

2016 Annual colloquium on fundamental rights
Public consultation on media pluralism and democracy

Input from the Office of the OSCE Representative on Freedom of the Media

6. Could you provide specific examples of problems deriving from lack of independence of media regulatory bodies in EU member states?

The RFOM office has noted several attempt of political influence and intimidation of independent media regulators.

- In June 2015, eleven members of the Latvian Parliament, including representatives from the governing coalition parties, asked the Parliament to dismiss four members of the National Electronic Mass Media Council, arguing they were no longer suitable to hold their positions because of the alleged “loss of their good reputation”, <http://www.osce.org/fom/213391>. Only the chairman was eventually dismissed, a decision that in December was found illegal and annulled by the courts,
- In March 2016 the Croatian government proposed that the Parliament rejected a regular report of the Croatian Agency for the Electronic Media, to terminate the Agency’s mandate and to dismiss the director. The Agency was also subject to political pressure and intimidation after it suspended TV Z1’s operating licence for three days, <http://www.osce.org/fom/226861>
- In June 2016, the annual report of the National Broadcaster Council in Poland (KRRiT) was dismissed by the cultural committee in the Parliament. In December 2015 legislative changes in Poland gave the Treasury Minister the right to appoint and dismiss members of the supervisory and management boards of public service media in Poland, <http://www.osce.org/fom/213391>. The report was critical to the effects these changes had had on the news reporting in public service media.

17. Have you ever experienced, or are you aware of, any limitation imposed on journalistic activities by state measures?

Rules on accreditation for foreign journalists present in some countries an undue limitation. For example, in order to obtain permanent accreditation with the Ministry of Foreign Affairs of Belgium, foreign journalists must obtain a temporary press card which has the status of a work permit, as explicitly stated in the accreditation rules of the Ministry of Foreign Affairs of Belgium. According to the rules, a press card cannot be issued without a D visa. The visa procedure may take several months and the exact term is not specified. However, visas and accreditation serve different purposes and these processes cannot be equated. Journalistic activities without a temporary press card are not permitted. In general, journalists, who need a permanent press card must pass the accreditation procedure twice in Belgium. They first get a temporary press card and, only after that, can they apply for a permanent Belgian press card.

Additional procedures that may be qualified as “arrival control” have been also introduced. For instance, after arriving to Belgium, foreign journalists must contact the Press Office to arrange an appointment to collect their temporary press cards. They must also go to municipal authorities of their place of residence within eight days after their arrival in Belgium, so that journalists would be included into a register of foreign nationals. These regulations significantly complicate the working conditions of foreign journalists in Belgium.

Furthermore, in Latvia, an accreditation card is key condition to obtain visa. Similarly, in order to receive an accreditation in Lithuania, foreign journalists have to address a diplomatic mission or a consular post of Lithuania in their own countries. For more information, see <http://www.osce.org/fom/245146?download=true>

18. Please indicate any best practice that reconciles security concerns, media freedom and free speech in a way acceptable in a democratic society

As seen from the OSCE Representative’s perspective, national security concerns has become a threat to freedom of expression, as expressed in this article for the Huffington Post, http://www.huffingtonpost.com/dunja-mijatovic/security-the-greatest-thr_b_9327240.html. It is hard to find examples on best practices to share from EU countries, but we would, however, like to share a relevant example from an EEA-country:

- In November 2015 the Norwegian Supreme Court decided that the police had to return film footage of radicalized Norwegian youth that was seized from a filmmaker in a terror probe. In contrast to the widespread international tendency to sacrifice freedom of expression in times of crisis, the ruling recognizes the crucial importance of a free press and the public’s right to get information. The court found anonymously for broad protection against exposure of journalistic sources even in the context of a government’s anti-terror investigation, <http://www.osce.org/fom/203036>. The ruling was awarded the 2016 Columbia Global Freedom of Expression Award for the most significant ruling last year.

19. Have you experienced, or are you aware of, limitations related to privacy and data protection imposed on journalistic activities

Expanded use of bulk surveillance and data retention is increasingly making it difficult to reveal stories that might be in the public interest, in particular in the area of national security, intelligence and law enforcement, where information is sensitive, but not necessarily classified. Journalists the office are in touch with, also in EU countries, tell us that government officials and other whistle-blowers refrain from sharing because of the risk that digital tracks are left behind. Journalists pay so much attention on how to cover their tracks that they end up feeling like spies instead of journalists.

