



**Organization for Security and Co-operation in Europe
Representative on Freedom of the Media
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*Helsinki Commission Hearing
on the Threats to Free Media in the OSCE Region
June 9, 2010*

**Dear Chairmen,
Distinguished Commissioners,
Ladies and Gentlemen,**

I am honored to be invited to this hearing before the Helsinki Commission at the very beginning of my mandate. I feel privileged to speak before you today. The Helsinki Commission's welcoming statement issued on the day of my appointment is a clear manifestation of the strong support you continuously show toward the work of this unique Office, and I assure you, distinguished Commissioners, that this fact is very much appreciated.

It will be three months tomorrow since I took office as the new Representative on Freedom of the Media to the OSCE. Even though three months may sound short, it has proved more than enough to gain a deep insight, and unfortunately also voice concerns, about the decline of media freedom in many of the 56 countries that today constitute the OSCE.

Although the challenges and dangers that journalists face in our countries may differ from region to region, one sad fact holds true everywhere: The freedom to express ourselves is questioned and challenged from many sides. Some of these challenges are blatant, others concealed; some of them follow traditional methods to silence free speech and critical voices, some use new technologies to suppress and restrict the free flow of information and media pluralism; and far too many result in physical harassment and deadly violence against journalists.

Today, I would like to draw your attention to the constant struggle of so many institutions and NGO's around the world, including your Commission and my Institution, to combat and ultimately stop violence against journalists. I would also like to address several other challenges that I want to place in the center of my professional activities, each of which I intend to improve by relentlessly using the public voice I am now given at the OSCE.

Let me first start with **violence against journalists.**

Ever since it was created in 1997, my Office has been raising attention to the alarming increase of violent attacks against journalists. Not only is the high number of violent attacks against journalists a cause for concern. Equally alarming is the authorities' far-

too-prevalent willingness to classify many of the murders as unrelated to the journalists' professional activities. We also see that more and more often critical speech is being punished with questionable charges brought against the journalists.

Impunity of perpetrators and the responsible authorities' passivity in investigating and failing to publicly condemn these murders breeds further violence.

There are numerous cases that need to be raised over and over again. We need to continue to loudly repeat the names of these courageous individuals who lost their lives for the words they have written. I am sorry for all those whom I will not mention today; but the names that follow are on the list that I call "the Hall of Shame" of those Governments that still have not brought to justice the perpetrators of the horrifying murders that happened in their countries.

- The most recent murder of a journalist in the OSCE area is the one of the Kyrgyz opposition journalist **Gennady Pavlyuk** (Bely Parokhod), who was killed in Kazakhstan in December last year. It gives me hope that the new Interim Government of Kyrgyzstan has announced to save no efforts to bring the perpetrators to justice, as well as those involved in the 2007 murder of **Alisher Saipov** (Siyosat).
- The Russian Federation remains the OSCE participating State where most members of the media are killed. **Paul Klebnikov** (Forbes, Russia), **Anna Politkovskaya** (Novaya Gazeta), **Anastasia Baburova** (Novaya Gazeta), are the most reported about, but let us also remember **Magomed Yevloyev** (Ingushetiya), **Ivan Safronov** (Kommersant), **Yury Shchekochikhin** (Novaya Gazeta), **Igor Domnikov** (Novaya Gazeta), **Vladislav Listyev** (ORT), **Dmitry Kholodov** (Moskovsky Komsomolets) and many others.

We also should not forget the brutal murders of the following journalists, some remain unresolved today:

- **Hrant Dink** (Agos) Armenian Turkish journalist was shot in 2007 in Turkey.
- **Elmar Huseynov** (Monitor) was murdered in 2005 in Azerbaijan.
- **Georgy Gongadze** (Ukrainskaya Pravda) was killed in 2000 in Ukraine.
- In Serbia, **Slavko Curuvija** (Dnevni Telegraph) was murdered in 1999, and
- **Milan Pantic** (Vecernje Novosti) was killed in 2001.
- In Montenegro, **Dusko Jovanovic** (Dan), was shot dead in 2004.
- In Croatia, **Ivo Pukanic** (Nacional) and his marketing director, **Niko Franjic**, were killed by a car bomb in 2008.

