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The Representative on Freedom of the Media
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Regular Report to the Permanent Council

Introduction

I am pleased and honoured to present this report one year after you entrusted me to become the new OSCE Representative on Freedom of the Media. I believe it is a good time to reflect on the developments of the past 12 months and, perhaps most importantly, what will happen in the months to come.

I must begin by giving thanks to the Kazakh Chairmanship, starting with Foreign Minister Kanat Saudabayev and Ambassador Kairat Abdrakhmanov, whose assistance and friendship throughout the year allowed my transition into this position with great ease.

I would also like to thank sincerely all of the ambassadors and their staff members for their co-operation. Here in Vienna, every delegation assisted my Office in the performance of their duties. As well, the delegations and their counterparts at home have been remarkable in their assistance when I have visited their countries. I felt at home everywhere I went.

I also would like to recognize the effort of the Lithuanian Chairmanship, including Chairman-in-Office Audronius Ažubalis and the Chairperson of the Permanent Council, Ambassador Renatas Norkus. I am especially pleased that the Chairmanship has made media one of its priorities for its term in office and, particularly, journalists' safety, as a focus of concern. Along that line, plans are progressing successfully for a conference in Vilnius in early June on the issue of journalists' safety. In today's world, not enough can be said or done to make the world a safer place for those who report on the world in which we live.

I would like to thank Secretary General Marc Perrin de Brichambaut and his staff for the continuous genuine support and assistance that has been offered to me.

Last but not least, the staff members of my Office deserve special thanks for their tireless and energetic attitude that they have demonstrated within this period. Without all this I would not be able to finalize my first year so smoothly and successfully.

Before I turn to the topic of journalists' safety, I would like to acknowledge that there are many positive trends happening in many OSCE participating States when it comes to media-freedom developments and active co-operation with this Office. With many governments we are actively engaged in legislative reforms – decriminalization of defamation, codes of practices and the like. You are all very much aware that I publicly welcome these developments, but I also must share my opinion, because it seems to me that all these positive

developments are almost invisible to the outside world if we turn our attention to the issue of the safety of journalists.

When I delivered my second report in December last year just after the Summit in Astana, I asked you to consider the 10 principles, the RFOM Decalogue, which would guide my Office to fulfill the mandate and participating States to fulfill their commitments. Top among them, indeed the first three principles, directly relate to the treatment of journalists – their physical treatment to be sure – including murder, beatings, harassment and all manners of general thuggery perpetrated upon them, but also the criminalization of their work.

That, however, is exactly and unfortunately what is happening across the OSCE region and beyond.

As I speak to you today, literally dozens of journalists are sitting behind bars because they had the courage to do their work and the courage to report a story.

In five OSCE participating States journalists currently are in jail while hundreds are awaiting trial. The journalists are beaten, intimidated and harassed in several more participating States.

Consider these facts.

Since my last report to you, in mid-December, just three months ago, journalists were put in prison, detained, harassed, beaten and they were denied entry to foreign countries. A bomb exploded outside the editorial offices of a metropolitan newspaper. A threatening letter – with four bullets – was mailed to the headquarters of a major broadcaster. Posters were pasted on city streets – death notices to a television station and four journalists. Just this week, masked and armed militia stormed the offices of a public service broadcaster to take files and equipment. The violence is not, I repeat, is not directed only at journalists. Families of journalists have been threatened. Lawyers are being disbarred for simply representing the interests of journalists in criminal cases.

I pose a question before you today.

Has it become a crime to be a journalist in the 21st century? Why are we afraid of words?

Consider Nedim Şener. He is in jail today. Two weeks ago Nedim said, “I don’t know what crime I committed. If doing your job is a crime, yes, I am guilty.”

Please also think of Natalya Radzina, a writer for the charter97.org website. She is under house arrest and awaiting trial that could put her in prison for 15 years. “Is it a crime to be a journalist?” Natalia asks. “Maybe someone wanted to convince all people of this, but they failed to convince me.”

I assume that many of us in this hall do not like dealing with journalists and the media in general. Journalists may misquote you. They may provoke you with their questions. They may violate your privacy or just be irritating.

Most of us have learned to live with it. We need to have thick skins, so to speak, having realized that it is part of our faith in democracy to have a higher level of tolerance when it

comes to public scrutiny. Of course, journalists themselves need to have the responsibility to protect the culture of objectivity, and to report accurately, fairly and in good faith.

But even without being professional in all cases, continuing the embarrassing practice of violence and intimidation against journalists can only take us back to the past and times of fear and repression.

It is true that many of us who live in democracies do not always appreciate the importance of our freedoms, including the freedom to speak and to write, until it is too late. And without the free expression of ideas and opinions and the publication and distribution thereof, society ceases to develop.

Another question I have for all of us today rings clear: What are we going to do about it and how can we, by working together, change this negative and embarrassing trend?

Allow me to move from the philosophical, but necessary, to the practical. The practical approach begins with living up to the OSCE commitments on media freedom that all 56 Heads of State reaffirmed and recommitted themselves to just a few months ago in Astana. Are these words only valid on paper? The only answer I have is to truly recommit to the principles of this organization. Not just in words, but in deeds as well. The finest language in the world rings hollow if there is no actual, practical follow-through to allow for the mechanisms to develop and exist that protects free expression.

I pledge to work to make this happen. But I can not do it without the active participation of the governments involved. Hence I appeal to you to follow up on the cases mentioned below as well as on the ones previously presented to you.

Issues Raised with the participating States

Albania

On 3 February I wrote to the Speaker of Parliament, Jozefina Topalli, and Prime Minister Sali Berisha to express my concern about a parliamentary committee's request for journalists' phone logs. The committee is looking into circumstances surrounding violent demonstrations that took place in Tirana on 21 January. I stressed that the protection of journalists' sources is one of the basic conditions for media freedom. Absent such protection, sources may be deterred from sharing information of public interest. Any overriding of the principle of the confidentiality of sources should be carefully balanced against the public interest. I asked the authorities to ensure that decisions that require media to hand over their materials or electronic equipment need to be prescribed by law and made by independent and impartial decision-making bodies or courts.

