

## The OSCE Media Freedom Representative Turns Ten: Current and Future Challenges to Press Freedom in the OSCE Region<sup>1</sup>

Together with its corollary, freedom of the media, freedom of expression is one of the most basic human rights. In order to ensure a high level of compliance with the norms and standards accepted by the OSCE participating States, the Office of the OSCE Representative on Freedom of the Media (RFOM) was established in November 1997 by Permanent Council Decision No. 193.

The RFOM, the youngest of the three independent OSCE institutions,<sup>2</sup> is tasked with both monitoring the relevant media developments in the OSCE area and assisting OSCE participating States in implementing their media freedom commitments. It has often been referred to as the “the only intergovernmental media freedom watchdog in the world”.

In January 1998, Freimut Duve of Germany took office as the first RFOM; he was succeeded in this capacity by Miklós Haraszti of Hungary in March 2004.

Under the auspices of the 2008 Finnish OSCE Chairmanship, the Office of the RFOM organized a special event to mark the 10th anniversary of his mandate. This took place on 29 February 2008 in Vienna and was dedicated to “Present and future challenges to media freedom and free expression in the OSCE region”.<sup>3</sup>

### *A Unique Insight into Media Freedom in the OSCE Area*

The anniversary event featured an impressive array of speakers, who outlined the challenges that journalists face every day. All geographical areas and major issues were scrutinized, including cases where states tolerate harassment or journalists are murdered, where pluralism is considerably restricted by undue government influence, where journalists’ rights to investigate their

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1 The views and opinions expressed in this report are those of the author and do not necessarily reflect those of the OSCE.

2 The two others are the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), based in The Hague.

3 A publication featuring the presentations and the discussions held at the anniversary event was produced in the autumn of 2008: *Ten Years for Media Freedom – An OSCE Anniversary: Current and Forthcoming Challenges*, 15 September 2008. The handbook can be downloaded from: [http://www.osce.org/fom/item\\_11\\_32993.html](http://www.osce.org/fom/item_11_32993.html).

governments' acts are denied, and where offending or critical views are often punished, sometimes systematically, as "extremism" or "hate speech".

Recent international tensions caused by secular depictions of religious figures and an increased tendency to criminalize attempts to revise and re-interpret historical events were given special attention by several speakers, including *Le Monde* cartoonist Plantu and *Gazeta Wyborcza* foreign correspondent Konstanty Gebert. The Chair of the Writers in Prison Committee, Karin Clark, spoke about restrictions on free expression faced by writers in the OSCE region.

Thomas Hammarberg, the Human Rights Commissioner of the Council of Europe, joined the appeal by the RFOM to participating States to decriminalize the professional mistakes of journalists – such as libel and slander – and to allow these offences to be treated exclusively in civil courts.

Gus Hosein, Senior Fellow at Privacy International, denounced recent policies on border, travel, and communications surveillance in both the United States and the European Union. Reino Paasilinna, a Finnish Member of the European Parliament, explored global trends towards increased surveillance, especially on the internet.

Firdevs Robinson, an editor with the BBC World Service, described the current situation regarding media and press freedom in Turkey and the three countries of the South Caucasus, Armenia, Azerbaijan, and Georgia, particularly in the light of recent or forthcoming elections in these countries.

Other speakers drew a distressing picture of press freedom in the Commonwealth of Independent States (CIS). Far from thriving, independent media outlets in most CIS nations are struggling just to keep operating. Oleg Panfilov, Director of the Moscow-based Centre for Journalism in Extreme Situations, rated the media environment in most of the post-Soviet countries as unsatisfactory.

Aleksey Simonov, President of the Glasnost Defence Foundation, compared the current media situation in Russia to a zoo, with the media in the role of the caged animals.

#### *Typology of Threats against Freedom of the Media in the OSCE Area*

Ten years after the establishment of the Office of the RFOM, the right to freedom of expression and freedom of the media continues to be under threat both in the participating States and worldwide.

In particular, we are witnessing the rapid deterioration in two crucial dimensions of press freedom: the physical security of journalists and the legal protection of reporting critical of state officials and national or religious symbols.

## *Violence against Journalists*

Miklós Haraszti has stated on numerous occasions that there is only one thing more intimidating for free speech than harassment, physical attacks, or even murder of media workers and that is when governments *tolerate* harassment, attacks and murders. Tragic events throughout recent years in the OSCE area showed that violence against journalists is a recurring challenge to media freedom.

