



PC.DEL/204/01  
29 March 2001

ENGLISH only

*The Chairman of the Permanent Council*

Vienna, 29 March 2001

**SUPPLEMENTARY HUMAN DIMENSION MEETING ON  
FREEDOM OF EXPRESSION: NEW AND EXISTING CHALLENGES**

**FINAL REPORT**

*Dear Colleagues,*

Please find enclosed the final report of the Supplementary Human Dimension Meeting on "Freedom of Expression: New and Existing Challenges", which will take place in Vienna on 12-13 March 2001.

A discussion on follow-up measures will take place at the Permanent Council's Meeting, on 5 April.

With best regards,

*Liviu Bota*

To  
All OSCE Delegations/Missions to the OSCE, OSCE Secretariat,  
ODIHR, HCNM and the Representative on Freedom of the Media



## **SUPPLEMENTARY HUMAN DIMENSION MEETING**

### **FREEDOM OF EXPRESSION: NEW AND EXISTING CHALLENGES**

**Vienna 12-13 March 2001**

#### **FINAL REPORT**

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## I. Executive Summary

The OSCE held the first of the three Supplementary Human Dimension Meetings for 2001 in Vienna on 12-13 March. The meeting was dedicated to the topic “Freedom of Expression: New and Existing Challenges”.

The meeting was organized by the Romanian OSCE Chairmanship with the assistance of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the office of the OSCE Representative on Freedom of the Media.

By highlighting best practices as well as identifying problem issues, and with a focus not just on the media but on other spheres relevant to the exercise of the right to freedom of expression, the meeting aimed to do the following:

- Explore the central issue of freedom versus regulation in the exercise of the fundamental right to freedom of expression, consistent with OSCE human dimension commitments.
- Examine the various linkages between exercise of the right to freedom of expression and other issues that are the subject of OSCE commitments, aims and activities.
- Initiate a discussion within OSCE human dimension forums about freedom of expression and other OSCE commitments as they relate to expanding access to new technologies, including the Internet.

Delegations and NGOs were invited to make recommendations for ways to improve the implementation of relevant OSCE commitments.

In the Opening Plenary, introductory remarks were given by the moderator, Ambassador Cristian Diaconescu, on behalf of the Romanian OSCE Chairmanship, and by Mr. Freimut Duve, the OSCE Representative on Freedom of the Media. The key-note speech was given by Mr. Kevin Klose, the Chief Executive Officer of US National Public Radio.

In a departure from the formats previously used at OSCE Supplementary Human Dimension Meetings since their inception in 1999, following the Opening Plenary the meeting continued in three **consecutive Working Sessions**.

Discussions in **Working Session I** focused on tendencies and challenges in the implementation of OSCE commitments related to freedom of expression, on examples of how civil and criminal defamation currently is regulated in OSCE participating States, how this affects the functioning of free and independent media, and what can be done to bring domestic legislation and its implementation into line with international standards. (Other issues, such as combating the various methods aimed at limiting freedom of expression and media, ways to limit the negative effects of the economic situation upon the independence and working conditions of the media, as well as the question of monopoly ownership of media, could not be dealt with to the extent that had been foreseen in the agenda due to time constraints.)

The wide-ranging discussion in **Working Session II** featured a particular emphasis on the links between freedom of expression and the promotion and protection of tolerance; the potential of the media sector in the matter of early warning and conflict prevention; as well as recommendations for support to the media sector and for promoting journalistic responsibility. There were also calls for better co-ordination of relevant OSCE activities.

**Working Session III** focused on three blocks of issues -- access to new technologies, regulation, and education and training.

The meeting concluded with a Closing Plenary where the recommendations of the three Working Sessions were presented and discussed. In a further innovation motivated by the clear linkages between the issue of freedom of expression and the topics of forthcoming OSCE Human Dimension meetings in the remainder of 2001, an additional report from the ODIHR highlighted issues raised in the present meeting to be carried over to subsequent meetings.

## **II. Recommendations**

This report, just as the Meeting itself, focuses on concrete recommendations arising from the three Working Sessions. These recommendations -- from delegations of OSCE participating States and partners for co-operation, international organizations and non-governmental organizations (NGOs) -- are wide-ranging and aimed at various actors (OSCE Institutions, Governments, NGOs).

It is emphasized that the OSCE cannot implement all of these recommendations. The recommendations have no official status, are not based on consensus, and the inclusion of a recommendation in this report does not suggest that it reflects the views or policy of the OSCE. Nevertheless, the recommendations are a useful indicator for the OSCE in deciding priorities and possible new initiatives in the area of Freedom of Expression. They can also provide a basis for measuring the degree of follow-up to this meeting.

## **Outcome of Working Session I**

### ***Legal and non-legal frameworks, including criminal defamation laws***

#### *Moderator:*

Mr. Ian GORVIN, Head of the Monitoring and Public Affairs Section, OSCE/ODIHR

#### *Co-moderator:*

Mr. Jens-Hagen ESCHENBÄCHER, Spokesperson, OSCE/ODIHR

#### *Introducer:*

Ms. Regan McCARTHY, Director, Department for Media Relations, OSCE Mission to Bosnia and Herzegovina

The following recommendations were made in Working Session I:

### Recommendations to the OSCE participating States

#### *on the general legislative framework*

- Participating States should ensure that their domestic legislation fully complies with international standards such as the ICCPR and the European Convention on Human Rights. This applies in particular with regard to the scope of limitation clauses of these treaties and the jurisprudence of the European Court of Human Rights in this regard.
- Any restriction on freedom of expression should be prescribed by law and narrowly defined. The law should be precise and assessable. The validity of any restriction should be demonstrable by the Government.
- Any person restricted in their freedom of expression should be able to challenge the validity of that restriction before an independent court or tribunal.
- The independence of the judiciary should be strengthened, including by judicial training, in order to enable the judiciary to apply the law fairly and appropriately.
- State authorities should provide unhindered access to information in order to ensure utmost transparency. Any restrictions, including by classification as state secret, should be limited to what is absolutely necessary in a democratic society.

