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PROTECTION OF JOURNALISTS FROM VIOLENCE

Issue Discussion Paper

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FOREWORD

The picture from a surveillance camera shows Anna Politkovskaya about to enter the building where the assassin waits. She is all alone, unprotected. Another picture shows Hrant Dink stretched out on the ground, face down. Shot, from behind, in front of his office. Alone and unprotected. Yet the threats against Politkovskaya and Dink were well known.

There are many other pictures. But there are also deaths that are not documented, as well as disappearances and assaults. In several countries in Europe today journalists are threatened, sent to prison and sometimes even murdered for merely doing their job.

The purpose of journalism is not to please those who hold power or to be the mouthpiece of governments. Journalists report, investigate and analyse, they inform us about politics, religion, celebrities, the arts, sports, revolutions and wars. They entertain and sometimes annoy us. But most importantly of all, they are “public watchdogs”.

This role is fundamental for democracy. Free, independent and pluralistic media based on freedom of information and expression is a core element of any functioning democracy.

Freedom of the media is also essential for the protection of all other human rights. There are many examples where misuses of power, corruption, discrimination and even torture have come to light because of the work of investigative journalists. Making the facts known to the public is often the first, essential step towards redressing human rights violations and holding those in power accountable.

To ensure this public authorities, civil society and the international community as well as media owners and journalist’s community all have important roles to play – roles stretching from law-enforcement, education, public control, monitoring and setting of universal standards, to ethical conduct and self-regulation.

Threats against one journalist can have the devastating effect of silencing many others. Colleagues of the victims may go on working but fear the danger of reporting and writing about what the public ought to know. Many of them will start to exercise self-censorship.

Functioning law-enforcement and judicial systems are crucial. The killers must be punished – but it is also imperative that the masterminds be brought to justice, otherwise they will continue with their cruel business. Impunity creates more impunity. If murders, assaults and psychological violence against journalists prevail, media cannot be free, information cannot be pluralistic and democracy cannot function.

This is why the role of governments in ensuring the safety of journalists is particularly important. It goes without saying that it is a difficult role. It requires strong adherence to human rights principles, determination and perseverance. Governments must demonstrate forcefully that they are prepared to protect freedom of the media, not only in words, but also through concrete action.

There are many things authorities can do to protect journalists from violence and thus protect freedom of speech and the press. I would like to spell out the positions of my own Office in this important area:

- *Governments* who are serious about media freedom and democracy need to *effectively* investigate murders and other serious violent crimes against journalists; investigations should be carried out promptly and efficiently.
- *Prosecutors and investigators* must be independent, as well as trained and qualified for the job. No political interference should hinder them from doing their work.
- *Judges* have to be aware of the importance of bringing everyone responsible for violence against journalists to justice. Unless the *real* culprits are investigated, tried and punished, they will go on planning and ordering the killings of journalists.

- It is unacceptable to drag out investigations, put criminal proceedings on hold (without good reason), and give early pardons or symbolic sentences. They do not reflect the seriousness of the crime and function as obstacles to doing away with impunity.
- *Police and security officials* need to effectively protect journalists from danger. Threats have to be taken seriously. The Court in Strasbourg has confirmed time and time again that the European Convention on Human Rights (Article 2) “enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction”.
- *Politicians* need to take a clear position and speak out against violence against journalists. Often the aggression comes from groups and individuals with fundamentalist or extreme nationalistic positions. It is important that politicians take a clear stance against right-wing or any other extremism.
- *Politicians and government officials* also have to accept a higher degree of public criticism and scrutiny, including from journalists. Mature and non-violent responses from them to criticism send an important signal to the public and the media.

Thomas Hammarberg

SUMMARY

Although the challenges and dangers that journalists face in many countries may differ from region to region, one sad fact holds true everywhere: our freedom to express ourselves is questioned and challenged from many sides. Some of these challenges are blatant, others concealed; some of them follow traditional methods to silence free speech and critical voices, some use new technologies to suppress and restrict the free flow of information and media pluralism; and far too many result in physical harassment and deadly violence against journalists.

The right of journalists to carry out their work under safe conditions, without fear of being harassed, attacked, beaten or killed is a topic of paramount importance for freedom of the press and freedom of expression.

The aim of this paper is to draw attention to the critical problems journalists face in their work – and to the responsibilities that we, officials of international organisations, have to demand of the authorities, to ensure that journalists can work safely. Attempts to intimidate journalists are unfortunately very common. During the last five years close to 30 journalists were killed in the Organization for Security and Co-operation in Europe (OSCE) region¹ – and that number is surpassed exponentially by those who were beaten or whose lives were threatened.

Section one of this paper describes the dangers of working as a journalist. The number and frequency of harassed, attacked and murdered journalists is a matter for grave concern. The threat of violence has become a form of censorship, which often goes unpunished. This section also discusses the danger of impunity – the blatant neglect of human rights when authorities allow perpetrators to remain immune to punishment. This sends a dangerous signal to society, and can lead to further violence.

Section two discusses the protection media professionals enjoy – or are meant to enjoy – under international humanitarian law. It also highlights the concern that, despite the several conventions that spell out everyone's right to freedom of expression, innumerable cases of violence with the aim of silencing journalists occur every year.

