



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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Regular Report to the Permanent Council

Introduction

This report is my last as the Representative on Freedom of the Media. Not even this occasion can tempt me into assessing the media-freedom situation on a scale from pessimistic to optimistic, neither in the whole OSCE region nor on a state-by-state basis. Of course, you can follow in this report the summary of the instances when my Office intervened.

As it has been during my entire tenure, the period since my last report in October 2009 has been one of mixed results for the cause of media freedom.

However, I must ring an alarm at the dramatic deterioration of the safety of Kyrgyzstan's journalists. The cold-blooded execution in December of Gennady Pavlyuk, an opposition journalist, lured by the perpetrators into the neighbouring Kazakhstan, as well as the numerous other cases of violence, show all signs of an organized campaign with the goal of intimidation.

In January, Moldomusa Kongantiev, Minister of the Interior of Kyrgyz Republic, stated in Parliament that 31 attacks on journalists have been reported to the Ministry since 2005. But almost even more alarming than that terribly high number is that the official was ready to ascribe only one of all murders to motives tied with the journalists' professional activities.

A further bad signal about the stance of the authorities was the outrageous sentence given in the case of journalist Almazbek Tashiev. Several policemen in Osh were seen to beat him to death in July of last year. However, in February, only two of them were convicted; they were set free.

The OSCE commitments oblige all participating States to provide safety to journalists, not just for the sake of justice but also for the sake of democracy, which becomes an empty name without fearless fact-finding and discussion by the media. Kyrgyzstan is now yet another nation where violence against free media and civil society is rampant while there is practically no political engagement to address the problem, let alone eradicate it. As the bitter lesson learned already by Russia demonstrates, impunity breeds further violence, and practically blesses the most brutal type of censorship without saying so.

I believe the OSCE is entitled to see a transparent investigation into the death of Pavlyuk to be carried out by Kyrgyz and Kazakh authorities, jointly or separately.

Excellencies,

Six years ago, when I was chosen to hold this position, I commenced my work with the resolve that I will implement the mandate by being geographically blind, while, of course, not problem-blind.

The greatest challenge has been upholding the very notion of universal standards. Media-freedom problems are not only omnipresent, they perpetually re-emerge. Having said that, it is unfortunate that in the second decade of OSCE's existence, the universality of the commitments has been questioned by several participating States. That has put the institution I am heading – as well as the other human rights activities of this great organization – into a difficult position.

I have never expected overnight improvements. The notion of universal commitments may be well served by slow progress. But the commitments come under pressure when participating States act to preclude, rather than include, media diversity, free expression and access to information in their societies.

These six years in the job have only strengthened my conviction about how indispensable international scrutiny is for the fate of human rights. The more we believe that democracy ultimately only can be accomplished by people who live in their own country, the more essential it is for the international community to give unconditional and public support to the actual human beings who have decided to be those internal carriers of our common values and goals.

The states that dismiss international co-operation and scrutiny in issues of human rights as “intrusion into internal affairs” are doing so not because they feel restricted in their efforts at delivering those rights but because their restrictions on those rights are being questioned.

The co-operation between my Office, the participating States and the OSCE institutions and field presences has led to the two main achievements of this Institution.

One is the rescuing of many victims of violations of the right to free expression from deterioration of their situation, and in several cases, successes in guarding their right to personal safety and even their lives. Unfortunately, the nature of this life-saving function of our Institution precludes measuring, while the memory of victims who could not be saved looms large in our conscience.

The other achievement also resists easy measuring. This Office has no legal power, except that it is mandated by the participating States to ask questions, suggest solutions and request replies. Its greatest power, however, is its authority to notify the public about these co-operative exchanges and, thereby, involve civil society in the debate. That element helps make the free-speech commitments an interaction of all players in the democratic process. Introducing concerns and solutions into the national debates have been the most rewarding moments in my work.

Excellencies,

I would like to express my gratitude for your and your predecessors' personal support during my tenure. I am glad that Ambassador Maria-Pia Kothbauer is still serving as she had assisted the Dutch and the Bulgarian Chairmanships to select me the Representative.

I also would like to thank the Kazakh and all previous Chairmanships, and personally Secretary General Marc Perrin de Brichambaut. He marvellously understood and supported our mission. I believe our Institution has accomplished quite a scope of activities with funds of well under 1 per cent of OSCE's budget, and that is possible only because all departments of the Secretariat have assisted us in many ways.

Special thanks go to OSCE's field missions. My gratitude also goes to the members of the media of the participating States, and all those activists working to promote civil society and the cause of media freedom.

Finally, I also would like to thank the team at the Representative's Office that has worked hard and ably during these years. Two of them, Joanna Jinks, Senior Administrative Assistant, and Senior Adviser Ana Karlsreiter, have been with this institution for the entire time of my mandate.

I hope that my successor will be able to build on what we have achieved. Proud that all the candidates nominated for the post have been experts who have co-operated with my Office, I am sure that my successor will continue to advocate for freedom of speech for all citizens and for all journalists in the OSCE region.

The candidate slated for consensus, Dunja Mijatović, deserves the support of all of you, ladies and gentlemen. And that support can be best embodied by governmental adherence, in each of our nations, to our founding conviction that peace and security never will be lasting without free media.

Issues Raised with the Participating States

Azerbaijan

I am following the case of young video bloggers Adnan Hajizade and Emin Milli. **On 11 November**, I wrote to Elmar Mammadyarov, Minister of Foreign Affairs, to express my strong objection to the sentencing to two and two-and-a-half years, respectively, of the critically minded journalists. They were convicted for alleged hooliganism, in a case where, in fact, they were the victims of an attack.

Their appeal has been postponed on several occasions since December. I hope the appeal will not only set the two bloggers free but also will acquit them. Their first-instance sentences confirmed Azerbaijan's continued prosecution of journalists based on dubious non-journalism charges.