#### *on defamation laws*

- The genuine purpose and effect of defamation laws should be to protect the reputation of individuals against injury. Defamation laws should not be used if their purpose or effect is to prevent legitimate criticism of officials or the exposure of official wrongdoing or corruption.

- Criminal defamation laws should only be used when absolutely necessary in a democratic society. Some participants suggested to completely abolish criminal defamation legislation.
- If criminal sanctions are applied, prison sentences or suspended sentences should not be used in defamation cases.
- On the other hand, one specific case was cited, with the contention that the use of criminal defamation laws was preferred by journalists because of the relatively greater severity of the punishment involved in civil cases.
- While several participants held that defamation laws should not provide greater protection for certain public officials than for ordinary citizens, others welcomed the distinction between the protection afforded public officials in performance of their duty, and that afforded ordinary citizens.
- The party alleging defamation should have to do so beyond reasonable doubt. It should also be proven that the statement in question was false, was known to be false and that there was an intention to defame.
- Protection of confidentiality legislation may be necessary to protect sources, and journalists should be able to refuse to name sources in defamation cases.
- No-one should be liable under defamation law for the expression of an opinion.
- Proof of truth of a statement of fact should always absolve a defendant from liability.
- Legal assistance should be provided to persons charged with defamation.
- Remedies for defamation should not be excessive and should be proportionate to the actual damage caused.
- It was suggested that remedies might be curtailed by requiring the plaintiff to pay a deposit of 10 per cent of the damages sought.
- Disrespect towards state and public authority symbols should not be actionable, as such symbols cannot have a reputation to protect.

*on other issues*

- Legal provisions on freedom of access to information are necessary to ensure freedom of expression as the right to express is dependent on the ability to know.
- Government should not use measures such as tax audits, limitations to access to materials or licensing regulations to harass and obstruct independent media.

- States should guard against the excessive concentration of independent media in the hands of one person or organization.
- There was also a call for broader acknowledgement and condemnation of "censorship by killing". Support was expressed for the position of the OSCE Representative on Freedom of the Media on this issue.

#### Recommendations to OSCE institutions and field missions

- The OSCE could assist governments with drafting suitable legislation in this area and also with applying existing legislation.
- The OSCE could support the institutionalization of helplines for journalists threatened or intimidated
- As many cases of intimidation of the media take place in areas remote from the national capital, the OSCE was urged to bear this in mind in its monitoring activities.
- The OSCE should support the further development of NGO capacity in the area of protecting freedom of expression.

## **Outcome of Working Session II**

### *The role of free speech in advancing the objectives of the OSCE*

#### *Moderator:*

Ambassador Marianne VON GRÜNIGEN, Head of the Swiss Delegation to the OSCE

#### *Introducers:*

Ms. Anne-Marie BOLIN PENNEGÅRD, Minister, Deputy Head of the Permanent Delegation of Sweden to the OSCE

Mr. Alexander YAKOVENKO, Director of the Department of Information, Ministry of Foreign Affairs of the Russian Federation

Ms. Diana MOXHAY, Senior Adviser, Office of the OSCE Representative on Freedom of the Media

The following recommendations were made in Working Session II:

#### Recommendations of a general character

- Regular exchange of information should be established about any matter of misuse of media for provoking terrorism or ethnic intolerance.

- Tolerance in the realm in inter-ethnic relations and nationalities policies should be encouraged.
- Journalists should be guaranteed genuine freedom and provided with legal and economic conditions for a civilized information flow.
- The independence of media should be ensured in circumstances of gradual monopolization of media markets and growing influence of large financial groups on shaping information policy.
- There should be support for the setting up and development of professional and responsible media.
- The education of national and local government officials with regard to freedom of expression and media (seminars, manuals, etc) is as important as that of journalists.
- Efforts should be made towards the improvement of civil society's effectiveness in putting pressure on governments in order to raise the level of respect for freedom of expression.
- The instigation of co-operation between governmental bodies on the one hand and the public on the other with regard to these above issues should be promoted.
- There is a need for support for involving state-owned media into public service.
- Consideration should be given to developing standards to ensure the editorial independence of public media.
- There should be training for journalists on reporting from conflict zones.

#### Recommendations to the OSCE participating States

- An extension of the mandate of the OSCE Representative on Freedom of the Media should be sought so that it would involve a broader range of freedom of expression issues.
- The OSCE field presences should be empowered to respond to violations of the freedom of the media.
- There should be co-ordination of OSCE donor strategies. There is a need for increased funds for media projects in the field.
- Corruption should be recognized as a major obstacle to the existence and development of freedom of expression and freedom of the media.

