникновение коллизии между Уголовно-процессуальным кодексом и Уголовным Кодексом, разрешить которую с использованием механизмов, предусмотренных статьей 32 Закона Кыргызской Республики «О нормативных правовых актах»,<sup>33</sup> невозможно, либо допущение существования непоследовательной юридической терминологии, что означает нарушение частей 1, 3 статьи 11 обозначенного закона. Как следствие, предложение заменить термин «донос» на «сообщение», представляется находящимся в противоречии с формальными требованиями законодательства Кыргызской Республики, а равно с международными стандартами, в соответствии с которыми, как указывалось ранее, расплывчатые или нечетко сформулированные ограничения или ограничения, оставляющие чрезмерную свободу действий для исполнительной власти, несовместимы с правом на свободу выражения мнения.<sup>34</sup>

Во-вторых, наряду с несоответствием формальной логике, законопроект не только терминологически, но и концептуально нацелен на то, чтобы воздействовать прежде всего на средства массовой информации. Это, в частности, следует из смысла справки-обоснования к законопроекту, в которой указывается, что его внесение обусловлено действием такого фактора, как использование в обществе публичных обвинений лиц в совершении преступлений, в том числе в политической борьбе. Очевидно, что политическая борьба в публичном поле происходит, прежде всего, с задействованием медийного ресурса.

В обосновании законопроекта также прямо указано, что преступление рассматривается как посягающее не только на нормальную деятельность правоохранительных органов, но и на права и законные интересы лиц, ложно обвиненных в совершении преступлений. При этом в изначальной редакции особенно выделялись такие лица, обвинения которых в коррупционных нарушениях могли существенно затронуть их интересы. Между тем, представляется, что такое толкование нормы, осуществленное вслед за законотворческим органом правоприменителем, приведет к подмене смысла закона. По сути, вместо цели защиты беспристрастности и независимости правосудия, применение уголовного наказания станет инструментом защиты репутации граждан, организаций и должностных лиц. Тем самым, законодатель,

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33 Закон КР от 20 июля 2009 года № 241 «О нормативных правовых актах Кыргызской Республики». Текст документа на русском языке доступен в сети Интернет по адресу: <http://cbd.minjust.gov.kg/act/view/ru-ru/202591/90?mode=tekst>

34 См. сноску 23.

по сути, повторно криминализирует клевету, пересматривая решение, принятое в процессе приведения законодательства в соответствие с Конституцией, принятой в 2010 году. Также существенным является то обстоятельство, что законодатель приоритизирует защиту должностных лиц от обвинений в коррупции, что может быть истолковано как несоблюдение международных стандартов регулирования статуса публичной фигуры.

С учетом приведенного понимания сути предлагаемого регулирования ведение уголовной ответственности за распространение информации средствами массовой информации не может быть признано соразмерным цели защиты законных прав и интересов третьих лиц. Это следует как из требований международно-правовых стандартов в отношении декриминализации диффамации, приведенных выше, так и из фундаментального принципа, заложенного в статье 20 Конституции Кыргызской Республики, состоящего в запрете уголовного преследования за распространение информации, порочащей честь и достоинство личности.

Важно подчеркнуть, что как указывалось выше, действующее законодательство о СМИ Кыргызской Республики содержит достаточные рычаги для адекватного воздействия на прессу, распространяющую ложные сведения. Санкцией для средства массовой информации за такое нарушение может стать полное прекращение деятельности, что само по себе является очень существенным и болезненным последствием нарушения. Принятие же предлагаемого законопроекта приведет к удвоению ответственности за совершение одного и того же деяния. Это, в свою очередь, означает нарушение базового юридического принципа справедливости, составляющего одну из основ законодательства Кыргызской Республики, подразумевающего, что лицо не может быть привлечено к публично-правовой ответственности дважды за совершение одного и того же деяния.<sup>35</sup>

Нужно отметить и то обстоятельство, что в принципе применение к СМИ статьи 329 Уголовного Кодекса Кыргызской Республики предполагает возможность дискриминации в отношении средств массовой информации. Ложный «донос» или «сообщение» от СМИ может быть признано таковым только сквозь призму применения статьи 150 УПК Кыргызской Республики, которая устанавливает в качестве повода для возбуждения уголовного дела, сообщение информации медиа организацией. При этом процессуальное законодательство, а равно какое-либо иное законодательство не содержит позитивной обязанности работников следственных органов отслеживать сообщения СМИ о преступлениях и реагировать на них. То есть, в отличие от гражданина, заявление которого не было рассмотрено, средство массовой информации не имеет права требовать привлечения следователя к уголовной ответственности за халатность в случае распространения СМИ информации, на которую правоохранительные органы

<sup>35</sup> См., в частности ст. 3 Кодекса Кыргызской Республики об административной ответственности от 4 августа 1998 года № 114, ст. 3 Уголовного Кодекса Кыргызской Республики.

не прореагировали. Таким образом, существование возможности привлечения СМИ за распространение заведомо ложной информации, при условии, что отслеживание и реагирование на сообщения СМИ не является обязательным, представляется дискриминационным.

Исходя из приведенных аргументов, представляется необходимым доработать как положения законопроекта, так и действующего закона с тем, чтобы обеспечить изъятие сообщений средств массовой информации из сферы действия статьи 329 Уголовного Кодекса Кыргызской Республики.

В рамках общего анализа важно также отметить, что логика законопроекта в части введения такого квалифицированного состава преступления как заведомо ложное сообщение о совершении тяжкого или особо тяжкого преступления, является непонятной и может рассматриваться в определенных случаях как дискриминационная. Как указывалось ранее, основным и единственным объектом преступного посягательства является полное и независимое осуществление правосудия. Действия преступника направлены на дестабилизацию работы правоохранительных органов и суда, в том числе на направление их по ложному следу, отвлечение от настоящих подозреваемых, попытка направить действие машины государственного принуждения против невиновного лица. Однако, как представляется, правоохранительные органы при расследовании преступлений не вправе каким-то образом ранжировать значимость своей работы и объем предпринимаемых усилий по раскрытию преступления в зависимости от тяжести совершенного (или предположительно совершенного) деяния. Лицо, осуществляющее уголовное следствие, обязано в равной степени прилагать усилия в отношении раскрытия как самого незначительного, так и самого тяжкого преступления. Иное бы означало нарушение фундаментального конституционного принципа равенства всех перед законом и судом, сформулированного в Конституции Кыргызской Республики и отраженного в отраслевом законодательстве (ст. 3 Уголовного Кодекса).

Исходя из вышеизложенного, представляется, что оснований для выделения квалифицированного состава преступления заведомо ложное сообщение о совершении тяжкого или особо тяжкого преступления, нет, соответствующее положение должно быть изъято из Уголовного Кодекса.

***Рекомендации:***

1. Отказаться от принятия законопроекта в редакции, одобренной в третьем чтении парламентом Кыргызской Республики, как содержащего потенциал ограничения свободы выражения мнения, противоречащего конституционным принципам и действующему законодательству Кыргызской Республики.

2. Выполнить доработку законопроекта с тем, чтобы обеспечить защиту с одной стороны независимого и полного осуществления правосудия, а с другой стороны гарантировать неприкосновенность свободы выражения мнения. Как представляется, распространение СМИ информации не должно в принципе подпадать под действие статьи 329 Уголовного Кодекса Кыргызской Республики. Иное будет означать применение двойной ответственности за одно и то же деяние.
3. В рамках доработки проекта отказаться от введения квалифицированного состава преступления, предусмотренного статьей 329 Уголовного Кодекса Кыргызской Республики, состоящего в заведомо ложном сообщении о совершении тяжкого или особо тяжкого преступления.

**LEGAL ANALYSIS OF THE DRAFT LAW OF THE REPUBLIC OF LITHUANIA AMENDING THE TITLE OF CHAPTER XXII AND ARTICLE 154 AND REPEALING ARTICLES 155, 232 AND 290 OF THE CRIMINAL CODE AND THE DRAFT LAW OF THE REPUBLIC OF LITHUANIA AMENDING ARTICLE 187 OF THE CODE OF ADMINISTRATIVE OFFENCES**

**Commissioned by the Office of the OSCE Representative on Freedom of the Media from Boyko Boev, Senior Legal Officer, ARTICLE 19 Global Campaign for Free Expression**

**January 2014**

**Executive Summary**

This Comment analyzes the Draft Law of the Republic of Lithuania Amending the Title of Chapter XXII and Article 154 and Repealing Articles 155, 232 and 290 of the Criminal Code and the Draft Law of the Republic of Lithuania Amending Article 187 of the Code of Administrative Offences. The proposed amendments relate to libel, insult, and contempt of court. The draft law was prepared and submitted to the Lithuanian Seimas (Parliament) by its member Loreta Graužinienė.

The Defamation Law can be lauded for a number of changes which will have a positive impact on freedom of expression and media freedom in Lithuania. These include:

- The draft criminal law decriminalizes insult, including acts degrading the honour of judges and civil officials;
- The draft criminal law decriminalizes the crime of libellous accusation of commission of a serious or grave crime or in the media or in a publication;
- The draft criminal law restricts the scope of criminal libel by abolishing liability for words that arouse contempt for this person or humiliate him or undermine trust;
- The draft criminal law abolishes imprisonment for libel.

At the same time some aspects of the Defamation Law are not in favour of freedom of expression; these include:

- The proposed criminal defamation reform does not provide for full decriminalization of libel;
- The retention of the power of the public prosecutor to initiate criminal proceedings for libel;
- The retention of the penalty of administrative arrest for insulting public officials and

for bailiffs;

•The protection of public officials against insult is not explicitly restricted to the performance of their duties.

### **Summary of recommendations**

1. Libel should be fully decriminalized;
2. If libel is retained, prosecutors should be stripped of their power to launch criminal cases for libel;
3. The penalty of administrative arrest for insulting public officials should be removed;
4. The protection of public officials against insult should be explicitly restricted to the performance of their duties.

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## Introduction

The present comment was prepared by Boyko Boev, Senior Legal Officer at ARTICLE 19,<sup>1</sup> at the request of the Office of the OSCE Representative on Freedom of the Media.

This Comment analyzes the Draft Law of the Republic of Lithuania Amending the Title of Chapter XXII and Article 154 and Repealing Articles 155, 232 and 290 of the Criminal Code (“the CC”) and the Draft Law of the Republic of Lithuania Amending Article 187 of the Code of Administrative Offences (“the CAO”). The proposed amendments relate to criminal defamation and administrative liability for defamation. The draft law was prepared and submitted to the Lithuanian Seimas (Parliament) by its member Loreta Graužinienė.

The structure of the comment is guided by tasks formulated by the Office of the OSCE Representative on Freedom of the Media. These include to comment on the current version of the draft law by comparing provisions against international media standards and OSCE commitments; to indicate provisions which are incompatible with the principles of freedom of expression and media; and to provide recommendation on how to bring the legislation in line with the above- mentioned standards.

The Comment first outlines the international standards with respect to the right to freedom of expression and libel and insult. These standards are defined in international human rights treaties and in other international instruments authored by the United Nations, the OSCE, and the Council of Europe.

Part II includes an overview of the proposed defamation reform. In Part III the amendments to the CC and CAO are analyzed for their compliance with international freedom of expression standards. The Comment lists the positive aspects of the draft laws and elaborates on the negative ones, with a view of formulating recommendations for the review.

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1 Established in 1988, ARTICLE 19 advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. It has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. ARTICLE 19’s Defining Defamation: Principles on Freedom of Expression and Protection of Reputations (London: ARTICLE 19, 2000) have attained significant international endorsement, including that of the three official mandates on freedom of expression, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (see their Joint Declaration of 30 November 2000)

## **Part I. International Standards relating to the Right to Freedom of Expression and Defamation**

The right to freedom of expression

Article 10 of the European Convention on Human Rights provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

In the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE the OSCE participating Sstates reaffirmed that:

[E]veryone will have the right to freedom of expression.... 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. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.

### **Restrictions on the right to freedom of expression**

The right to freedom of expression is not absolute. Both international law and most national constitutions recognize that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 10(2) of the ECHR lays down the benchmark, stating:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

This article envisages restrictions on freedom of expression but only where they meet the following a strict three-part test:

- First, the interference must be provided for by law. The European Court has stated that this requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”
- Second, the interference must pursue a legitimate aim. The lists of aims at **Article 10(2)** of the ECHR and Article 19(3) of the ICCPR are exclusive in the sense that no other aims are considered to be legitimate grounds for restricting freedom of expression. The listed aims include the protection of national security, prevention of disorder and the rights of others.
- Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.<sup>5</sup>

### **Criminal defamation under international law**

There is an international consensus that criminal defamation is unnecessary for protection of reputation and must be abolished in view of its chilling effect on free expression. In General Comment No. 34 concerning Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee stated:

States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.<sup>6</sup>

The three special international mandates for promoting freedom of expression – the UN Special Rapporteur, the OSCE Representative on Freedom of the Media and the

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2 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990.

3 *Ibid.*, para. 9.1.

4 *The Sunday Times v. UK*, Application No. 6538/7426 Judgment of April 1979, para. 49.

5 *Lingens v. Austria*, Application No. 9815/82, Judgment of 8 July 1986, paras. 39-40.