Along with Milli and Hajizade, imprisoned remain Eynulla Fattulayev, editor of defunct newspapers *Realny Azerbaijan* and *Gündalik Azərbaycan*, who is serving a eight- and one-half year sentence, and Ganimat Zahidov, former editor of *Azadliq*, who is in jail serving a 4-

year sentence. Both were convicted based on trumped-up charges in violation of OSCE commitments on press freedom.

On 30 December, I condemned claims by Azerbaijan prison officials that Fatullayev had been found in possession of heroin during a 29 December search.

On 3 February, the Baku Police issued a statement claiming that traces of heroin, amphetamines and a hypnotic benzodiazepine known as Flunitrozepam had been found in Fatullayev's blood.

I consider these steps as a provocation aimed at smearing his reputation and pre-empting the European Court of Human Rights' expected verdict on violations of human rights that occurred during Fatullayev's prosecution

This month marks the fifth anniversary of Elmar Huseynov's murder. The editor-in-chief of the weekly newspaper *Monitor* was gunned down in the staircase of his apartment building in 2005. As of today, not a single suspect has been apprehended.

I still hope that, as President Ilham Aliyev once pledged, all those involved in Huseynov's murder will be soon brought to justice.

I welcome the fact that Azerbaijan is considering decriminalizing libel. This Office stands ready to assist Azerbaijan in its reform efforts in this area.

Belarus

On 27 January, in a letter I asked Minister of Foreign Affairs Sergei Martynov to provide me with more information on recent amendments to the proposed law "On Executive and Investigative Activities" concerning Internet service providers and web sites.

The amendments reportedly give the Presidential Administration powers to intercept e-mails, conduct online investigations and allow government agencies to close web sites deemed extremist.

On 1 February, another piece of internet legislation, the decree "On measures to improve the use of the national segment of the Internet" was signed by President Alexander Lukashenko.

My Office commissioned a legal analysis that was submitted to the Belarusian authorities. The study reports welcome facts. Several provisions envisioned in the draft of the decree were not included in the final version. These were the possibility to block web sites by the authorities, mandatory hosting of Belarusian web sites by Belarusian providers and making Internet service providers responsible for information available on the Internet.

Regarding the future implementation of the decree, several recommendations were made by the expert in accordance with the OSCE commitments.

I hope that these suggestions will be taken into consideration when developing further legislation which concerns the Internet in Belarus.

My Office will continue to assist Belarus with its media law reforms. Together with the authorities in Minsk, it could organize a roundtable on the developments in the field of Internet legislation.

For more details please see Legal reviews.

Bosnia and Herzegovina

On 23 December, together with three representatives of the international community, I wrote to the Council of Ministers of Bosnia and Herzegovina. The letter to Nikola Špirić, Chairman of the Council of Ministers, was co-signed by the Acting Head of the OSCE Mission to Bosnia and Herzegovina, Vadim Kuznetsov; the High Representative and EU Special Representative, Valentin Inzko and the Acting Head of the European Union Delegation to BiH, Boris Iarochevitch.

The letter urged the government to refrain from undermining the independence of the Communications Regulatory Agency (CRA) by interfering with its composition. The Council had ordered the Ministry of Communications to draw up new appointment procedures for the CRA Council which would ensure a composition along ethnic and territorial criteria.

We cautioned that the Law on Communications should not be reinterpreted to include appointment criteria other than those stated in the law, which are the integrity, knowledge and professional merit of appointees.

We also urged the Council of Ministers to finalize the process of appointing a General Director of the CRA, which has been pending for more than two years, and has hampered the functioning of the Agency.

This joint letter is part of an inter-agency effort, initiated by my Office, aimed at eventually placing the media-freedom dimension higher on the EU's list of priorities in Bosnia and Herzegovina.

For more information, see my July 2009 Report to the Permanent Council.

Bulgaria

On 7 January, I wrote to then-Minister of Foreign Affairs Rumiana Jeleva, seeking information about the murder of Bobi Tsankov, an author and journalist, who covered organized-crime issues. Tsankov was shot in downtown Sofia on 5 January. Law enforcement authorities have charged a man with his murder. Tsankov is the second journalist murdered while covering organized crime. Georgi Stoev was killed in April 2008 under similar circumstances.

On 2 March, I was pleased to receive the update of Minister of Foreign Affairs Nikolay Mladenov with the assurance that the authorities are actively working on the cases. I hope to soon receive news of specific results.

Canada

On 26 February, I wrote to the Canadian authorities asking for information about the progress of the investigation into the 21 February vandalizing of the office of the *Uthayan* newspaper in Scarborough, Ontario. This attack followed a threatening phone call to Logan Logendralingam, editor of the newspaper, and was allegedly conducted with the intention of intimidating him from reporting on dissenting voices in the Tamil community of Canada.

Cyprus

On 12 January, I wrote to Cypriot authorities to express concern and request updates on the investigation into the murder of Andis Hadjicostis. The chief executive officer of Dias Media Group and the most influential publisher on the island was shot outside his home in Nicosia on 11 January.

I hope that the murder and its motives will be thoroughly and promptly investigated and that all of those responsible – both the executioners and masterminds – will be brought to justice.

France

On 14 January, I welcomed a new law that strengthens protection for journalists' sources. The law allows journalists to keep their sources of information confidential even in courts. Exceptions can be made when a "preponderant need of public interest" can be shown and "the measure is strictly necessary and proportionate to the pursued legitimate aim". I welcomed this because confidentiality of sources is a precondition for strong investigative journalism in the service of democracy. France already had some safeguards in place, but the new law now also protects the media against the use of warrants to obtain names of sources.

Georgia

On 19 to 20 November, I visited Georgia on the occasion of our Sixth South Caucasus Media Conference. See Visits below.