On top of numerous incidents of threats, harassment, and beatings of media professionals, recent years have seen the murders of journalists Elmar Huseynov in Azerbaijan, Alisher Saipov in Kyrgyzstan, Paul Klebnikov and Anna Politkovskaya in the Russian Federation, Hrant Dink in Turkey, and Chauncey Bailey in the US.

The benefits of professional journalism can be enjoyed by all only if journalists can operate in an environment where professional, legal, and political parameters are conducive to free media.

In an address to the International Federation of Journalists' World Congress in May 2007 in Moscow, the RFOM said:

When violence against journalism can count on a practical impunity, it is no exaggeration to claim that this indifference by the authorities encourages and perpetuates the crime. Failure to find the perpetrators may happen even to the best of detectives. But with apathy, law enforcement seems to share the motives of the perpetrators. Idleness in stopping violence kills hope.<sup>4</sup>

## *Criminalization of Defamation*

Impunity does not start with the actual failure to successfully investigate and prosecute murders of journalists. It starts with the criminalization of journalist offences, which is, in essence, the criminalization of journalism. In 21st century democracies, such offences should be handled by civil courts for the sake of an open debate about issues of public interest.

Violence against journalists and officially imposed restrictions on their freedoms are intricately linked. Before becoming the victims of violent crime, journalists are often the defendants in criminal cases – for speech offences.

This is highlighted by some of the more notorious cases involving the murder of journalists, such as Elmar Huseynov (2005) and Hrant Dink

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4 Miklos Haraszti, *Violence against journalists: why the gravest danger?* Keynote speech by the Representative on Freedom of the Media to the IFJ World Congress, 28 May 2007, Moscow. The text is available online at: [http://www.osce.org/documents/rfm/2007/06/24811\\_en.pdf](http://www.osce.org/documents/rfm/2007/06/24811_en.pdf).

(2007). Both murders were preceded by numerous criminal proceedings brought against these journalists throughout their careers.

The criminalization of libel and insult is the most common reason for the imprisonment of journalists in the OSCE area today. Equally oppressive is the ongoing habit of granting special protection from verbal criticism to heads of state or other high public officials. Such practices contradict the case law of the European Court of Human Rights in Strasbourg – competent for 47 of the 56 OSCE participating States.<sup>5</sup>

In cases of defamation, almost all OSCE participating States (and, most notably, 25 of 27 EU member States)<sup>6</sup> have the possibility of imposing criminal sanctions, including imprisonment. In practice, Western European states do not apply criminal sanctions for defamation. However, the criminal codes of these well-respected democracies are referred to by countries in other parts of the world to argue for the retention of such provisions in their laws. EU countries would set a good example if they were to remove these provisions and refer all such cases to civil law.<sup>7</sup> In this vein, the Parliamentary Assembly of the Council of Europe recently called on its member states to “abolish prison sentences for defamation without delay”.<sup>8</sup>

#### *Misuse of Counter-Terrorism Provisions and Increased Surveillance over the Internet*

With the increase in both the magnitude and the number of threats, there is a growing and legitimate trend among the OSCE participating States to address these heightened security concerns. However, governments also need to respect the media’s right to investigate and report on issues that are clearly of public interest.

In this regard, journalists have come under increased pressure for writing investigative pieces based on confidential information, or after refusing to reveal their sources, notably in Western OSCE countries.<sup>9</sup> Such pressure weakens the media’s ability to uncover information and write about wrong-

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5 In a landmark case (*Lingens v. Austria*), the Court made clear that “freedom of the press [...] affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. [...] The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.” *Lingens v. Austria* (1986), para. 42.

6 Only seven OSCE participating States (Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Moldova, Ukraine, and the United States) have decriminalized libel so far.

7 Ireland seems to have initiated just such a move, with Justice Minister Brian Lenihan’s recent proposal to delete the sections on criminal libel contained in a Bill that was being discussed in the Irish Senate in March 2008. Cf. [http://www.osce.org/fom/item\\_1\\_30323.html](http://www.osce.org/fom/item_1_30323.html).

8 Council of Europe, Parliamentary Assembly, *Resolution 1577 (2007) Towards decriminalisation of defamation*.

9 The RFOM has issued a number of press releases on such cases, which can be consulted at the RFOM website.

doing, corruption, abuse of power, nepotism, etc, and undermines its role as the “fourth estate”.