6 General Comment No. 34, adopted on 29 June 2011, CCPR/C/GC/34, available online at <http://goo.gl/CyYeBo>.

OAS Special Rapporteur on Freedom of Expression – have met each year since 1999 and each year they issue a joint Declaration addressing various freedom of expression issues. In their Joint Declarations of November 1999, and again in December 2002, they called on States to repeal their criminal defamation laws. The 2002 statement read:

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.<sup>7</sup>

Along the same lines, the Joint Declaration of 2010 reiterated that:

Laws making it a crime to defame, insult, slander or libel someone or something, represent threat to freedom of expression.<sup>8</sup>

The Parliamentary Assembly of the OSCE has repeatedly called on participating States to “repeal laws which provide criminal penalties for the defamation of public figures, or which penalise the defamation of the State, State organs or public officials as such”.<sup>9</sup>

In 2007 the Parliamentary Assembly of Council of Europe invited states to repeal or amend criminal defamation provisions.<sup>10</sup> The Council of Europe Commissioner for Human Rights also stated that defamation should be decriminalized and that unreasonably high awards should be avoided in civil cases relating to the media.<sup>11</sup>

The European Court, however, has never ruled out criminal defamation, and there are a small number of cases in which it has allowed criminal defamation convictions, but it clearly recognizes that there are serious problems with criminal defamation. It has frequently reiterated the following statement, including in defamation cases:

The dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means

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7 Joint Declaration of 10 December 2002, available online at <http://www.osce.org/fom/39838>.

8 Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade, available online at <http://www.osce.org/fom/41439>

9 Warsaw Declaration, 1997; Bucharest Declaration, 2000; Paris Declaration, 2001.

10 Recommendation 1814 (2007) and Resolution 1577 (2007) of the Parliamentary Assembly “Towards decriminalisation of defamation”, available online at <http://goo.gl/2UCvk2>. See also Recommendations 1506(2001) and 1589 (2003) of the Parliamentary Assembly.

11 T Hammarberg, Human Rights and a changing media landscape, Council of Europe, 2011.

are available for replying to the unjustified attacks and criticisms of its adversaries or the media.<sup>12</sup>

## **Part II. Overview of the Proposed Defamation Reform in Lithuania**

The proposed reform of the defamation legislation in Lithuania is triggered by two draft laws, submitted to the Lithuanian Parliament (Seimas) by its member Loreta Graužinienė.

The draft laws envisage amendments to the Criminal Code (“the CC”) and Code of Administrative Offences (“the CAO”) relating to liability for libel, insult, and contempt of court.

### **Current regulation of libel and insult in the CC and the CAO**

At present libel and insult are criminal offences in Lithuania.<sup>13</sup> Both are punishable by custodial sentences. The crimes are part of Chapter XXII of the CC relating to crimes and misdemeanours against a person’s dignity and honour.<sup>14</sup>

According to Article 154 of the CC libel is defined as an act of spreading false information about another person that could arouse contempt for this person or humiliate him or undermine trust in him. The penalties for libel are a fine<sup>15</sup>, arrest<sup>16</sup> or imprisonment for a term of up to one year.

The offence of libel is capable of being aggravated. The aggravated offence concerns accusations of commissioning of a serious or grave crime or in the media or in a publication. The sanctions for the crime are of same type as ordinary libel, however in view of the aggravated nature, imprisonment can be up to two years.<sup>17</sup>

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12 Castells v. Spain, op.cit., para 46.

13 Criminal Code of the Republic of Lithuania, <http://goo.gl/vU4e8B>

14 Crimes and misdemeanours are both criminal offences, however crimes are punishable with custodial penalties (Article 11 of the CC), whereas misdemeanours with non-custodial with the exception of arrest. (Article 12 of the CC).

15 According to Article 47 of the CC fines are calculated in the amounts of minimum standard of living (MSL). The amounts of a fines for the crimes of libel and insult can be up to 100 MSLs.

16 According to Article 49 of the CC, arrest can be imposed for a period from 15 up to 90 days for a crime and from 10 to up to 45 days for a misdemeanour. It is served in a short-term detention facility. If arrest is imposed for a period of 45 days or less, a court may order to serve it on days of rest.

17Article 154 (2).

The offence of insult can be either a crime or a misdemeanour.<sup>18</sup> As a crime, insult is a public humiliation in an abusive manner by an action, word of mouth or in writing. The penalties are fine, restriction of liberty<sup>19</sup>, arrest or imprisonment for a term of up to one year. If the insult is done in a manner other than publicly, it is a misdemeanour and can be punished by community service or by a fine<sup>20</sup> or by arrest.

Criminal responsibility for both libel and insult is sought following a complaint by the victim, a statement by his/her representative or a prosecutor's request.<sup>21</sup>

The CC defines additional crimes relating to specific cases of insult. Article 232 sets out that everyone who publicly in an abusive manner by an action, word of mouth or in writing, humiliates a court or a judge executing justice by reason of their activities is liable for contempt of court. The crime can be punished by a fine or arrest or imprisonment for a term of up to two years.

Article 290 incriminates the insulting of civil servants "or a person performing the functions of public administration". The penalties for the crime can be a fine or arrest or imprisonment for a term of up to two years.

Besides criminal liability, the Lithuanian legislation provides for administrative liability for certain forms of insult. Article 186<sup>1</sup> of the COA sets out that a person who interferes with court in delivering justice, and undermines the authority of court or judge is subject to a fine in the amount from five hundred up to one thousand litas. Article 186<sup>2</sup> of COA protects bailiffs from insults. Article 187 (1) of COA provides protection against insult to police officers, officers of the Special Investigations Service, the State Border Guard Service, the Public Security Service, the Financial Crime Investigation Service, the VIP Protection Department, the State Security Department and of the State Fire and Rescue Service. The penalty for this administrative offence is a fine in the amount of three hundred to five hundred thousand or administrative arrest for fifteen to thirty days.

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<sup>18</sup> See *ibid.* 12.

<sup>19</sup> According to Article 48 of the CC restriction of liberty may be imposed for a period from three months up to two years. The persons sentenced to restriction of liberty are under a specific obligation. The obligations can be: 1) not to change their place of residence without giving a notice to a court or the institution executing the penalty; 2) to comply with mandatory and prohibitive injunctions of the court; 3) to give an account, in accordance with the established procedure, of compliance with the prohibitive and mandatory injunctions.

<sup>20</sup> When an insult is a misdemeanour the fine is up to the amount of 50 MSLs (Article 47 (3) of the CC).

<sup>21</sup> Article 154 (3) and Article 155 (3) of the CC.

## **Proposed changes to the CC and CAO**

The proposed penal reform envisages the repeal of Articles 155, 232 and 290 of the CC. This means abolishment of criminal liability for insult, contempt of court and for insulting of civil servants.

It is also proposed to limit the liability for libel only to cases of false accusations of commissioning of a crime. The aggravated crime of libel under Article 154 (2) concerning the accusations of a serious or grave crime or in the media is abolished. The reform abolishes prison penalties for libel. The criminal liability for libel continue to be sought following a complaint filed by the victim or a statement by his authorized representative or at the prosecutor's request.

The proposed change to the COA includes an expansion of the scope of Article 187 (2). The new version of the Article adds civil servants or a person performing the functions of public administration to the list of officials which the law protects against insult. The penalties for the administrative offence are retained.

## **Reasons for the Reform**

The Explanatory note to the draft laws points out that the proposed legislation aims at enhancing the right to freedom of expression and the implementing the idea of criminal liability as a last resort (*ultima ratio*). According to this legal doctrine recognized by in both in the jurisprudence of the Constitutional Court and the Supreme Court of Lithuania, the criminal responsibility should be reserved for the most blameworthy acts as well as when the intended result cannot be achieved by less intrusive or costly means.<sup>22</sup> The authors of the draft law reason that the criminal law provisions which are proposed to be repealed are not necessary because they overlap with provisions of the Code of Administrative Offences.

The Explanatory note also points out that Article 186<sup>1</sup> of the COA and Article 232 of the CC as well as Article 187 of the CAO and Article 290 serve the same purpose and taking note of the idea of criminal liability of as a last resort concludes that it is "expedient" to limit liability for such acts to a single area of public law.

The expansion of the scope of persons to which Article 187 (2) of the COA offers protection against insult is explained with the abolishment of Article 290 of the CC relating to insult of civil servants and persons performing the functions of public administration.

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<sup>22</sup> Nils Jareborg, *Criminalization as Last Resort (Ultima Ratio)*, 2 OHIO ST.J.CRIM. L. 521, 523 (2004)

The Explanatory note points out that the reform is expected to lead to a decrease of the workload of criminal courts and to recourse to in administrative courts where the proceedings are speedier and more cost effective. As a result the implementation of the new legislation will allow to save budget funds.

### **Part III. Analysis of the Draft Legislation**

#### **A. Positive aspects**

The Draft Defamation Legislation can be lauded for the following changes which will have a positive impact on freedom of expression and media freedom in Lithuania:

- The draft criminal law decriminalizes insult, including acts degrading the honour of judges and civil officials: The decision to decriminalize insult is in line with the recommendations of Council of Europe and of the OSCE Representative on Freedom of the Media.<sup>23</sup> By decriminalising insult Lithuania follows the current “trend towards abolition of sentences restricting freedom of expression and a lightening of the sentences in general”.<sup>24</sup> At present 14 OSCE participating States have partially or fully decriminalized defamation: Armenia, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Ireland, Kyrgyzstan, Moldova, Montenegro, Romania, Tajikistan, Ukraine, the United Kingdom and the United States. Besides there is no need to seek criminal liability for this crime in view of the opportunities for protection against insult provided by the COA and civil laws. Moreover the proceedings before administrative courts are speedier and more cost effective;
- The draft criminal law decriminalizes the crime of libellous accusation of commissioning of a serious or grave crime or in the media or in a publication: This change will have a positive impact on media freedom and public debate because journalists, the media and those interviewed by the media will no longer carry a greater responsibility for their expression;
- The draft criminal law restricts the scope of criminal libel by removing liability for words that arouse contempt for this person or humiliate him or undermine trust: According to the new Article 154 (1) the liability is retained only for libellous accusation of commission of a crime. The proposal for removal of the most of the elements of the current crime can be praised as a step toward full decriminalization of libel. In practice the retention of only one type of libel removes many of the existing possibilities for seeking criminal liability in defamation cases.

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<sup>23</sup> See international standards in Part I above.

<sup>24</sup> Study on the alignment of laws and practices concerning defamation with the relevant case-law of the European Court of Human Rights on freedom of expression, particularly with regard to the principle of proportionality, Council of Europe, Information Society Department, CDMSI(2012)Misc 11Rev.

- The draft criminal law abolishes imprisonment for libel: This change is in line with the univocal consensus within the international human right community that imprisonment is disproportionate sanction for defamation and violates the right to freedom of expression. The UN Human Rights Committee has repeatedly expressed concern, in the context of its consideration of regular country reports, about the possibility of custodial sanctions for defamation.<sup>25</sup> The UN Special Rapporteurs on the Right to Freedom of Opinion and Expression repeatedly stated in their annual reports that “penal sanctions, in particular imprisonment, should never be applied.”<sup>26</sup> The Parliamentary Assembly of Council of Europe also invited states to ensure that in the future defamatory acts will no longer be punishable by imprisonment.<sup>27</sup>

### B.Negative Aspects

The following provisions of the proposed defamation legislation are problematic from the freedom of expression point of view:

- The proposed criminal defamation reform does not provide for full decriminalization of libel: The retention of criminal liability for libellous accusation of commissioning of a crime is not necessary because victims have civil law means of addressing unwarranted attacks on reputation. The facts that many states have no longer have criminal defamation demonstrates that reputation can be protected without recourse to criminal law. Moreover, only the full decriminalisation of libel can implement the idea of criminal liability as a last resort.

Finally, the use of criminal laws for defamation has always has a chilling effect on freedom of expression.<sup>28</sup> It is recommended that full decriminalisation of libel be proposed.

- The retention of the power of the public prosecutor to initiate criminal proceedings for libel: Libel affects personal reputation and as such the liability for it should be sought only after a complaint by the victim or his representative.

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25 For example in relation to Iceland and Jordan (1994), Tunisia and Morocco (1995), Mauritius (1996), Iraq (1997), Zimbabwe (1998), and Cameroon, Mexico, Morocco, Norway and Romania (1999), Italy (2006) and Former Yugoslav Republic of Macedonia (2008).

26 Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 28, available online at <http://goo.gl/h8MqGY>.

27 See *ibid.* 10.

28 The European Court has repeatedly criticised the imposition of criminal sanctions for defamation holding that a sanction of criminal nature has in itself a chilling effect. See *Cumpănă and Mazăre v. Romania*, Application No. 33348/96 Judgment of 17 December 2004, para. 114; *Belpietro v. Italy*, *ibid.* Error! Bookmark not defined., para. 61

There is no justification for the spending of public money for the prosecution of defamation cases. Besides there is always a danger that prosecutors' powers to launch criminal cases may be used for protection of public order or for stifling debates on public bodies. In view of this, ARTICLE 19's Defining Defamation: Principles on Freedom of Expression and Protection of Reputations<sup>29</sup>, sets out that "public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official".<sup>30</sup> It is recommended that should libel remains a criminal offence, prosecutors be stripped of their powers to launch criminal proceedings for libel.

- The retention of the penalty of administrative arrest for insulting public officials under Article 187 (2) and for bailiffs under Article 186<sup>2</sup> of COA: As it was stated above, there is universal consensus within the international human rights community that deprivation of liberty for defamation is a disproportionate interference with the right to freedom of expression and therefore amounts to a violation thereof. In *Cumpănă and Mazăre v. Romania*, the European Court of Human Rights stated:

Although sentencing is in principle a matter for the national courts, the Court considers that the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.

In view of the above, it is recommended that administrative arrest be abolished for insult.