I noted with satisfaction that two years after the closure of *Imedi TV* in 2007, criticized by my Office at that time, diversity in the television media is advancing in Georgia. I welcomed the access for satellite use granted to the oppositional channel *Maestro TV*, and preparations to start a parliamentary and discussions channel in February 2010, as well as the growing number of invitations to all political forces to talk shows on private channels.

On 19 January, I welcomed the adopted reform of Public Service Broadcasting. The Parliament amended the Law on Broadcasting, which now stipulates that annual funding of the Georgian Public Broadcaster should be at least 0.12 per cent of the country's gross domestic product. Georgia had a similar automatic system until 2008, with 0.15 per cent of GDP guaranteed as the broadcaster's revenue. Prime-time advertisements are banned on Georgian public television, except during sport events.

Germany

On 2 December, I wrote to Sabine Leutheusser-Schnarrenberger, Minister of Justice, and asked her to approach the judiciary for a clarification on whether the composition of the public-service broadcaster's (ZDF) boards and their role in the appointment of the editorial management are in line with the Constitution.

My request came after the ZDF administrative board refused to re-nominate the broadcaster's editor-in-chief.

On 18 January, I received an answer from the Justice Minister, assuring of the importance to secure the independence of public-service broadcasting in Germany. Members of the Parliament have initiated a motion the aim of which is to have the Constitutional Court assess the constitutionality and, thus, independence of the underlying legislation on public-service broadcasting.

Hungary

On 5 February, I wrote to Minister of Foreign Affairs Péter Balázs concerning a civil libel lawsuit won by Former Prime Minister Viktor Orbán. The plaintiff sued not only a politician for defamation, but also a newspaper, *Népszava*, which reported on the publicly made statement. The newspaper was ordered to share the damage award.

This ruling runs against international standards that prohibit holding media liable for publishing statements or quotes from identified sources or for reporting about events with sources identified.

Although the Civil Code currently allows for such punishment, changes to the Code which would protect the media in cases such as this already have passed Parliament. The measure awaits only the signature of the President for the changes to become law. I hope that this case raises attention to the need to carry out this long-overdue reform.

Iceland

I am following a legislative proposal, currently under review in the Icelandic Parliament, which in an unprecedented way aims at strengthening freedom of expression and the media by incorporating all best practices from across the OSCE region. Its goal is to strengthen access to information provisions, whistleblower and source protections, and to exempt intermediaries, such as Internet service providers, from content responsibility.

Should Iceland adopt the envisaged legal provisions, it will be the first participating State improving its media governance by combining all available best practices.

Ireland

A new Defamation Act went into effect at the first of the year, which I welcomed **on 12 January** because it officially decriminalized libel. But I also had to criticize the law because

it introduced a new libel provision keeping blasphemy a criminal offense, even if removing imprisonment as a sanction.

Ireland and the United Kingdom are the first nations in Western Europe to drop libel and defamation as a criminal offense, allowing it solely as a civil-law issue. I believe this reform should be adopted by more countries that still treat media mistakes a crime, thus exerting a chilling effect on critical journalism. Most EU member countries have stopped using criminal libel provisions in their laws, following the jurisdiction of the European Court of Human Rights.

However, I believe maintaining blasphemy as a crime, defined as making statements that are “grossly abusive or insulting in relation to matters held sacred by any religion” is a step backwards. The provision is actually contrary to Ireland’s stance in the UN Human Rights Council, where it has consistently voted against motions to make defamation of religion a crime.

I called upon authorities to repeal the provision as quickly as possible.

Kazakhstan

I was disappointed to learn that on 8 December, President Nursultan Nazarbaev signed the law “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan concerning protection of the rights of citizens to privacy”. Earlier, **on 2 November**, when the draft law was being examined by Parliament, I addressed the Kazakh authorities, recommending they drop the proposed five-year prison term for publishing information related to the private life of individuals. Unfortunately, the law retains this severe punishment without any waiver for public-interest issues.

I am monitoring the case of Ramazan Yesergepov, the editor of the newspaper *Alma-Ata Info*. To my regret, on 14 December, the Jambyl regional court upheld the three-year prison sentence. A year has passed since Yesergepov was detained for disclosing internal documents of the Kazakh National Security Committee (KNB) in an article that criticized KNB actions against a company. Yesergepov has submitted an appeal to the Supreme Court.

This Office will continue to follow the case, as media-freedom standards disapprove of punishing journalists for publishing leaked documents, especially without examining the public-interest merits of the publication.

I was pleased that on 9 February, the Almaty Medeu district court reversed its ruling of 1 February that banned media outlets from carrying any reports that could “damage honor and dignity of Timur Kulibayev”, a well-known public figure. Earlier, **on 4 February**, I wrote to Minister of Foreign Affairs Kanat Saudabayev, when the court ordered the seizure of all print runs of *Respublika*, *Golos Respubliki*, *Kursiv*, *Kursiv-News* and *Vzglyad*, in which letters sent to the country’s authorities by exiled former government minister Mukhtar Ablyazov had been published. The letters contained accusations of corruption against Kulibayev.

The Office also is following the case of the murder of Gennady Pavlyuk, a leading journalist from Kyrgyzstan. He died on 22 December, a week after he was thrown from an upper-story

window of an Almaty apartment building. I hope that Kazakh authorities, together with their Kyrgyz counterparts, will ensure a transparent investigation of this cruel execution.

See Kyrgyzstan for more details

Kyrgyzstan

On 9 November, I wrote to the State Minister of Foreign Affairs Kadyrbek Sarbaev expressing my concern about the murder on 4 November of Seyitbek Murataliev, editor of the newspaper *Jylan*, and the attack against *Osh Shamy* deputy editor-in-chief Kubanychbek Joldoshev, whom unidentified assailants had beaten a few days earlier. Since then, Joldoshev has moved to another region for safety reasons.

On 22 December, I again had to address Kyrgyz authorities over the continuing wave of intimidation and violence against journalists. I raised several cases.