On 15 March I received a reply from the Secretary General of the Albanian Parliament informing me that on 3 February a Parliamentary committee unanimously decided to refrain from requesting the phone logs of citizens and journalists, a decision I very much welcome.

Armenia

I continue to follow the activities of the media working group established last year by President Serzh Sargsyan to amend the broadcast law. I hope a consensus concerning recent proposals soon will be achieved and amendments will be introduced in Parliament. I would like to reiterate my Office's readiness to continue providing expert support in this process.

On 1 March I sent a letter to the President expressing concern over large damage awards against journalists and media in civil defamation suits. On 7 February a district court in Yerevan ruled that the newspaper *Haykakan Zhamanak* must pay the equivalent of €12,500 in damages to three members of Parliament. Similar proceedings are underway against other media, including *Aravot, Yerkir, Zhamanak* and NEWS.am. I encouraged the authorities to amend the Civil Code to make civil defamation laws more favourable to free media. I also offered my Office's assistance in drafting the laws.

On 15 March I wrote to Minister of Foreign Affairs Edward Nalbandian to enquire about a recent incident involving representatives of YLE, Finland's national public service broadcaster. On 10 March four members of the crew who are Finnish, Lithuanian and Estonian citizens were denied entry visas. I look forward to receiving a swift answer on this case.

Austria

On 1 February I met with State Secretary for Media Josef Ostermayer to discuss, *inter alia*, the role of free and pluralistic media in a democratic society and the protection of editorial secrets in Austria. In that context, I welcomed the verdict of the Supreme Court of Justice on 16 December 2010 upholding the decision by the national broadcaster ORF not to produce material to a lower court in the so-called 'ORF-Am Schauplatz' case. The court had ordered ORF to hand over unedited film footage after a politician filed a complaint claiming illegal methods were used to produce the program. The Supreme Court confirmed that the materials were protected by editorial confidentiality under Article 31 of the Media Act. I also expressed my satisfaction at the re-launching in January of a self-regulatory body in Austria (Österreichischer Presserat) during the meeting.

Azerbaijan

I continue to follow the case of editor Eynulla Fatullayev who remains in prison despite a ruling by the European Court of Human Rights in April 2010 ordering his immediate release. On 25 January a Baku appeals court rejected Fatullayev's appeal of a conviction in 2010 on questionable drug possession charges.

On 10 March I issued a press release calling upon the authorities to stop intimidating Fatullayev and release him immediately from jail. I expressed concern over the fact that the journalist was transferred to a prison colony where he says his life is in danger. I urged the Government to take all necessary steps to ensure Fatullayev's safety and that of his relatives, who have been receiving anonymous telephone threats.

I continue my call for the convictions of bloggers Adnan Hacizade and Emin Milli to be overturned. Both were set free late last year after serving more than half of their sentences after convictions on hooliganism charges. I believe their records should be expunged.

On a positive note, I am encouraged by the expressed willingness of the authorities to decriminalize defamation. I will visit Baku in early May to participate in a round-table discussion on this subject. As this will be my first visit to Azerbaijan I also will hold meetings with Government officials and the media.

Belarus

On 21 December 2010 I issued a statement condemning the post-election violence against members of the foreign and Belarusian press corps, as well as the detentions and sentencing of journalists that took place in the wake of opposition-led street protests.

On 5 January in a press release and in a letter to Foreign Minister Sergei Martynov I expressed concern over the indictment of two well-known journalists, Irina Khalip of Russia's *Novaya gazeta* newspaper, and Natalya Radina of the charter97.org website. Both were charged with organizing and taking part in mass unrest. They face up to 15 years in jail. In my letter, I also objected to the police searches that had been conducted at the homes of several journalists, the editorial headquarters of charter97.org and other independent media outlets. I also informed Minister Martynov of my willingness to travel to Belarus as soon as possible to discuss the situation.

On 17 January I reiterated my offer to travel to Minsk in a second letter to Minister Martynov**.** In addition to requesting a meeting with him and other government officials, I expressed my wish to visit Khalip and Radina in prison. On 18 January I received a reply from the authorities informing me that my request to meet with the two journalists had been transferred to the relevant authorities.

On 1 February in the wake of a decision to place Khalip under house arrest and confine Radina to her hometown of Kobryn, in a press statement I once again called upon the authorities to drop the charges. I also regretted that the Government had not timely responded to my request to visit Minsk.

On 8 February I wrote to Information Minister Oleg Proleskovsky with a proposal to initiate and host a round-table discussion on planned amendments to the media laws. A few days earlier Minister Proleskovsky had suggested that changes be made to the existing laws to ensure "efficient government control over the national market." It is my view that no changes should be made without taking into account the opinion of all stakeholders, including representatives of independent media outlets.

I continue to follow the situation in Belarus and I hope my Office will be able to co-operate with the authorities.

Bosnia and Herzegovina

The 15th anniversary of the OSCE Mission to Bosnia and Herzegovina was a unique opportunity to evaluate the current status of the media freedom situation in the country. Not so long ago, the media legislative and regulatory framework of Bosnia and Herzegovina was regarded as very progressive and the leader in the region. However, the implementation of respective laws has not just stalled but is worsening by the day. As a result, over the last year, the media freedom further deteriorated. Politicians are increasingly trying to suppress

alternative and critical voices. The political will to respect a free press or to foster media freedom is far from being sufficient. The overall politicization of the media has led to its fragmentation along political and ethnic lines and to a polarization of journalists who no longer have a common purpose. I very much welcome the important work of the OSCE Mission to Bosnia and Herzegovina which keeps raising awareness of the media freedom situation and together with my Office we are trying to assist the country in moving forward with its media reform.

Bulgaria

On 11 February I wrote to Foreign Minister Nickolay Mladenov to condemn the bomb explosion that took place the previous morning outside of the office of the *Galeria* weekly in Sofia. I asked the authorities to publicly condemn this violence against media and carry out a fast and thorough investigation.

