

## The OSCE Representative on Freedom of the Media

On 27 April 1999, Freimut Duve, the OSCE Representative on Freedom of the Media, stated in a press release that he was "seriously concerned" about NATO's missile attack against the headquarters of the Serbian state television RTS in Belgrade.<sup>1</sup> This attack, which took place on 23 April 1999, killed 16 RTS employees and injured numerous others.

Duve said that although he was fully aware that the state television network was the backbone of Milošević's war propaganda machine, he was nevertheless worried that in future conflicts journalists would be treated as "combatants". In his words, setting such a precedent was "extremely dangerous". Furthermore, the press release stated that although commenting on the actions of other international organizations was not one of his priorities, he hoped that NATO would take his concern into consideration.

NATO commanders and several leading politicians from NATO states did not share Duve's concern. In particular, US and British government representatives gave their complete backing to the air strike. Even a year later, on 8 June 2000, the former NATO Supreme Commander in Europe, US General Wesley Clark, described this attack as a "huge step" towards the removal of this "major instrument of provocation".<sup>2</sup> In contrast, leading human rights organizations and journalist associations like Amnesty International and the International Federation of Journalists as well as other NGOs all over the world had condemned the attack sharply. However, their protests had absolutely no recognizable effect on the treatment of journalists and the media in the further course of the war or on the international debate on the protection of journalists in conflict situations. In June 2000, the International Criminal Tribunal for Former Yugoslavia stated in a letter to Amnesty International that their prosecutor did not see any reason to open an investigation into the NATO air strike on the Serbian television and other civilian goals.<sup>3</sup>

Dealing with this attack on the Serbian television station killing 16 people was the most rigorous test of the OSCE Media Representative's work since the establishment of this office in December 1997. If the Media Representative had remained silent about this blood bath, his credibility would have

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1 Duve Concerned with the Bombing of RTS, Press Release of the OSCE Representative on Freedom of the Media of 27 April 1999.

2 Clark Calls Attack on Serbian Media Center Necessary, in: RFE/RL Newsline of 9 June 2000.

3 Cf. Amnesty International's initial comments on the review by the International Criminal Tribunal for the Former Yugoslavia of NATO's Operation Allied Force, AI Index EUR 70/029/2000, News Service No. 116. In paragraphs 55 and 76 of this review by the Tribunal it is stated that the media can become "a legitimate military objective" if it is "the nerve system that keeps a war-monger in power and thus perpetuates the war effort".

been shattered. This is because one of the most important beliefs of the first OSCE Representative on Freedom of the Media, the German Social Democrat Freimut Duve, is his unremitting denunciation of "censorship by killing". Moreover, as Duve has emphasized more than once, the question "How do democracies deal with armed conflicts?" has become a "permanent test of journalistic freedom" and thus a "central challenge" to his work.<sup>4</sup> However, this fateful case showed the limitations to the effectiveness of the OSCE media ombudsman. The only tool at his disposal to mobilize international public opinion is his plain language. In contrast, those who hold power, whether these are governments or common criminals, have very few obstacles in their paths when they want to silence awkward or undesirable voices in the media - often by murder.

#### *The Media after the End of One-Party Rule in Central and Eastern Europe*

On 18 December 1997 at the OSCE Ministerial Council Meeting in Copenhagen, Freimut Duve was appointed as the first OSCE Representative on Freedom of the Media. This had been preceded by a diplomatic initiative by the then German Foreign Minister Klaus Kinkel. The increased interest in Bonn and other Western capitals on freedom-of-the-media issues seems to go back primarily to the problematic developments in this area in many of the so-called transition countries in Eastern and South-eastern Europe and in particular to the importance of the war propaganda in the media in former Yugoslavia.

In the "new" democracies that emerged in the former one-party states, after the *Wende* 1989/1990, the climate did not automatically become favourable to the development of freedom of expression and freedom of the press. On the contrary, in Central Asian, Caucasian and other states of the former Soviet Union, the governments still controlled the media, often with an iron hand.<sup>5</sup> After the introduction of party pluralism, "media wars" broke out repeatedly in Hungary, the Czech Republic and other Central Eastern European states in the fight to gain control of public service broadcasters and other important news organizations.<sup>6</sup> Apparently, numerous politicians understood direct control of the media as one of the powers they had gained from winning parliamentary elections. This led to resistance by the opposition, journalists and the general public. These media conflicts have damaged the democratization of political practice in post-communist countries considerably.