On 15 December, two men wearing police uniforms attacked Aleksandr Yevgrafov, a correspondent for the Russian *BaltInfo* news agency in Bishkek. The journalist believes that the attack is related to his coverage of political developments in Kyrgyzstan.

On 16 December, staffers of the *Osh Shamy* newspaper received an automatic-rifle bullet and threatening notes.

In my letter, I expressed particular concern with the case of the murder of Gennady Pavlyuk, the director-general of the *Bely Parokhod* Internet newspaper and media collaborator with Kyrgyzstan's Ata-Meken opposition party. On 16 December, Pavlyuk was found at the foot of an Almaty apartment building with his hands and feet bound with tape. Pavlyuk died in hospital on 22 December.

Unfortunately on 10 February the Kyrgyz Ministry of Interior stated that it could not interfere with the investigation carried out by Kazakh authorities and could only provide legal support. The OSCE is entitled to see a transparent investigation of the death of Pavlyuk to be carried out, jointly or separately, by Kyrgyz and Kazakh authorities.

In the same letter, I expressed regret that on 9 December the Supreme Court of Kyrgyzstan refused to order a new probe into the investigation of 2007 killing of *Siyosat* reporter Alisher Saipov. I still hope that all those involved in Saipov's murder will be brought to justice.

On 9 December, I received a response to my request for information about the attack on Abduvakhob Moniev, editor-in-chief of the pro-opposition *Achyk Sayasat*. He was beaten by four unidentified men in Bishkek on 5 June. I was informed that the authorities launched an investigation into the case. Alarming is the fact that two weeks prior to the attack, police seized several thousand copies of the newspaper and prevented its distribution.

On 25 February, an outrageous judgment was rendered in the case of murdered journalist Almazbek Tashiev, a case mentioned in a previous report. Tashiev died on 12 July 2009 from injuries suffered in an attack by several police officers. The Nookat district court in Osh sentenced the two police officers charged to a 5-years sentence without jail time, along with a two-year probationary period, in essence setting the killers free. These men were uniformed

officers who are supposed to protect, not attack, journalists. This practical acquittal was handed down amid a shocking wave of violence against journalists.

The recent wave of attacks and threats has turned into a dangerous trend that must be stopped immediately by the authorities. The government must publicly acknowledge that violence against members of the media is not crime as usual and should not go unpunished. Impunity leads to further violence.

Moldova

I visited Moldova on 26 November to assess the media situation after a new government took office. I observed somewhat more pluralism in media compared to findings in my report on Moldova in 2004. Even as I sensed resistance from the new opposition to allow for more impartiality in media matters, it is important that, reacting to this, the current political leadership seeks to establish balance by adhering to internationally accepted standards of media governance.

I recommended that an agreement be reached about mutually acceptable guarantees of media independence. The continuing media reform should enforce the transparency of media ownership; revise the restrictive law on state secrets adopted by the previous government and improve access to information for journalists.

I welcome the February election of well-known civil society media experts to the top management positions in *Teleradio Moldova*. Among other changes, Angela Sirbu, the former director of the Independent Journalism Centre was elected Director of *TV Moldova-1*, and Alexandru Dorogan, the former head of Association for Electronic Press became the new Director of *Radio Moldova*. I hope that these personnel changes will soon lead to the needed reform of the Moldovan Public Service Broadcaster.

This Office will continue to stand ready to assist Moldova in its legal reform efforts, but no law is good enough without a willingness to co-operate among the political forces in the country.

For more details please see sections Visits and Legal reviews.

Russian Federation

I very much regret the final outcome of the Magomed Yevloyev murder case in Ingushetia. The owner of the then-opposition information web site *ingushetiya.ru*, Yevloyev was shot in a police car on 31 August 2008, minutes after being arrested. Authorities claim the death was accidental. On 11 December 2009, an Ingush trial court sentenced the police officer who killed Yevloyev to two years in a colony settlement on negligent homicide charges. On 2 March, the Supreme Court of Ingushetia ruled that the convict should serve his sentence out of prison. This decision sets a dangerous precedent as it fuels the sense of impunity felt by those who kill journalists.

On 18 December, I wrote to Foreign Minister Sergei Lavrov raising cases of prosecution of investigative journalists.

In November, a Kazan trial court sentenced Irek Murtazin to 21 months in a colony settlement, or corrective labor colony, on defamation and other charges. The accusations stemmed from an investigative book, newspaper articles and blog entries, in which Murtazin criticized Mintimer Shaimiyev, the then-president of the Republic of Tatarstan.

Aygul Makhmutova, the chief editor of a small Moscow community newspaper, was convicted in two separate trials on counts of fraud, extortion and assault, and is serving a cumulative five-and-one-half year sentence in a colony settlement. On 4 December, a higher court acknowledged legal flaws and scrapped one of the two verdicts. However, Makhmutova remains in custody to serve her first sentence.

In his response, which I received on 3 February, Minister Lavrov's spokesperson, Andrei Nesterenko, said that Makhmutova had not been convicted for her professional activities. With regard to the first case, Nesterenko said the office of Tatarstan's chief prosecutor had been asked to consider my viewpoint in the run-up to Murtazin's appeal trial. However, on 15 January the Supreme Court of Tatarstan already had upheld the sentence.

On January 27, Moscow's Perovo district court sentenced independent journalist Aleksandr Podrabinek to pay World War II veteran Viktor Semyonov 1,000 rubles (approximately 23 euros) in damages for an article he contributed to the *Yezhednevny Zhurnal* online newspaper in September 2009. In this article, Podrabinek criticized those who claim a monopoly on Soviet history.

Although the fine imposed on Podrabinek is 500-times smaller than the damages demanded by Semyonov, I regret that the court agreed with the defamatory character of his comments and ordered the journalist to recant two sentences of his article.