- The protection of public officials against insult under Article 187 (2) of the COA is not explicitly restricted to the performance of their duties: When public officials are not performing their duties, it is unjustified and unnecessary to offer them special protection. Thus, it is recommended that Article 187 (2) of the COA explicitly link the protection of public officials with the performance of their duties.

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<sup>29</sup> Principles are based on international law and standards, evolving state practice (as reflected, inter alia, in national laws and judgments of national courts), and the general principles of law recognized by the community of nations. They are the product of a long process of study, analysis and consultation overseen by ARTICLE 19, including a number of national and international seminars and workshops. See *ibid.* 1.

<sup>30</sup> *Ibid.* Principle 4 (b) (iii).

## **LEGAL ANALYSIS OF THE DRAFT LAWS AMENDING AND COMPLEMENTING THE MOLDOVAN AUDIOVISUAL CODE**

**Commissioned by the Office of the OSCE Representative on Freedom of the Media from Dr. Katrin Nyman-Metcalf, Professor and Head of the Chair of Law and Technology of Tallinn Law School, Tallinn University of Technology**

5 May 2014

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### **Executive Summary**

A series of amendments to the Audiovisual Code of the Republic of Moldova no. 260-XVI, dated 27 July 2006 (or laws amending this Code such as Law 165 from 11 July 2012 and other earlier amending laws) have been presented in 2013 and 2014. In addition, a related proposal has been made for a Law complementing Article 24 from the Law on contentious administrative matters no. 793-XIV, dated 10 February 2000 (5 February 2013). These amendments cover several important areas, such as content matters (including right to reply and respect of human dignity), must carry and other retransmission of programmes, appointments to the Coordinating Council of Audiovisual, ownership concentration, audience measurement and administrative procedure.

The report is divided into categories according to the abovementioned content rather than according to the different proposals and is based on the mandate of the OSCE in relation to freedom of expression as set out in international instruments such as the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights on freedom of opinion and expression, to which OSCE Participating States have declared their commitment.

## Key Considerations and Recommendations

- There should not be detailed provisions in law on how to moderate debates or deal with undesirable statements in broadcasting, with moderators being legally liable, as this risks having a chilling effect on free debate in media and infringes on what should be within the editorial responsibility of media outlets. The creation of a better debate climate should be done through education, discussions and guidelines, with only a minimum of restrictions in law and only for the most serious instances, like incitement. Amendments to the Audiovisual Code that stipulate details on content related issues and liability for moderators should not be adopted.
- The right of reply is an important tool to enable a good debate with different viewpoints being heard, but the right must be applied in such a manner so as not to limit freedom of expression and not to infringe unduly on editorial responsibility. A right of reply according to international practice exists in the Audiovisual Code and it is not clear that additions are needed, at least not in the potentially limiting style that is proposed.
- Restrictions on unverified or confidential information are not well drafted as they can act as a limit on freedom of expression, contributing to the chilling effect on debate that any details on how to present information may have. Such rules should not be adopted.
- Must-carry obligations to ensure access to public service broadcasting as well as other programmes of public interest are positive as they provide more choice for the audience, but must also take into account the legitimate business interests of broadcasters.
- The regulatory authority must act within the law but must be able within its competence to act independently with suitable discretion.
- The proposal to introduce a special 3/5 majority in Parliament to approve candidates to the regulatory authority, the Coordinating Council of Audiovisual, are positive as it is important to find candidates with a wide acceptance in society.
- Proposals for stricter ownership requirements are positive as they support media pluralism. The change should be introduced in a certain period, as it changes the legitimate expectations of current media owners who must have a reasonable – albeit not too long – period to adjust before they can be sanctioned for violation of the law. Clarifications of concepts such as control and beneficiary owner are good.
- Greater transparency requirements to deal with ownership issues are a positive complement to ownership restrictions, but there must be a possibility that not all information provided to the regulator is public – with clear rules for what may be kept confidential. The current proposed amendments are not clear on whether any restrictions can be made to the transparency.

## Analysis of the Draft Laws

### 1. Introduction

A series of amendments to the Audiovisual Code of the Republic of Moldova no. 260-

XVI, dated 27 July 2006 (or laws amending this Code such as Law 165 from 11 July 2012 and other earlier amending laws) have been presented in 2013 and 2014. In addition, a related proposal has been made for a Law complementing Article 24 from the Law on contentious administrative matters no. 793-XIV, dated 10 February 2000 (5 February 2013).

The proposed amendments partially overlap. The various issues the proposals refer to are detailed below, divided into categories according to the content rather than according to the different proposals.<sup>1</sup> Some of the proposals are accompanied by informative notes. These show that the motivation for the amendments includes matters such as a concern for a bad debate climate in Moldova, insufficient access to some programming and a need to strengthen procedures.

Some smaller amendments of very limited substantive content (of the type to clarify used terms for example) are not discussed in the report.

## 2. International Standards

This report is based on the mandate of the OSCE in relation to freedom of expression as set out in international instruments such as the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights on freedom of opinion and expression, to which OSCE participating States have declared their commitment.<sup>2</sup> The right is also expressed in Article 10 of the European Convention on Human Rights.<sup>3</sup> Moldova is a party to these instruments and bound by these provisions.

In the 1999 OSCE Charter for European Security the role of free and independent media as an essential component of any democratic, free and open society is stressed.<sup>4</sup> The Mandate of the OSCE Representative on Freedom of the Media is, based on OSCE principles and commitments, to observe relevant media developments in all participating States and on this basis advocate and promote full compliance with OSCE principles and commitments regarding free expression and free media.<sup>5</sup>

Although each country has the right to determine the details of its media landscape and the content of its media legislation, such legislation must respect the principles

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1 Not all the translations of the proposed amendments contain dates, so it is not known how they relate to one-another (replacing another proposed change or being presented as alternative proposals in parallel, etc.) but this is not essential for the comments on the content of the proposals.

2 Helsinki Final Act (1975), Part VII; reiterated e.g. in the Concluding Document of the Copenhagen Meeting of the CSCE on the Human Dimension (1990) and later statements.

3 Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 4.XI.1950. [www.echr.coe.int/NR/...DC13.../Convention\\_ENG.pdf](http://www.echr.coe.int/NR/...DC13.../Convention_ENG.pdf)

4 See point 26 of the Charter for European Security, adopted at the Istanbul Summit of the OSCE, 1999. [http://www.osce.org/documents/mcs/1999/11/17497\\_en.pdf](http://www.osce.org/documents/mcs/1999/11/17497_en.pdf)

5 Mandate of the OSCE Representative on Freedom of the Media 1997, Point 2. <http://www.osce.org/pc/40131>

included in international commitments on freedom of expression and ensure that it can be implemented in practice. International best practices have developed on how to achieve this.

### **3. Respect of Human Dignity, Right of Reply and Other Content Related Matters**

A new Article 61 is proposed for Chapter II of the Audiovisual Code, for the respect of human rights, dignity, honour as well as protection of privacy and the right to one's image. Such general respect for fundamental rights should follow from the Constitution but it is in line with international practice to specify in special legislation on different issues what it means in practice. What however needs to be carefully considered – even if the aim of such legal protection is good – is that the legal provisions setting out the protection are not so detailed that they in practice limit rather than support rights and freedoms. In a society with freedom of expression it is part of this freedom that people can decide how to express themselves, with rules and restrictions only to avoid infringement of other rights.

The second paragraph of the proposed Article 61 sets out that any allegations of illegal behaviour have to be supported by evidence and the persons concerned have the right to reply. It is unclear how the new proposed provision relates to existing provisions on the right to reply (Article 16 of the Audiovisual Code). The paragraph makes the moderators of the programme liable for failure to provide the right of reply. This is not good and the provisions in the existing Article 16 are more in line with best international practice. The need to support allegations with facts and to provide right of reply are important elements of a good broadcasting system. The details of right of reply may fit better in secondary legislation, with the principle set out in law, as is done at some length in the existing Article 16. The situations in which such a right should be given and the way to do this can vary a lot depending on the type of programme, what allegations are made and how, etc. It is not practical to always include an immediate right of reply (for example, if a person makes an allegation in a live broadcast about a person who most likely would not be present at that moment) but the right can be exercised in a subsequent broadcast. Guidelines on how to do this so can be made by the regulator to help ensure that the reply is given due prominence but also so that spurious demands for right of reply are not used to disturb programming or for whatever less legitimate reasons. There does not appear to be any need for the legal amendments suggested now.

The responsibility for properly according right of reply should follow normal rules for who is responsible for broadcast content, which would be the responsible owner and/or editor. The existing Article on right of reply includes this. There appears to be no reason to hold a programme moderator responsible, but such responsibility – if the moderator has on purpose or by grave negligence violated rules – should be an internal matter for the broadcaster. In legal sense, it is the broadcaster as an entity that is responsible. The paragraph does mention that the responsibility is in accordance with legislation in force, which might be confusing, as such legislation would normally

not be directed against the moderator. (It is possible that this reference is only to the sanctions.)

The third paragraph states that moderators must request evidence for any accusing statements or otherwise inform that there is no such evidence. Although the idea that unsubstantiated allegations shall not be made is good, it is still not suitable to have detailed provisions in a law, as these can have the effect of limiting freedom of expression for fear of acting against the rules. This would be true especially in regard to the mentioned sanction for encouraging un-proven accusations, for which both the moderator and broadcaster can be held responsible. It is not clear what such “encouragement” could be and there is a risk of wide interpretation in order to prevent debate. It is better to have guidelines on how to react to any allegations made, how to explain what investigations have been made and so on rather than to sanction this in law. Media ethics and proper behaviour of all involved in creating broadcasts are to be preferred to legal provisions that may have a chilling effect.

The rest of the proposed Article goes on to set out rules against incitement as well as against licentious language and repeats a second time the ban against unproven accusations. The latter is a repetition in substance and not needed. As for the ban on incitement, this is of a different dignity than that against licentious language and mixing the two in one paragraph is not a good idea. Although it is possible to have rules on what language to use in broadcasting, especially at times when children may be in the audience, such rules are best set out in secondary legislation or guidelines and the rules in a modern society should not be too strict. Rules and regulations should not act as a “taste police” but it is up to editors to ensure suitable programmes for different audiences. Incitement to hatred and violence is however a different matter. This is one of the legitimate reasons to limit freedom of expression and in many countries such activities are banned by criminal law. The responsibility for such activities lies with the broadcaster and not with the moderators. Incitement is briefly mentioned in the existing law, Article 6. As said in the point above, any internal responsibility for moderators that the broadcaster wants to claim is an internal issue. For incitement under the criminal code, the moderator may also be personally responsible, but from the viewpoint of the Audiovisual Code, the responsibility is with the broadcaster as a legal entity and not with other individuals.

Proposed amendments to Article 7 deal with verification of information and the need to state clearly if sources and/or information cannot be properly verified. Information related to certain persons or to public institutions shall be broadcast only if accompanied by a statement from the person or institution – or in case of institutions, if the institution refuses to offer an opinion in which case this shall be said. These provisions are not good from the viewpoint of freedom of the media and should not be added to the law. They can have a limiting effect on public debate, especially on a critical debate regarding public persons and public institutions, which is so essential for any democratic society. Issues should be presented from different viewpoints, giving a chance to those criticised or challenged to state their point of view, with efforts made to illustrate

matters objectively and truthfully. It is very good if there are guidelines as well as regulations, rules or some form of secondary legislation to set out what requirements there are on such reporting and how to achieve this. However, issues in the public interest must be debated and sometimes it may be necessary to do so without having statements from those concerned. To make this a legal obligation will have a chilling effect on the public debate and is not proportional to the aim of having a proper debate: achieving a good discussion climate is to be obtained by education on ethical issues, by giving the possibility to counter arguments with other arguments, etc., and not by prohibitions and rules in law.

Similar criticism can be made of the proposed new paragraph 41 to Article 7 about balance in informative programmes (analytical and debates), requiring fair representation of political parties. As a general principle, balance and fairness in political reporting can be set out. Balance is indeed already mentioned several times in the existing Article 7. In addition, for election periods there can be special rules on broadcasts to more specifically regulate equitable representation. In other periods, having detailed rules on how political matters should be presented may have a limiting effect. Even if the intention of the rules may be good, they open too many possibilities for misinterpretation that can be used to prevent political debate. Furthermore, the previously existing Article 7 (that does not appear to be abrogated by the new proposals) would seem to be sufficient. Detail on how to achieve balance should be part of the exercise of editorial responsibility and a certain leeway must be given to editors, journalists and others involved in the public debate through media.

The addition to Article 8, new paragraph 41 on banning public figures of a certain position from presenting news and informative programming is in line with rules that exist in several countries. It is very common that such persons are banned from advertising (as is the case also in Moldova, Article 19) but it can be extended also to certain other types of programming, as it prevents the trust held by such persons from being abused or rules on balance in election reporting from being circumvented. The only criticism against the proposed provision is that the word “politician” is quite vague and could include a lot of people: it should be interpreted so that only people known for their political, public activities in known positions are covered.

In the informative note to the proposals on human dignity, right of reply, etc., there is an extensive reference to case law of the European Court on Human Rights. It is correctly stated in the note that freedom of expression is not an absolute freedom and one reason it can be limited is to protect other rights such as privacy. However, the same restrictions on how freedom of expression can be limited that are mentioned in the informative note and a careful reading of mentioned case law actually does not support the kind of rules proposed here, as they go beyond what is necessary and proportional.