#### Recommendations to the OSCE Institutions and field presences



- There should be joint monitoring efforts by the OSCE Representative on Freedom of the Media, the ODIHR, the High Commissioner on National Minorities and by various OSCE field presences in connection with the rights of minorities to use their language.
- A special meeting of experts should be held on the issue of ensuring the fundamental rights and freedoms of national minorities, including their rights to unimpeded access to media.
- Statements, reports, analyses, alert-appeals, etc. posted on specialized NGO mailing lists should be carefully assessed, as they often contain information relevant for analyzing and preventing conflicts.
- Regular information exchange and close co-operation between field representations and the media and journalist associations as well as civil society should be encouraged.
- An early warning system is ineffective if it is not followed by prompt action. Therefore, within the OSCE, special focus should be put on efforts to strengthen ways to quickly implement recommendations of the OSCE Representative on Freedom of the Media and field presences.
- There is a need for closer co-ordination of OSCE activities in the field, as well as co-operation between the OSCE institutions and other international organizations working in the regions and NGOs.
- The OSCE should provide technical assistance to NGOs and media outlets.
- OSCE assistance to the media sector could also take the following other forms:
  - Media law training in the regions, including training about journalists' rights;
  - Financial support to media outlets;
  - Providing analysis of media laws;
  - Promoting self-regulation as a matter of journalists' responsibility.

## **Outcome of Working Session III**

### ***Broadening access to new information technologies***

#### *Moderator:*

Mr. Alexander IVANKO, Senior Adviser, Office of the OSCE Representative on Freedom of the Media

#### *Introducer:*

Mr. Christophe POIREL, Chief of the Media Division, General Directorate for Human Rights, Council of Europe

### Recommendations to the OSCE participating States

- Access to new services, especially the Internet, should be developed, particularly in public places, such as libraries, universities and post offices.
- Proactive policies should be developed to encourage the use of Internet services and develop new industries.
- Training of individuals to use the new facilities should be developed so that every citizen will be equipped to deal with and work in the information society.
- A wide variety of content, in particular cultural and linguistic content, should be promoted and made available.
- New technologies should be used to improve the relationship between governments and governed, in a new form of open government, made possible by new technologies.
- Officials should be trained and made aware of the new possibilities that exist.
- The risk of control through proprietary technology should be limited and equal access to all operators should be ensured.
- Many participants recommended that the free-flow of information on the Internet not be regulated, except by the end user.
- It was also recommended that information be regulated by States to protect citizens from harmful material and that this should be done in accordance with Article 10 of the European Convention on Human Rights.
- Co-regulation, which is joint action between providers and Governments to stop banned content and to prevent access of minors to unsuitable material, was also recommended.
- The Internet should be utilized as a means for dissemination of legislation limiting freedom of expression, in line with Article 10 of the European Convention on Human Rights .
- The Internet should be used to promote reconciliation and improve relations between different ethnic groups in post-conflict situations.

### Recommendations to the OSCE Institutions and field presences

- The Internet's function as a means for increasing democracy and human rights should be emphasized.
- All instruments of the Organization should be available on the Internet.

- The free flow of information should be encouraged. A standard should be developed making national monopolies of communication, incoming or outgoing, unacceptable.
- The OSCE Representative on Freedom of the Media and Field Missions should consider workshops to promote greater access to new technologies.
- The OSCE Representative on Freedom of the Media should disseminate all reviews of Freedom of Information legislation, possibly through a database.
- Field presences should provide legal and technical training for NGOs and other interested parties, especially in Central Asia.

## **ODIHR report to Closing Plenary**

### *Identification of issues for follow-up in the Human Dimension Seminar and other Supplementary Human Dimension Meetings in 2001*

*Rapporteur:*

Mr. Gerald STABEROCK, Rule of Law Officer, OSCE/ODIHR

As has been mentioned in the beginning of this meeting, all supplementary meetings as well as this year's OSCE Human Dimension Seminar are closely inter-related.

This is a very fortunate situation, since it will allow us to follow-up better than in the past on issues and recommendations we have discussed here during the last two days. It will enable us to revisit certain issues from a slightly different perspective and to build on the knowledge and understanding we gained during the last two days. Moreover, it will also provide for an opportunity for raising in more detail issues that have been addressed here only very briefly.

So, what I will try to do - as briefly as possible - is to highlight some of the linkages between the issues raised in this meeting with our subsequent topics.

For those not fully aware of the calendar of events, I would like to recall that this year's OSCE Human Dimension Seminar will be devoted to "election processes" (29-31 May) and the remaining two Supplementary Human Dimension Meetings will be on "Promoting Tolerance and Non-Discrimination" (18-19 June) to be followed by "Human Rights: Advocacy and Defenders" (24-25 September).

### *Electoral process*

Regarding elections, a number of speakers mentioned the importance of freedom of expression and access to information in the context of elections.

This referred mainly to the electoral campaign. Here the freedom of expression and the media have been addressed but also the important role of closely related freedoms such as freedom of assembly and freedom of association, which some speakers mentioned yesterday.

Participants at this seminar raised specifically: Access to information as a requirement for the exercise of the right to vote, meaning to have a free choice; access to media by political parties; fair reporting on campaign issues; the need to ensure a certain pluralism for a viable electoral campaign which raises issues both with regard to private as well as public media sector.

### *Promotion of Tolerance and Non-discrimination*

On the topic of promoting tolerance and non-discrimination the linkages are the following: Firstly the positive role that the media and freedom of expression play in promoting tolerance and non-discrimination. In particular, these freedoms allow for a pluralism of opinions and for those being at the margin of society to express themselves and participate in society.

But also the question of a social and moral responsibility of journalism to use the words of Mr. Duve might be an issue to be discussed again.

The role that new media and technology play with regard to tolerance and non-discrimination is another issue linked to this.

I should also mention that we heard a lot about "language as part of freedom of expression" with regard to minorities in that context. We heard about the need for the possibility to disseminate and receive information in the minority language and about representation of minorities in media.

It might be appropriate to explore these issues more deeply than we could do here in order to define more closely what the issues at stake are. I believe we can build on the illustrative presentation from the High Commissioner on National Minorities representative.

One participant also raised the important question of education which should be discussed also more deeply in the context of promoting tolerance (regarding human rights education and democratic values, but also regarding minorities).