Russian authorities recently reported progress in the investigation of the assassination of human rights lawyer Stanislav Markelov and *Novaya Gazeta* correspondent Anastasia Baburova. They were gunned down in Moscow on 19 January 2009. Two suspects arrested in December 2009 reportedly confessed to their involvement. I welcome these developments and my Office looks forward to receiving updates on the case.

Two more pieces of good news are worth mentioning. On 9 February, Chechen President Ramzan Kadyrov announced his decision to call off his defamation lawsuits against Memorial Chairman Oleg Orlov, Moscow Helsinki Group Chairwoman Lyudmila Alekseyeva and the *Novaya Gazeta* newspaper. As mentioned in my previous report, **on 28 October**, I wrote to Foreign Minister Sergei Lavrov to convey my concerns regarding these criminal proceedings. They stemmed from comments Orlov had made about Kadyrov in July 2009, following the abduction and assassination of Memorial worker Natalya Estemirova. Orlov said he believed Kadyrov was politically responsible for the climate of fear and insecurity that prevailed in Chechnya.

I also welcome the fact that in January the Russian government rejected a May 2009 proposal by two prominent members of the United Russia ruling party to criminalize "falsification of history." The proposal would have punished statements questioning the role played by the Soviet Union during World War II and in its immediate aftermath with a prison term of up to five years. President Dmitry Medvedev had made it known that he was not in favour of the proposal and I hope that no further attempt to criminalize historical debates will be made.

Slovenia

On 15 February, in a letter to Foreign Minister Samuel Žbogar, I expressed my concern over criminal defamation charges filed by a Slovenian prosecutor against Finnish journalist Magnus Berglund. In a TV programme aired by Finland's public service broadcaster, *YLE*, and re-broadcast by *RTV Slovenia*, Berglund alleged that then-members of the Slovenian Government had accepted bribes from a Finnish defence contractor.

The criminal charges are based on the 2008 Criminal Code which I had criticized in May 2008. The Code not only fails to decriminalize defamation, but also extends liability for it to editors, publishers and printing companies

See my Report to the Permanent Council of 27 November 2008.

In my letter to Minister Žbogar, I asked him to initiate a reform of Slovenia's criminal defamation provisions. I also criticized former Prime Minister Janez Janša for using the same case to file civil defamation charges against Berglund demanding 1.5 million euros in damages. I hope that the court will take international standards and OSCE commitments into account, including the obvious public interest in corruption inquiries; the need for proportionality in civil fines; as well as the fact that politicians should tolerate a higher level of criticism than ordinary citizens.

Spain

On 19 January, I welcomed the step taken to de-commercialize TVE, the public-service broadcaster. In exchange for removing advertising, the reform guarantees several sources of funds, including taxes levied on frequency users, commercial broadcasters and telecommunications operators.

This reform also strengthens the public-service media's ability to perform their duties free of commercial and political pressure. Early results of advertising-free programming are encouraging. According to a study cited by *El Pais*, in the first ten days after the ban took effect, general audience share jumped from 16 to 20 per cent and prime time viewing increased from 22 to 30 per cent.

On 20 January, I wrote to the authorities to express my concern over the recent sentencing of two Internet journalists for "revealing secret information".

On 23 December, Daniel Anido, the director of the online radio *Cadena SER*, and Rodolfo Irago, its news director, received suspended jail sentences and were ordered to pay approximately 140,000 euros of damages. The journalists were convicted for posting on the web in 2003 a list of alleged irregular members of the conservative Popular Party.

Spain acknowledges that criminalization of publication of leaked documents by journalists restricts investigative reporting. I believe this standard should be applied to all media. No journalist, whether online or not, should be punished for publishing information that the public has a legitimate interest to know about.

Tajikistan

On 4 February, I expressed my concern to Minister of Foreign Affairs Hamrokhon Zarifi about a recent spate of lawsuits against independent newspapers that threaten the very existence of the publications.

On 29 October, a Dushanbe district court ordered the newspaper *Paykon* to pay an extortionate amount of 49,000 euros in damages to a government agency, Tajikstandard, for allegedly damaging its reputation. The newspaper had published an open letter to the Tajik President written by a group of entrepreneurs alleging wrongdoings by Tajikstandard.

On 26 January, the Ministry of Agriculture filed suit against the newspaper *Millat* demanding 163,000 euros in damages for an article that alleged corruption in the Ministry.

On 29 January, three newspapers, *Aziya Plus*, *Farazh* and *Ozodagon*, were sued by two judges of the Supreme Court and a judge from a Dushanbe City Court, demanding the unprecedented sum of 900,280 euros in damages for reprinting public accusations brought against them by a lawyer.

I consider these lawsuits to be dangerous attempts at censorship. Additionally, if the enormously high damages are collected, these newspapers will have to go out of business.

International standards require that libel suits against the media always should take into account the public nature of the person or entity being written about; only natural persons should be allowed to claim compensation for damage to their honor or dignity; the damages claimed should be proportional to the harm caused; media should not be held liable for accurately reporting statements of identifiable persons.

Turkey

On 22 December, I condemned the killing of Cihan Hayirsevener, chief editor of the newspaper *Guney Marmara'da Yasam*. Hayirsevener was shot by an unknown assailant on 18 December, while on his way to the office. The editor previously had received death threats related to his articles about a local corruption case.

On 23 December, the authorities arrested three people on suspicion of murder and one has confessed to the crime. I look forward to receiving updates on the on-going investigation.

On 18 January, on a visit in Turkey upon the invitation by several universities and the Ankara Bar Association, I asked the authorities to bring the country's Internet law in line with OSCE commitments and international standards on freedom of expression. In its current form the law limits freedom of expression and severely restricts the citizens' right to access information.

My request followed a recent report commissioned by my Office, showing that approximately 3,700 websites are currently blocked in Turkey, including YouTube, GeoCities and other major global sites. The system of blocking access to web sites paralyzes access to numerous modern file sharing or social networks.