#### 4. Must-carry and Other Retransmission of Programmes

There are different and partially overlapping proposed amendments to Article 29 on must-carry. The provisions include that public service broadcasting as well as local informative and analytical broadcasts offered free of charge by private broadcasters shall be included in the basic packages of any distributors of programmes through telecommunications networks (or in one amendment, distributors of services). Such so-called must-carry rules are common in the broadcasting legislation of many countries and are to be welcomed, as it gives people access to more content. In the era of digitalisation, it is important to actually make use of the possibilities to provide additional content so that benefits of digitalisation can be enjoyed by people. Additional programming free of charge is a clear benefit. As far as public service broadcasting is concerned, it is not just an extra benefit to make it available but it should be a clear requirement as the idea of public service broadcasting is that it should cater to the whole population and thus it must be easily available, regardless of what package of content that people select. This requirement is already in the law, but the new item of the proposals is that instead of just stating that when possible, broadcasts of local broadcasters shall be included in any provision of programming via the telecommunications network, it is mentioned that free of charge informative and analytical programmes shall be included.<sup>6</sup>

Public service broadcasting should be available in any package of programmes, without extra charge<sup>7</sup> whereas any other additional free-of-charge programming is a valuable extra benefit for audiences that service providers should make available if possible. Any interference with the right of distributors to decide freely what to provide must be motivated and proportional, like any intervention in the business activities of private partners. If the provision of extra programming is in the public interest, provides something of value for the audience and it is not overly onerous for distributors to provide it, there is nothing against such rules.

Another addition to Article 29 includes that foreign programming can be retransmitted freely in the territory of Moldova provided it does not contravene the Article in the Audiovisual Code that deals with programme standards. This changes the existing provisions on the Coordinating Council making a list of programmes for rebroadcasting, As said above, access to additional content is positive but for foreign content there may be various considerations that need to be kept in mind, including copyright rules (that

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<sup>6</sup> There appear to be three proposed amendments with partially the same content, regarding the free retransmission of public service broadcasting and other free programming, with one undated proposal referring specifically to content related to a certain region and broadcasters from that region being obliged to retransmit it and another short amendment which requires public service broadcasting to be included and private, local broadcasts if possible plus for certain localities an obligation to include local, free-of-charge programming for that region. One proposal also contains amendments to classification of broadcasters. It is not known if the different proposals are parallel or consecutive, but the essence and thus the comments made to them are the same regardless of this.

<sup>7</sup> Which does not mean that there can be no charge, as licence fees for public service broadcasting may exist.

are linked to a certain territory), possible differences in rules on legitimate restrictions on audiovisual content in different countries (different watershed times for example). Provided the Article referred to is sufficient to ensure that such matters are considered, providing foreign programmes is positive. It does not appear that the copyright issue is clearly dealt with in the new proposed Article or those it refers to. However, in this context in the Republic of Moldova the special situation of having traditionally had a very large proportion of foreign re-broadcast programming should be kept in mind. There is nothing wrong with providing access to foreign programmes and in the modern media environment people in any case have various possibilities to access foreign content if they are interested, speak foreign languages and so on. At the same time, it is important that there is local content, dealing with local issues of importance for the country and its regions.

The informative note to these legal amendments shows clearly that the background is political. It states: *The legislative amendment excludes the future possibility of carrying out severe attacks on the fundamental liberties, which have taken place in the Republic of Moldova at the end of 2013 – beginning of 2014, by arbitrary exclusion from the programs of main distributors of services the programs of the inconvenient broadcasters.* The stated aim is good as is as wide an availability of programming as possible. In addition to legal amendments, careful oversight by the regulator will be necessary. What however complicates the matter are the following paragraphs of the informative note, stating that the Coordinating Council has arbitrarily produced a list of excluded programmes and thus in the view of the parliamentarians proposing the amendments presumably exceeded its authority. The regulator will have to implement also the new provisions and no legal change is fool-proof against misuse, so if there really are problems with the work of the regulator, other measures may be needed. However, it is essential to determine if there was a case of the regulator abusing its role and acting outside of its mandate, as the parliament should not replace the independent regulator. This report cannot comment on what the real situation was, as that would need a different kind of analysis as this one of legal amendments. The possibility for independent regulators to act without political interference is essential, but at the same time the regulator acting within the law is equally essential. It can only be repeated that problems and different interpretations of the situation in such a politically tense situation as that of Moldova and all of Eastern Europe at the current moment need to be worked out and not dealt with just by legal changes. The informative note mentions that activities of the Coordinating Council have been non-transparent. This report cannot comment on that, but can underline the importance of transparency. If the Coordinating Council feels it has been acting within its mandate and had both legal basis and legitimate reasons for restricting certain retransmission of broadcasts, there can be no reason not to transparently show its reasoning and decision-making process.

## **5. Appointments to the Coordinating Council**

Another change, to Article 42, deals with appointments of members to the regulatory authority – the Coordinating Council of Audiovisual. The change is in the voting per-

centage needed in the Parliament, 3/5 of the total number of members of Parliament. In general, for appointment of members of bodies such as the Coordinating Council, it is important that they have the widest possible acceptance of different groups of society and that they are not seen to be political appointments, which is why a large majority is good – normally ensuring that also some opposition support is needed.

## 6. Ownership Concentration

The proposed addition to Article 66 deals with limitation of ownership concentration. This is a very important aspect and it is positive that the restrictions are now strengthened with a limitation to two instead of five licences in one administrative unit or zone and with sanctions for violation. The text of the Article is not quite clear (which may be a translation issue) in that it mentions that exclusiveness is excluded. This is good, but the ban on more than two licences should apply in any case, even if having more than two would still not lead to exclusiveness (in a region with many broadcasters). Presumably this is the case and the additional mention of exclusiveness is just to emphasise this (as is also done in the current law), in which case it is fine. The sanction of losing the broadcasting licences if the provision is violated is good and proportional although it may be better from a formal point of view to gather sanctions in one place in the law. With any legal change, it is important that concerned parties have time to adjust. There should be transitory provisions to avoid that the change in ownership limitation provisions leads to entities being immediately in violation of the law and liable to sanctions before they have had a reasonable time to adjust.

An earlier amendment from June 2013 proposes the inclusion of new definitions of “control” and “beneficiary owners” in the Code (Article 2). The proposals refer to the Law on Competition and stipulates how the notion of control and that of beneficiary ownership shall be understood. It is a positive addition, as it should help deal with ownership restrictions by getting to the real situation and making paper-constructions to avoid anti-concentration rules more difficult. The provision is extensive and quite detailed and it should be possible to include in it most manners in which indirect control of entities is exercised. The coordination with the Law on Competition is good.<sup>8</sup>

Article 23 of the Law is proposed to be amended and has additions, to set out more extensive transparency and publication deadlines for the regulator – all designed to establish real ownership and control. The amendments are to be welcomed, as transparency in the process can deal with many potential problems and the additional work and effort required by the regulator and the applicants is legitimate and proportional to establishing confidence in the process. Just as a small note of caution: It must be mentioned that some documents that applicants provide may be seen as business secrets that are not to be made public. It is important that the regulator has a possibility to not make everything public, as applicants are obliged to give full information to the regulator but not all this information can be public even if the main principle is one of

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<sup>8</sup> This review does not include a comparison with the Law on Competition but it is presumed the provisions are properly coordinated.

transparency. The kind of information that can be kept secret should be based on the law on public access to information and internal guidelines to supplement any laws.

Also amendments to Articles 28, 38 and 66 contain provisions that increase the transparency requirements and make the real control of broadcasters known. There is no objection to any of these proposed changes. Time limits for publication are short (2-3 days) but the information to be published is not complicated and it is legitimate to ask for such information, including the report that shall be submitted annually by broadcasters. On the latter, it may just be emphasized that it is important that the demands that are made are not interpreted excessively: the broadcasters can be asked to submit basic information but such requests should not be so onerous as to make it hard for the broadcasters to concentrate on their core tasks. To avoid this, it is good that the Coordinating Council according to Article 66.7 shall prepare and publish models of the reports it requests.

## **7. Audience Measurement**

The addition (new Article 192) to the section on advertising about at least two operators for measuring audiovisual media audiences is not objectionable as such, but it is unclear what the normative content of the Article is. The Code appears not to create the operators and indeed especially if these are private entities the law cannot create them; it also does not appear to intend to licence firms if indeed they need a licence. The proposed Article just says that at least two operators can perform the tasks but it does not create two or help to deal with the situation if there are not at least two.

## **8. Administrative Procedure**

A proposed amendment from February 2013 to the Law on Contentious Administrative Matters (Law no. 793-XIV, dated 10 February 2000) amends the procedure of appeal of decisions of the regulatory authority by stipulating a time limit of 30 days. According to the new paragraph to be added to Article 24 of the law, requests related to the decisions of the Coordinating Council of Audiovisual regarding the use of sanctions for suspending or withdrawing broadcasting licences shall be examined by the administrative court as a priority with the time for examining the cases not exceeding 30 days. The provision in itself is positive although it would be better to formulate it not absolutely but with some small possibility for exceptions, even if only under strict conditions and in special cases. Absolute timelines without any possibility for exceptions are too inflexible and can cause problems, but exceptions should be rare.

According to the informative note, the background to the proposal is that a real need has been shown in practice as well as stressed by the constitutional court (referring also to the European Court on Human Rights). In such a case, a legal amendment can be welcomed, as it is to be avoided to have long handling time in the cases mentioned, as broadcasters lose their chance to earn an income while licences remain suspended or withdrawn.

**Briefing on Proposed Amendments to Law No. 5651****The Internet Law of Turkey****January 2014**

Since the enactment of Law No 5651 entitled Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication<sup>1</sup> in May 2007 access to approximately 37,000 websites have been denied by court orders and administrative blocking orders issued by the Telecommunications Communication Presidency (TIB) by January 2014.<sup>2</sup> Currently, access to popular platforms such as Scribd, Last.fm and Metacafe is blocked from Turkey. Access to Wordpress, DailyMotion and Vimeo has been blocked temporarily by court orders during the last few months. A number of alternative news websites that report news on southeastern Turkey and Kurdish issues remain indefinitely blocked from Turkey. Furthermore, several users received fines, prison time or suspended sentences for comments made on social media platforms. In September 2013, during a retrial following an appeal, the renowned pianist Fazil Say received a 10 month suspended sentence for insulting religious values on Twitter. Furthermore, a legal challenge was launched in 2011 to annul the BTK filtering policy on the grounds that it lacked a legal basis. The Alternative Information Technologies Association argued at the Council of State level that the filtering system discourages diversity by imposing a single type of family and moral values. A decision is expected during 2014.

The blocking provisions of Law No 5651 has been subject to review by the European Court of Human Rights in December 2012. In the judgment of Ahmet Yildirim v. Turkey involving access blocking to the Google Sites platform in Turkey, the European Court of Human Rights, finding a violation of Article 10 of the European Convention on Human Rights, held that a restriction on access to a source of information is only compatible with the Convention if a strict legal framework is in place regulating the scope of a ban and affording the guarantee of judicial review to prevent possible abuses. Despite this important decision access to Google Sites is still blocked in Turkey.<sup>3</sup> The European Court's decision is in line with a 2010 study published by the OSCE Representative on Freedom of the Media which called the Turkish authorities to quickly bring Law No. 5651 in line with OSCE commitments and other international standards on freedom of expression, independence and pluralism of the media and the free flow of information.

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1 Law No. 5651 was published on the Turkish Official Gazette on 23.05.2007, No. 26030.

2 Official statistics are not published by the TIB or any other government authority. However, detailed non-official statistics can be obtained through <http://engelliweb.com/istatistikler/>

3 Four other applications are currently pending in Strasbourg with regard to the blocking of YouTube and Last.fm in Turkey.

However, rather than bringing the current law in line with the OSCE commitments and other international standards, the Government proposed further restrictions that raise major concerns that will be assessed below.

### **Undemocratic legislative process**

A draft law amending Law No. 5651 was submitted to the Parliament by a number of members of the ruling party on 14 December 2013. No consultation process had been conducted during the preparation of the draft law. Although a number of academic and NGOs complaints about Law No. 5651 were known in addition to international evaluations noted above, administrative authorities and parliamentarians of the ruling party ignored such criticism.

The legislative process for the proposed amendments was even more problematic. The draft amendments were assigned to the Planning and Budget Commission at the Parliament. Furthermore, the draft amendments were added into a mixed law package (Torba Yasa) which included irrelevant amendment proposals on the Family and Social Policy Ministry, the Anti-Terror Law, the Social Security and the General Health Insurance Law and many others. The Commission merged seven different amendment proposals into one package. As might be expected, as the merged proposal before the Planning and Budget Commission included too many irrelevant provisions, no real expertise could cover all of them. Despite this fact, a sub-commission merged all the proposals in a single draft bill in a very short period of time and the Commission finalized its work on the draft bill on 16 January 2014.

The final version of the draft which was submitted to the Plenary Assembly of the Parliament included 125 sections and amended 42 different laws, including Law No 5651, and was adopted in less than one month. No public debate took place during this process, thus all the critiques of the amendments to Law No. 5651 were ignored.

### **Proposed amendment on notification (Section 3 of Law No. 5651)**

The raft aw provides a new rule about the notification process. Accordingly, those who carry out activities falling within the scope of Law No. 5651 can be notified via e-mail and other communication ways gathered from Internet websites, IP addresses, URLs and similar sources. This means that in many cases legal proceedings might start even before the relevant party becomes aware of the situation.