### *Human Rights: Advocacy and Defenders*

Concerning the last supplementary human dimension meeting this year there are equally a number of issues to follow-up that were raised the last two days.

First of all, human rights advocacy and the work of human rights defenders is a crucially important form of the freedom of expression. Since it is critical - almost by definition - of power structures, this is a part of freedom of expression that is extremely susceptible to interference by participating states.

This is even more so when linked to a minority group or a marginal group of society.

It is important to realize that freedom of expression is the tool or the means by which human rights advocacy operates. Thus, any restriction on freedom of expression is critical to the very essence of being a human rights advocate or human rights defender.

This is equally true with regard to the access to information and restrictions to report on certain issues; for example classified information - a topic that has been raised at this meeting.

Another linkage is that human rights advocates also often happen to be journalists. They do promote human rights but more broadly social justice and a number of the good governance issues we had mentioned in Working Session II.

In that regard I just want to mention the role of media and freedom of expression and transparency and accountability, which has been stressed by many speakers.

This leads me to a final remark: there is a human dimension linkage also to the Economic Forum on Good Governance when talking about transparency, accountability in the context of freedom of expression and the media.

With that I want to close. I should stress that those are only some of the issues to be followed-up from this meeting. Taken the rich discussions of the last days, this list of issues can by no means be exclusive.

# ANNEXES

## 1. Agenda

### DAY 1 – 12 MARCH

09.00 -10.00

#### OPENING SESSION

*Moderator:* Ambassador Cristian DIACONESCU, State Secretary,  
Ministry of Foreign Affairs of Romania

*Welcoming remarks* on behalf of the OSCE Chairman-in-Office by  
Ambassador Cristian DIACONESCU

*Introductory remarks* by the OSCE Representative on Freedom of the  
Media, Mr. Freimut DUVE

*Key-note speech*

Mr. Kevin KLOSE, Chief Executive Officer, US National Public Radio

*Technical information* by the OSCE/ODIHR

10.00 -10.30

#### BREAK

10.30 -13.00

#### WORKING SESSION 1

Legal and non-legal frameworks, including criminal defamation laws

*Moderator:* Mr. Ian GORVIN, Head of the Monitoring and  
Public Affairs Section, OSCE/ODIHR

*Introducer:* Ms. Regan McCARTHY, Director, Department for  
Media Relations,  
OSCE Mission to Bosnia and Herzegovina

13.00 – 15.00

BUFFET LUNCH OFFERED BY THE ROMANIAN OSCE CHAIRMANSHIP  
(*SEGMENTGALERIE*)

15.00 - 18.00

#### WORKING SESSION 2

The role of free speech in advancing the objectives of the OSCE

*Moderator:* Ambassador Marianne VON GRÜNIGEN, Head of  
the Swiss Delegation to the OSCE

*Introducers:* Ms. Anne-Marie BOLIN PENNEGÅRD, Minister,  
Deputy Head of the Permanent Delegation of  
Sweden to the OSCE

Mr. Alexander YAKOVENKO, Director of the  
Department of Information, Ministry of Foreign  
Affairs of the Russian Federation

Ms. Diana MOXHAY, Senior Adviser, Office of the  
OSCE Representative on Freedom of the Media

18.00

CLOSE OF DAY 1

## DAY 2 – 13 MARCH

09.00 - 11.00

### WORKING SESSION 3

Broadening access to new information technologies

*Moderator:* Mr. Alexander IVANKO, Senior Adviser, Office of the OSCE Representative on Freedom of the Media

*Introducer:* Mr. Christophe POIREL, Chief of the Media Division, General Directorate for Human Rights, Council of Europe

11.00 - 12.00

BREAK

12.00 - 13.00

### CLOSING SESSION

*Moderator:* Ambassador Cristian DIACONESCU, State Secretary, Ministry of Foreign Affairs of Romania

#### Working Session Moderators' Reports:

Session 1: Mr. Jens-Hagen ESCHENBÄCHER,  
Spokesperson, OSCE/ODIHR

Session 2: Ambassador Marianne VON GRÜNIGEN

Session 3: Mr. Alexander IVANKO

Comments from the floor

ODIHR summary report on issues for follow-up in the Human Dimension Seminar and other Supplementary Human Dimension Meetings in 2001

*Rapporteur:* Mr. Gerald STABEROCK, Rule of Law Officer, OSCE/ODIHR

## **2. Annotated Agenda**

### **OVERVIEW:**

The focus of this meeting will be twofold:

Firstly, the meeting will explore the central issue of freedom versus regulation in the exercise of the fundamental right to freedom of expression, consistent with OSCE human dimension commitments. One working session of the meeting will survey the current legal and non-legal frameworks in which freedom of expression is exercised in the OSCE region, in the media as well as other spheres. Another working session will approach this issue specifically in relation to new technologies, including the Internet, and will also examine other issues of how to broaden access to new technologies in the OSCE region.

Secondly, the meeting will look, in a separate working session, at the various linkages between exercise of the right to freedom of expression and the advancement of the objectives of the OSCE.

All three working sessions will aim to highlight best practices as well as problem issues, and make recommendations for ways to improve the implementation of relevant OSCE commitments. Recommendations may be addressed to the OSCE as a whole, its political bodies including the Chairmanship, its institutions including the OSCE Representative on Freedom of the Media and the Office for Democratic Institutions and Human Rights, to its field presences, or to the participating States.