Of the almost 30 murders of journalists in the OSCE region mentioned above, only about one-tenth resulted in successful prosecutions. This casts serious doubts on the effectiveness of law-enforcement bodies and the judiciary.

Section three focuses on what can be done to strengthen the protection of journalists from violence. It requires strong commitment from governments, law enforcement agencies and legislators, as well as international organisations, civil society, and journalists' own organisations to secure progress in this area. The best results can be achieved if they work together.

Governments must understand why journalists need special attention. Violence against journalists is a crime against basic democratic values such as free expression and the right to information. Therefore governments need to commit themselves to treating such violence as crimes aimed at undermining public order and democratic governance. Appropriate amendments need to be introduced in criminal and civil laws. Governmental authorities, politicians and law-enforcement agencies must treat these crimes with the full political, administrative and technical resources available to them so as to make sure the criminals and those behind them do not escape justice.

There is no doubt that journalists ought to show the highest level of professional standards in order to defend the dignity of this noble profession. However, journalists' professional standards, (or lack of them) must not be used as an argument by governments when discussing their safety or lack thereof. In too many regions, too many governments misconstrue the meaning of responsibility. It is too often assumed that "responsible journalism" means "no criticism, no satire, no provocation, and no differing voices". This approach leads to self-censorship and presents a double-edged sword, suppressing and silencing voices. Governments should nurture an

¹ The Organization for Security and Co-operation in Europe, OSCE, comprises 56 participating States, encompassing three continents – North America, Europe and Asia. See: www.osce.org.

environment in which their citizens live in a society where free speech is protected by laws in order to foster, not suppress, pluralistic media.

If these and other basic conditions for a free society are not provided for, journalists and the media will always look for alternative ways to loudly and clearly voice their opinions in order to expose topics of public importance to society.

The overall conclusion is that *safety* of the media is a precondition for *free* media. Without safe working conditions, journalists cannot write freely. To defend the very important human rights of free media and free expression, authorities and organisations on all levels need to combine their efforts.

Introduction

Journalism is an important profession. It can be seen as a skill, a talent, even a passion in a way; a passion to tell the truth, to inform, to reach others, to communicate news using any means necessary. So why is this passion, this profession so fiercely attacked, challenged and perceived as controversial?

Many journalists have risked their futures, have been beaten, harassed, imprisoned and too many have even made the ultimate sacrifice – of their lives – in the pursuit of telling a story, exposing the truth and acknowledging the right to be heard.

Along with threats directed to freedom of speech and freedom of the media in general, today the freedom to be and to call yourself a journalist and to perform your job freely is also threatened.

We do not always appreciate the importance of the universal right to free expression and free speech, until they are tampered with by state interference and control. Without the expression of ideas and opinions and their publication and distribution in the media, no society can develop effectively. As citizens we should protect our freedom of speech and freedom of the media to ensure that all other human rights are protected.

Too many nations around the world know that, like democracy, freedom of the media and freedom of speech do not come naturally, and cannot be taken for granted. They must be constantly justified, reaffirmed and strengthened.

Governments can play a crucial role in creating a safe environment. A free and independent media is the cornerstone of a vibrant democratic society. Democracy flourishes where journalists are free to seek out and question all members of the public, particularly government officials, whose jobs rely upon the public's trust.

I. Violence against journalists and journalism

The Committee to Protect Journalists reports that since 1992 in the Council of Europe region² more than one hundred journalists have been killed because of, or in the line of their work, and many, many more have been physically attacked or have received threats.

The high number of violent attacks against journalists has been a cause for deep concern. Equally alarming is the authorities' far too prevalent willingness to classify many of the murders as unrelated to the journalist's professional activities. We also see that more and more often critical speech is being punished, with questionable charges being brought against journalists. The impunity of perpetrators and the responsible authorities' passivity in investigating and failing to publicly condemn these murders breeds further violence.

There are many other forms of harassment or intimidation besides physical violence and imprisonment that also have a threatening effect on journalists. With the heightened security concerns of the last decade, police and prosecutors have increasingly raided editorial offices, journalists' homes or seized their equipment when searching for leaks that were perceived as national security threats.

At present safety may be the biggest issue for press freedom since perhaps now more than ever, it is dangerous to be a journalist.

1.1 *An extreme form of censorship*

Almost no year goes by without journalists in the OSCE region paying with their lives for writing about issues that they know will put them in danger. We are also very familiar with the numerous beatings that take place – often causing horrific injuries and very long periods of physical pain.

² The Council of Europe covers virtually the entire European continent, with its 47 member states. See: www.coe.int.

Today, in the 21st century, it is dangerous to be a journalist, a photographer, a member of the media. It is dangerous to be a journalist and to have lunch with your source in a restaurant. It is dangerous to be a friend or neighbour of a journalist. It is dangerous to write about corruption. It is dangerous to investigate stories. In many parts of the world it is dangerous to be a monitor of our times and it is dangerous to be a human being who speaks his or her mind freely.

If murder is the most extreme form of censorship, it is not the only form being practised.