### **Proposed amendments on the liability of hosting providers**

With the proposed new amendments to Article 5 of Law No. 5651, the liability of hosting providers has been extended. Hosting providers are going to be required to retain traffic data (communications data) in relation to their hosting activities from 1 to 2 years. Previously, Law No. 5651 only required Internet Access (Service) Providers to retain traffic data for a period of 6 months to 2 years. Further regulations will clarify

the classification and liability of hosting providers as well as the exact period of data retention requirements. Hosting providers will also be required to provide the accuracy, integrity and secrecy of the information requested by the Presidency (TIB) and should also comply with the required measures that are requested by the Presidency. Hence, the Presidency will be able to request information without a court decision or a justified reason. This cannot be compared to or considered in line with similar provisions within the European Union, as these provisions clearly establish very strict and clear limits in order for public authorities to gain access to retained data.<sup>4</sup> No legal way to object to this request has been envisaged within the amendments. Thus, the Presidency can arbitrarily obtain any kind of information from the hosting providers, which is a considerable threat to private life and secrecy of communications. In case of non-compliance, administrative fines can be applied between 10,000TL (approximately €3,000) and 100,000TL (approximately €32,000).

While confined to “communications data,” the combined effect of the proposed measures can provide a complete dossier on private life, raising serious privacy implications. The proposed measure is explicitly wide and the details are to be established with secondary legislation, including the retention period. Therefore, combined with the requirement for the Internet Access (Service) Providers to retain such communications data, as explained below, Law No. 5651 will encourage mass interference and will enable the Presidency to request and collect data on the entire population of Internet users from Turkey without any judicial review or process.

### **Proposed amendments on the liability of access providers**

With the proposed new amendments to Article 6, Access Providers will be required to take necessary measures to block access to alternative access means, such as proxy websites.<sup>5</sup> These alternative methods are not clearly defined by the proposed amendments. This lack of clarity is especially important considering that under Article 6(3) of the law, Access Providers can be fined up to 50,000 TL (approximately €16,000) on the grounds that they failed to take necessary measures to block access to alternative access means.

Access Providers will also be required to guarantee the accuracy, integrity and secrecy of the information requested by the Presidency (TIB) and should also comply with the required measures that are requested by the Presidency. As in the case of the amendments regarding hosting providers, the limits and reasons for requests have not been set out.

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<sup>4</sup> See Articles 7 and 8 of the EU Directive 2006/24/EC.

<sup>5</sup> Within this context it should be noted that access to Ktunnel.com has been blocked in Turkey since November 2013 by a court order.

Amendments made to Articles 5 and 6 will enable the Presidency (TIB) to gather communications data about all Internet users without any legal limits or restrictions. Since the users never will be able to know when and how this information is gathered, the Presidency will have unlimited discretion in this field. However, in the context of covert measures of surveillance, the law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence.<sup>6</sup>

### **Formation of an association of access providers**

The proposed amendments include a new Article 6A which creates an Association of Access Providers. The main purpose of the Association is to centrally ensure compliance of blocking decisions that are outside the scope of Article 8.

The Association will be recognized as a private legal entity and the headquarters of the Association will be based in Ankara. The by-laws of the Association will be subject to approval of the Authority (ICTA - Information and Communication Technologies Authority). The Association will be composed of all Internet service providers (within the ambit of the Electronic Communication Law No. 5809) and other corporations that provide Internet access from within Turkey. The Association will be required to coordinate co-operation between these entities.

The Association will be set up within 3 months following the enactment of the proposed measures. Membership to the Association is compulsory. Access providers or other Internet service providers, which do not apply for the membership of the Association within the first month following the establishment of the Association will be fined. Fines will be assessed at 1 percent of the net sales proceeds of the previous civil year. Access providers who do not become members of the Association will not be able to provide access services.

Blocking orders that are outside the scope of Article 8 (see below) will be directly sent to the Association for execution. Notification of blocking orders made to the Association will be regarded as made to all access providers. The Association may appeal against the blocking decisions that are sent to the Association.

Although the draft law defines the Association as a private legal entity, considering its powers and duties, it is a public law entity in Turkish law.

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<sup>6</sup> See *Valenzuela Contreras v. Spain*, judgment of 30 July 1998, Reports 1998 V, p. 1925, § 46 (iii).

Membership to this entity is compulsory and members are required to pay monthly dues to the Association which will be decided according to their profits. The Association will also not be free to draft its own by-laws, as approval of the ICTA is necessary for it to go into effect. Therefore, this new body cannot be seen as an entity established by free will.

### **Proposed amendments on the liability of mass use providers**

With the proposed amendments Liability of Mass Use Providers (Internet cafes, etc.) has been extended. All Mass Use Providers will be responsible for retaining the logs and communication data of their users regarding access and blocking of illegal content and taking the precautionary measures in accordance with further regulations to be established by secondary legislation. These new provisions are not clear and leave full discretion to the administration, which is a clear violation of the legality principle. Infringement of Article 7 provisions will result in an administrative fine between 1,000TL (€320) and 15,000TL (€48,000) or an injunction to cease activity for up to three days with a decision of the local civilian authority, e.g. governors and mayors.

### **Proposed amendments on Article 8 concerning sanctions**

Article 8 of Law No. 5651 establishes a blocking measure for websites. Although this provision has been harshly criticized by the European Court and found in violation of the European Convention on Human Rights in *Ahmet Yildirim v. Turkey*, the blocking measure was not amended. However, with the current proposed amendments the sanctions set forth in the Article were amended while not making changes to the blocking measure. Currently, responsible persons of hosting or service providers who fail to carry out the blocking decisions are subject to imprisonment from 6 months to 2 years. According to the proposed amendment, they could only be subjected to a fine. However, such punishment would still be disproportionate. Furthermore, in practice, prison sentences up to 2 years are also converted to fines. Two years imprisonment in practice can be converted to 770 days of fines.

However, the proposed legislation states that responsible persons will be subject to a fine from 500 days to 3,000 days. One day of a fine can be up to 100 TLs. Thus, according to the proposed new rule, a person could be fined up to 300,000 TL (€95,000) for non-compliance with the execution of a blocking order. This is obviously disproportionate and, although it initially appears to be a relaxation of the penalties provided in Article 8, the proposed amendments provide potentially harsher penalties for both hosting and service providers.

### **Proposed amendments to Article 9 on the violation of individual rights**

Within the scope of Article 9, the proposed amendments also provide for URL-based

blocking orders, which would be issued by a judge of a Criminal Court of Peace. In exceptional and necessary cases, the judge may decide to issue a blocking order for the whole website if the URL-based restriction is not sufficient to remedy the violation. The judge is required to issue his decision within 24 hours of the initial request to the Court. Judge-issued orders would be sent directly to the Association for execution.

If content is removed by the time the Association is notified, the decision of the judge will be void. Otherwise, access providers should comply with the order of the Judge within 4 hours of notification. Fines would be applied in case of violations of the above mentioned requirements. As previously mentioned, fines could reach 300,000 TLs (€95,000). Furthermore, content and hosting providers will be required to respond to violations of individual rights requests within 24 hours, down from 48 hours as currently provided in law.

With this amendment, a shift from a notice-based removal and liability system to a URL-based blocking system is evident. In practice, blocking will be the measure that will be requested more often and alleged violations of individual rights claims will result in a considerable number of URL-based blocking orders. Individual Twitter and Facebook accounts, as well as YouTube videos or accounts, may be the subject of such URL-based blocking orders to be issued by criminal courts.

### **Proposed new measure on privacy violations**

The proposed amendments include a new blocking measure in Article 9A which addresses individual privacy violations. According to this new provision, individuals and legal entities who claim that their privacy has been violated through the Internet may request access be blocked by applying directly to the Presidency. Individuals and legal entities are required to provide detailed information regarding the alleged privacy violation, including the exact URL where the violation occurred as detailed explanation of the violation. Upon issuing the blocking decision, the Presidency directly notifies the Association and access providers should comply within 4 hours.

Presidency-issued blocking orders will be URL-based and will only involve the exact location of the allegedly infringing content. Individuals and legal entities that claim their privacy has been violated are then required to apply to a judge at a Criminal Court of Peace within 24 hours. The judge is then required to issue a decision within 48 hours and send the decision directly to the Presidency. Otherwise the blocking order is void and removed by the Presidency. The decision of the judge can be challenged by the Presidency in accordance with provisions of the Criminal Procedure Act. This amendment contains an anomaly as this provision might be understood as merely the Presidency but not the content providers or other stakeholders can challenge the decision. This means that the decision of the Presidency, once approved by a judge at a Criminal

Court of Peace, can never be challenged legally. If the content is removed by the time the Presidency is notified, the decision of the judge will be void.

According to the proposed new measure, if any possible delay will result in adverse consequences regarding the protection of privacy or rights and freedoms of others, then the Director of the Presidency can, *ex officio*, issue a blocking order. In this case the Presidency will execute the order. Objections to such a blocking order can be made to a Criminal Court of Peace. Administrative restrictions on freedom of expression of this kind could violate Articles 26 to 30 of the Constitution and Article 10 of the European Convention on Human Rights regardless of whether appeals can be made to a court of law. Laws designed to restrict freedom of expression should not grant administrative authorities like the Presidency (TIB) excessively broad discretionary powers to limit expression or content. If the provisions become law this will enable the issuing of politically motivated blocking orders and such a discretionary power may have a chilling effect on freedom of expression. Vaguely drafted provisions such as these are vulnerable to broad interpretation and therefore they could be applied by the authorities to situations that bear no relationship to the original purpose. A 2011 OSCE Report on Freedom of Expression on the Internet recalled that courts of law are the guarantors of justice which have a fundamental role to play in a state governed by the rule of law. In the absence of a valid legal basis the issuing of blocking orders and decisions by a public authority or the Director of such an authority other than courts of law is therefore potentially problematic from a freedom of expression perspective.

### **Conclusion**

When Law No. 5651 was originally drafted, the government announced that the main aim of the law was to protect children from harmful content on the Internet. However, the implementation and application of the law has shown that, rather than protecting children, the law has been systematically used to block access to legitimate content, therefore seriously violating the right to freedom of expression. Finding that the implementation of the Law No. 5651 had violated Article 10 of the European Convention on Human Rights in *Ahmet Yildirim v. Turkey* the European Court of Human Rights held that a restriction on access to a source of information is only compatible with the Convention if a strict legal framework is in place regulating the scope of a ban and affording the guarantee of judicial review to prevent possible abuses. Despite this finding, instead of improving freedom of expression on the Internet, the Turkish government has introduced a bill which considerably threatens fundamental freedoms. If the provisions become law, they will impose a disproportionate burden upon the Internet Service Providers and Hosting Providers. Also, the new measures will encourage mass interference and will enable the Administration to request and collect data on all Internet users from Turkey without judicial review. The amendments to protect individual rights and privacy will result in new blocking measures while leaving unfettered discretion to the administration.

Overall, these measures are not compatible with OSCE commitments and international standards on freedom of expression and they have the potential to significantly impact free expression, investigative journalism, the protection of journalists' sources, political discourse and access to information over the Internet.

**Stellungnahme zu den aktuellen österreichischen Gesetzesentwürfen zu Transparenz und Informationsfreiheit (Legal review on the current Austrian draft laws on transparency and freedom of information)**

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**Juli 2014**

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### A. Ausgangslage

Das Interesse der Bürger an der Zugänglichkeit beim Staat vorhandener Informationen, hat in den letzten Jahren stark zugenommen. Die Forderung nach Transparenz ist in der Generation ausgeprägt, die mit dem Internet aufgewachsen ist. Es wird daher allerorts mit Open-Data-Plattformen experimentiert, auf denen staatlicherseits verfügbare Informationen für die Öffentlichkeit zur Verfügung gestellt werden. Furore hat kürzlich die Bekanntgabe der brasilianischen Internetverfassung (Marco Civil da Internet) gemacht, weil sie den Transparenzgedanken eloquent in eine moderne rechtliche Rahmenordnung verpackt hat. Auch in Europa werden diese Konzepte derzeit intensiv diskutiert. Die modernen Transparenzgesetze in Hamburg oder Slowenien verpflichten staatliche Stellen dazu, von sich aus beispielsweise die Vorlagen und Beschlüsse des Parlaments, Baupläne, amtliche Statistiken oder auch Tätigkeitsberichte in ihr allgemein zugängliches Informationsregister einzupflegen.<sup>1</sup>

Begründet wird dieser Wunsch nach Transparenz mit der Kontrollfunktion der Öffentlichkeit gegenüber staatlicher Tätigkeit. Dies soll nicht zuletzt der Korruptionsbekämpfung dienen. Zudem geht es um eine angemessene Informationsverteilung zwischen Staat und Gesellschaft. Da der Staat an Steuerungs- und Finanzierungskraft einbüße, müssten Selbstverantwortung und Kooperationsbereitschaft in der Zivilgesellschaft durch die Bereitstellung von Informationen gefördert werden. Zudem wird auf den wirtschaftlichen Nutzen einer erweiterten Verwertung behördlicher Informationen für die Volkswirtschaften hingewiesen. Ein besonderes Wertschöpfungspotenzial wird dabei z.B. den Geodaten zugemessen.

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<sup>1</sup> Vgl. § 2 Abs. 8 i.V.m. § 3 Hamburgisches Transparenzgesetz.