Violence against journalists equals violence against society and democracy, and it should be met with harsh condemnation and prosecution of the perpetrators. There can be no improvement without an overhaul of the very apparatus of prosecution and law enforcement, starting from the very top of the Government pyramid.

There is no true press freedom as long as journalists have to fear for their lives while performing their work. The OSCE commitments oblige all participating States to provide safety to these journalists, and I will do my best to pursue this goal with the mandate I am given and with all professional tools at my disposal.

We also observe another very worrying trend; more and more often the **imprisonment of critical journalists based on political motivations including fabricated charges**. Let me mention some cases:

- In **Azerbaijan**, the prominent editor-in-chief of the now-closed independent Russian-language weekly, *Realny Azerbaijan*, and Azeri-language daily, *Gundalik Azarbaycan*, **Eynulla Fatullayev** was sentenced in 2007 to a cumulative eight-and-a-half years in prison on charges on defamation, incitement of ethnic hatred, terrorism and tax evasion. The European Court of Human Rights (ECtHR) found Azerbaijan in violation of Article 10 and Article 6, paragraphs 1 and 2 of the European Convention on Human Rights, so there is only one possible outcome – Fatullayev should be immediately released.
- In **Kazakhstan**, **Ramazan Yesergepov**, the editor of *Alma-Ata Info*, is serving a three-year prison term on charges of disclosing state secrets.
- **Emin Milli and Adnan Hajizade**, bloggers from **Azerbaijan**, are serving two and a half years and two years in prison respectively since July 2009 on charges of hooliganism and infliction of light bodily injuries.
- In **Uzbekistan**, two independent journalists, **Dilmurod Saiid** (a freelancer) and **Solijon Abdurahmanov** (Uznews), are currently serving long jail sentences (twelve-and-a-half-year and ten years) on charges of extortion and drugs possession.

I will continue to raise my voice and demand the immediate release of media workers imprisoned for their critical work.

I join Chairman Cardin for commending independent journalists in the Helsinki Commission's recent statement on World Press Freedom Day. These professionals pursue truth wherever it may lead them, often at great personal risk. They indeed play a crucial and indispensable role in advancing democracy and human rights.

By highlighting these murder and imprisonment cases, by no means do I intend to neglect other forms of harassment or intimidation that also have a threatening effect on journalists. Let me just recall that, with the heightened security concerns in the last decade, police and prosecutors have increasingly raided editorial offices, journalists' homes, or seized their equipment to find leaks that were perceived as security threats.

Suppression and restriction of Internet Freedom

Turning to the problems facing Internet freedom, we can see that new media have changed the communications and education landscape in an even more dramatic manner than did the broadcast media in the last half century. Under my mandate, the challenge has remained the same: how to safeguard or enhance pluralism and the free flow of information, both classical Helsinki obligations within the OSCE.

It was in 1998 that I read the words of Vinton G. Cerf in his article called “Truth and the Internet”. It perfectly summarizes the nature of the Internet and the ways it can create freedom.

Dr. Cerf calls the Internet one of the most powerful agents of freedom: It exposes truth to those who wish to see it. But he also warns us that the power of the Internet is like a two-edged sword: it can also deliver misinformation and uncorroborated opinion with equal ease. The thoughtful and the thoughtless co-exist side by side in the Internet's electronic universe. What is to be done, asks Cerf.

His answer is **to apply critical thinking**. Consider the Internet as an opportunity to educate us all. We truly must think about what we see and hear, and we must evaluate and select. We must choose our guides. Furthermore, we must also teach our children to think more deeply about what they see and hear. That, more than any electronic filter, he says, will build a foundation upon which truth can stand.

Today, this foundation upon which truth could indeed so firmly stand is under continuous pressure by governments. As soon as governments realized that the Internet challenges secrecy and censorship, corruption, inefficiency and bad governing, they started imposing controls on it. In many countries and in many ways the effects are visible and they indeed threaten the potential for information to circulate freely.