A few recent examples:

- In June 2016 in United Kingdom, the the Investigatory Powers Bill passed the House of Commons despite major human rights concerns expressed both nationally and internationally. Among others, the bill gives powers to issue bulk warrants without the

existence of reasonable suspicion before issuing the surveillance measure. This is clearly running counter to principles set out by the European Court of Human Rights. It also has flaws in control mechanisms, as recently pointed out by the Parliament's very own Committee on Human Rights which submitted proposals to improve the Bill to further enhance the compatibility of the legal framework with human rights. RFOM previous statement <http://www.osce.org/fom/198791>

- In June 2016, Poland adopted a new anti-terror law that among others gives broad powers to the head of the intelligence service to use surveillance measures against foreigners to identify, prevent and combat terrorist activities, a concept which is vaguely defined. There is also lack of sufficient judicial oversight.
- In July 2015, France passed a sweeping new surveillance law that gives the government broad powers to monitor the mobile phone network and the Internet. The law allows for new communication-monitoring practices and investigative methods, and it is giving law enforcement agencies special surveillance powers almost without judicial oversight. Among others, the law requires Internet service providers to install technical measures that may collect and analyze metadata on Internet users' habits and make it available to intelligence services, <http://www.osce.org/fom/155336>.

20. Have you experienced, or are you aware of, problems linked to hate speech and threats directed towards individuals exercising journalistic activities?

Throughout the so-called 'refugee crisis' in Germany in 2015-16 reporters filing for both national and regional media outlets have extensively covered the news related to the refugees per se and to the reactions in society. Thus in the Free State of Saxony they closely covered the extreme right and populist PEGIDA movement and their marches in Dresden and Leipzig. Organisers of the marches as well as functionaries of the extreme right-wing political party the AfD singled out media professionals as a target group for violence and verbal abuse.

Branded the 'Luegenpresse'/Lies' press, a notion going back to the 1930s, media workers were targeted at rallies, their press cards were photographed and later published on online social platforms, such as FB, with calls for violence against them. In some cases, personal details of journalists, such as private addresses, were published in closed online groups run by representatives of the said movement. The media workers were singled out as a group and supporters of these movements attacked them as such. The notion of the Lies' Press has strong political connotations and is firmly established in the political discourse of the said movements.

21. Are you aware of cases where fear of hate speech or threats, as described above, has led to reluctance to report on certain issues or has had a generally chilling effect on the exercise of freedom of speech?

Following up on question 20, the Leipziger Internet Zeitung has stopped live coverage of PEGIDA rallies the regional public service broadcaster started employing a private security company which accompanies its crews to rallies.

22. Have you experienced, or are you aware of, problems concerning journalists' safety and security in the EU?

Criminal defamation provisions, which primarily protect heads of foreign states, politicians and public figures, infringe on media's right to report critically on matters of public interest. To promote the abolition of all criminal defamation laws has been a strong position and consistent policy of the Office of the OSCE Representative on Freedom of the Media ever since it was established in 1998. The Office shares the position of the European Court of Human Rights, that the limits of acceptable criticism are wider with regard to a politician acting in a public capacity than in relation to a private individual.

- In April 2016 it was announced that German authorities will launch a criminal investigation into satirist Jan Böhmermann under Article 103 of the Criminal Code, following a request by the President of Turkey who claimed he was insulted by a poem broadcast on 31 March by the German television station ZDF (<http://www.osce.org/fom/234131>).
- In spring 2015 journalist Kostas Vaxevanis was convicted of libelling financier Andreas Vgenopoulos and was given a jail sentence of 26 months, suspended for three years in Greece (<http://www.osce.org/fom/150391>).
- In May 2014 the appeals court of Østre Landsret fined Kåre Quist, Dorthe Vest Andersen, Sara Munck Andersen and Lisbeth Kølster, journalists with the Danish Broadcasting Corporation, more than €30,000 in criminal fines over allegations in a 2009 radio broadcast in which they criticized Boligadministratorene A/S, a housing association (<http://www.osce.org/fom/118508>).
- In April 2014 Croatian journalists Slavica Lukić and Vladimir Matijanić were convicted for criminal insult, even though they were reporting on issues of clear public interest. According to the Croatian Journalists Association, in 2014 there were more than 40 criminal insult cases pending against journalists in the country (<http://www.osce.org/fom/117267>).
- In September 2014 criminal libel charges were filed against journalist Dušan Karolyi in Slovakia (<http://www.osce.org/fom/123274>).
- In May 2013 journalists Andrea Marcenaro, Giorgio Mulé and Riccardo Arena were sentenced to prison by the Court of Milan on defamation charges after they published an article in the Italian weekly Panorama in 2010 about Palermo magistrate Francesco Messineo (<http://www.osce.org/fom/101969>).