Charakteristisch für den derzeitigen Stand des europäischen Informationsrechtes sind jedoch nicht die Transparenzgesetze, sondern das Informationszugangsrecht. Dies ist ein antragsbezogenes Recht auf Zugang zu staatlichen, insbesondere behördlichen Informationen. So legt zum Beispiel die sog. Transparenz-Verordnung der EU über den Zugang der Öffentlichkeit zu Dokumenten des Europäischen Parlaments, des Rates und der Kommission<sup>2</sup> fest, dass jeder Unionsbürger ein Recht auf Zugang zu Dokumenten dieser Organe hat (Art. 2 Abs. 1). Ausnahmen von diesem Grundsatz sind nur bei Vorliegen bestimmter Gründe wie der Gefährdung der Privatsphäre, der öffentlichen Sicherheit oder der ernstlichen Erschwerung der behördlichen Entscheidungsfindung zulässig (vgl. § 4 Transparenz-VO). Der Informationsanspruch soll folglich nur bei Vorliegen klar definierter Verweigerungsgründe beschränkt werden können. Dieses Regel-Ausnahme-Schema sieht auch die Konvention des Europarates über den Zugang zu amtlichen Dokumenten aus dem Juni 2009<sup>3</sup> vor. Hierin finden sich Standards für die Ausgestaltung von Informationszugangsrechten, so dass sie als Referenzpunkt für die Beurteilung des nationalen Rechts herangezogen werden kann. Rechtlich bindend ist die Konvention mangels Unterzeichnung in Österreich jedoch nicht. Ganz auf dieser Linie des Europarats liegen die Aussagen der OSZE. Dort ist es die OSZE Medienbeauftragte, die seit Jahren zusammen mit anderen zwischenstaatlichen Organisationen wie den Vereinten Nationen, dem Europarat, der Afrikanischen Union und der Organisation Amerikanischer Staaten zur Entwicklung von Standards beiträgt. Ein wichtiger Schritt dabei war unter anderem die gemeinsame Erklärung im Jahr 2004 zur Informationsfreiheit und zu Geheimhaltungsgesetzen, in der es heißt: “Das Recht, auf Informationen zuzugreifen, die in der Hand von Behörden liegen, ist ein fundamentales Menschenrecht, das auf nationaler Ebene durch umfassende Gesetzgebung (z. B. durch Informationsfreiheitsgesetze) umgesetzt werden sollte, basierend auf dem Prinzip maximaler Veröffentlichung und unter Begründung der Prämisse, dass jede Information, mit nur eng definierten Ausnahmen, zugänglich sein soll.”<sup>4</sup>

Österreich ist demgegenüber als einer der letzten europäischen Staaten noch der Tradition der Amtsverschwiegenheit verbunden. Dieser Grundsatz hat Verfassungsrang und ist in Art. 20 Abs. 3 des österreichischen Bundesverfassungs-Gesetzes niedergelegt. Der Verschwiegenheit unterliegen, soweit nicht anders gesetzlich bestimmt, alle

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2 Verordnung (EG) Nr. 1049/2001 des Europäischen Parlaments und des Rates über den Zugang der Öffentlichkeit zu Dokumenten des Europäischen Parlaments, des Rates und der Kommission, vom 30. Mai 2001, ABl. L 145/43 v. 31.5.2001.

3 European Convention on Access to Official Documents, abrufbar unter: <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>.

4 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, 2004, in: The Representative on Freedom of the Media (Hrsg.), Joint Declarations of intergovernmental bodies to protect free media and expression, Wien 2013, 34; abrufbar unter: <http://www.osce.org/fom/99558?download=true>.

anlässlich einer amtlichen Tätigkeit bekanntgewordenen Tatsachen, deren Geheimhaltung im Interesse der Aufrechterhaltung der öffentlichen Ruhe, Ordnung und Sicherheit, der umfassenden Landesverteidigung, der auswärtigen Beziehungen, im wirtschaftlichen Interesse einer Körperschaft des öffentlichen Rechts, der Vorbereitung einer Entscheidung oder im überwiegenden Interesse der Parteien geboten ist. Für die verpflichteten Beamten stellt die Verschwiegenheit eine Dienstpflicht dar. Verstöße hiergegen können disziplinarrechtlich geahndet werden.

Der Grundsatz der Amtsverschwiegenheit ist in Österreich seit Jahrzehnten umstritten. Der Verfassungsgerichtshof hat sich früh darum bemüht, einer weiten Auslegung entgegenzutreten. So dürfe der Gesetzgeber die Amtsverschwiegenheitspflicht nicht erweitern, sondern nur einschränken.<sup>5</sup> Diese Begrenzung wurde aus der Informationsfreiheit i.S.d. Art. 10 EMRK abgeleitet. Zudem wurde es abgelehnt, aus Art. 20 Abs. 3 B-VG ein subjektives Recht auf Wahrung der Amtsverschwiegenheit abzuleiten. Dieses könne sich aber aus anderen Gründen ergeben wie z.B. aus dem Recht auf Datenschutz.<sup>6</sup>

Eine Lockerung der Amtsverschwiegenheit erfolgte durch die Verfassungsnovelle von 1987. Die Geheimhaltungsinteressen wurden näher spezifiziert.<sup>7</sup> Insbesondere wurde aber in Art. 20 Abs. 4 B-VG eine Auskunftspflicht eingeführt. Hiernach haben alle Organe der Bundes-, Landes- und Gemeindeverwaltung über Angelegenheiten ihres Wirkungsbereichs Auskünfte zu erteilen, soweit nicht eine gesetzliche Verschwiegenheitspflicht entgegensteht. Diese sind in den Auskunftsgesetzen des Bundes und der Länder näher ausgestaltet worden.

Rechtsdogmatisch gesehen stehen damit das Gebot der Amtsverschwiegenheit und die Auskunftspflicht gleichberechtigt nebeneinander. Dem Bundes- und Landesgesetzgeber wird jeweils im Einzelfall die Befugnis eingeräumt, über den Vorrang zu entscheiden. Im Schrifttum wird dieser Regelungsansatz auch Kombinationslösung genannt.<sup>8</sup>

Dass hier jedoch zwei gegenläufige Rechtsprinzipien konzeptionell unvermittelt gegenübergestellt werden, hat in der Auslegung der Art. 20 Abs. 3 und 4 B-VG zahlreiche Schwierigkeiten hervorgerufen.

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5 Öhlinger, Verfassungsrecht, 3. Aufl. 1997, S. 230; VfSlg 9657/1983.

6 Walter/ Mayer, Grundriß des österreichischen Bundesverfassungsrechts, 8. Aufl. 1996, Rn. 583; VfSlg 3005, 7455.

7 Adamovich/Funk/Holzinger, Österreichisches Staatsrecht, Bd. 1, 1997, Rn. 09.019-27.

Sie erschweren die Anwendung in der Praxis.<sup>9</sup> Wie stark die obrigkeitstaatliche und transparenzkritische Tradition in Österreich ausgeprägt ist, zeigt aber ein Blick in die Ausnahmegründe der Auskunftsgesetze. Dort steht das Ziel, die Funktionsfähigkeit der Verwaltung zu schützen, im Vordergrund. So darf die Auskunft verweigert werden, wenn die Auskunft in einer Sache verlangt wird, die nicht in den Wirkungsbereich des Organs fällt; wenn durch die Erteilung der Auskunft die Besorgung der übrigen Aufgaben des Organs wesentlich beeinträchtigt wäre; wenn die Auskunft offenbar mutwillig verlangt wird; wenn die für die Erteilung der Auskunft erforderlichen Informationen erst beschafft werden müssen und/oder wenn umfangreiche Ausarbeitungen erforderlich sind oder wenn die Information dem Auskunftssuchenden anders zugänglich ist (§ 5 Abs. 1 des niederösterreichischen Auskunftsgesetzes<sup>10</sup>). Eine Abwägung mit dem Belang der Informationsfreiheit ist nicht vorgesehen. Gibt es keine einfachgesetzlichen Regelungen, kommt der Amtsverschwiegenheit i.S.d. Art.

20 Abs. 3 B-VG eine Auffangfunktion zu. Denn sie ist, wie sich aus den Gesetzesmaterialien ergibt, eine „gesetzliche Verschwiegenheitspflicht“. <sup>11</sup> Bemerkenswert sind auch die Schwächen bei der Durchsetzung von Auskunftsbegehren. Der Instanzenweg ist zeit- und kostenaufwendig. Er wird in der Praxis nur selten besritten. Wie es um die Informationsfreiheit in Österreich bestellt ist, zeigt das sog. RTI-Rating der Organisation Access Info und des Centre for Law and Democracy, das die rechtlichen Rahmenbedingungen der Informationsfreiheit in verschiedenen Ländern vergleicht. Österreich belegte den letzten Platz der 89 bewerteten Länder.<sup>12</sup>

Vor diesem Hintergrund kann es nicht verwundern, dass derzeit verschiedene Reformvorschläge diskutiert werden. Im Oktober 2013 haben die Grünen<sup>13</sup> und die Neos<sup>14</sup> zwei Initiativanträge zur Änderung der derzeitigen Verfassungslage in den österreichischen Nationalrat eingebracht. Da beide Anträge beinahe wortgleich sind, aber nur der Entwurf der Grünen eine Gesetzesbegründung enthält, soll allein dieser im Folgenden betrachtet werden.

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9 Hierzu im Einzelnen Hengstschläger, Stellungnahme zur Amtsverschwiegenheit, Ausschussvorlage Österreich-Konvent, 272/AVORL-K.

10 Bundesgesetz vom 15. Mai 1987 über die Auskunftspflicht der Verwaltung des Bundes und eine Änderung des Bundesministeriengesetzes 1986, StF: BGBl. Nr. 287/1987 (NR: GP XVII RV 41 AB 8 S. 18. BR: 3243 AB 3248 S. 488.).

11 39 BlgNR 17. GP.

12 [http://www.rti-rating.org/country\\_rating.php](http://www.rti-rating.org/country_rating.php).

13 [http://www.parlament.gv.at/PAKT/VHG/XXV/A/A\\_00018/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXV/A/A_00018/index.shtml).

14 [http://www.parlament.gv.at/PAKT/VHG/XXV/A/A\\_00006/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXV/A/A_00006/index.shtml).

Im März 2014 ist ein Ministerialentwurf in das Begutachtungsverfahren eingeführt worden.<sup>15</sup> Dieser wird von den beiden Regierungsparteien, der ÖVP und der SPÖ, getragen.

Alle Vorschläge sehen eine Änderung des Bundes-Verfassungsgesetzes vor. Damit würde in Österreich die Frage von Informationsfreiheit und Transparenz anders als in den meisten anderen europäischen Staaten nicht durch einfaches Gesetz, sondern auf Verfassungsebene geregelt. Im Folgenden werden die Reformvorschläge vorgestellt und rechtspolitisch bewertet.

## **B. Ministerialentwurf**

### **B.I. Zielsetzung**

Der Ministerialentwurf (B-VG-ME) ist Teil der Umsetzung des Arbeitsprogramms der österreichischen Bundesregierung 2013-2018. Er verfolgt das Ziel, „staatliches Handeln transparenter und offener“ zu gestalten. Daher soll der Grundsatz der Amtsverschwiegenheit abgeschafft werden. Die Pflicht zur Auskunftserteilung wird durch ein Recht auf Zugang zu staatlichen Informationen ersetzt. Darüber hinaus wird eine generelle Verpflichtung eingeführt, Informationen von allgemeinem Interesse allgemein zugänglich zur Verfügung zu stellen.

### **B.II. Veröffentlichungspflichten**

#### **B.II.1. Anspruchsberechtigte und Umfang der Pflichten**

Nach Art. 22a Abs. 1 B-VG-ME sollen Informationen von allgemeinem Interesse veröffentlicht werden. Zum Kreis der Informationen von allgemeinem Interesse gehören „insbesondere allgemeine Weisungen, Statistiken, Gutachten und Studien, die von diesen Organen erstellt oder in Auftrag gegeben wurden“. Die Erläuterungen nennen zusätzlich noch „Tätigkeitsberichte, Geschäftseinteilungen, Geschäftsordnungen, Kanzleiordnungen sowie Leistungen gemäß § 4 Abs. 1 Z 1 des Transparenzdatenbankgesetzes, BGBl. I Nr. 99/2012“. Die Informationen sollen in einer für jedermann zugänglichen Art und Weise veröffentlicht werden. Dies bedeutet, dass die Veröffentlichung auch „ohne ein konkretes Ansuchen auf Zugang auf Informationen“ erfolgen muss. Damit will der Ministerialentwurf dem Grundsatz des Open Government entsprechen. In der Tat folgt der Entwurf so konzeptionell den modernen Transparenzgesetzen. Die Veröffentlichungspflichten sollen enumerativ aufgelistet und damit konkretisiert werden, so wie dies z.B. im Hamburger Transparenzgesetz erfolgt ist.

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15 [http://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME\\_00019/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00019/index.shtml).

### B.II.2. Verpflichtete

Bemerkenswert ist, dass der Kreis der Verpflichteten sehr weit gezogen ist. Während sich die Informationsfreiheitsgesetze und die modernen Transparenzgesetze z.B. in

der Bundesrepublik auf die Exekutive und damit behördliche Informationen beziehen, umschließt der österreichische Ansatz alle drei Gewalten. Der Ministerialentwurf folgt damit einer Handlungsoption, die auch in Art. 1 Abs. 2 lit a ii. der Konvention des Europarates über den Zugang zu amtlichen Dokumenten vorgesehen ist. Im Einzelnen unterliegen der Veröffentlichungspflicht „die Organe der Gesetzgebung, die mit der Besorgung von Geschäften der Bundesverwaltung und der Landesverwaltung betrauten Organe, die Organe der ordentlichen Gerichtsbarkeit und der Verwaltungsgerichtsbarkeit, der Rechnungshof, ein Landesrechnungshof, die Volksanwaltschaft sowie eine vom Land für den Bereich der Landesverwaltung geschaffene Einrichtung mit gleichwertigen Aufgaben wie die Volksanwaltschaft“.

