

## Six Years as OSCE Representative on Freedom of the Media – An Assessment<sup>1</sup>

In 1997, I was elected as the Representative on Freedom of the Media by the foreign ministers of the then 54 OSCE participating States. I served for two three-year terms. Six years ago, there was great hope in the world for those countries just emerging from a dark period during which freedom for writers and journalists had been non-existent. As a publisher, I brought some of the authors who were forbidden in their own countries to the attention of the public. Back in the nineties, we all felt confident that we would be able to overcome the burden of the past in the pluralizing media landscapes of the newly emerging democracies.

At that point, it seemed that media freedom had taken hold in almost all OSCE participating States, and that what was then needed was to cement this successful start with vigorous monitoring and support, mostly of a legal nature. This was how my two-fold work started.

We had not foreseen that in the following six years the situation would change not for the better: Many of the new governments used innovative and established methods of countering criticism of their policies. The result was a change of climate. The new media openness in some states was replaced by nervousness, self-censorship, and a constant fear of oppression. This difficult situation for the media was exacerbated by the murder of thousands of civilians on 11 September 2001.

Due to a shift in priorities among OSCE participating States, civil liberties, including freedom of expression, were pushed to the sidelines by what many countries believed were more pressing needs. Many of the new priorities were justified, but we also saw the misuse of the September 11 tragedy by certain governments for their own selfish reasons.

In 2003, an organization that prided itself on being a community of declared democracies, shifted its policy outlook more towards global threats to security than to its own deteriorating human rights record.

When I left the OSCE after six years, the record of some of our participating States concerning freedom of the media was more problematic than when I took on this job in 1997. Who at that time would have thought that in democratizing Russia, the Kremlin would again have direct or indirect control of many of the print media and of most of the electronic media? Who could have predicted that the recently concluded Russian State Duma elections would be so widely criticized for failing to meet international standards

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<sup>1</sup> The current contribution is based on the final regular report made by the OSCE Representative on Freedom of the Media to the Permanent Council on 11 December 2003.

precisely because of the lack of media independence, balanced coverage and the absence of a broad range of information for voters, thus casting a dark shadow, perhaps for years to come, over Russia's true democratic intentions?

Who at that time would have foreseen, that an elected prime minister of a founding member of the European Union would frame media legislation so as to help his political agenda and his and his family's economic interest?

It was with great concern that I viewed the passage in Italy in December 2003 of a new media law. As I understand it, the law would allow Prime Minister Silvio Berlusconi's family holding company to buy into radio and newspapers starting in 2009. Prime Minister Berlusconi, through his political office and his business interests, already has direct and indirect influence over an estimated 95 per cent of Italian TV. In this respect, Italy is setting a very dangerous precedent that could have a significant influence on the structure of media ownership in other OSCE States, not to mention undermining the position of this Office regarding media monopolization.<sup>2</sup>

I would now like to focus on some of the methods that are being used in the OSCE region by both governments and big business to stifle public debate and curtail independent journalism.

Since my very first report to the OSCE Permanent Council in 1998, I have highlighted what I called *structural censorship*. Many governments, in order to avoid open censorship, have introduced various indirect methods of media harassment, which have a chilling effect and often force journalists and editors to practise self-censorship. Structural censorship encompasses using the tax police, the fire department, owners of office space, and distribution and printing companies to exert pressure on the media by means such as repeated unnecessary inspections designed only to harass or the denial of services under a range of economic pretexts.

In the end, journalists and editors are forced to compromise their editorial policy so as to be able to continue to publish and broadcast. I have brought dozens of such cases to the attention of the Permanent Council, and they are well enough known that I do not need to repeat them here. To mention just one example: One newspaper in an OSCE participating State was forced to endure over forty tax inspections in a single year before radically changing its attitude towards the authorities. It has not seen a tax inspector since.