### **WORKING SESSIONS**

#### **I. Legal and non-legal frameworks, including criminal defamation laws**

##### **Context:**

Freedom of expression and media figured prominently in the Helsinki Final Act, and over the years an impressive body of specific OSCE commitments in this area has developed. These commitments should be reflected in the domestic legal frameworks of the OSCE participating States. The OSCE, its different institutions and field operations, as well as other international organizations, have worked closely with many OSCE participating States in providing legal advice and assistance in bringing national laws in line with international standards. However, in a number of emerging democracies legislation in line with international commitments exists, while the implementation of these laws raises many questions.

One of the practices resorted to in some participating States consists in using legal structures to address the issues of libel and defamation. In some instances, defaming an official can result in criminal charges being brought. In other instances, pursuit of civil penalties for defamation is used to bankrupt media in opposition to the current government. These practices need to be assessed in view of OSCE freedom of expression commitments



In addition to legal restrictions against freedom of expression, non-legal arbitrary actions by governments, not in line with domestic legislation, can also hinder the work of the media. Moreover, difficult economic conditions in many of the OSCE participating States undergoing economic transition can negatively impact the functioning of the media sector in a number of ways.

Still many countries in the area try to find an adequate answer to the question of the media independence versus the financial and economic interests in the media.

Discussions in this working session will include:

- What are the tendencies and challenges in the implementation of the OSCE commitments related to freedom of expression?
- How can the OSCE enhance its assistance to the Participating States in bringing their domestic legislation and its implementation in line with the OSCE commitments?
- How is civil and criminal defamation currently regulated in the OSCE participating States? How does it affect the functioning of free and independent media?
- How can the OSCE, its Participating states, institutions and field presences efficiently combat methods aimed at limiting freedom of expression and media? What can be done to limit the negative effects of the economic situation upon the independence and working conditions of the media.

## **II. The role of free speech in advancing the objectives of the OSCE**

### **Context:**

OSCE documents have repeatedly affirmed freedom of expression as a basic component of a democratic society. Beyond obvious implications for the enjoyment of other fundamental rights, freedom of expression has a critical impact in many areas of concern to the OSCE:

As an **early warning indicator** for conflict prevention, restrictions on the right of freedom of expression can indicate a deterioration in the protection and enjoyment of and respect for other human rights and freedoms. Tensions that might lead to conflict in certain contexts can also be eased by expanding access to media and widening freedom of expression. **Confidence building measures** related to the exercise of the right to free expression, such as promotion of minority language rights (e.g. the availability of publications, including teaching materials, and broadcasting in minority languages) are also useful in this context. Moreover, the media in particular can be a constructive force in easing tensions.

Freedom of expression is a key component of promoting **good governance**, accountability and transparency. Without representative and free media, corrupt practices in the economic and political arenas, and non-transparent policy decisions with negative social impacts (such as in the environmental sphere) are unlikely to be exposed and remedied. In **election processes, the electorate cannot make an informed choice without free access to independent media.** In

addition to unjustified restrictions on the freedom of expression and other repressive measures against the media, over-regulation of the media during electoral events can also have a chilling impact on the full discussion of all issues during electoral events.

Topics for discussions in this working group will include:

- How can the OSCE enhance appreciation of the importance of restrictions on freedom of expression as an early warning indicator?
- How to promote freedom of expression, especially freedom of the media, as a component of democracy, security, rule of law, civil society and good governance?

### **III. Broadening access to new information technologies**

#### **Context:**

New technologies, particularly the Internet, create possibilities to seek, receive and impart information and ideas of all kinds as never before. At its core, facilitating access to the Internet and similar technologies is a free expression issue.

Topics for discussions in this working group will include:

- In view of OSCE human dimension commitments in the sphere of freedom of expression what are the opportunities presented by new technologies?
- What are the existing forms of regulation of the Internet and other new information technologies? Are these appropriate in the context of OSCE commitments relating to freedom of expression?
- Beyond the issue of regulation, what challenges exist to broadening access to new technologies throughout the OSCE region?

### 3. Keynote speeches

#### OPENING ADDRESS

*H.E. Mr. Cristian DIACONESCU, Secretary of State,  
Representative of the Chairman-in-Office of the OSCE*

Your Excellencies,  
Ladies and Gentlemen,

It is a real honour and responsibility for me to be here as a representative of the Chairman-in-Office and to welcome you at this very important meeting, the first in a series of human dimension meetings to be held this year. I would also like to greet the representatives of the precedent Chairmanship for their valuable contribution and efforts towards the fulfillment of recommendations made at previous Supplementary and Implementation Meetings.

I welcome all participants in this important meeting dedicated to the freedom of expression.

It is our wish to understand that freedom of media is one of the most important accomplishments of democracy today.

Freedom of expression and media in its entire understanding are both important in promoting the principles of democracy and co-operation among states. Freedom of expression has been since the adoption of the Helsinki Final Act a guiding principle in most of democracies in the OSCE area, an asset that we have to promote and implement constantly. We consider the freedom of media as a must in building a strong and lasting democracy.

Freedom of expression has been during the past decade a basic element of the human security concept. Freedom of the media and freedom of expression are both an early warning indicator for conflict prevention and crisis management in a first stage. Any restriction of the right of freedom of expression could indicate a deterioration of the global system of human rights protection. In this way, all measures used in this respect could become a positive step forward: assuring an appropriate legal framework, accessible financial conditions, and promotion of minorities' rights in their full comprehension.

Free media is an important component of a democratic society in promoting the principles of good governance. In a society without free media, the non-transparent practices in the economic and political field could lead to tense situations.

Still, there are many challenges that some countries are facing nowadays. We should continue to pay attention to most aspects of freedom of the media that still impede some democracies in the OSCE area. In this way, we will promote the principles and commitments valued by the Helsinki

Final Act in this respect. Free mass media is a precondition for the establishment of democracy in a country. We have to address today's challenges in order to have adequate response for existing and potential cases.