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4 Freimut Duve, *Medienfreiheit organisieren. Ein Amt für Pressefreiheit in der OSZE* [How to Structure Freedom of the Media. An OSCE Office for Freedom of the Press], in: *Internationale Politik* 5/2001, pp. 37-42, here: p. 40 (this and all other quotations from foreign-language sources are author's translations).

5 Cf. the more than 50 reports written since 1992 by the European Institute for the Media in Düsseldorf on the media coverage during the lead-up to elections in transition countries between South-eastern Europe and Central Asia, at: [www.eim.org](http://www.eim.org).

6 Cf. Péter Bajomi-Lázár/István Hegedüs (Eds.), *Media and Politics*, Budapest 2001.

A special case is that of the former Yugoslavia where under the rule of the Communist Party the media were very dynamic and only partially censored. Before the outbreak of civil war in 1991, however, the war of weapons was initially prepared and tested by the war of words. Numerous media became the unscrupulous mouthpieces of ethnic-chauvinist propaganda. On the other hand, many newspapers, radio and television stations won laurels in their fight against the nationalist despotisms existing in Serbia, Croatia and Bosnia.

Duve himself summarized the background of the creation of his post as follows: "When the OSCE, as the first regional organization of the United Nations, established the office of a Representative on Freedom of the Media, entitled to intervene, this was only made possible due to the special Helsinki history. Without 'Solidarność', Alexander *Solshenyzin*, Václav *Havel*, the thousands of unnamed authors, many of whom were sentenced to jail even during the seventies, the willingness to accept supranational observation of freedom of the press is incomprehensible."<sup>7</sup>

### *The Mandate*

On 5 November 1997, the OSCE Permanent Council passed a decision to establish the office of the OSCE Representative on Freedom of the Media as well as the text of its mandate. In this decision it states that 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".<sup>8</sup> In this document, the office is tasked, *inter alia*, with the following:

- The OSCE Representative on Freedom of the Media is to observe relevant media developments in all participating States and advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media. In this respect, he assumes an early-warning function.
- The OSCE Representative on Freedom of the Media is to concentrate on a rapid response to serious non-compliance with OSCE principles and commitments by participating States with respect to freedom of expression and free media. He is to seek direct contacts with the participating State and other parties concerned, assess the facts, assist the participating State and contribute to the resolution of the issue.
- The OSCE Representative may collect and receive information on the situation of the media from participating States and other interested parties, e.g. the media, national and international media associations as

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<sup>7</sup> Duve, cited above (Note 4), p. 37 (emphasis in original text).

<sup>8</sup> OSCE, Permanent Council, Decision No. 193, PC.DEC/193 of 5 November 1997.

well as other relevant non-governmental organizations. He is to work closely with the Office for Democratic Institutions and Human Rights (ODIHR) as well as the High Commissioner on National Minorities (HCNM) and also co-operate with the United Nations, the Council of Europe and relevant international organizations. However, he may not communicate with persons or organizations which practice or condone terrorism or violence.

- The OSCE Representative routinely consults with the Chairman-in-Office and reports on a regular basis to the Permanent Council. He is to 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 with respect to free media.

In summary, the three most important tasks of the OSCE Media Representative are as follows:

1. Observing and reporting on developments in the OSCE States with regard to freedom of the media,
2. an early-warning function with regard to possible limitations on the freedom of the media as well as
3. a rapid response to serious violations against the freedom of the media.

The OSCE Representative on Freedom of the Media is appointed by the Ministerial Council upon the recommendation of the Chairman-in-Office after consultation with the participating States. This position is to be filled by an "eminent international personality with long-standing relevant experience from whom an impartial performance of the function would be expected". The term of office is three years long and may be extended for one further term of three years. His Office is located in Vienna.