The digital age offers the promise of a truly democratic culture of participation and interactivity. Realizing that promise is the challenge of our times. In the age of the borderless Internet, the protection of the right to Freedom of Expression “*regardless of frontiers*” takes on a new and more powerful meaning.

In an age of rapid technological change and convergence, archaic governmental controls over the media are increasingly unjust, indefensible and ultimately unsustainable. Despite progress, many challenges remain, including the lack of or poor quality of national legislation relating to freedom of information, a low level of implementation in many OSCE member states and existing political resistance.

The importance of providing free access for all people anywhere in the world can not be raised often enough in the public arena, and can not be discussed often enough among stakeholders: civil society, media, as well as local and international authorities.

Freedom of speech is more than a choice about which media products to consume. Media freedom and freedom of speech in the digital age also mean giving everyone – not just a small number of people who own the dominant modes of mass communication, but ordinary people, too – an opportunity to use these new technologies to participate, interact, build, route around and talk about whatever they wish – be it politics, public issues or popular culture.

The Internet fundamentally affects how we live. It offers extraordinary opportunities for us to learn, trade, connect, create and also to safeguard human rights and strengthen democratic values. It allows us to hear each other, see each other and speak

to each other. It can connect isolated people and help them through their personal problems.

These rights, possibilities and ideals are at the heart of the Helsinki Process and the OSCE principles and commitments that we share. We must find the best ways to spread access to the Internet, so that the whole world can benefit from what it can offer, rather than increasing the existing gaps between those who have access to information and those who do not. And to those governments who fear and distrust the openness brought along by the Internet, let me emphasize over and over again: The way a society uses the new communications technologies and how it responds to economic, political and cultural globalization will determine the very future of that society.

Restrict access to information, and your chances to develop will become restricted. Open up the channels of free communication, and your society will find ways to prosper.

I was delighted to hear **Secretary of State Clinton** speak about a basic freedom in her January speech on Internet freedom in the “Newseum”. This freedom is **the freedom to connect**. Secretary Clinton rightly calls this freedom the freedom of assembly in cyber space. It allows us to come together online, and shape our society in fundamental ways. Fame or money is no longer a requisite to immensely affect our world.

My Office is rapidly developing a comprehensive strategy to identify the main problems related to Internet regulation in the 56 countries of the OSCE, and ways to address these issues. I will **count** on the support of the Helsinki Commission to advance the universal values that this strategy will attempt to extend to those countries where these values are still being questioned.

Let me also mention the importance to protect the freedom of other new technologies.

Only two weeks ago, my Office organized the 12th Central Asia Media Conference in Dushanbe, Tajikistan, where media professionals from all five Central Asian countries adopted **a declaration on access to information and new technologies**. This document calls on OSCE governments to facilitate the freer and wider dissemination of information, including through modern information and communication technologies, so as to ensure wide access of the public to governmental information.

It also reiterates that new technologies strengthen democracy by ensuring easy access to information, and calls upon state institutions with legislative competencies to refrain from adopting new legislation that would restrict the free flow of information.

And only this spring my Office published a guide to the **digital switchover**, to assist the many OSCE countries where the switch from analogue to digital will take place in the next five years. The aim of the guide is to help plan the digitalization process, and help ensure that it positively affects media freedom, as well as the choice and quality available to the audience.

Besides advocating the importance of good digitalization strategies, I will also use all available fora to raise attention to **the alarming lack of broadcast pluralism**, especially television broadcast pluralism, in many OSCE countries. As television is the main source of information in many OSCE regions, we must ensure that the laws allow for diverse, high-quality programs and objective news to easily reach every one of us. Only well-informed citizens can make good choices and further democratic values.

Whether we talk about Internet regulation, inventive ways to switch to digital while preserving the dominance of a few selected broadcasters, attempts to limit access to information or broadcast pluralism, we must keep one thing in mind: No matter what governments do, **in the long run, their attempts to regulate is a lost battle.**

People always find ways to obtain the rights that are denied to them. History has shown this over and over again. In the short run, however, it is very clear that I will intervene with governments which try to restrict the free flow of information.

Defamation

Similar to fighting violence against journalists, my Office has been campaigning since its establishment in 1997 to decriminalize defamation and libel in the entire OSCE region.

