



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Dunja Mijatović**

Media Freedom and the Rule of Law

OSCE PARLIAMENTARY ASSEMBLY WINTER MEETING

Check Against Delivery

Vienna

13 February 2014

Good morning, respected Parliamentarians and ladies and gentlemen.

Today's topic, media freedom and the rule of law, is **not** an ethereal exercise. It is the practical application of national and international standards relating to free expression and free media in the context of daily events.

Allow me to start with a part of the Preamble to the 1948 Universal Declaration on Human Rights, which took note of the necessity of the rule of law to civil society. It states:

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

From this point forward there was recognition among citizens of all nations that human rights, including freedom of expression and freedom of information, were intrinsically tied to the rule of law.

Thus, any discussion about media freedom and the rule of law must begin with the acceptance of the right to free expression through any media as a fundamental human right, as set forth in Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

A society that claims to be governed by the rule of law must consent to this premise. Laws that are enacted and are sought to be enforced must respect and promote fundamental human rights, unless we speak of "*tyranny and oppression.*"

Please note that it is not enough to say that a statute has been adopted by a legislative body and enforced by the executive branch of government in order to satisfy the notion of living in a democratic society with the rule of law.

The process, in and of itself, does not give laws *per se* moral legitimacy. The law must be right and just.

Accepting the premise that free expression and free media are fundamental human rights, there are benchmarks available to determine if, in fact, a society is operating with respect for those rights.

First, laws that affect free expression and free media must be adopted by legitimate legislative bodies which were elected through a fair and open process. The legislative deliberations on such laws must occur in an open and pluralistic venue that allows all voices to be heard.

The laws must be precisely worded and not allow for arbitrary application or interpretation.

Second, laws should respect international standards in the field of freedom of expression and freedom of information, as they have been established and protected as universal rights. States can, of course, incorporate and take into consideration certain national values or principles when determining the scope and protection of such rights in their jurisdiction.

However, it has to be stressed that in the 21st century free speech is something that belongs to human kind and that national authorities should recognize a basic sphere of individual autonomy to allow human beings to express views, opinions, sentiments and to disseminate information, regardless of methods used. And no matter where they live.

This is why challenges to the laws must be allowed by those affected by it and the efficacy (or legality) of the laws must be decided by independent courts of competent jurisdiction which enjoy the public's trust and operate in the public's interest, independent of partisan political interests. Moreover, in the application of these norms, and in order to guarantee an effective protection of individuals' rights, due process must be afforded throughout the course, including any appeals to higher courts.

I believe that, when it comes to free expression and free media, the following restrictions may violate the principle of the rule of law

- Arbitrary punishment of oppositional political media outlets and journalists, both when charges are brought with the view of political expediency, and when they are dubiously accused of hooliganism, drug trafficking, terrorism or arms smuggling.
- Criminal defamation laws which provide for imprisonment.
- Vague definitions of crimes such as extremism and terrorism, harm to the state, the slander of officials and the like.
- Laws that allow for pre-publication censorship of written or broadcast materials either by the state or by private operators and
- the blanket blocking of Internet sites and content.

These are just a few of the many media-freedom issues that my Office addresses. Some of them were dealt with by the participating States last year at the Human Dimension Implementation Meeting in Warsaw.

Despite the efforts, from my vantage point, we have a long way to go throughout the OSCE region when it comes to rule of law and freedom of the media issues.