In the summer of 2001, ten employees from nine countries were working in the Office of the Representative. However, this number is likely to increase if the OSCE bodies approve Duve's recommendations for an extension of the existing projects, in which the Office of the Media Representative is involved, and also approve the corresponding augmented funding and increase in personnel. In the OSCE 2001 budget, 647,800 Euros were allocated to the Office of the Media Representative. Even assuming this is only 0.34 per cent of the total OSCE budget, it still means an increase compared to the preceding year, in which 0.24 per cent (515,300 Euros) of total OSCE expenditures were allocated for this purpose.

### *The First OSCE Representative on Freedom of the Media*

It was only in the early summer of 2001, that Freimut Duve was reappointed to his post for another three years. Newspaper reports indicated that because Russia was annoyed about his criticism of Moscow's approach in Chechnya and as a sign of protest, at the OSCE Ministerial Council in November, for the time being, it agreed to extend his mandate for only six months. US sources spoke of a respected Russian rival who would candidate against the "controversial" incumbent.<sup>9</sup> In July 2001, his reappointment was confirmed after all, retroactively to the beginning of the year. In particular, German newspapers had reported that "massive pressure" had been exerted - only in part behind the scenes - by some authoritarian OSCE participating States against the Media Representative.

For example, a conflict with Belarusian authorities became public when Duve cancelled his visit to Minsk scheduled for the last week in April 2001. Before this the authorities in Minsk had made difficulties for the member of Duve's staff responsible for Belarus - who had formerly held a top position at the US Embassy in Minsk - to obtain a visa. "It is unacceptable that any one of the 55 participating States can at whim decide who I will take on which trip", Duve declared subsequently to journalists.

Already as an SPD Member of the German Parliament, who was in this office for over four legislative periods starting in 1980, and previously as the editor of the *rororo-aktuell* series, Duve (born in 1936) had made a name for himself as someone who uses plain language. Later he was a Member of the OSCE Parliamentary Assembly and in November 1997 received the Hannah Arendt Prize for Political Philosophy. Duve once wrote about a trait which had left an indelible mark on his personality: "What was meant as an endearing as well as mocking praise in my youth - 'very idealistic' -, has stayed with me in politics till this very day. Today the mocking continues, but it is meant contemptuously."<sup>10</sup> A Zurich newspaper described him as "passionately devoted to curing the world's ill".<sup>11</sup>

Idealism as well as large doses of pragmatism belong without a doubt to the most important characteristics that a mandate holder in this office must possess. Since the collapse of the Soviet system in Central and Eastern Europe, for example, instead of a generally expected permanent improvement in the area of freedom of the media, there have been very serious setbacks. A recent example of this was the murder of the Ukrainian journalist Georgiy Gongadze in 2000, which, in international newspaper reports, was linked to the highest state levels. Upon the recommendation of the OSCE Media Repre-

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9 Cf. Limited Renewal for the OSCE's Freimut Duve, in: Newsletter of the World Press Freedom Committee, 7 December 2000.

10 Freimut Duve, *Vom Krieg in der Seele. Rücksichten eines Deutschen* [On the War in the Soul. Considerations of a German], Hamburg 1998, p. 18.

11 Peter Fürst, *Schutzpatron der Pressefreiheit* [The Patron Saint of Freedom of the Press], in: *Tages-Anzeiger*, Zurich, 12 June 1999.

sentative, Gongadze was awarded the OSCE Prize for Journalism and Democracy posthumously in the spring of 2001. Simultaneously, the Office of the OSCE Media Representative in co-operation with the Ukrainian Foreign Ministry organized a series of seminars on freedom of the media in various parts of the country.

The first OSCE Media Representative also shows idealism in his efforts not to be just "an accountant on repression", but to place a special emphasis on the "cultural and civil dimension" of his office. Thus, the Yearbooks of the OSCE Representative on Freedom of the Media were created and even their design demonstrates this ambition. The cover has an illustration by Günter Grass of a hand holding a sharp quill pen rising up from a desert of stones entitled "The Writer's Hand". In addition to articles on the media, there are also poems and literary essays by renowned authors like Chingiz Aitmatov and Dragan Velikić.