I asked the Government to do so to demonstrate that violence against the media is not acceptable and will be prosecuted. Prompt investigations into attempts to silence critical voices can help ensure that such crimes will not be repeated.

On 8 March I received a reply from Minister Mladenov informing me that the police and prosecutors are carrying out a full-scale investigation to find the perpetrators and assuring me that further information of relevance will be communicated to me as soon as it becomes available. I hope that the perpetrators will be brought to justice in the near future.

Canada

On 19 January I wrote to the authorities regarding the 31 December 2010 ruling of the British Columbia Supreme Court ordering a reporter of the Vancouver newspaper *The Province* to reveal a confidential source. I indicated that this order seemed to contradict the recent guidelines set forth in May 2010 by the Supreme Court of Canada regarding the protection of journalists' sources.

On 31 January I received an answer indicating that a copy of my letter had been sent to the relevant authorities in Ottawa which would review it and provide an explanation, if appropriate. On 24 February I received another answer indicating that the Government is aware of the Supreme Court ruling but would not comment on active litigation since the newspaper involved intends to appeal the judgment.

Croatia

On 17 February I wrote to Foreign Minister Gordan Jandroković about the reform of the penal code. The draft amendments foresee a re-introduction of imprisonment as a sanction for defamation. I reminded the authorities that in 2004 and 2006 Croatia took encouraging steps by liberalizing its defamation law and abolishing prison sentences. I called upon the Government to withdraw the amendments and decriminalize defamation altogether, making it solely a civil offence – a step also supported by President Ivo Josipović.

On 22 February I received a reply by the Foreign Minister informing me that the current draft of the legal amendments is under public debate and that a wide participation of

representatives of media has been organized. I was assured that the Government remains open to suggestions related to the reform of the defamation provisions and will share the consolidated final draft of amendments to the penal code with my Office for further consideration.

Czech Republic

On 16 March I wrote to Foreign Minister Karel Schwarzenberg and also commented publicly on the recent raid by the Czech military police on the offices of Czech Television.

On 11 March 10 armed and masked military police raided the offices of the Czech Television in search of a report that in 2007 had led to the dismissal of a former military intelligence head. The police seized computers, documents, notes, phone numbers and other items from the offices of the television station.

I stressed that such action is an excessive and undue intrusion into the independence of the media outlet and it threatens journalists for doing their job of reporting about issues of public interest. I also welcomed the swift reaction of the authorities, including the announcement of Defense Minister Alexandr Vondra about starting an investigation into the details of the case.

I ask the Government to carry out the investigation in a swift and transparent method and help ensure that all confiscated equipment and materials are immediately returned to the station. I also ask the authorities to enhance the protection offered to journalists who report about public issues. Punishing the media for obtaining and publishing confidential information can lead to the media losing its ability to uncover corruption and report wrongdoings.

I look forward to receiving the authorities' updates on this case in the near future.

France

On 20 January I wrote to the authorities asking for more information about the case of Michaël Szames, a reporter for *France 24*, who allegedly was the victim of a violent attack on 15 January in Tours. The reporter filed a complaint with the police accusing eight security staff of the Front National Party of having beaten and insulted him as he was covering a party congress. Party leaders contested this version of the story and filed a defamation lawsuit against Szames on 17 January.

On 24 January I received an answer indicating that my letter had been forwarded to the relevant authorities.

I also continue to monitor the debates about the "Loppsi 2" law which was adopted by the Parliament on 8 February. Following my letter on 10 December 2010 to Bernard Accoyer, President of the French Assemblée Nationale, in which I raised concerns about amendments to the draft law, I was pleased that a provision which could limit the access to government-held information was dropped from the text.

Georgia

In late December 2010 I received a letter from Speaker of the Parliament Davit Bakradze assuring me that legislators will "introduce high standards" when they resume work on a bill to make media ownership transparent.Work on the proposed changes is expected to resume in the coming days. I hope legislators will take into account the recommendations given by my Office in this regard. ***(See Legal reviews).***

On 9 March I wrote to Irakli Chikovani, chair of the Georgian National Communications Commission, proposing my Office co-operate with the Commission to introduce guidelines in order to raise awareness and ensure better implementation of the Broadcasting Code of Conduct. I hope to receive a reply soon.

Greece

On 28 February I wrote to the authorities to request details about the decision of the Greek National Council for Radio and Television to levy a penalty of €3,000 against radio station KRAL FM in Xanthi Prefecture.

The station broadcasts in the Turkish language. The reason for the penalty was a violation of the radio licensing law that requires 25 percent of programming be in Greek.

On 7 March, I received the reply from the authorities confirming the penalty levied on KRAL FM, indicating that the station had violated the language-content requirements.

Since 2007, my Office has said on several occasions that the relevant Greek legislation needs to be reformed, as it sets a high threshold for minority, community and low-cost broadcasters because of the language requirement, as well as financial and personnel requirements, which can endanger media pluralism.

On 8 March, I wrote to the authorities asking for details in the cases of two Muslim minority newspapers that were given high fines by a civil court for their articles about a Greek teacher in a Muslim minority school. The newspapers, *Gundem* and *Millet*, published articles criticizing the teaching method of a Greek teacher. The teacher sued the newspapers and the court ordered them to pay €150,000 and €120,000 respectively. An initial amount of €20,000 for *Gundem* and €30,000 for *Millet* has to be paid to the teacher immediately, even if the newspapers appeal the verdict to a higher court. The newspapers claim that this amount could lead to bankruptcy.

I stressed the importance of capping compensatory damage awards that can be levied to ensure that judgments do not lead to bankruptcy and thus weaken media pluralism in the country.

I look forward to receiving the reply of the authorities in this case as well.

Hungary

In the months since my last report to the Permanent Council, the new media legislation has remained a focus.