### B.II.3. Beschränkungen

Kein Recht auf Informationszugang und keine Transparenzpflicht kann schrankenlos gewährt werden. Geheimhaltungspflichten müssen nach Art. 22 a Abs. 1, 2 B-VGME ausdrücklich durch Bundes- oder Landesgesetz angeordnet sein. Sie umfassen die Geheimhaltung „aus zwingenden außen- und integrationspolitischen Gründen, im Interesse der nationalen Sicherheit, der umfassenden Landesverteidigung oder der Aufrechterhaltung der öffentlichen Ruhe, Ordnung und Sicherheit, zur Vorbereitung einer Entscheidung, im wirtschaftlichen oder finanziellen Interesse einer Gebietskörperschaft oder eines sonstigen Selbstverwaltungskörpers oder zur Wahrung überwiegender berechtigter Interessen eines anderen oder zur Wahrung anderer gleich wichtiger öffentlicher Interessen“.

Auf den ersten Blick ist verwunderlich, dass der Normtext nicht explizit entgegenstehende private Rechte, wie das Recht auf Datenschutz oder Betriebs- und Geschäftsgeheimnisse, anführt. Die Erläuterungen führen hierzu jedoch klarstellend aus, dass zu den überwiegenden berechtigten Interessen eines anderen auch das Grundrecht auf Datenschutz, § 1 Abs. 1 des Datenschutzgesetzes 2000<sup>16</sup>, ebenso wie die Geschäfts- und Betriebsgeheimnisse juristischer Personen gehören. Als Interessen, derentwegen der Zugang zu Informationen verwehrt werden kann, kommen nach den Erläuterungen auch der Schutz des behördlichen Ermittlungsverfahrens, einer unbeeinflussten Entscheidungsfindung, der Stabilität des Finanzmarktes oder der Schutz des Wettbewerbs in Betracht. Ausdrücklich wird betont, dass die im Abs. 2 genannten Ausnahmetatbestände im Materiengesetz wiederholt bzw. konkretisiert werden können.

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<sup>16</sup> DSG 2000, BGBl. I Nr. 165/1999.

Das Ausmaß antragsunabhängiger Veröffentlichungspflichten und damit die Umsetzung des Transparenzgedankens kann daher erst dann abschließend beurteilt werden, wenn die Ausgestaltungsgesetze vorliegen. Der Gesetzgeber hat im Einzelfall eine Abwägung zwischen den unterschiedlichen Belangen durchzuführen. Denn nur überwiegende berechnigte Interessen eines anderen oder der Allgemeinheit legitimieren zur Einschränkung der Informationsverpflichtung.

### **B.III. Informationszugangsrecht**

#### **B.III.1. Anspruchsberechnigter und Umfang**

Nach Art. 22 a Abs. 2 B-VG-ME soll jedermann darüber hinaus ein Recht auf Zugang zu Informationen haben. Anders als die Auskunftspflicht nach der derzeitigen Rechtslage wird ein subjektives Recht auf Informationszugang im Verfassungstext verankert. Damit übernimmt der Entwurf regelungstechnisch das in Europa gebräuchliche Regel Ausnahme-Schema. Information ist laut den Erwägungen „jede amtlichen bzw. unternehmerischen Zwecken dienende Aufzeichnung, ausgenommen Entwürfe oder Notizen, unabhängig von der Art ihrer Speicherung. Nur gesichertes Wissen im tatsächlichen Bereich stellt eine Information dar“. Als Informationen gelten zudem „nur Tatsachen, die bereits bekannt sind und nicht solche, die erst – auf welche Art auch immer – erhoben werden müssen“. Dies entspricht dem Vorgehen in anderen Vorgaben über den Informationszugang.<sup>17</sup> Der Ministerialentwurf fällt jedoch hinter Art. 2 Abs. 1 der Konvention des Europarates über den Zugang zu amtlichen Dokumenten zurück, weil er einen Zugang zu den Originaldokumenten (Akteneinsicht) nicht vorsieht. Ein solches Recht auf Akteneinsicht gehört heute jedoch zum europäischen „Standard“.

#### **B.III.2. Anspruchsverpflichtete**

Anspruchsverpflichtete sind der bereits oben genannte Kreis, jedoch unter Ausschluss der Organe der ordentlichen Gerichtsbarkeit und der Verwaltungsgerichtsbarkeit. Diese Abweichung ist angesichts der Besonderheiten der Justiz und der Bedeutung der Verfahrensrechte der Prozessbeteiligten gut vertretbar. Dieser Regelungsansatz entspricht dem des deutschen Informationsfreiheitsgesetzes. Die gesetzlichen beruflichen Vertretungen sollen nur gegenüber ihren Angehörigen verpflichtet sein, Zugang zu Informationen zu gewähren (Art. 22 a Abs. 2 2. HS. BVG- ME). Nach Art. 22 a Abs. 3 B-VG-ME sind dem Zugangsrecht auch Unternehmen unterworfen, die der Kontrolle des Rechnungshofes oder eines Landesrechnungshofes unterliegen.

#### **B.III.3. Beschränkungen**

Für das Informationszugangsrecht gelten die soeben für die Veröffentlichungspflicht in Art. 22 a Abs. 1, 2 B-VG-ME angeführten Schranken. Unternehmen, die der Kontrolle des Rechnungshofes oder eines Landesrechnungshofes unterliegen, können zudem den Informationszugang verweigern, wenn dies zur Vermeidung einer

Beeinträchtigung ihrer Wettbewerbsfähigkeit erforderlich ist. Auffällig ist, dass der Kreis der Ausnahmegründe weitergezogen ist, als dies in der Transparenz-VO der Europäischen Union und vielen Informationsfreiheitsgesetzen üblich ist. Bei einem Vergleich ist aber zu bedenken, dass der Informationszugang nach dem Ministerialentwurf nicht allein zur Exekutive gewährt wird, wie dies bei den zuvor genannten Regelwerken der Fall ist. Vergleicht man die Ausnahmegründe mit denen, die in Art. 3 der Konvention des Europarates über den Zugang zu amtlichen Dokumenten niedergelegt sind, stellt man fest, dass eine Reihe gewichtiger Belange wie private Rechte oder die Stabilität des Finanzmarktes in Art. 22a Abs. 2 B-VG-ME gar nicht aufgeführt sind. Zwar werden diese Aspekte, wie bereits erwähnt, in den Erläuterungen als legitime Verweigerungsgründe angesehen. Es wäre jedoch zu empfehlen, hier für eine Übereinstimmung mit den Vorgaben der Konvention des Europarates über den Zugang zu amtlichen Dokumenten zu sorgen und die fehlenden Ausnahmegründe in den Entwurf aufzunehmen. Andererseits ist nicht nachvollziehbar, warum eine Verweigerung immer dann zulässig ist, wenn sie unmittelbar der Vorbereitung einer Entscheidung dient. Sicherlich ist die ungestörte Entscheidungsfindung ein wichtiges Gut, das Schutz verdient. Es gibt jedoch zahlreiche Unterlagen wie z.B. Ausschreibungsunterlagen oder Pläne auf frühen Entscheidungsstufen, die durchaus in der Öffentlichkeit diskutiert werden sollten. Zudem ist auch inhaltlich gar nicht klar, was unter Entscheidungsvorbereitung gemeint ist. Komplexe Verwaltungsentscheidungen sind heute oft in zahlreiche Teilentscheidungen untergliedert, so dass es schwierig bis unmöglich ist, wie die Entscheidungsvorbereitung von der eigentlichen Endentscheidung abzugrenzen ist. Hier ist eine präzisere Formulierung dieses Verweigerungsgrund zu fordern.<sup>18</sup>

Anders als in Art. 3 Abs. 2 der Konvention des Europarates über den Zugang zu amtlichen Dokumenten fehlt es im Ministerialentwurf an einer Abwägungsklausel, die eine Balancierung des Rechts auf Informationszugangs mit entgegenstehenden Belangen verbindlich macht. Dass die Abwägung auch Art. 22a Abs. 2 B-VG-ME nicht fremd ist, zeigt der Ministerialentwurf, wenn er von „zwingenden außenpolitischen Gründen“ oder von der „Wahrung überwiegender berechtigter Interessen“ spricht. Ein alle Verweigerungsgründe umfassendes Abwägungsgebot enthält die Vorschrift jedoch nicht. Hier sollte nachgebessert werden.

#### **B.IV. Ausgestaltung durch den einfachen Gesetzgeber**

Die nähere Ausgestaltung von Auskunfts- bzw. Informationsrechten muss naturgemäß sachbereichsspezifisch vom Gesetzgeber vorgenommen werden. Nach dem Ministerialentwurf sollen hier Bundes- und Landesebene gleichermaßen für die Gesetzgebung zuständig sein. Da alle drei Gewalten betroffen sind, ist mit einer Vielzahl von Ausgestaltungsgesetzen zu rechnen. Hier besteht die Gefahr, dass das Recht über den Informationszugang und die Transparenz übermäßig zersplittert.

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<sup>18</sup> Für ein Beispiel vgl. § 4 IFG in der Bundesrepublik.

## B.V. Fazit

Positiv an dem Ministerialentwurf ist zu vermerken, dass der Grundsatz der Amtsverschwiegenheit abgeschafft wird. Es wird ein subjektives Recht auf Informationszugang als Regelfall anerkannt. Hier wäre es von Vorteil, wenn ein Zugang zu den Originaldokumenten und damit ein Akteneinsichtsrecht gewährt werden könnte. Auch die Verankerung einer Pflicht zur Veröffentlichung von Informationen von allgemeinem Interesse ist zu begrüßen. Die Aufzählung von Informationen, die in diese Kategorie fallen, gibt dem einfachen Gesetzgeber Anhaltspunkte dafür, wie er die Veröffentlichungsverpflichtungen näher ausgestalten kann. So gehen auch die modernen Transparenzgesetze vor.

Der Zugang zu Informationen und die Veröffentlichungsverpflichtung kann nur bei Vorliegen bestimmter Gründe verweigert werden. Es ist zu begrüßen, dass diese Gründe allein durch den Gesetzgeber festgelegt werden können. Der Kreis der im Ministerialentwurf genannten ist jedoch zu eng. Es fehlen z.B. das Datenschutzrecht oder Geschäfts- und Betriebsgeheimnisse. Diese Belange sind zwar in den Erwägungsgründen aufgeführt, sie sollten jedoch explizit in den Kanon des Art. 22a Abs. 2 B-VG-ME aufgenommen werden. Hier könnte sich der Entwurf an den Vorgaben des Art. 3 der Konvention des Europarates über den Zugang zu amtlichen Dokumenten orientieren. Der Verweigerungsgrund „Vorbereitung einer Entscheidung“ bedarf einer Konkretisierung oder sollte gestrichen werden. Zudem ist die Aufnahme einer Abwägungsklausel dringlich zu empfehlen. Informationszugangsrechte können ihre Ziele nur optimal erreichen, wenn es einen effektiven Vollzug und Rechtsschutz gibt. Diesbezüglich fehlen im Ministerialentwurf hinreichende Vorgaben.

## C. Entwurf der Grünen

### C.I. Zielsetzung

Dem Entwurf der Grünen liegt eine Ausarbeitung der Expertengruppe für die Bürgerplattform „transparenzgesetz.at“ zu Grunde. Der Entwurf dient dazu, für „Transparenz in Gesetzgebung und Vollziehung“ zu sorgen. Transparenz wird für erforderlich gehalten, damit Bürger und Medien die Kontrolle über die Verwaltung ausüben können. Dies soll dazu beitragen, dass Korruption verhindert wird. Die bestehenden Auskunftspflichtgesetze werden als unzureichend kritisiert, da die breiten Ausnahmetatbestände in der Praxis nahezu immer eine Verweigerung der Auskunft erlauben. Zudem sei der gewährte Rechtsschutz lückenhaft.

### C.II. Transparenz- und Veröffentlichungsverpflichtungen

#### C.II.1. Aus der Staatszielbestimmung

Nach dem Vorschlag der Grünen (B-VG-GE) soll ein Art. 9 b B-VG-GE eingeführt werden, der eine neue Staatszielbestimmung im Bundesverfassungsgerichtsgesetz verankert. Hiernach bekennt sich in Abs. 1 dieser Vorschrift die Republik Österreich

(Bund, Länder und Gemeinden) „zur umfassenden Transparenz des staatlichen Handelns und zur Informationsfreiheit seiner Bürger“. Umfassende Transparenz erfordert nach Art. 9 b Abs. 2 B-VG-GE zunächst die möglichst weit gehende öffentliche Zurverfügungstellung aller Informationen bezüglich staatlichen Handelns. Sie ist insbesondere durch umfassende amtliche Zugänglichmachung der Ergebnisse staatlichen Handelns – auch in maschinenlesbarer Form – herzustellen. In der Begründung wird sodann aus der Staatszielbestimmung abgeleitet, dass hieraus eine staatliche Handlungspflicht zur Errichtung einer öffentlichen Open-Data-Plattform resultiere. Aus dem Wortlaut der vorgeschlagenen Vorschrift kann dies jedoch nicht entnommen werden.

Umfassende Transparenz ist aber auch im Hinblick auf die Informationszugangsfreiheit bedeutsam. Nach Abs. 2 ist sie durch rasche und kostenlose Hilfestellung bei Auskunftsbegehren sowie durch Maßnahmen zur Erleichterung und Gewährleistung der Akteneinsicht herzustellen. Auch diese Anforderungen werden in der Begründung näher konkretisiert. Eine staatliche Handlungspflicht solle im Hinblick auf die Schaffung eines Beauftragten für Informationsfreiheit oder die jährliche Vorlage eines Fortschrittsberichts zur Informationsfreiheit bestehen. Auch hier verwundert, dass diese Instrumente nicht direkt in den Entwurf aufgenommen werden.