*Censorship by killing* remains a threat in the OSCE region, despite the fact that ours is one of the areas in the world with the lowest number of journalists killed each year. There were two murders of journalists in Russia during 2003. But even one case of this ultimate form of censorship is extremely disturbing. It is also a notable fact that rarely anyone is ever charged

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2 The law was passed for a second time in an amended form by the Italian parliament in April 2004 after the Italian President, Carlo Azeglio Ciampi, refused to put his signature to the first version. The amendments, however, are restricted to limitations on advertising. Critics consider them to be inadequate. For more details, cf. <http://news.bbc.co.uk/1/hi/world/europe/3671991.stm>).

with murdering a journalist. These cases often drag on for years with no arrests ever being made.

When threats of this kind – and structural censorship in particular – do not produce the required effect, direct legal harassment through the use of both criminal and civil codes is put into gear. The weapon of choice here is usually libel legislation. That is why I have taken a very strong stand concerning criminal defamation and insult laws that provide undue protection for public officials.

In late November 2003, I held a Round Table in Paris on this matter and issued a joint set of recommendations with *Reporters Without Borders*. Among other things, the recommendations call for the decriminalization of defamation in OSCE participating States. That is why I continue to stress that the two main pillars of a democracy are free media and the independence of a country's legal institutions.

Libel is not the only legal means to target an offending journalist. When all else fails, a criminal case might be fabricated that could involve any allegedly unlawful activity: from bribery to having sex with a minor. Again, I have brought several such cases to the attention of the OSCE Permanent Council. The depth of cynicism of some of the governments that belong to this Organization never ceases to amaze me. Journalists who had the courage to criticize these governments are locked up for years on trumped-up charges that appear on the surface to have nothing to do with the exercise of one's right to freedom of expression. I would like to mention just two names: Sergei Duvanov, who is serving time in Kazakhstan, and Ruslan Sharipov, who is incarcerated in Uzbekistan. Even after I leave this job, I will continue fighting for their freedom.

There is one country in the OSCE region where I have put all the activities of my Office on hold. This is Turkmenistan, a dictatorial regime within our Organization, where the only function of the media is to glorify the President-for-Life and destroy his opponents. Until civil liberties are reinstated, I do not see any reason to work with the government. Of course, I will continue defending those reporters who run afoul of this racist dictatorship.

Now, I will provide a review of some of the themes we have worked on over the past years.

*Freedom of the media and the internet.* This is becoming an important topic, with governments and civil society debating the future development of information technologies and the pros and cons of the global information network. I convened a meeting of experts in June 2003 in Amsterdam, where we all agreed that illegal content must be prosecuted in the country of its origin but that all legislative and law enforcement activity must clearly target only illegal content and not the infrastructure of the internet itself.

Another theme I have been pursuing concerns media in multilingual societies. Our latest effort is a publication issued in several languages on what is happening in this field in five OSCE countries: the former Yugoslav Re-

public of Macedonia, Luxembourg, Moldova, Serbia and Montenegro, and Switzerland. The five country reports were presented at a conference in March 2003 in Berne, Switzerland. I also presented them in Belgrade in October. In the digital global future, there will be no completely monolingual country in the OSCE or elsewhere.

*Journalists working in conflict zones* has been an ongoing theme that I have focused on over the past years. There are two dimensions here: the security of those reporters who follow events from the frontlines, often filing from conflicts where dividing lines are blurred and combatants represent complex formations of groups and communities. The second dimension concerns the relationship that is established between journalists and the military, as came to prominence during the war in Iraq.

How to balance fair and unbiased reporting with security when covering a conflict area is a theme that all of us – inside and outside the OSCE – should continue to discuss. Any military action by a democracy can only be preceded by informed public debate and monitored scrupulously if the public has access to all kinds of information from a variety of sources. This established practice should not be jeopardized.

We all understand that the moment a democracy sends its soldiers to war, the arguments for and against lose some of their urgency and we tend to “support our troops”. But any military action a democracy feels it has to take needs to be debated critically.

After September 11, national security matters started once again to be cited as reasons to censor the media. Overly intrusive legislation is being passed in several OSCE States. Some media outlets feel the full burden of being targeted for allegedly undermining national security. When I point an accusing finger at a country East of Vienna, that country points its own finger at the West: “If they can get away with it, why can’t we?” I believe that in the developed democracies, the glitches in the system that we come across will in the end be fixed through the efforts of civil society assisted by an independent judiciary and a vigilant media. However, these glitches still set a bad precedent for the developing democracies, where civil society is weak, independent judiciary mostly non-existent, and the media hounded into submission. That is why, no matter how often I am criticized for raising what might appear to be minor issues, I will urge my successor to do the same. A minor issue in the US that will be ironed out in a week or two may set a precedent in another country that will become law for years to come. We know that this must be avoided.