On 22 December I raised attention to the fact that the new legislation, if misused, can silence critical media and public debate in Hungary. I noted that the legislation regulates all media content – broadcast, print and online – based on identical principles, and gives an unusually broad power to the Media Authority and the Media Council, which are led exclusively by members supported by the governing party. The legislation also leaves numerous key terms undefined, such as the protection of public order, which, if violated, requires journalists to reveal their sources. I stressed that in the absence of clearly defined guidelines, journalists can not know when they are in breach of the law. I also raised concern over the requirement for all media to be registered with the Media Authority, and the high fines that can be levied for many kinds of violations. I expressed concern over the political independence of public service media, as all new heads of public service outlets were nominated by the governing party and the Media Authority controls the budget of all public service media in the country.

On 18 January I was pleased to travel to Budapest at the invitation of Minister Zoltan Kovacs, Minister of State for Communication. I had very detailed discussions with Minister Kovacs and Gergely Prohle, State Secretary at the Foreign Ministry. Although we continue to have differing viewpoints, I appreciate the willingness of the authorities to continue the dialogue with my Office on this very important topic.

On 28 February I provided the authorities with the second legal analysis that my Office has commissioned on the media legislation. Since modifications to the law were being considered following an assessment by the European Commission, I asked the Government to use this opportunity to also modify those provisions that run against OSCE commitments. The legal analysis contained detailed recommendations.

On 7 March Parliament adopted the new media law. I noted that, despite adjustments, the law still runs against OSCE commitments on media freedom. I stressed that my Office remains ready to assist the authorities in case they decide to further modify the legislation. I look forward to continuing the co-operation my Office has enjoyed with the authorities during the last several months on this issue.

Italy

On 9 March I wrote to the authorities about the case of Fabio Cosma Colombo, a journalist for the newspaper *Metropolis*, who was attacked and left unconscious on 28 February near Salerno. Colombo was reporting on the death of a young man – later declared a suicide – when the attack took place. Allegedly police looked on but did not intervene.

I suggested that this incident was one in a string of hostile acts against journalists that have been occurring on a regular basis across the country. The most recent case took place on 1 March when a letter was sent, together with four bullets, to the headquarters of the public service-broadcaster RAI in Rome. The letter was addressed to four prominent journalists: Michele Santoro, a journalist and host of the political show Annozero, Marco Travaglio, co-founder of the independent newspaper *Il Fatto Quotidiano* and regular guest on Annozero, Gianni Barbacetto, a well-known investigative journalist covering corruption in Italy, and Peter Gomez, editor of the webpage ilfattoquotidiano.it.

I asked the authorities to send me additional information about the cases and to keep me informed on the progress of the investigation regarding the Colombo attack. On 14 March I made my concerns public in a press statement on the matter.

In the margins of the OSCE PA, on 24 February, I met with Riccardo Migliori, Head of the Italian Delegation to the PA. During our fruitful discussion, Migliori shared with me the latest details about the draft law on telephone surveillance and electronic eavesdropping. I assured him that my Office was ready to assist the Italian government in reviewing the bill before it reaches the Parliament for debate, an offer which was taken up by Migliori in a letter of 9 March.

Kazakhstan

I welcome the decision made by the Tengizneftestroi oil contractor to renounce damages awarded from the *Uralskaya nedelya* weekly and journalist Lukpan Akhmedyarov. A court in in April 2010 ruled against the newspaper and the journalist and ordered them to pay Tengizneftestroi 20 million tenge (€101,500) in damages over an article claiming that the company had allegedly illegally won a tender to build a natural gas pipeline.

On 9 February I sent a letter to the authorities expressing concern about the Parliament's failure to decriminalize defamation. Amendments which went into effect in January replaced criminal penalties with administrative sanctions for minor crimes committed by first-time offenders. These crimes include libel and insult. However, defamation of top government officials, including the President and members of Parliament, still can result in imprisonment.

On 22 February I offered the Government an analysis of the draft law "On television and radio broadcasting". This draft has been proposed by the Ministry of Communication and Information and is being discussed with the Government.

I am pleased that the Government shared a draft law with my Office at an early stage of expert discussions and before its official introduction in Parliament.

The introduction of a law regulating broadcasting is welcomed. This is particularly important in view of the anticipated digital switchover. However, our analysis found that if the current draft was adopted, it would substantially reduce broadcast media freedom. I hope that these recommendations will help the authorities bring the draft in accord with international standards and OSCE media freedom commitments. My Office stands ready to further co-operate with Kazakhstan on this issue. ***(See Legal reviews).***

I continue to follow the case of the imprisoned editor of Alma-Ata Info, Ramazan Yesergepov. On 27 January he was refused early release for the third time, despite seriously deteriorating health. I call on the authorities to release him immediately.

Kyrgyzstan

On 7 March I wrote to Foreign Minister Ruslan Kazakbaev to inform him about the successful completion of a Deutsche Welle project on conflict-sensitive reporting supported by my Office. I enquired about the authorities' current activities to promote media pluralism in the South.

I continue to follow the media reforms, especially the process of establishing an independent public service broadcaster; and I hope that Kyrgyzstan soon will become the first Central

Asian state to decriminalize defamation. My Office stands ready to continue supporting the Government in these matters.

The former Yugoslav Republic of Macedonia

On 4 February I wrote to Foreign Minister Antonio Milososki expressing my concern over possibly negative implications the investigation into the so-called "Spider Web" case might have on media pluralism. On 27 January the Skopje 1 First Instance Court, in order to prohibit the hiding of assets, froze the accounts of 11 companies suspected of tax evasion and money laundering, among them two commercial television stations, A1 and A2, as well as the printing and publishing companies that issue the newspapers *Koha e Re, Spic* and *Vreme*.

I called upon the authorities to ensure that an investigation into the alleged crimes would not affect the broadcasting of A1 and A2 television programmes or the publication of the three dailies.

The assets remain frozen today. I remain concerned about the potential impact this might have on media pluralism and the functioning of important media outlets. While I fully respect the independence of courts, the authorities should ensure that the investigations will not lead to economic censorship of the media.

On 22 February I received an answer from Deputy Foreign Minister Zoran Petrov stressing the independence of the judiciary in the matter and ensuring me that the authorities were doing their utmost to reduce possible negative effects the investigations might have on the work of the media.