Unfortunately, in most countries, defamation is still punishable by imprisonment, which threatens the existence of critical speech in the media. This is so despite the consistent rulings of the European Court of Human Rights in Strasbourg, stating that imprisonment for speech offences, especially when committed by criticizing public figures, is a disproportionate punishment.

Let us again remind ourselves of the journalists and bloggers I have mentioned above when discussing violence against journalists. They are currently in prison because their writing was considered defamatory. Their fate reminds us all of the importance of the right to freely speak our mind.

This problem needs urgent reform not only in the new, but also in the old democracies of the OSCE. Although the obsolete criminal provisions have not been used in Western Europe for decades, their “chilling effect” remained. Furthermore, the mere existence of these provisions has served as a justification for other states that are unwilling to stop the criminalization of journalistic errors, and instead leave these offenses solely to the civil-law domain.

Currently, defamation is a criminal offence in all but ten OSCE countries – my home country Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Ireland, Moldova, Romania, Ukraine, the United Kingdom and the United States.

Last year, three OSCE countries decriminalized defamation, which I consider to be an enormous success: Ireland, Romania and the United Kingdom; the last being the first

among the Western European participating States to officially decriminalize defamation.

Some other countries, such as Armenia, are currently reforming their defamation provisions, and I hope that I can soon welcome the next country that carries out this important and very long overdue reform.

Concluding remarks

Dear Chairmen,
Dear Commissioners,
Ladies and Gentlemen,

The above problematic areas – violence against journalists, restrictions of new media including the Internet, lack of pluralism and resistance to decriminalize defamation – are among the most urgent media freedom problems that need our attention and concentrated efforts today.

However, we will also not forget about the many other fields where there is plenty of room to improve. Of course, I will not miss the excellent opportunity that we are here together today to raise your attention to the topic that my distinguished predecessor, Miklos Haraszti, has already raised with you: **the establishment and the adoption of a federal shield law in the United States.**

As you know, my Office has been a dedicated promoter of the federal shield law for many years. If passed, the Free Flow of Information Act would provide a stronger protection to journalists; it could ensure that imprisonments such as that of Judith Miller in 2005, and Josh Wolf in 2006, could never again take place and hinder investigative journalism. But the passage of such legislation would resonate far further than within the borders of the United States of America. It could send a very much needed signal and set a precedent to all the countries where protection of sources is still opposed by the government and is still not more than a dream for journalists.

I respectfully ask all of you, distinguished Commissioners, to continue and even increase your efforts to enable that the Free Flow of Information Act soon becomes the latest protector of media freedom in the United States.

And of course I can not close my speech without mentioning **my home country, Bosnia and Herzegovina.** As you know, not only Bosnia and Herzegovina, but also most of the emerging democracies in the Balkans enjoy modern and forward-looking media legislation. We can openly say that they almost have it all when it comes to an advanced legal and regulatory framework enabling free expression to thrive. But it is not that simple. I use this moment to pose several questions: if there are good laws, then why do we still face severe problems in relation to media freedom, why do we stagnate and sometimes even move backward? Where does the problem lie? And, more importantly, how can we solve it and move ahead?

What Bosnia and Herzegovina shows us is that **good laws in themselves are not enough**. Without their good implementation, they are only documents filled with unrealized potential. In countries that struggle with similar problems, we must stress over and over again: without the full implementation of valid legislation, without genuine political will, without a comprehensive understanding of the media's role in a functioning democracy, without the creation of a safe environment for journalists to do their work, and without true commitment by all actors, these countries risk falling far behind international standards.

Apart from unmet expectations and disillusioned citizens, we all know that the consequences of politicized and misused media could be very serious.

In conclusion, let me assure you, dear Commissioners, that I will not hesitate to openly and vigorously remind any country of their responsibilities toward implementing the OSCE commitments to the freedom of the media.

I am also asking you to use this opportunity today and send a clear message to the governments of all OSCE countries to do their utmost to fully implement their media legislation safeguarding freedom of expression. The governments have the power to create an environment in which media can perform their unique role free of pressures and threats. Without this, no democracy can flourish.

Thank you for your attention.