## **C.II.2. Aus dem Grundrecht auf Informationen**

Art. 20 Abs. 3 Satz 1 B-VG-GE enthält das Recht auf Information über alle Angelegenheiten des Wirkungskreises von staatlichen Organen, die dann in der Vorschrift weiter aufgelistet werden. Dieses Recht besteht ohne Darlegung eines berechtigten Interesses an der Kenntnis des jeweiligen Vorgangs. Die Begründung argumentiert, dass diese Vorschrift ein Grundrecht verankere. Schon die Überschrift zu der einschlägigen Passage lautet zudem „Besonderer Teil: Ziffer 2 - Grundrecht“.

Das Informationsrecht gewährt dem Grundrechtsträger einen subjektiv-rechtlichen Anspruch. Der Wortlaut der Vorschrift lässt offen, ob die Zugänglichmachung nur gegenüber dem Antragsteller oder auch gegenüber der Öffentlichkeit erfolgen soll. Für die erste Variante spricht, dass gemäß Abs. 5 der Norm Akten, Dokumente und Informationen, wenn sie sich unmittelbar auf die Verwendung öffentlicher Mittel beziehen, „jedenfalls zugänglich“ zu machen sind. Andererseits kann Art. 20 Abs. 3 B-VG-GE auch so verstanden werden, dass die Zugänglichmachung nur gegenüber dem Antragsteller erfolgen muss. Denn es wird, anders als dies in Art. 9 b Abs. 2 B-VG-GE der Fall ist, nicht davon gesprochen, dass eine „umfassende amtliche Zugänglichmachung“ erfolgt. Hier wäre eine Klarstellung hilfreich, um zukünftige Auslegungsprobleme zu vermeiden.

Das Informationsrecht hat aber auch eine objektiv-rechtliche Dimension, die eine grundrechtliche Gewährleistungspflicht“ begründe. So müsse der Staat für die umfassende und unverzügliche amtliche Zugänglichmachung der Ergebnisse staatlichen Handelns Sorge tragen. Als Mittel, um dieses Ziel zu erreichen, wird insbesondere die Errichtung einer öffentlichen Open-Data-Plattform genannt. Aber auch die Weiterverwendung der auf der Plattform verfügbaren Informationen soll vorgesehen werden. Darüber

hinaus soll für effektiven Rechtsschutz gesorgt werden, wenn das Auskunftersuchen abgelehnt wurde. Anders als die modernen Transparenzgesetze oder auch der Ministerialentwurf legt der Grünen-Entwurf nicht im Einzelnen fest, welche Veröffentlichungspflichten gelten. Dies obliegt vielmehr dem Gestaltungsermessen des Gesetzgebers. Allenfalls aus Art. 20 Abs. 5 B-VG-GE könnte die Leitlinie abgeleitet werden, dass Akten, Dokumente und Informationen jedenfalls dann zugänglich zu machen sind, wenn sie sich unmittelbar auf die Verwendung öffentlicher Mittel beziehen oder sobald eine Entscheidung abschließend getroffen ist. Aber auch hier bleiben Auslegungsunsicherheiten. Abs. 5 könnte auch allein als eine Konkretisierung der in Abs. 4 genannten Verweigerungsgründe aufgefasst werden. Hier wäre eine Präzisierung des Entwurfs hilfreich.

### **C.III. Informationszugangrecht**

#### **C.III.1. Anspruchsberechtigte und Umfang des Anspruchs**

Das Recht auf Informationen über alle Angelegenheiten des Wirkungskreises der verpflichteten Organe ist als ein Auskunftsanspruch zu verstehen. Dabei bemüht sich der Entwurf, Defizite abzustellen, die das gegenwärtige Auskunftsrecht kennzeichnen.

Zunächst ist das Recht auf Information unverzüglich zu gewähren. In der Praxis sind Auskunftersuchen nicht immer in gebotener Frist beantwortet worden. Da eine Beschwerde wegen Säumnis nicht zugelassen wurde, kam dies einer Auskunftsverweigerung gleich. Des Weiteren soll die Auskunft kostenlos erfolgen. Dies ist nicht selbstverständlich, wie ein Blick in andere Informationsfreiheitsgesetze zeigt. Satz 2 umfasst das Recht auf (direkten) Zugang zu Akten, Dokumenten und sonstigen Informationen der Organe. Nach den bisherigen Auskunftsgesetzen oblag es mehr oder weniger der zuständigen Stelle, über den Inhalt der Akten zu berichten.

#### **C.III.2. Anspruchsverpflichtete**

Anspruchsverpflichtete sind Organe, die mit Aufgaben der Bundes-, Landes- und Gemeindeverwaltung betraut sind, Organe anderer Körperschaften des öffentlichen Rechts, Organe der Gerichtsbarkeit, Organe der Gesetzgebung, der Rechnungshöfe, der Volksanwaltschaft und sämtlicher Einrichtungen, die der Kontrolle des Rechnungshofes und vergleichbarer Institution der Länder unterliegen sowie Gemeindeverbände, Stiftungen, Fonds und Anstalten. Der Entwurf der Grünen sieht den Informationszugang damit ebenso wie der Ministerialentwurf gegenüber allen drei Gewalten vor.

#### **C.III.3. Beschränkungen**

Der Entwurf ist ersichtlich von dem Wunsch getragen, präzise Ausnahmeregelungen zu schaffen. Auskunftersuchen werden heute in der Praxis oft mit generellem Hinweis auf den Grundsatz der Amtsverschwiegenheit und die weiteren Verweigerungsgründe

### C.IV. Gesetzgebungszuständigkeiten

Die Zuständigkeit für den Erlass weiterer Ausführungsgesetze und die Vollziehung der Auskunftsgesetze abgelehnt. Die vorgeschlagene Regelung ist durch vier Aspekte charakterisiert. Erstens ist die Beschränkung des Rechts auf Information zulässig, wenn dies ausdrücklich im Gesetz vorgesehen ist. Darüber hinaus muss sie zweitens im konkreten Einzelfall erforderlich sein. Damit wird angeordnet, dass im Hinblick auf die konkrete Sachlage eine Abwägung zwischen den widerstreitenden Interessen stattfindet. Stets ist, wie sich dies schon aus allgemeinen Verhältnismäßigkeitserwägungen ergibt, das mildeste Mittel anzuwenden. Diese Konkretisierungen sind uneingeschränkt zu befürworten.

Drittens werden abschließend Rechtsgüter aufgezählt, bei deren Betroffenheit eine Verweigerung des Rechts auf Information zulässig ist. Art. 20 Abs. 4 B-VG-GE nennt im Einzelnen als Rechtfertigungsgründe überwiegende berechnete Geheimhaltungsinteressen im Sinne des Datenschutzgesetzes, eine unmittelbare und schwer wiegende Gefahr für die Aufrechterhaltung der öffentlichen Sicherheit, für die militärische Landesverteidigung, für die außenpolitischen Interessen sowie für die wirtschaftliche Existenz einer Körperschaft des öffentlichen Rechts oder soweit sie unmittelbar der Vorbereitung einer Entscheidung dienen. Sind juristische Personen des Privatrechts, die im Wettbewerb stehen, betroffen, dürfen Auskünfte beschränkt werden, um Geschäfts- und Betriebsgeheimnisse zu wahren. Dieser Kanon entspricht in etwa dem, wie er in Art. 3 der Konvention des Europarates über den Zugang zu amtlichen Dokumenten niedergelegt ist.

Viertens werden zwei Fallkonstellationen genannt, bei denen diese Gründe nicht angewandt werden sollen. So sind zunächst jedenfalls Akten, Dokumente und Informationen zugänglich zu machen, soweit sie sich unmittelbar auf die Verwendung öffentlicher Mittel beziehen. Dienen sie der Vorbereitung einer Entscheidung, sind sie zugänglich zu machen, sobald die Entscheidung getroffen ist. Die Absolutheit dieser Regelung verwundert, kann es doch zum Beispiel aus Gründen der Aufrechterhaltung der öffentlichen Sicherheit oder aufgrund außenpolitischer Erwägungen geboten sein, Informationen geheim zu halten. Der Entwurf der Grünen reagiert hier offenbar auf die anhaltende Erfahrung, dass es bei zahlreichen Skandalen der jüngeren Zeit (Stichwort Bankenskandal) nicht möglich war, im Wege eines Auskunftsersuchens an die erforderlichen Informationen heranzukommen.

Eine Sonderregelung gilt für das Verhältnis zwischen einem von einem allgemeinen Vertretungskörper bestellten Funktionär und diesem Vertretungskörper, wenn er derartige Informationen verlangt. In diesem Fall sollen die Beschränkungen nach Abs. 4 nicht bestehen. Sinngemäß gilt diese Vorgabe auch für Mitglieder der Bundesregierung gegenüber dem Nationalrat und dem Bundesrat sowie für vom Volk gewählte Bürgermeister gegenüber dem Gemeinderat.

### C.IV. Gesetzgebungszuständigkeiten

Die Zuständigkeit für den Erlass weiterer Ausführungsgesetze und die Vollziehung ist dem Bund überantwortet. Dies soll eine Zersplitterung der Rechtssetzung in Bundes- und Ländergesetze verhindern. Inwiefern es nicht auch auf Ebene der Länder - und zwar im Hinblick auf legitime Länderbelange - Regeln über den Informationszugang geben muss, entzieht sich meiner Kenntnis.

### C.V. Fazit

Zu begrüßen ist, dass der Entwurf mit seiner Staatszielbestimmung dem Gesetzgeber den Auftrag erteilt, eine umfassende Transparenzgesetzgebung zu erlassen. Zutreffend lässt die Begründung erkennen, dass hierzu neben den fast schon selbstverständlichen Regeln über den Informationszugang Veröffentlichungsverpflichtungen, Vorgaben über die Weiterverwendung von zugänglichen Informationen und auch ein Register i.S. einer einheitlichen Open-Data-Plattform gehören. In dieser Hinsicht geht der Entwurf der Grünen deutlich über den Ministerialentwurf hinaus. Jedoch könnte der Entwurf auch Informationen bestimmen, bei denen regelmäßig von einer Veröffentlichungspflicht ausgegangen wird. Diesbezüglich ist der Ministerialentwurf transparenzfreundlicher.

Der Informationszugangsanspruch ist deutlich konkreter ausgestaltet als dies im Ministerialentwurf der Fall ist. Positiv ist zu bewerten, dass der Zugang unverzüglich erfolgen muss.

Etwas zu eng geraten sind die Ausnahmegründe. So wäre es angezeigt, überwiegende private Belange anzuerkennen, auch wenn sie nicht vom Datenschutz erfasst werden. Auch beim Entwurf der Grünen ist nicht nachvollziehbar, warum eine Verweigerung immer dann zulässig ist, wenn sie unmittelbar der Vorbereitung einer Entscheidung dient.

Es ist von Vorteil, dass der Entwurf eine Verweigerung des Informationersuchens dem Grundsatz der Verhältnismäßigkeit unterstellt. Leider fehlt es auch in diesem Entwurf an hinreichenden Vorkehrungen für einen effektiven Vollzug und Rechtsschutz.

### D. Ergebnis

Beide Entwürfe bewirken im Falle ihres Inkrafttretens eine Zäsur im österreichischen Informationsrecht. Das verfassungsrechtliche Gebot der Amtsverschwiegenheit würde abgeschafft. Ein Recht auf Informationen gegenüber allen staatlichen Gewalten würde errichtet. Zudem würde der moderne Transparenzgedanke in der Verfassung verankert, sei es als Staatszielbestimmung oder als Pflicht zur Veröffentlichung von Informationen im allgemeinen Interesse. Österreich würde damit in der vordersten Reihe der Staaten mit einer modernen Gesetzgebung zu den Themen Informationsfreiheit und Transparenz Platz nehmen.

Informationsfreiheit und Transparenz können aber nur bedingt durch rechtliche Vorschriften durchgesetzt werden. Erforderlich ist vielmehr eine Veränderung der Verwaltungskultur. Angesichts der langen Tradition der Amtsverschwiegenheit in Österreich ist daher die Befürchtung groß, dass die gewährten Rechte durch die erforderlichen Ausgestaltungsgesetze übermäßig abgeschwächt oder gar ausgehöhlt werden könnten. Vor diesem Hintergrund empfiehlt es sich, die verfassungsrechtlichen Vorgaben möglichst präzise abzufassen. Dies kann z.B. dadurch geschehen, dass eine unverzügliche Bearbeitung eines Informationsbegehrens verlangt, ein Einsichtsrecht in die Originaldokumente vorgesehen und auch Verweigerungsgründe möglichst eng sowie im Rahmen des international Üblichen abgefasst werden. Auch sollte die Anwendung des Verhältnismäßigkeitsgebots angeordnet werden. Hierdurch wird es möglich, einen Standard für den Vollzug zu entwickeln, ihn mit den internationalen Gepflogenheiten abzugleichen und hierüber regelmäßig zu berichten. Dreh- und Angelpunkt für eine effektive Umsetzung von Informationsfreiheit und Transparenz ist insofern eine unabhängige und schlagkräftige Vollzugsstelle. Hier liegt es nahe, diese Aufgabe, ähnlich wie dies europarechtlich im Bereich des Datenschutzes vorgesehen ist, einem unabhängigen Beauftragten für Transparenz und Informationsfreiheit zu überantworten.