I presented the report at Bilgi University in Istanbul, Ankara State University and at the International Law Congress of the Ankara Bar Association on 13 and 14 January. The report has been distributed to the Delegations in January, and is available at www.osce.org/fom.

United Kingdom

On 17 November, I commended the United Kingdom for becoming the first Western European participating State of the OSCE to officially decriminalize defamation.

This Office has long insisted that laws that criminalize speech have a chilling effect on journalists. Although these obsolete provisions have not been used in Western Europe for decades, their existence has served as justification for states unwilling to stop the practice.

Uzbekistan

On 19 November, I wrote to the Minister of Foreign Affairs, Vladimir Norov, as I have several times, asking for the release of Dilmurad Saiid, an independent journalist, who was sentenced to 12- and one-half years in prison for alleged extortion and forgery of documents and seals.

On 1 February, in another letter to the Foreign Minister, I expressed concern that on 7 and 9 January, six independent reporters presently or formerly affiliated with foreign-based media outlets were summoned for questioning to the Office of the Tashkent Prosecutor.

In the same letter I raised the case of Hayrullo Khamidov, the deputy editor-in-chief of the *Champion* sports newspaper and a former religion commentator for the Tashkent-based *Novruz* radio station. Khamidov was detained on 21 January and charged with violating legislation relating to religious organizations.

I also expressed my disappointment with the fact that imprisoned journalists Dilmurod Saiid and Solijon Abdurakhmanov were not pardoned nor had their sentences reconsidered, despite my numerous interventions on these two cases and assurances given to me by Uzbek officials that the cases would be handled in a humanitarian way.

On a positive note, I was glad to learn that on 10 February, Umida Akhmedova, an internationally acclaimed independent photojournalist, was free to leave the court room under an amnesty law. I nevertheless call for her complete acquittal to avoid a further public campaign against Akhmedova currently taking place in the Uzbek media. Akhmedova had been indicted for insulting and defaming the Uzbek people and their traditions in a book of photographs and a documentary film she authored in 2007 and 2008, respectively.

I hope that like Akhmedova, Saiid, Abdurakhmanov and other imprisoned journalists will be amnestied soon, and criminalization of the work of the media will stop.

European Union

We have followed as relevant for media freedom the European Parliament's approval, on 24 November, of a major overhaul of EU telecom rules aimed at boosting the rights of European mobile phone and Internet users and protection against access restrictions.

Main rules adopted concerning Internet access safeguards:

- Authorities will no longer be able to cut off Internet services to users without providing evidence of illegal downloading or other activity.
- Internet users who are breaking the law cannot be cut off without due process, including the users' rights to defend themselves.

These rules come at a time when the UK, the Netherlands and Spain are trying to present legislation similar to France's "Hadopi-law," which orders Internet service cut off to users caught in multiple unauthorized downloads of copyrighted materials.

Projects and activities since the last report

Joint Declaration of Global Free Expression Mandates on 10 key challenges of our time

On 4 February, together with freedom of expression rapporteurs of the United Nations, the Organization of American States and the African Commission on Human and Peoples' Rights I released a declaration on the 10 key challenges facing freedom of expression in the next decade.

"The Declaration on Ten Key Threats to Freedom of Expression" was adopted at a joint meeting held the same day in Washington with the assistance of the media freedom group Article 19: Global Campaign for Free Expression, and the Centre for Law and Democracy.

"Enormous challenges still exist in giving full effect to the right to freedom of expression, including restrictive legal regimes, commercial and social pressures, and a lack of tolerance of criticism on the part of the powerful," the four rapporteurs said.

The declaration comes at a time when the free press faces a severe safety crisis as governments fail to address unabated violence against journalists. More and more countries introduce restrictive Internet regulations that endanger the freedom of the global medium.

In many post-Soviet countries, the greatest structural challenge to media freedom comes from total government control over television content.

The 10 threats listed in the four representatives' declaration are:

- Governments continue to exert direct or indirect control over the media;
- Laws criminalizing journalistic errors such as defamation, insult, or slander remain in force in most countries;
- Violence against journalists remains widespread, and several governments fail to address it adequately;

- Limits continue to be imposed on the right to information, including through the application of secrecy laws to journalists and others who are not public officials;
- Restrictions to the right to freedom of expression still exist for historically disadvantaged groups;
- The growing concentration of ownership, the fracturing of the advertising market, and other commercial pressures threaten the ability of the media to disseminate public interest content;
- Public broadcasters do not enjoy sufficient financial support, while many of them have not been given a clear public service mandate;
- Security concerns and vaguely worded definitions of what constitutes terrorism or extremism are often used to limit critical or offensive speech;
- Some governments are trying to control or limit the Internet, including through the use of jurisdictional rules that allow cases, particularly defamation cases, to be pursued anywhere;
- A majority of the world's population still have no or limited access to the Internet.

The signatories were:

- The UN Special Rapporteur on Freedom of Opinion and Expression, Frank LaRue
- The OSCE Representative on Freedom of the Media, Miklos Haraszti
- The Organization of American States Special Rapporteur on Freedom of Expression, Catalina Botero
- The African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression, Faith Pansy Tlakula.

Guide to digital switchover

My Office commissioned a guide to assist participating States to deal with the challenges of the digital switchover and its media freedom implications. The study was prepared by two leading international experts.

The document, attached to this report and downloadable at www.osce.org/fom, details what a digitalization plan should contain, who should be involved in the process, what legal provisions are needed to allow and encourage digitalization and how to manage the process. It also analyzes how a country's authorities, together with other sectors of society, can manage the digitalization process in order to avoid negative consequences and promote positive aspects of digitalization, such as increased media diversity and plurality.

Furthermore, it addresses the relevant political issues related to the switchover, including the obligations of democratic states such as market regulation, entry into the market of digital television and the advantages and disadvantages of economic support to broadcasters and consumers.