My Office also is following the drafting of a new law on broadcasting. I look forward to seeing the final draft when it enters the parliamentary reading process and offer my Office's assistance to review the draft. Once put out for public comments, I hope wide public interest will ensure an all-inclusive debate.

Norway

As my office learned that the Government is moving to repeal the defamation provisions from its penal code, I sent a letter to the authorities on 23 February to ask for a copy of the bill. I also expressed my support for this significant change in the legislation, recalling that my Office has campaigned for the decriminalization of defamation for several years. Although those obsolete provisions have not been enforced in Europe since the 1970s, their chilling effect remained.

On 1 March, I received an answer from the authorities together with the text of the bill. The reply confirms that the Government is working on a revision of the Penal Code of 1902 which includes the dropping of criminal liability for defamation. The authorities also informed me that it is uncertain when the revised law will be enacted. I look forward to the final adoption of the bill.

Russian Federation

I welcome two recent court decisions to grant journalist Aygul Makhmutova and blogger Irek Murtazin early release from custody. Both were serving sentences in corrective labor colonies on defamation and other criminal charges.

On 8 February I wrote to Deputy Foreign Minister Aleksandr Grushko to enquire about a decision to bar Luke Harding, the Moscow correspondent for Britain's *The Guardian* newspaper, from entering the country. On 14 February I received a reply from the Foreign Ministry saying the journalist had been temporarily denied entry because of visa and accreditation violations. I was very pleased to hear that the issue was resolved quickly and the journalist was able to return to Russia to continue his work.

On 2 March I wrote to Sergei Lavrov, Minister of Foreign Affairs, in order to start planning my next visit to Russia.

Serbia

I was pleased to learn that on 29 November 2010, amendments to the Public Information Act, adopted on 31 August 2009 in a fast-track procedure, entered into force in an improved version by its publication in the Official Gazette. On 22 June 2010 the Constitutional Court of Serbia had unanimously rejected several amendments about which my predecessor had expressed his concern. The Court had objected to the provisions governing the founding and registration of media outlets and proposed fines for violating them. The Court also ruled that the right to establish a media outlet can not be limited to domestic legal persons and has to apply to every person interested in setting up a media outlet. I welcome that Serbia aligned its legislation with international standards regarding media freedom.

I was pleased that on 20 January the Court of Appeal in Niš ruled in favour of journalist Dragana Kočić of *Narodne Novine* in a civil defamation lawsuit. Kočić had been fined with 1 million Dinars by a lower court for having used a quote from an official indictment in a newspaper story about the conduct of a public official and the misuse of public funds. My predecessor had intervened in the case on 28 April 2009. In August 2010, I expressed satisfaction about the High Court of Niš ruling in favour of the journalist, as the quoted text was an official document and hence in the public domain. With the final verdict of the Court of Appeal, taking into account European standards of media freedom, the case has been brought to a successful close. (***See also Regular Reports to the Permanent Council of 2 July 2009 and 16 December 2010*).**

On 16 February I issued a statement condemning the intimidation campaign against the independent television station B92 and its journalists. On 15 February B92 journalists had reported about alleged corruption cases at a state-owned mine in Lazarevac, a town south of Belgrade. A day later numerous poster-sized notices appeared around Lazeravac announcing the death of the television station and listing the names of prominent B92 journalists, among them Brankica Stanković, the author of the investigative programme, Insajder, and Veran Matić, B92's editor-in-chief. I stressed that instances of attacks against media are to be considered direct attempts to undermine democratic values. I welcomed the statement of Interior Minister Ivica Dačić to protect B92 journalists and asked the authorities to do their utmost to provide a safe working environment for media. In the past, B92 had been attacked after broadcasting investigative programmes and shedding light on wrongdoings. However,

recent investigative shows on B92 have led to an increase in attacks, making necessary heightened police protection for Stanković and Matić. At the same time, the organization NAŠI 1389 organized a protest on 5 March under the motto "Silence the TV Bastille – Stop Fascism of the Media Regime" in front of the B92 building. Although the police managed to disperse the protest, the overall hostile atmosphere toward independent media remains of great concern to me.

Spain

On 3 February I addressed the authorities regarding the case of Fernando Santiago, President of the Press Association of Cadiz, who was brutally attacked in Cadiz on 21 January. According to information available to me, the journalist was attacked in response to an article about the use of public funds to rescue Delphi, a struggling automobile parts company. I asked the authorities for information regarding the progress of the investigation into the case.

On 8 March I received a reply from the authorities indicating that a judicial investigation had been opened and is ongoing. Police allegedly have identified the assailant. I was assured that I would receive more information as the investigation goes forward and that the authorities are fully committed to ensuring a safe working environment for journalists.

Tajikistan

On 17 January I wrote to Foreign Minister Hamrokhon Zarifi to ask about the fate of independent journalist Mahmadyusuf Ismoilov, who was apprehended on 23 November 2010 in the northern Sughd Region. His detention was reported a month later. Ismoilov is under investigation on various criminal charges that include defamation, insult, incitement to national, racial or religious hatred and fraud. Although he has not been formally indicted, he remains in a pre-trial detention facility in the city of Khojand.

On 8 February I wrote again to Minister Zarifi to express my concern over the beating of Hikmatullo Saifullozoda, the chief editor of the *Najot* newspaper. In this letter I also addressed the 1 million somoni (€164,000) defamation lawsuit brought by Interior Ministry official Anvar Taghoymurodov against the *Asia-Plus* newspaper. I used this opportunity to once again to call the Minister's attention the seven civil and two criminal pending defamation lawsuits filed recently against independent media outlets. The total damages demanded in these cases – more than €1.3 million – threatens the very existence of media pluralism in Tajikistan.

My Office continues to follow the reform of the media law. I took note of the 24 February announcement by Ambassador Nuriddin Shamsov, Permanent Representative of the Delegation of the Republic of Tajikistan to the OSCE, at the Permanent Council about the ongoing process. I hope that Tajikistan will adopt an advanced law taking into account recommendations of international and local experts. I would like to offer my Office's continuing support in this important endeavour and look forward to visiting Tajikistan soon.