To have an appropriate response to the challenges in this field, we need to have a compatible legislation with the standards and principles agreed. The legislation should eliminate the arbitrary actions of the governments.

Discrepancies in the economic field could lead to similar situations in the social and political field. All these could lead to actions that impede the right to have freedom of expression. Member States should take the appropriate measures to adopt legal economic measures to obtain a free media environment.

The Chairmanship intends to focus the attention on finding a solution for the existing challenges. This is one of the aims of this meeting, along with analysing the linkages between the right to the freedom of expression and the commitments and principles in the area of freedom of expression, as well as the recommendations that are needed for overcoming the existing challenges.

In this respect, we welcome the valuable and considerable contribution of Mr. Freimut Duve in addressing the challenges of a free and pluralistic mass media. His dedication and responsibility are an important cornerstone on our countries' way to democracy, by respecting the OSCE principles and commitments.

We also welcome the presence here in Vienna of the representatives of OSCE field missions, whose contribution to implement the OSCE commitments and promote the principles of free media are important and actual. We are in favour of a more active involvement of the field missions in promoting good practices in media conditions.

The work and contribution of NGOs are extremely important for raising the awareness of the public opinion and in establishing a proper environment for free mass-media. Their co-operation and support are essential in this respect.

Finally, a benefit to our work is the presence of the OSCE representatives of participating states, OSCE institutions and field missions, as well as the "partners for co-operation" and the "Mediterranean partners for co-operation".

We need to make maximum use of the rich resources we have in the institutions of the OSCE: the Secretary General and its staff, the Office of the Representative on Freedom of the Media, the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, the Economic Co-ordinator, not to mention the NGO representatives.

Freedom of expression is not only a concept, it is a commitment as well, a binding that must be followed by all member states and societies that wish to have a free and democratic media.

The Chairmanship welcomes the determination of member States to promote a free press environment and is ready to assist the representatives of the civil society to contribute to the accomplishment of the important tasks lying ahead in the field of human dimension and freedom of expression.

I would like to conclude by wishing all the participants success in their commitments in this field and I hope the meeting will adopt concrete and useful recommendations.

Thank you for your attention

## **INTRODUCTORY REMARKS**

*Mr. Freimut Duve, OSCE Representative on Freedom of the Media*

Ladies and Gentlemen, Dear Friends,

I see the goal of the meeting as exploring the central issue of how in the difficult situations of many of our participating States the fundamental right of freedom of expression can be guaranteed. I hope that this meeting will highlight best practices as well as problem issues, and make recommendations on how to improve the implementation of relevant commitments undertaken by the OSCE States. Among the issues we will discuss are:

- Legal and non-legal frameworks, including criminal defamation laws;
- The role of free speech in advancing the common values and agreed upon principles of the OSCE;
- Broadening access to new information technologies.

Let me start with a very important lesson we, myself and my staff, had to learn during the three years of our work.

We have done a lot and we have also understood how big are the challenges facing my Office. One thing I would like to underline from the start -- many of us who are trying to help the newly emerging democracies had the chance to grow up in democratic and pluralistic societies.

Our counterparts, including many journalists now have to contribute themselves to what most of us who want to help have been given almost automatically: the realisation of their own pluralistic democratic society after many decades in which they, their parents and even their grandparents had lived under dictatorial conditions. That is why I always stress our great respect to the many people whom we try to help. We should in some cases be more sensitive to the needs and ideas of our friends. We are ready to help but we should not be preachers -- because the people that we try to help sometimes have risked their lives for democracy. Most of us have not.

The situation in the OSCE world regarding freedom of expression has not improved over the past years. On the contrary, in some participating States we have seen renewed attacks on free journalism with certain governments believing that independent journalism posed a threat to them.

One government official in one of the leading OSCE countries, for example, asked me recently what my Office was doing to protect governments against sharp journalist attacks.

In a parliamentary democratic society governments must not seek the protection from the media, but from the civil pluralism and the rule of law.

It does, however, need the media to act as a “corrective function”. All important government and business decisions affecting the future of the country and the citizens need the free journalistic awareness and the public debate on central economic and political developments.

We had to learn that now after the abolishment of direct government censorship some have developed a number of instruments used by interested groups, outside open censorship, to suppress free journalistic media.

The most criminal is what I refer to as “**editorship by killing**” when a journalist is terminated because of his work. We had cases of “editorship by killing” in a number of OSCE member-states, among them Ireland, Spain, Russia, Ukraine -- the recent case of Georgiy Gongadze -- some others. Journalists also go missing, like Dmitry Zavadsky in Belarus. Those who organize this can be criminal groups, mafia organizations, even government-related officials or ethnic terror-groups like in the tragic case of Jose Luis Lopez de la Calle in Spain. What are the motives? To silence the killed. But more important to silence the surviving colleagues to stop their investigation once and for all.

Less criminal, but just as disturbing is “**structural editorship**,” a new form of silencing critical journalists. Administrations have a number of instruments at their disposal that can be used to pressure media:

- a monopoly on newsprint, including its import;
- control of rent of office premises;
- control of distribution;
- pressure on businesses to advertise only in government-friendly media.

There are many more open and silent instruments which are used.

Media that have been through “**structural editorship**” often start silencing themselves by exercising **self-censorship** to avoid going bankrupt.

There are numerous cases of “structural editorship” in the OSCE region, and not necessarily developed by central governments, but often at the local level when a regional head of government silences critical media. We have seen this in Russia and Ukraine, where the freedom situation outside the capitals is very different. Here I would like to draw your attention to the

Russian report *Anatomy of Freedom of Speech: A Public Examination* published last year that focuses on the media situation in all the regions of Russia.