Legal reviews

Belarus

The Office has commissioned a legal analysis of the decree "On measures to improve the use of the national segment of the Internet" signed by President Alexander Lukashenko on 1 February 2010.

According to the analysis, several positive elements were incorporated into the draft, including the following:

- Information on state bodies and other public organizations will be more accessible to citizens (including journalists), as the decree envisions responsibility of such organizations to publish information concerning their activities on their websites.
- Copyrights on the Internet will be protected.
- Internet service providers will have to undergo state registration merely in a declarative manner.
- Internet service providers will not be held responsible for the information available on the Internet.

In light of these advantageous provisions of the decree, much depends on how they will be implemented. The employed legal instrument should exclude the danger of limiting freedom of the Internet in Belarus.

The main concerns expressed by the expert are the following:

- The law obliges owners and administrators of Internet clubs and cafes to carry out identification of their visitors, keep their records and store their personal data. The same rule of identification applies to technical means of Internet service users used to connect to Internet access.
- It is unclear who and how will determine the essence of information in relation to which a request to limit access has been received. The definitions of types of harmful information under Belarusian legislation allow for legal ambiguity of categories.
- In the event of failure to comply with an order by a relevant body to liquidate violations or to suspend Internet services, the responsibility for content is transferred to Internet service providers, owners and administrators of places of collective Internet use.

The list of information which must be displayed on the websites of state bodies and other public organizations is quite limited.

- The law requires information and materials of a media outlet disseminated via the Internet to include hyperlinks to the original information source. This is an additional requirement placed on editorial boards, which cannot be applied in the event if the original source is not an Internet source.

In view of the abovementioned concerns, and the decree's deadline for the implementation rules by 1 May 2010, the following recommendations were made by the expert in accordance with the OSCE commitments regarding freedom of the media:

- Abolish mandatory identification of Internet service users and their technical means used to connect to the Internet.
- Clarify the meaning and procedure of introducing limitations and bans on spreading illegal information.
- Clarify the scope of responsibility of Internet service providers in the event of failure to comply with an order by a relevant body to liquidate violations or to suspend Internet services.

- Envision requiring state bodies and other public organizations to publish information not only on their activities, but also information which results from these activities.
- Abolish the requirement to include hyperlinks to the original information source in materials of a media outlet disseminated via the Internet.

Moldova

My Office commissioned a legal review on the proposed amendments to the Broadcasting Code of the Republic of Moldova, submitted to the Parliamentarian Committee on Mass Media and the Ministry of Foreign Affairs on 4 November.

The legal review presented the following recommendations in order to bring the Broadcasting Code in line with OSCE commitments and international standards:

- The broadcast regulator (existing or new) should not have such extensive powers over the public service broadcaster that it interferes in the daily management of the broadcaster. The proposed amendments must be changed to address this.
- Before a new regulatory body is established, the reasons for the alleged lack of independence and professionalism of the previous system need to be carefully analyzed. Otherwise, the new regulation will be plagued by the same problems.
- In case it is decided that the creation of a new regulatory body is the most practical way to deal with these problems (rather than to reform existing standards), the law needs to distinguish the respective role of the new system from remaining elements of the previous regulatory code to avoid overlap and confusion.
- While it is regrettable if the special majority has to be abolished in order to be in accordance with the Constitution, possibilities for a constitutional amendment should be investigated.

My Office stands ready to continue assisting Moldova with the reform of its media legislation and strengthen the efficiency of the regulator and the independence of the public service broadcaster.

Turkey

In December, my Office commissioned a legal review of Law No. 5651, entitled “Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication”, widely known as the Internet Law of Turkey.

I presented the report at the International Law Congress of the Ankara Bar Association, at Bilgi University in Istanbul, and at the Ankara State University on 13-14 January 2010. Following my visit to Turkey, I also published the report on my Office’s web site.

The legal review offers recommendations on how to bring the law in line with international standards protecting freedom of expression. The aim of the survey is to provide a useful tool for the Turkish authorities in their efforts to reform the much-debated legislation.

Since May 2007, the law has served as the basis of a mass blocking of websites in Turkey. The enactment of this law followed concerns about defamatory videos available on YouTube

involving the founder of the Turkish Republic Mustafa Kemal Atatürk, combined with concerns for the availability of content that is deemed bad, such as child pornography.

Through December 2009, access to approximately 3,700 websites has been blocked under the law. This includes access to a considerable number of foreign web sites, including prominent sites such as YouTube, Geocities, DailyMotion, and Google. Similarly, web sites in Turkish, or addressing Turkey-related issues, have been subjected to blocking orders since the law went into effect. This is particularly prevalent in news sites dealing with south-eastern Turkey, such as Özgür Gündem, Keditör, and Günlük Gazetesi. However, Gabile.com and Hadigayri.com, which combine to form the largest online gay community in Turkey with approximately 225,000 users, also were blocked. Access to popular web 2.0-based services such as Myspace.com, Last.fm, and Justin.tv have been blocked on the basis of intellectual property infringement.

Article 8 of the law includes the blocking measures. Under Article 8(1), access to web sites are subject to blocking if there is sufficient suspicion that certain crimes are being committed on a particular web site. The eight specific crimes of Article 8 are encouragement of and incitement to suicide, sexual exploitation and abuse of children, facilitation of the use of drugs, provision of substances dangerous to health, obscenity, gambling, and crimes committed against Atatürk. The Article 8 blocking provisions are also applicable with regard to football and other sports-betting web sites and web sites that enable users to play games of chance through the Internet which are based outside the Turkish jurisdiction without having valid permit.

The legal review provides an analysis of the following:

- The implementation and application of Law No. 5651,
- Analysis of the current legal provisions under Law No. 5651,
- Analysis of the Law's application by the courts and by TIB,
- Assessment of related Internet website blocking statistics,
- Identification of the legal and procedural defects of Law No. 5651, and
- An assessment with regard to Article 10 of the European Convention on Human Rights.