Anti-terrorist laws are increasingly criminalizing journalists' activity, including with regard to disclosure of non-sensitive documents on issues of public interest and to reporting on terrorism. Anti-terrorism legislation should not be misapplied or abused so that it hinders the work of journalists and suppress free media and the right of free expression.

- In October 2015 police used the Terrorism Act of 2000 to obtain a court order to seize the computer of BBC journalist Secunder Kermani to read his exchanges with a member of ISIS (<http://www.osce.org/fom/195251>).
- In August 2013 David Miranda, journalist with Guardian newspaper, was detained and questioned, and his electronic equipment was seized under the Terrorism Act of 2000 as he passed through Heathrow Airport in London (<http://www.osce.org/fom/104451>).

Violence against journalists

- In January 2016 Stoyan Tonchev, an investigative journalist for the website *Hello Bulgaria*, was severely beaten by unidentified persons with baseball bats outside his home in the town of Pomorie, Bulgaria. During the beating, the attackers reportedly threatened Tonchev, asking him how long he will continue to write. The journalist was taken to hospital where he was treated for severe injuries to his skull and face. He reported the attack to the police (<http://www.osce.org/fom/216881>).
- In February 2016 a freelance radio journalist Demitrios Perros was covering a public protest in Athens when he was attacked by a group, after having identified himself as a journalist. He sustained severe head injuries that required emergency medical attention (<http://www.osce.org/fom/221176>).
- In January 2015 a terrorist attack on French satirical magazine Charlie Hebdo in left at least 12 dead of which 10 are Charlie Hebdo staff, including cartoonists Charb, Cabu, Tignous and Wolinski. Several people were wounded. This was the deadliest attack in the history of the French press and the third attack on French newspapers in recent years (<http://www.osce.org/fom/133526>). The offices of Charlie Hebdo were also fire bombed in 2011. In November 2013 a gunman opened fire in the offices of the newspaper Libération.
- In 2015 there were several attacks and threats against journalist in Croatia, including Oliver Frljić, a prominent theatre director and columnist; Hrvoje Šimičević and Vladimir Kinderski; Saša Leković, the President of the Croatian Journalists' Association; Domagoj Margetić, freelance journalist; Drago Pilsel, journalist with the daily newspaper Novi List; Katarina Marić Banje, journalist with the daily newspaper Slobodna Dalmacija; Ivica Marijačić, editor-in-chief, and Antonio Mlikota, graphic designer, with the weekly newspaper Hrvatski tjednik; Domagoj Mikić, journalist with Nova TV (<http://www.osce.org/fom/177311>).
- In September 2015 Associated Press cameraman Luca Muzi was briefly detained near the border town of Roszke, Hungary, by police who forced him to delete photos he took of a police dog threatening a Syrian refugee. Journalist Jacek Tacik from Poland's public broadcaster TVP was beaten by the police, suffered head injuries and was briefly arrested for illegally crossing the border; Members of the Serbian media outlet B92 suffered from tear gas fired at the refugees by the police while they were covering the events; cameraman Vladan Hadži Mijailović and sound engineer Miroslav Djurašinović, both from Radio Television of Serbia, were attacked by the police at the Horgos border crossing, and their colleague, reporter Jovana Djurović, suffered a hand injury (<http://www.osce.org/fom/182646>).
- In August 2015 several incidents against journalists covering activities of organized crime groups took place in Italy. Alessio Viscardi, an investigative reporter with Fanpage.it, received death threats from a group of four individuals while conducting research on Vittorio Casamonica's funeral. A news crew from the television station RAI 3 was stopped by local residents and threatened while filming in an area in Rome where several members of Casamonica's family lives (<http://www.osce.org/fom/179151>).

23. Please indicate any best practice for protecting journalists from threats against their safety and security.

- In 2015 Lithuania launched reforms in the laws on defamation and removed two provisions in the Criminal Code that criminalized libel (<http://www.osce.org/fom/171216>).
- In 2013 the British Parliament adopted a defamation law which makes it harder for lawsuits to be pursued against media. The law requires that claimants must show they have or will suffer serious harm before bringing a defamation lawsuit. It brings in new statutory defences of truth and honest opinion to replace common law and introduces a defence of "responsible publication on matters of public interest". It removes the presumption in favour of jury trials in defamation cases. The law aims to restrict the so-called "libel tourism" trade, where foreign claimants file suits in plaintiff-friendly British courts. Foreign-based journalists will no longer be subject to British defamation suits and non-European Union residents must prove a British court is the proper jurisdiction for their claims to be heard (<http://www.osce.org/fom/101063>).