Turkey

On 3 March I wrote to Foreign Minister Ahmet Davutoğlu to raise once again my serious concerns over the high number of jailed journalists in Turkey and urged the Government to carry out the much-needed reform of the legal system that allows for the imprisonment of

journalists for their writing and reporting on issues of importance. In September 2010 I already turned to the Government to address this issue.

I am concerned that the situation has further deteriorated since my last letter. The number of journalists currently in prison is estimated to be up to 60. As well, lengthy pre-trial detention periods are of serious concern. I stressed that this practice has an enormous chilling effect on editors and journalists in Turkey.

In addition, there are hundreds of ongoing criminal proceedings that threaten journalists with imprisonment if they will be found guilty. In most cases the journalists are being charged under various articles of the Turkish Criminal Code and the Anti-Terror Law, which allow for a wide range of sanctions to silence journalists with critical or differing views.

In the letter I informed the Minister that my Office is currently completing a project that will list all known cases of imprisoned journalists in Turkey. The list will be presented to the Government soon. I asked the authorities to start a dialogue and closely co-operate with my Office in order to assist Turkey in the best way possible to stop the current trend of imprisonments.

On 3 March I had to address Turkey a second time on that day with a public statement to express concern about the unprecedented persecution of journalists. On that morning police took at least six journalists into custody, raided their homes and offices and confiscated equipment. I called on the authorities to stop intimidating and threatening journalists and requested that detained journalists immediately be released.

I hope to receive a reply from the authorities soon. My Office is ready to assist the Government in implementing reforms.

Turkmenistan

I hope to be able to follow up on the invitation extended to me by Rashid Meredov, Deputy Chairman of the Cabinet of Ministers and Minister of Foreign Affairs, to visit Turkmenistan soon.

Ukraine

On 17 January I publicly commended the adoption of a comprehensive access-to-information law by the Parliament and called it “a considerable step toward government transparency”. My Office will closely monitor its implementation, offer advice and share “best practices” from other OSCE participating States. I reiterated my call on the authorities made during my October 2010 visit to Kyiv to reform the media law, including adopting laws on media ownership transparency, the privatization of print media and by abolishing the “public morality law”. I also called for the swift adoption of a law on public broadcasting, noting that the authorities had not done so despite assurances that a law would be in place by the end of 2010.

On 7 March I wrote to Minister of Foreign Affairs Kostyantin Hryshchenko to express my concern over recent developments in the Georgiy Gongadze murder case. On 2 March the Kyiv Appellate Court upheld a lower court’s decision to not charge the prime suspect in the

Gongadze murder case, former Interior Ministry official Oleksiy Pukach, with a contract killing, instead calling it "carrying out a criminal verbal order," which carries a lesser penalty. In addition to carrying a lesser penalty, the revised charges limit criminal responsibility to the persons who issued the order and those who implemented it. Therefore I am concerned that the decision to reclassify the case may preclude any attempt to identify other people who could be involved in the horrifying assassination of Gongadze.

United Kingdom

On 17 January I addressed the authorities regarding the case of an ITV News reporter who was excluded from a police press conference regarding a murder investigation. It came after ITV News broadcast a critical report on the handling of the investigation. I asked the authorities for a clarification about the case because the equal treatment of journalists at a press conference is a basic media freedom principle.

On 22 February, I received an answer from Nick Herbert, Minister of State for Policing and Criminal Justice, which provided further details about the matter. The Minister said the issue had been resolved following discussions between the Chief Constable and ITV News' senior manager. He assured me that this had been an isolated case which does not demonstrate bigger issues about media freedom in the United Kingdom.

On 17 January I also wrote to the authorities to welcome and support the pledge by the coalition government to amend the libel law. On 7 January Deputy Prime Minister Nick Clegg promised to publish a draft defamation bill in the spring that will prevent "libel tourism" and provide a new statutory defence for persons making statements in the public interest. The bill also will clarify the existing defences of fair comment and justification.

In the letter I drew attention to the case of Dmytro Firtash against *The Kyiv Post*, a Ukrainian English-language newspaper. Firtash, a Ukrainian businessman, sued the paper over a 2 July 2010 article "Gas trade leaves trail of lawsuits, corruption". Although only 21 people in the UK downloaded the article about Firtash's business practices, the libel action was pursued in London's High Court.

On 8 February I received a response from the Minister of State for the Ministry of Justice who confirmed the plan to publish a draft defamation bill and launch public hearings to ensure that the legislation would safeguard freedom of expression while protecting people's reputations.

On 24 February, I was pleased to learn that the Firtash case was dismissed by a court. This important decision is a precedent that may limit the filing of defamation complaints by foreign plaintiffs in British courts and indicates a change in the fight against so-called libel tourism.

United States

On 3 March I wrote to the Department of State expressing my concern about an open letter written by the U.S. Ambassador in Pristina, Christopher Dell, on 23 February to the broadcast regulatory agency, the Independent Media Commission, complaining about the allegedly "illegal" conduct of journalists covering the presidential election and the media's

"unauthorized interception of personal conversation". The media when covering the voting in the Assembly of Kosovo[1] published photos of short messages between one presidential candidate and his adviser. I recalled that while it is the duty of the media to respect someone's right to privacy, reporting about core public interest issues, such as elections, is in fact one reason for the media's very existence and that an individual's right to privacy has to stand the public interest test. In my letter I asked the U.S. authorities to continue supporting media freedom and upholding the right to free expression in the region, which still has to establish functioning institutional safeguards for a free press.

In the reply, which I received on 15 March, the United States restates its efforts to promote media freedom in Kosovo.

I also continue to follow the cases of two television reporters from Russia Today who were arrested and charged with state law violations arising out of coverage of a protest at the Fort Benning military base in Columbus, Georgia. The reporters are scheduled to stand trial in late March. I reiterate my call for the charges to be dropped against the two members of the media who were covering a public demonstration in a public arena.