My Office will continue documenting cases of “censorship by killing” and “structural censorship” and bringing them to the attention of our member-states and of the public.

Another central concern for my Office is “**hate speech**” and post-conflict reconciliation. Article 6 of my mandate asks my Office to deal with the challenges of media being misused for ethnic hatred or even ethnic terror.

I therefore was involved in the two regions where ethnic propaganda strategies were of central importance to the conflicts. In South-Eastern Europe and the Caucasus we had published two volumes of writings called *In Defence of the Future*, one brought together writers from South-Eastern Europe, and the other—from the Caucasus.

I have also initiated a project called *mobile.culture.container In Defence of Our Future* for the young people, the next generation in the post-war towns of the Balkans. This travelling gymnasium will be a venue for young people to meet, exchange ideas, read, maybe publish their own newspaper. We plan to start in June and visit war-affected cities in the next two years. If the project is successful.

Two weeks ago my Office, together with the Council of Europe and the OSCE Mission to Croatia, held a conference in Zagreb on *Free Media in Southeast Europe: the Protection of Journalists and Their Role in Reconciliation, Promoting Interethnic Peace and Preventing Conflicts*. We brought journalists and media experts from the whole region to discuss several themes, including covering corruption and war crimes. As a result, a number of recommendations have been made to governments, governmental and non-governmental organisations, and to the media.

Although “hate speech” is much less of a problem these days in the OSCE region, it still exists and I see eradicating it as also part of my mandate. For example, one international expert who attended the Zagreb conference pointed out that “hate speech” influenced the political debate in Kosovo. The recent developments in Bosnia and Herzegovina and in the Former Yugoslav Republic of Macedonia show that we have a long way to go in establishing the priority of citizen over ethnicity in the Balkans.

One of the issues we will be discussing in the first session deals with criminal defamation laws, that exist on the books not only in the emerging democracies but in some old European ones as well. Here I believe in two fundamental things.

First, no journalist should ever go to prison for what he or she wrote. I have and will continue taking up cases of imprisoned journalists and demanding their release.

Second, politicians and government officials should finally understand that defamation laws are not there to protect them but to protect ordinary citizens. An official who is criticised for his

work often immediately runs to court and demands compensation for “libel.” In some newly emerging democracies courts are not as independent as one would have hoped. As a result, often decisions are made in favour of the politician or official forcing the newspaper, magazine, radio or television station to pay an exorbitant fine. Sometimes this can even bankrupt the media concerned. I never stop repeating that the level of tolerance of a politician should be much higher than that of an ordinary citizen.

Another issue we will be discussing deals with access to new technologies. And here we also have to look at a number of matters-foremost among them is regulation of the Internet. In the OSCE region there are different approaches to regulation-from the very liberal one in the US to a highly restrictive one in some Central Asian states. There are currently discussions related to stricter control of the Internet in Ukraine and Russia.

The killed Ukrainian journalist Georgiy Gongadze edited an on-line publication in Kiev that is quite popular. More and more on-line media are becoming just as respected as newspapers and magazines. Because of the difficulty of controlling them, this is making certain governments nervous.

However, we should be very careful when debating regulation-governments should take into account that the Internet is still very young and any steps in the wrong direction can ultimately hurt it.

These are just some of the issues I wanted to touch upon. I look forward to a fruitful and interesting discussion.

Thank you.

## **KEY-NOTE SPEECH**

*Mr. Kevin Klose, Chief Executive Officer, US National Public Radio*

Thank you, Mr. Chairman, ladies and gentlemen, guests.

It is an honor to address you all in this very important work in this very important series of sessions meeting on freedom of expression.

I would like to make my remarks general and not engage in specifics. We are in an age where the press and how the press is treated by governments and peoples is a matter for world concern because we are at a unique moment in the age of information. There are almost no walls or barricades to peoples across borders knowing what is happening to the press, to journalists and to free media, country by country. This is especially true in the member nations of OSCE.

The principle that we have followed in our country is a principle which I think speaks for itself which is that a people cannot be both ignorant and free. As people aspire to free civil societies



based on the rule of law, the notion of how the press fulfills and helps them express their aspirations for freedom, as aspirations, and as reality in their daily lives and in the daily lives of their new nations (where they are newly enfranchised nations), it is essential that there be protections of the press and protections of the media from many deprivations and many traditional forms of seeking to influence and to restrict free expression.

The state, said Thomas Jefferson, one of our founding fathers, has no rightful place in the newsroom. Following his guidance, there was created in our democracy a huge space to experiment with freedom of the press. We have been experimenting ever since - from the largest newspapers and broadcast stations to the smallest. The experiment retains its transforming power.

In the press gallery of the legislature of the State of Vermont, a very small place indeed, there is a plaque that neatly summarizes the organizing principle. It says that the Press should protect the afflicted, afflict the protected. Those who afflict the protected are always in danger. I know of such instances in my own country: a reporter blinded by two thugs who threw acid in his face in retaliation for investigating and writing about union corruption; a reporter killed in a car bomb explosion for daring to investigate organized crime.

These events occur. We know of them today. We know of them immediately. They are headlines in the world press, today. In Russia, in Ukraine, in Belarus, elsewhere, investigative reporters have disappeared. This cannot go unchallenged and will not go unchallenged by the international media. Such prestigious organizations as Amnesty International, the Committee to Protect Journalists and the World Press Freedom Committee will publicize these crimes against their brethren. In the age of information, it can truly be said of those who foster or condone violence against the media that they cannot escape the judgement of the world community.