27. Have you experienced, or are you aware of, censorship (including self-censorship) in the EU?

Online abuse of female journalists is a phenomenon of growing concern also within the EU. There is limited research on the effects upon journalism and freedom of expression online, but through a series of activities the RFOM office has been involved in since February 2015 addressing this topic (see also question 28), it has become clear that many female journalists as a consequence of online abuse engage in self-censorship. Threats and fear of being orally or physically abused may have a significant impact on what and how news stories are reported. It may also affect editors' choices of who should report on significant stories out of safety concerns. As a result, female journalists may choose to opt out or stop writing critically online on issues of importance. Information about our activities, including survey, recommendations from expert meeting, articles and a publication of essays on the topic, can be found at <http://www.osce.org/fom/179486> (scroll down)

28 Have you experienced, or are you aware of, any obstacles to investigative journalism, which may include legal provisions in force or lack of resources?

The RFOM has detected several obstacles to investigative journalism. They include though not limited to:

- a) The problem of female journalists and bloggers being inundated with threats of murder, rape, physical violence and graphic imagery via email, commenting sections and across all social media platforms. Based on a number of cases RFOM, Dunja Mijatović, raised and information provided by journalists from throughout the OSCE region, RFOM issued a Communiqué in February 2015 to bring awareness of the issue to OSCE participating States, media companies and civil society and to bring attention to the growing threat of female journalists being coerced into silence online, with widespread repercussions including their opting out of reporting on certain issues, and even leaving social media and retreating into silence. RFOM next decided to take a closer look at the effect this could have on media freedom and free expression online and explore how stakeholders could effectively address this issue.

RFOM Office carried out a qualitative study of female journalists working in the region. The responses we received were a true wake-up call and shocking in terms of number and nature of threats most of these women were subjected to on a daily basis. It is important to note that male journalists are also targeted with online abuse, however, the severity, in terms of both sheer amount and content of abuse, including blatant sexist and misogynistic vitriol, is much more extreme for female journalists. RFOM called on the OSCE participating States to declare, unequivocally, that any effort to silence women online must be regarded as a direct attack on our fundamental freedoms, while refraining from drafting new laws to restrict abusive speech on the internet, as they may have a chilling effect on freedom of expression. See more: <http://www.osce.org/fom/220411?download=true>

- b) The problem of charges of treason and other state crimes such as threats to national security brought against investigative reporters. For example, on 4 August 2015 OSCE Representative on Freedom of the Media Dunja Mijatović noted the launch of a treason investigation in Germany against the owner and a reporter for a website could harm reporting in the public interest. “The threat of being charged with treason has a clear general chilling effect on journalists engaged in investigative reporting,” Mijatović said in a letter to Frank-Walter Steinmeier, Minister for Foreign Affairs. On 24 July, the Federal Prosecutor General wrote informing Netzpolitik.org owner and editor, Markus Beckedahl, and its journalist, André Meister, about the investigation into two articles published on 25 February and 15 April. The articles in question report on the government’s plans regarding online surveillance programmes. If convicted, Meister and Beckedahl could face imprisonment. “I believe that in cases of possible violations of confidentiality or state secrets regulations, authorities should refrain from trailing the media whose job it is to investigate and report about issues of public importance,” Mijatović wrote. “I urge the authorities in Germany to look into the case and ensure that freedom of information and freedom of the media are respected, and hope the investigation is terminated.” The Representative also welcomed a recent statement by Minister of Justice Heiko Maas saying the investigation may show a need to reform criminal law provisions on treason and protection of state secrets in relation to free media. See more here: <http://www.osce.org/fom/175796>

In a similar case on 29 October 2015 RFOM noted that the United Kingdom’s anti-terrorism law may be used to access information, communications or a reporter’s professional material, expressing concern about the possible chilling effect of the law on investigative journalism. Mijatović responded to reports that police used the Terrorism Act of 2000 to obtain a court order to seize the computer of BBC journalist Secunder Kermani to read his exchanges with a member of ISIS. “Anti-terror legislation should not be used to make an end run around a journalist’s right to preserve their assets and materials, particularly those related to communications with their sources,” Mijatović said. “Law enforcement authorities cannot be allowed to rely upon journalists’ work to do their jobs.”