I am working with the U.S. Department of State and the U.S. Mission to the OSCE on preparations for my next visit to the United States.

Uzbekistan

I continue to call on the authorities to release the three journalists who are serving jail sentences of six to 12 and one-half years: Dilmurod Saiid, an independent news writer, Solijon Abdurahmanov, a former reporter for Radio Free Europe/Radio Liberty and the uznews.net website, and Hairullo Khamidov, the deputy chief editor of *Champion* sports newspaper.

I am also monitoring the appeal of Voice of America reporter Abdumalik Boboyev, who in October 2010 was fined the equivalent of €5,700 for defamation and other criminal charges. The Supreme Court of Uzbekistan in February ruled to send the case back to the Tashkent City Court. I hope the issue will be resolved in Boboyev's favour.

I took note of President Islam Karimov's announcement on 12 November to "put forward a number of reforms to increase the importance of independent mass media and ensure freedom of speech and information". I hope that this reform process will start soon and I offer my Office's full support in this endeavour.

Projects and activities since the last report

Visits and participation in events

On 18-20 January I was pleased to travel to **Budapest** at the invitation of Minister Zoltan Kovacs, Minister of State for Communication. I had detailed discussions with Minister Kovacs and Gergely Prohle, State Secretary at the Foreign Ministry.

[1] All reference to Kosovo institutions/leaders refer to the Provisional Institutions of Self-Government.

On 25 January I participated in a hearing on "Media freedom in Europe" at a meeting in **Strasbourg** of the Culture, Science and Education Committee of the Parliamentary Assembly of the Council of Europe. I also met top Council of Europe officials. In my speech I encouraged members of the committee to address grave challenges to media freedom, including violence against journalists, legal obstacles and administrative interference impeding the work of media professionals. This was my first official visit to the Council of Europe (CoE) as the OSCE media freedom representative. During the visit, I held talks with the CoE Secretary General, the President of the CoE Parliamentary Assembly and the Human Rights Commissioner to discuss media freedom in our common member countries and the modalities to maintain the excellent co-operation between the entities.

On 26 January I participated in an international symposium on freedom of expression organized by UNESCO in **Paris**. Participants discussed the current state of media freedom worldwide, the safety of journalists and freedom of expression over the Internet. On 27 January I addressed the UNESCO conference on "Journalism ethics and self-regulation in Europe: new media, old dilemmas". This event marked the end of a project that my Office supported and co-funded jointly with UNESCO to promote the consolidation of media self-regulation mechanisms in South East Europe.

On 1 February I met with the Austrian State Secretary for Media, Josef Ostermayer, in **Vienna** to discuss, among other issues, the role of free and pluralistic media in a democratic society and the protection of editorial secrets in Austria.

On 17-18 February I took part in celebrations marking the 15th anniversary of the OSCE Mission to Bosnia and Herzegovina in **Sarajevo**. The event focused on past, present and future challenges in Bosnia and Herzegovina. The dominating topics were the deteriorating media freedom situation, stalled media reform and ongoing attempts to undermine the independence of the public service broadcasting system and the communications regulatory authority.

On 23 February I was invited to meet Parliamentarians of the Norwegian and Swedish Delegations to the OSCE PA. During the meetings, we discussed the activities of my office and explored possible future co-operation.

On 24 February I addressed the third OSCE PA committee on the general challenges to freedom of the media and the activities of my Office in response to those challenges. The discussion focused on the situation in Belarus.

On 3-4 March my Office attended the OSCE regional meeting in **Belgrade** of media officers, organized by the OSCE Mission to Serbia. The event gathered all media officers of the OSCE field presences in South East Europe. Participants discussed the current media perspectives, updated each other on the respective activities in the region and shared best practices.

On 4 March I spoke at the annual meeting of the European Conference of Presidents of Lawyer's Associations – Vienna Advocates Deliberations, on the issues of media, freedom and its relationship to the rule of law.

On 14 March my Office participated in a conference in **Kyiv** organized by the Ukrainian Journalists Ethics Commission aimed at raising awareness of the benefits and the role of media self-regulation.

Legal reviews

Georgia

On 10 December, I offered the Speaker of the Parliament, Davit Bakradze, a legal analysis of the draft amendments to the Law on broadcasting related to transparency of media ownership.

The law was analyzed by Dr. Katrin Nyman-Metcalf, Professor and Chair of Law and Technology at the Tallinn University of Technology, and one of the most renowned international experts of communications law.

The expert analyzed the initial draft that was prepared by the Committee on Legal Issues of the Parliament in November 2010 and did not take into account the amendments made to the draft before the first reading on 7 December.

Generally, the introduction of the amendments is viewed as an important step in promoting media freedom and pluralism in Georgia.

The expert made the following key recommendations:

- Georgian legislators should ensure that the amendments are drafted in such a manner so as to not stipulate new requirements for existing licence holders during an ongoing licence period, as this could violate the principle of legal certainty;
- New requirements should only be applied for new applications although smaller modifications may also be applied for licence renewals and only if the real change is minor for ongoing licences;
- The use of the new term "beneficiary owner" must be clearly defined as well as the requirements for submitting information;
- The new term introduced should be used at all places in the Law where the concept is relevant and different ways of expressing the same situation should be avoided through a review of all related matters in the Law;
- Inconsistencies in the drafting of the new Article 37 should be removed.

I hope that the upcoming parliamentary hearings on the draft will take into account not only these recommendations, but also the suggestions other stakeholders, including media non-governmental organizations, may put forward.

Hungary

On 28 February I sent the Government a legal analysis with detailed recommendations on how to bring the law in line with OSCE media freedom commitments. The review was

prepared by Dr. Katrin Nyman-Metcalf, Professor and Chair of Law and Technology at the Tallinn University of Technology, and one of the most renowned international experts of communications law.

The main recommendations stated the following on the recently adopted media legislation:

- The legal requirements on balanced coverage and other content prescriptions should be deleted from the laws;
- Editorial independence must be safeguarded – media should be free to decide on content;
- Different forms of media - print, broadcast and online – require different rules;
- Vague notions in the legislation must be clarified;
- Registration requirements are excessive and should be deleted;
- The regulatory body should be independent and competent; real objectivity and plurality should be introduced through the means of appointment of organs governing the media sector;
- Print media should be self-regulated and not under the jurisdiction of the regulatory body.