Since 2003, I have been looking at commercial aspects of the media and how they may affect editorial policy and independent journalism. Again, this is not strictly a black and white issue; shades of grey prevail, and that is why it is essential to be very careful when making recommendations and offering advice. In July 2003, I proposed a set of *Principles to guarantee the editorial independence of media* in Central and Eastern Europe and in Central Asia.

These *Principles* concern media outlets that have been or are in the process of being acquired by Western conglomerates, as is happening in Bulgaria, the former Yugoslav Republic of Macedonia, Croatia, and several other OSCE participating States.

These *Principles* set out the criteria that the media owners take upon themselves to adhere to once they are in a position to financially control one or more media outlets in the developing democracies. For the time being, only two media giants have signed up: the German *WAZ Group* and the Norwegian *Orkla Media AS*, although I have invited many more to support these *Principles*. I hope that my successor will continue this lobbying effort so that we will be able to ensure that pluralistic media takes hold in all of our countries.

A report by my Office on the *Impact of Media Concentration on Professional Journalism* looks at the situation in four EU countries: Germany, Finland, the United Kingdom, and Italy; three new member-states: Hungary, Lithuania, and Poland; and one applicant country: Romania.

Besides our Vienna work, I have developed, with the help of donations by participating States and the Open Society Institute, some very concrete projects dealing with the future of the media and the younger generation: Five years ago, I supported the establishment of several school newspapers in Central Asia. This was followed by my largest project targeting young people: *In Defence of Our Future – mobile.culture.container*, a long-term undertaking that ended in 2003 after three years on the road in South-eastern Europe. During the course of its existence, the project increasingly concentrated on media development, including establishing student newspapers, and radio and video groups. I hope that these initiatives will continue to foster understanding between the young in a region that was torn apart by war only a decade ago. That is why I called our project *In Defence of Our Future*. Its focus was on the 14-to-18 generation, who are now facing a dilemma: to stay where they were born and to help rebuild their countries or to emigrate. *In Defence of Our Future* was geared at persuading them to stay.

This contribution, our 2002-2003 Yearbook *Freedom and Responsibility*, and our regular *Central Asian Conference Review* are the latest publications of my Office. During my tenure, we have published over three dozen books in several languages and in several countries. I gather this is a first for any OSCE institution.

I would also like to draw attention to the *Veronica Guerin Legal Defence Fund*, which aims to provide support to journalists being prosecuted in OSCE participating States. The Fund is named after Irish journalist Veronica Guerin, who covered organized crime for Ireland's *Sunday Independent*. She was killed on 26 June 1996. The purpose of the Fund is to assist, through voluntary donations by OSCE participating States, human rights organizations and individuals in making available appropriate legal defence for reporters who are in need of it. Relevant cases involving journalists are to be

referred to the Fund by OSCE field presences and *bona fide* non-governmental organizations. The Fund will be administered by the Office of the Representative on Freedom of the Media.

All of us at some point move on to new pastures but we do leave a legacy. It is in our work, in our books, in the effect we had, or the lack of an effect – that is also a legacy.

I leave a fully developed and well-organized Office of the Representative on Freedom of the Media, working in accordance with a functioning mandate in support of free media in the OSCE region – an Office that is well known and respected and staffed by a dedicated group of professional experts from half a dozen countries. I very much hope that our work was not in vain and will continue under a new Representative.

One last remark: One of my staff members just came back from a country where the OSCE observed how election results were pre-arranged in a very cynical fashion. My Office was looking into the terrible situation that journalists in that country faced. On several occasions, my staff member was informed, by journalists in particular, how much they need the attention of OSCE institutions such as the Representative on Freedom of the Media and ODIHR to their problems and the dangers they face, and how much they were disappointed by the decline in interest on the part of many journalists and public figures in the West in their extremely dangerous situation.