Indeed the most powerful act of international civil engagement that I know of is the act of bearing witness to the unjust treatment of others. The very dynamic of OSCE rests fundamentally on the signatory governments and, by extension, their citizens, bearing witness to the behavior of their fellow signatories - their own governments - to the guarantees contained in the original Helsinki Agreements.

The creation in 1997 of the OSCE's Representative on Freedom of Media, now so ably filled by Herr Fremut Duve, recognizes that the security of the signatory nations cannot be separated from issues of press freedom. The media of OSCE member states may be distracted by many things. No doubt this will happen. But in the age of instant bearing of witness, they will report the story. What I am underscoring is the unmistakable rise in the minds of millions of people who, casting off decades of inattention and intimidation regarding the fate of the media in their own midst, now see their own aspirations for freer expression of ideas embodied in the daily fates of reporters, editors, and broadcasters brought to life from decades of suspended animation regarding the power and the fragility of free independent media.

These emerging publics - and I use that word exactly in its meaning of empowered citizenry - these publics recognize an essential truth of independent media reportage - that journalists are

like canaries in the tunnel. They are vitally important members of the public. They smell the odorless gas of censorship and intimidation first and when they are victimized, the public will bear witness and the consequences will be felt by those who seek to govern.

Long denied the full and genuine rights of free speech, these publics now have little interest in, or inclination to, turn back the clock of their societies to the muzzled past.

As leaders in assuring that Basket III of Helsinki reach its fullest and most genuine expression, OSCE members must recognize and accept that promoting the establishment of laws that protect independent journalists from harassment of criminal defamation or insult laws is essential. I take as my guidance the experience of my country's founders, whose personal diaries are filled with ire and exasperation at the way their public lives and careers were assaulted by the journalists of the time. Partisan enterprises without recognizable ethical standards, disputation, distortion, disagreeable columnists - all were part of the rough and tumble in the public life of America, then as now.

But this is the path of freedom of speech. It is rocky. It is hard. It is filled with difficult places, but it is a fundamental requirement of societies that call themselves, and demand to be called, free societies.

Throughout the world of the information age exists a new category of organizations that rightly claim the respect of the community of nations. These are the professional organizations of journalists and the non-governmental organizations that nurture and monitor the growth of civil democratic activities, be they in educational activities, legal activities, or in other ways. Their place in society can be especially powerful and protecting in strengthening respect for independent media. Their work is important and supportive, establishing a wider awareness across borders and across perceptions of the power and the fragility of independent journalism.

None of these organizations can exist without legal guarantees of their right to do their work protected in assisting the growth of civil societies. They are vital presences in the internal spaces, the interim spaces, the interstices in any democracy. They can monitor and bring forward evidence of abuse by state, party, or other traditional central authorities against the rise of independent media.

The issue of establishing both independence and accountability is at the heart of the matter of free and independent public speech.

Nations and societies reach their own conclusions on this relationship. They address it differently in various parts of their societies. In this part of the globe, there has been experimentation that sometimes has exceeded and often, unfortunately, has failed quite miserably.

The guide in this complex space and relationship must be to come back to the very beginning. The state has no place in the newsroom.

In our country it was expressed very quickly and very simply in the first amendment to the Constitution. It was not an accident that the first amendment of the Constitution asserted that the Congress of the United States had no right to abridge freedom of speech, the press, rights of assembly.

By thus assuring that the Congress had no right to abridge, the founding fathers established a wide place for the society to talk to itself, to address its issues, to argue with itself, to debate its issues disputatiously, civilly or otherwise. But the society and the people of the society had an indivisible right to do that on their own, and the media would assure that there was dialogue.

The state has no place in the newsroom. This newsroom must include, in its essence, the recognition of linguistic rights, reflecting a commitment to common ground for diversity of heritage, diversity of culture, diversity of language, diversity of origin by committing to a common ground in recognizing the power of diversity of heritage. We also establish common ground for recognizing the ability to argue, to dispute, but nevertheless, to find a civil future for diversity and for those who embody diversity within our societies.

We all know, in fact, that none of us have an alternative to such a course. We can only set forth to protect, to strengthen, and to insure the freedom of free media.

That work and your commitment to it will be measured each day by increasingly knowledgeable and concerned publics. It is a self-empowering cycle. It will not be denied: the work that you will do here in the workshops, the work that OSCE has set itself to do.

We all recognize that the security issues of the OSCE are directly connected to issues of independent media, to guarantees of independent media. The independent media in one country - and its protection - assures and strengthens the security of all the signatories. That dynamic cannot be avoided. That dynamic is in fact what has brought you here and has helped guide you in your discussions.

These are extremely difficult and sensitive issues. In some cases they are expressed in the terms of the fates of individuals. The Gongadze case is simply one. But there are others. Some reach international headlines, some do not. The consequences of a refusal to assure protection of independent media? I can assure you it will be taken and accounted for and borne witness to by the international media worldwide and that in itself will have an adverse effect on the hopes, the aspirations, the designs and the desires of those in power and those who seek power country by country among the signatories.

To come back to it and to finish: we all know this. You know it, I know it, and the people who will read or participate in these discussions, will read of them later, also know that you all have no alternative nor do any of us. We must set forward on this difficult path and not turn away from it, and those structures which can strengthen and assure a legal basis for the protection of journalism, protection against laws of insult, protection of journalists so they can do their work and so that they can function properly as the canaries in the tunnel, identifying, describing,

discerning and then helping discuss issues society by society ...that is what you all must assure happens. You cannot turn back, nor can we.

Mr. Chairman, ladies and gentlemen and guests, thank you for the honor of addressing you and I look forward to a lively and an engaging discussion.

Thank you very much.