The full legal review and recommendations can be accessed here:
http://www.osce.org/fom/75990

Kazakhstan

On 22 February I presented to the authorities a review of the draft law "On television and radio broadcasting". The review was prepared by Dr. Andrei Richter, the director of the Moscow-based Media Law and Policy Institute. Our expert suggests that, in order to improve the draft law, the following changes should be made:

- Incorporate the requirement to ensure the right of citizens to freedom of speech and expression, dissemination of information and political pluralism in broadcasting;
- Include legal mechanisms of the implementation of people's right to free access to information that would satisfy their cultural, educational, spiritual and other needs; as well as of the protection of the audience's rights;
- Introduce the requirement to transform state broadcasters into public service broadcasters. Within the transition period, requirements for objectivity and impartiality of contents should be enforced;
- Envisage clear legal guarantees of independence of a licensing body;
- Introduce separate regulatory regimes for various platforms used to relay video and audio programmes. The licensing of satellite, cable, IP and Internet broadcasting systems should be abolished or reduced to registering them as private enterprises;
- Review the draft provisions on digitalization, taking into account the need to ensure universal access to new services while preventing monopolization of broadcast media market and reduction of pluralism due to withdrawal of analogue licenses;

- Abolish any limitations on the use of languages other than the official language in broadcasting;
- Review the limits on re-broadcasting foreign programmes and introduce obligations for broadcasters to allocate time for government announcements.

Internet-related activities

My Office is finalizing a compilation of the first OSCE-wide study of laws and regulations related to freedom of expression and the free flow of information on the Internet. The study will assess how national Internet legislation and practices comply with existing OSCE media freedom commitments and relevant international standards. I also hope it will establish a comprehensive database of applicable laws which would serve as a basis to assess future development in the area of Internet regulation, thus becoming a reference tool to follow best practices. I hoped to be able to present to you the final findings with this report; however, only 60 percent of the OSCE participating States have submitted answers to the questionnaire which was distributed in September of last year. I still hope to receive outstanding replies in the near future.

The study should be finalized over the next few weeks. However, I am pleased to inform you that this project has generated interest beyond the OSCE region. The former Special Rapporteur for Freedom of Expression at the Organization of American States, Eduardo Bertoni, and now Director of the Center for Studies on Freedom of Expression at Palermo University in Buenos Aires, Argentina, is mirroring the project in Latin America. By applying the same methodology we will be able to develop comprehensive databases that will not only be comparative within the OSCE region but across continents, embracing the nature of the Internet as a truly global and borderless medium.

Publications

Guide to the Digital Switchover

The Guide to the Digital Switchover has been published in Armenian. The Guide explains, in simple terms, a technological process that enables us to gain access to an unimaginable amount of information through television and radio. The Guide is a comprehensive examination of issues to be considered by all stakeholders involved in the switchover process, including the successes and pitfalls encountered. It gives a list of the "Do's and Don'ts" of the process, which raises attention to the main difficulties and opportunities of the switch. It is available at: http://www.osce.org/hy/node/75864[1].pdf

Planned activities for the next reporting period

Speaking engagements and visits

On 25 March I will speak on a panel at the Milton A. Wolf Seminar: “Picking up the Pieces: Fragmented Sovereignties and Emerging Information Maps” sponsored by The American Austrian Foundation at the Diplomatic Academy in Vienna. The topic will be “The Right to Connect,” studying attempts to leverage the Internet and mobile phones to open closed societies.

On 30 March I will participate in discussions regarding the state of freedom on the Internet at the Second Expert Meeting on Human Rights and the Internet in Stockholm, sponsored by the Swedish Ministry for Foreign Affairs and the UN Special Rapporteur on Freedom of Opinion and Expression.

On 12-13 April I will participate in the 2011 Regional Meeting of Heads of Field Operations in Central Asia in Tashkent.

On 6 May I will speak on media legislation, transparency of media ownership and media self regulation in the western Balkans and Turkey at a European Commission conference "Speak Up! Conference on Freedom of Expression and Media" in Brussels. The conference stems from the European Union's policy paper on enlargement in those regions.

I will visit Azerbaijan during the week of 9 May. I will participate in a conference organized by the Press Council regarding its legislative initiative to decriminalize defamation.
As this will be my first visit, I would also like to use this opportunity to meet authorities involved in media governance issues to receive first-hand information on the media freedom situation.

On 30 May I will participate in a conference at Central European University in Budapest organized by the Open Society Justice Initiative on "National Security and Access to Information."

On 7-8 June my Office and I will participate in a special conference in Vilnius on safety of journalists in the OSCE region organized by the Chairman-in-Office.

On 20 June I will speak at the 2011 Deutsche Welle Global Media Forum: "Human Rights in a Globalized World – Challenges for the Media" in Bonn.

Media Conferences

My Office will continue to organize media conferences in the South Caucasus and Central Asia. We will add a third site, Southeast Europe, for the first time in 2011. We have started consulting with media professionals and OSCE missions to identify the most relevant topic for the conferences.

I would like to thank the Delegations which already have expressed interest in our project activities and indicated their willingness to provide financial support. As we still lack some funding, I would like to use this opportunity to ask the Delegations to consider additional funding for the projects.

Training events

Access to information

My Office plans to conduct a major training event for journalists and government spokespersons on promoting citizen's access to official information in Central Asia to be held in May in Bishkek. I hope that participants from all five Central Asian states will take part in

this event, which will focus on utilizing modern Internet technologies to ensure wide access to government-held data. The extra-budgetary event is funded by the United States.

Internet business training

My Office will also continue raising capacity of journalists to run efficient and financially sustainable online media outlets in Moldova. A training event in June, which the Lithuanian Chairmanship has pledged to support, is a follow-up seminar to the one held in Chisinau in September 2010.