Furthermore, two books with a regional character as part of a new series were created under Duve's auspices: "The Caucasus - Defence of the Future" with articles by authors of different ethnic backgrounds from this crisis and war-torn region as well as "In Defence of the Future - Searching in the Minefield" with reflections by twelve authors from the former Yugoslavia on the effects of the recent past on the future of their native country.

Duve initiated another project in the year 2001, which hardly fits the image - and possibly the mandate in a narrower sense - of an international governmental organization: A "mobile culture container" is to travel across the former Yugoslavia till the end of 2002 which, in particular, will offer young people a contact point for cultural exchange as well as fighting against intolerance and ethnic chauvinism. The financial resources for this project totalling around 3.5 million DM were raised primarily by Germany, Austria, Switzerland and the Czech Republic within the framework of the Stability Pact for South Eastern Europe.

### *Activities*

The OSCE Representative on Freedom of the Media reports to the Permanent Council and other OSCE bodies on his activities regularly. Under given circumstances, he gives press releases and interviews to the general public. As can be gleaned from these documents, the majority of his activities are directed towards events in "new democracies" although to a lesser extent occurrences in Western democracies have also been dealt with.

For instance, in his report to the OSCE Permanent Council on 19 July 2001, Duve responded to Italian Prime Minister Silvio Berlusconi's announcement that he would relinquish his influence on his media empire in September of that same year. Duve emphasized that half-measures which cast the suspicion that he maintained his influence in a concealed manner would not be accept-

able. Duve's primary concern was the possibility that this turn of events in an EU country would give some political leaders in the new democracies the justification they needed to at least partially retain control of the media in their own countries.

Other cases he dealt with in the report are characteristic for the work of the OSCE Representative on Freedom of the Media. These included, *inter alia*: the pressure exerted on journalists of the Rustavi-2 television station in Georgia, reports of 70 cases alone in the first half of 2001 in which pressure was exerted on journalists in Azerbaijan, the case of the cameraman, Dmitri Zavadsky, who disappeared a year ago in Belarus, and other topical examples from repression to the murder of journalists in post-communist OSCE countries.

A cross-section of the usual activities of the OSCE Media Representative is as follows:

- public and confidential intervention at state authorities in favour of detained or harassed journalists,
- visits to state authorities in transition countries with particularly pronounced problems with respect to freedom of the media,
- publication of country reports on the media situation in OSCE States,
- organizing and participating in conferences on media topics which in particular embrace transition countries,
- initiating public debate on topics like the improvement of the security of journalists in conflict zones by having them wear badges.

There are two aspects of the activities of the OSCE Media Representative partly creating controversial discussions. One of these is the question of the relationship between "Eastern" and "Western" topics. The other is that the boundary between the work of non-governmental organizations active in the media field and that of the Media Representative seems unclear.

Duve has indicated in several of his interviews that the representatives of Western states have appeared "disconcerted" each time his Office expresses concern about the freedom of the media in their countries. His answer to this is always that "self-righteousness is the worst enemy of justice". "Thus you should always clean up at your own front door first."<sup>12</sup> However, as his own experiences have shown, this is no easy task. For instance, the conservative US World Press Freedom Committee did not react positively to the fact that Duve sees a "problem" in combating "hate language" in the wording of the first amendment to the US constitution. Berlusconi angrily rejected Duve's criticism that there was a possible conflict of interest between Berlusconi, the media mogul, and Berlusconi, the head of government, whereupon Duve was then quoted as saying he was disappointed about the EU's cautious response

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12 Ibid.

to the developments in Italy.<sup>13</sup> Duve's comments on Berlusconi led the Christian Democrats in his own country to polemically point out that the Social Democrats - of whom Duve is a member - also had a stake in the media.<sup>14</sup>

Duve has often drawn attention to the "structural censorship" in the "new democracies": the state monopolization of the small number of printing houses, discriminatory practices in distribution, arbitrary tax, fire or medical inspections by the authorities etc. The OSCE Media Representative has taken these problems into consideration in many of his activities. However, up to now, the Media Representative has not given similar attention to other just as serious problems he has identified on the Western media landscape. The OSCE Media Representative publicly expressed his concern when Spanish journalists were directly targeted by terrorist organizations or when the Italian police beat up and arrested journalists at the G8 Economic Summit in Genoa at the end of July 2001. He is also concerned about structural problems: for example, in Duve's words, the "industrialization of the media world" and the threat to journalistic freedom within globally operating media enterprises linked to this, whose owners have other widely diversified economic interests. Duve himself ascertains: "The modern state and the modern economy cannot survive without corrective debate. Thus freedom of the journalistic media is a global challenge."<sup>15</sup>