Following the publication of the review, I raised attention to the fact that even if some of the content that is deemed "bad" such as child pornography, must be sanctioned, the law is unfit to achieve this. Instead, by blocking access to entire web sites from Turkey, it paralyzes access to numerous modern file-sharing or social networks. By doing so, it not only limits freedom of expression, but severely restricts the citizens' right to access information

Therefore, the study concluded that the government should urgently bring Law No. 5651 in line with OSCE commitments and other international standards on freedom of expression, independence and pluralism of the media and the free flow of information. If kept in its present form, the law should be abolished.

I hope that the Turkish authorities soon will remove the blocking provisions that prevent Turkish citizens from being part of today's global information society.

South Caucasus Media Conference

On 19 and 20 November, in the absence of an OSCE field presence, I hosted the sixth South Caucasus Media Conference in Tbilisi, Georgia. Journalists, authorities and education experts from Armenia, Azerbaijan and Georgia discussed journalist education in the region and challenges journalism still faces.

The conference's statement also urged all three countries of the region to enforce ownership transparency in the media, and to issue further television licenses in order to make the media fully pluralistic.

The conference has greeted positive media developments, such as the encouraging signs of media pluralism and independence in Georgia, as well as Azerbaijan's plans to decriminalize defamation. At the same time, the fact that Azerbaijan has still not released imprisoned journalists remains a point of great concern.

I want to thank the countries that have contributed generously to the conference, including Austria, Belgium, Germany, Sweden and the United States.

Training activities

In October and November 2009, my Office together with Unesco and the South East European Network for Professionalization of Media organized national roundtable discussions on media self-regulation and newsroom ombudsman mechanisms in seven South East European countries and Turkey.

Around 280 media professionals, experts, publishers and regulators attended the roundtables held in **Skopje, Dubrovnik, Istanbul, Sarajevo, Pristina, Novi Sad, Tirana, and Podgorica**.

The goal of the project was to support the establishment of effective and functioning self-regulatory mechanisms, and to create a network of interested and expert contributors.

Visits and participation in events

Between 19 and 20 November, while I hosted the sixth South Caucasus Media Conference in Tbilisi, Georgia (see above), I also had meetings with local partners to discuss the media situation in Georgia.

I met Giorgi Bokeria, the First Deputy Foreign Minister of Georgia, and David Darchiashvili, the Chairman of the Committee on European integration of the Parliament of Georgia. I also met former Education Minister professor Ghia Nodia, and Georgian journalists from both print and broadcast media.

On 25 November, I visited Moldova. My visit was initiated by Ambassador Philip Remler, the Head of the OSCE Mission to Moldova, and Kalman Mizsei, EU Special Representative for Moldova.

I held meetings with Acting President and Parliamentary Speaker Mihai Ghimpu, as well as Corina Fusu, the Chair of the Media Commission of the Parliament, Deputy Foreign Minister Andrei Popov, Mark Tkachuc, the Advisor to the President of the Communist Party and Gheorge Gorincioi, the Chairman of the Audiovisual Co-ordination Council. I also met representatives of international organizations and foreign embassies.

From 29 November to 2 December, I attended the Ministerial Council Meeting in Athens, Greece.

On 2-3 December, my Office participated in a country visit to Serbia organized by the International Press Institute and the South East European Media Organisation (SEEMO). Meetings were held in Belgrade and Novi Sad with representatives of the Serbian government and more than 50 representatives of leading media companies and journalists' associations. The visit's focus was the controversial Law on Public Information and its possible implications on the free flow of information in Serbia.

On 8 December, my Office chaired a meeting in Sarajevo, Bosnia and Herzegovina with the aim of creating a joint OSCE, OHR, EU working group. The goal of the working group is to establish a coherent international mechanism, which would jointly advocate for and assist in finalizing the long-overdue implementation of media reforms in Bosnia and Herzegovina.

Due to the missing full implementation of media legislation, Bosnia and Herzegovina's public service broadcasting sector remains highly fragmented along ethnic lines. Also, the independence of the broadcast regulator has been challenged repeatedly by ad-hoc amendments to existing legislation.

On 10 December, I attended a PASOS international conference, "Return to Europe" – Reflections After 20 Years of Democratic Renewal, in Prague.

On 13-14 January, I visited Turkey upon the invitation of the Ankara Bar Association and several universities. In my speeches I raised attention to the dangers of the Internet Law of Turkey, and asked the authorities to bring the law in line with OSCE commitments and international standards on freedom of expression.

On 27 and 28 January, upon the invitation from the Council of Europe's Parliamentary Assembly, I addressed the Assembly's debate on freedom of the media. The debate was based on the report presented by Andrew McIntosh, the Chair of PACE Committee on Culture, Science and Education.

Following the debate, a recommendation to the Council of Ministers on Respect for Media Freedom was adopted: <http://assembly.coe.int/ConsultationNews.asp?idNews=5235>

During the visit, I met with CoE high officials, including Secretary General Thorbjorn Jagland, PACE President Mevlüt Çavusoglu, and Human Rights Commissioner Thomas Hammarberg.

On 18-19 February, my Office participated in a workshop organized by the Network for Reporting on Eastern Europe in Berlin, Germany. The event discussed difficulties journalists face when using access to information laws.

On 22-23 February, my Office attended a self-regulation conference in Istanbul, Turkey. Organized by Unesco, the conference concluded a joint project, conducted in cooperation with my Office, to support the establishment of effective self-regulatory mechanisms in South East Europe and Turkey.

Planned activities for the next reporting period

As in previous years, this Office is planning to hold its two annual media conferences, financed by extra-budgetary contributions: the South Caucasus Media Conference and the Central Asia Media Conference.

I therefore would like to thank those Delegations who have already indicated their financial support to the two events and also encourage other Delegations to consider supporting the conferences.