Additionally, while the internet is becoming the most important source of diverse information (indeed the only alternative source to state-controlled media in several countries), states have shown an increased willingness to control online communications. Such efforts have proven successful in various countries, including OSCE participating States, where technical blockages or filtering of the free flow of information across the internet have been put in place.<sup>10</sup> Telecom and content regulators from government and industry are increasingly playing a more intrusive role in overseeing “what happens online”, thereby endangering not only the present but also the future of media freedom in the internet age.

#### *Proliferation of Arbitrary Speech Bans*

Finally, in a world of dissolving boundaries, the otherwise legitimate expectation that the media should be culturally sensitive has seen an increase in the number of attempts to label the reporting, debate, or criticism of controversial issues as punishable “extremism” or “hate speech”. The proliferation of arbitrary speech bans on certain statements regarding historical events also weakens international standards on free debate and creates new tensions between nationalities and/or countries.

It is legitimate to ban certain vicious forms of racist expression, and international law actually requires this. States that have ratified the *International Covenant on Civil and Political Rights* (ICCPR) for example, are required under Article 20 to prohibit hate speech, carefully defined as “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. However, as the European Court of Human Rights has noted, the guarantee of freedom of expression also encompasses statements which “offend, shock or disturb”.<sup>11</sup>

#### *The Challenge of Digitization*

Future developments that will require the attention of the Office of the RFOM, and of OSCE participating States, are related to the so-called “switchover” from traditional (analogue) to digital-terrestrial transmission in

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10 See Ronald Deibert/John Palfrey/Rafal Rohozinski/Jonathan Zittrain (eds), *Access Denied: The Practice and Policy of Global Internet Filtering*, Cambridge, MA, 2008

11 *Handyside v. United Kingdom*, (1976), para. 49. The exact quote reads: “Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (Art. 10-2), it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.

broadcasting and the convergence of different telecommunication platforms (telecommunications, broadcast, mobile TV, handheld internet, etc).

This change will revolutionize the way we watch TV or listen to radio. The number of available channels will increase and broadcasting costs will diminish because of the elimination of the current scarcity of the frequency spectrum which, hitherto, has been the main justification for governmental licensing of broadcasters. However, to achieve the expected benefits – more choice for more people – a certain number of obstacles will have to be overcome so that all households in OSCE participating States can access television in digital mode: the first of them being for infrastructure owners/operators to invest in upgrading transmission networks.

### *The Dilution of OSCE Commitments*

In 2007, the RFOM raised issues related to media freedom with governments of the OSCE participating States on more than 100 occasions and issued more than 50 public statements. The Office organized two regional media conferences, conducted several assessment visits (in the Balkans, Caucasus, and Central Asia), and organized a series of training courses aimed at developing better relations between the state and the media and increasing the access of journalists to information held by government bodies. It also published numerous books and special reports on a wide range of subjects including: governance of the internet, accreditation of journalists, registration of media outlets, and the handling of journalists by law-enforcement officers during political demonstrations, to name just a few.

Despite a decade of hard work, Miklós Haraszti warned that the OSCE must remain vigilant against the weakening of OSCE commitments in areas such as democracy, human rights, and media freedom. The OSCE must continue to insist that compliance with these values is a prerequisite for peace and security.

In an address to the 56 OSCE ambassadors gathered at the OSCE Permanent Council on 13 March 2008, the RFOM raised attention to the new worrying trend of calling the universality of OSCE commitments into question.<sup>12</sup> In his words:

Ten years ago, the establishment of this Office marked a moment when all participating States committed themselves to the universal values of democracy, including the protection of free expression and media pluralism. Today, just as in the days before the

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12 The full speech can be accessed at: [http://www.osce.org/documents/rfm/2008/03/30234\\_en.pdf](http://www.osce.org/documents/rfm/2008/03/30234_en.pdf). All RFOM regular reports to the OSCE Permanent Council are available at the documents database of the RFOM website in the section on “statements and regular reports to the PC”.

formation of the OSCE, different interpretations of democracy are being cultivated again, also with regard to speech rights. The requests for co-operation from the OSCE Institutions mandated to care for the fulfilment of the human rights commitments again are sometimes regarded as “intrusion into internal affairs”.<sup>13</sup>

Notwithstanding these challenges – old and new – the RFOM will tirelessly continue to perform his mandated activities to keep the participating States’ commitments to media freedom alive and to try to ensure compliance.

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13 Ibid. p. 2.