Mijatović maintained her position that infringing confidentiality would lead to the silencing of sources necessary to disclose facts on issues of broad public interest. “I do not question the responsibility of governments to protect citizens from the serious threat of terrorist attacks,” Mijatović said. “However, this must never erode the public’s right to be informed on matters of public concern. Legal provisions which may affect media freedom and freedom of expression should be clearly worded and avoid granting overbroad discretionary powers to law enforcement authorities.” See more: <http://www.osce.org/fom/195251>

Another UK case underlined the danger of threats of legal actions on the pretext of national security. On 29 August 2013 the OSCE Representative on Freedom of the Media, Dunja Mijatović, expressed her concern in a letter to the U.K. Prime Minister David Cameron about recent actions of the authorities against the Guardian newspaper.

“Using anti-terrorism legislation, threatening legal action and forcing journalists to destroy data creates a chilling effect on the media in the United Kingdom and beyond and represents a form of unacceptable prior restraint,” Mijatović said.

In her letter, the Representative also pointed to the detention and questioning of David Miranda and seizure of his electronic equipment under the Terrorism Act of 2000 as he passed through Heathrow Airport, an issue that she already raised with the U.K. authorities on 19 August 2013.

“I do not in any way challenge the legitimate right of governments to fight terrorism and to protect our societies, but the laws should not be misapplied or abused so that they hinder the work of journalists and suppress free media and the right of free expression,” Mijatović said. “It is encouraging that civil society and the journalism community reacted promptly to these attacks on free media. I appeal to the authorities to carefully consider any future steps, so that to ensure that they support the right of media to report,” Mijatović concluded.

- c) The problem of delisting and the right to be forgotten. For example, on 7 July 2015 the OSCE Representative on Freedom of the Media Dunja Mijatović warned about the possible implications for freedom of information and freedom of the media on the Internet, following a decision by the French data protection authority (CNIL) to order the search engine Google to apply delisting requests on all its domain names. CNIL’s move follows the ruling by the European Union Court of Justice in Luxembourg on 13 May 2014, which said that search engines, based on individual claims, have an obligation to delete links to websites which publish “inadequate, irrelevant or no longer relevant” data (commonly referred to as the “right to be forgotten”). On 8 June 2015, CNIL ordered Google to delist several results within 15 days, specifically requesting that the delisting should be effective on national and global websites. “The decision to expand the EU court ruling to the global level represents a threat to the effective protection of freedom of information and freedom of the media beyond EU territory,” Mijatović said. “States should have all the instruments to properly safeguard these freedoms, online and offline, without undue interference and in conformity with the principle of country of origin,” Mijatović said. The

Representative's communiqué on the ruling of the European Union Court of Justice, addressing the "right to be forgotten" and its possible implications for investigative journalism and media freedom, is available at www.osce.org/fom/118632

- d) The problem of surveillance of journalists and insufficient protection of confidential sources of the journalists. On 3 September 2014 the OSCE Representative on Freedom of the Media Dunja Mijatović said that the London Metropolitan Police's access to The Sun political editor Tom Newton Dunn's phone records while investigating a source of leaks without his consent was unacceptable. "The police seemed to have deliberately ignored the law protecting journalists' confidential sources in their attempt to find the identity of the person who leaked information to the press," Mijatović said. "They accessed records without court permission or oversight which is required by law." Police disclosed they used Dunn's phone records in a report released on 1 September about an investigation into a disturbance on Downing Street in September 2012 involving police officers and Tory chief whip Andrew Mitchell. The Sun wrote about the incident and Mitchell resigned the next month. The police officers involved were not prosecuted but were eventually dismissed because of the matter. Dunn was questioned by police but declined to identify his source. See more: <http://www.osce.org/fom/123150>

31. What would be the most efficient ways to tackle the trivialisation of discrimination and violence that arises through the spreading of hatred, racism and xenophobia, in particular online?

While some degree of regulation seems to be inevitable (in particular, imposition of administrative and civil liability for use of e.g. hate speech), the only viable tool seems to be action promoting diversity, and specifically, allowing civil society organisations to take initiative developing and disseminating counter-narratives. Media literacy at all levels in society should be part of a concerted action against spread of identity based violence.

32. How can a better informed use of modern media, including new digital media ('media literacy') contribute to promote tolerance? Please indicate any best practice

Given that the current discourse on violent extremism and terrorism is often focused on Islam, several initiatives aimed at monitoring Islamophobia and promoting anti-prejudice tools may be mentioned. E.g. the Council on American-Islamic Relations established a multimedia platform which monitors the situation and promoting appropriate tools: <http://www.islamophobia.org/>. A similar policy of media literacy is pursued by the Islamic Scholarship Fund, also based in the US (<http://islamicscholarshipfund.org/>).