The second problem area involves the conceptual and financial relationship of the OSCE Media Representative to non-governmental organizations. In the reports to the OSCE Permanent Council of 5 April and 19 July 2001, Duve announced the extension of the project activities of his Office. Thus, the OSCE Media Representative will offer seminars and conferences on various topics including, for example, the transformation of former state television and radio stations into public service broadcasters in Central and Eastern Europe as well as offering legal advice to journalists in non-consolidated democracies, e.g. in Central Asia. These projects however have been part of the central programmes of numerous international non-governmental organizations for many years. For instance, the London NGO §19 has offered legal advice in transition countries in Africa and Asia as well as in Central and Eastern Europe for many years. The European Institute for the Media, the International Federation of Journalists, the International Press Institute and many other non-governmental Organizations have conducted projects for some time that have now increasingly also become part of the activities of the OSCE Media Representative. In addition, the media department of the Council of Europe in Strasbourg - and in part UNESCO as well - also conduct

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13 Cf. Berlusconi rejects criticism, BBC News Online, 24 May 2001.

14 Cf. CDU begrüßt Forderung nach der Trennung von Regierung und Medien [CDU Welcomes Demands for a Division of Government and Media], Statement of the CDU Secretary General, Laurenz Meyer, on 22 May 2001.

15 Freimut Duve, Für Stabilität und Pluralismus - Medienhilfe der OSZE [For Stability and Pluralism - OSCE Media Assistance], in: Magazin Deutschland 1/2000, online at: [www.magazin-deutschland.de](http://www.magazin-deutschland.de).

more or less the same activities. All these organizations have complained for years that there is a lack of co-ordination, but have taken very few steps to remedy the situation.

For many non-governmental organizations that deal with the media, the same sources of funding are an option as for governmental organizations carrying out similar projects. These are national, state and other sponsors like political and humanitarian foundations as well as the European Union. This funding is limited and any new successful applicant "on the market" diminishes the prospects that other interested parties have to obtain project financing. Unless there is much closer co-ordination between the many actors in this area, significant conflicts can be expected. In this connection, one could argue about not only access to funding, but the fundamental question of what a governmental organization is allowed to do in the area of the media, which traditionally have been rated as the most important institutions in civil society.

### *Effects*

It has been a significant gain for the "new democracies" among the OSCE participating States where freedom of speech and freedom of expression remain fragile constructs that the OSCE Representative on Freedom of the Media has been established. It is true that every journalist knows that in the end nothing can save him from the anger of the "power", he may have provoked - whether this be state power or criminal power, which often appear side by side. Nevertheless, his chances increase when there is someone "out there" whose telephone call the president cannot reject if he sets value on his international reputation at all. A telephone call of this nature or the prompt visit from a representative of the OSCE Media Office could save the lives of many journalists and authors. There is also the chance that a kind of "long-term effect" would be created: The political leaders of "non-consolidated democracies" are increasingly learning that there is a connection between freedom of expression in their own countries and their standing abroad as well as the willingness of the West to give them loans and other support. Very often at first, this creates only an appearance of freedom of public opinion because behind the scenes old and new control mechanisms are still at work. However, not even this semblance would have been conceivable a quarter century ago when the CSCE was established.

However, it is still open to what extent the OSCE Representative on Freedom of the Media will be able to overcome the East-West divergence - dating from the annals of CSCE history - in his daily work. The Yearbooks of the OSCE Media Representative have up to now been entitled "Freedom and Responsibility". Without a doubt, this office will have to remain engaged in activities for the freedom of the media for a long time to come, especially in Eastern Europe. And there is still the challenge to the OSCE Media Repre-

sentative of establishing greater international publicity on the responsibility of Western media tsars like Berlusconi, Kirch or Murdoch for the manner in which they deal with the tremendous political and social influence the power over the media gives them.