Throughout the region, journalists are beaten on a regular basis. Moreover, their attackers are often not caught or punished.

Imprisonment also remains a very common way to quash free speech throughout the OSCE region; leaving journalists behind bars for practising their craft – which often is reporting on corruption and corrupt public officials. In Turkey alone, more than 60 journalists are imprisoned; the authorities insist that most of them are convicted of crimes not related to their professional activities.

No one should fear being jailed for exposing the truth. As long as journalists are afraid for their lives and the lives of their families while doing their job, we do not live in a free society.

According to the Parliamentary Assembly of the Council of Europe, journalists continue to die, not only when covering events on the battlefield, but also, and more often so, in the course of their work when trying to shine light on the darker sides of society such as corruption, financial abuse, drug trafficking, terrorism and ethnic conflict.³ In 2009 in Vilnius, the OSCE Parliamentary Assembly also dealt with this problem, and passed a resolution on strengthening the OSCE's engagement on freedom of opinion and expression; among others, it urged participating States to fully investigate criminal activities against journalists, particularly those aimed at intimidating journalists reporting independently, and to fully prosecute those responsible for these criminal activities.⁴

There are myriad ways to quash freedom of the media. The most appalling method remains violence or threats of violence against journalists. These are a direct form of censorship.

There are many journalists who stop writing critically on issues of importance. What we often do not know is why. Nor do we know how we would react if we were in their shoes.

Apart from physical harm, there are other, less visible forms of violence which can silence a journalist. There are countless situations where there are no bruises, no explosions and no lives are lost; violence that creeps in more quietly, that is impossible to point out, and thus impossible to directly address.

What can be done when a journalist stops writing because someone has asked if they knew where their son or daughter was at the time? Or if they want to see their family again?

This is psychological violence which results in psychological pain. Although less spoken about, it affects journalists every day. It can manifest itself in various ways, including intimidation, harassment or threats. You are intimidated for example if you are persistently followed, or if your home or editorial office is being watched, or if you are warned against doing something you have the right to do – such as writing an article that will expose wrongdoings in society. You can be harassed in person, over the phone, or in e-mails sent to you.

All such cases have one thing in common – you do not know if, or when, these threats will become a reality. But they can make you fearful for your safety or for the safety of your loved ones.

³ Recommendation 1506. See: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta01/EREC1506.htm>

⁴ Resolution on Strengthening OSCE Engagement on Freedom of Opinion and Expression, adopted by the OSCE Parliamentary Assembly in Vilnius in July 2009.

Nations that do not allow independent media to shine light on the work, and wrongdoings, of officials who have a fiduciary duty to the public are harming their own development and prosperity.

For this reason, in 1994 at the Budapest Summit of the Conference on Security and Co-operation, the participating States condemned “all attacks on and harassment of journalists”, and committed themselves to “endeavour to hold those directly responsible for such attacks and harassment accountable”.⁵

It is encouraging that as recently as December 2010, at the OSCE Summit in Astana, all 56 participating States confirmed that human rights and fundamental freedoms are inalienable, and underlined that their protection and promotion remain their primary responsibility. They reaffirmed “categorically and irrevocably that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned”.⁶

1.2 Large number of journalists murdered

While the commitment to protect freedom of the media is a noble goal, its implementation has not been successful so far. In the OSCE region, around 30 journalists are estimated to have been killed in the past five years alone. And that number is surpassed exponentially by those who were beaten or whose lives were threatened.

The Russian Federation remains the OSCE participating State where most members of the media have been killed. The most reported about names include Paul Klebnikov (*Forbes, Russia*), Anna Politkovskaya (*Novaya Gazeta*), Yury Shchekochikhin (*Novaya Gazeta*), Vladislav Listyev (*ORT*) and Dmitry Kholodov (*Mokovsky Komsomolets*); but let us also remember Ivan Safronov (*Kommersant*), Vyacheslav Yaroshenko (*Korrupsiya i Prestupnost*), Larisa Yudina (*Sovetskaya Kalmykiya segodnya*), Magomed Yevolyev (*Ingushetiya.ru*), Nataya Skryl (*Nashe vremya*) and Valery Ivanov (*Tolytinskoye obozrenoya*) among many others.

In Ukraine, more than 10 years after Georgiy Gongadze’s murder, the masterminds of the crime have yet to be punished. However, it is commendable that there have been renewed efforts to investigate and punish all those involved. The authorities should consider all the evidence available to them and make sure they do their utmost to discover the truth about the circumstances of this murder and bring all those responsible for this horrible killing to justice.

And now, the Ukrainian government is faced with another test of its will – to identify, capture and prosecute those responsible for the August 2010 disappearance of Vasil Klymentyev, editor of *Novy Stil*.

We should also remember the murders (some of which remain unsolved) of Elmar Huseynov (*Monitor*) who was killed in Azerbaijan in 2005; Slavko Curuviya (*Dnevni Telegraf*) and Milan Pantić, (*Vecernje Novosti*) who were murdered in Serbia in 1999 and 2001 respectively; and Ivo Pukanic (*Nacional*) and his marketing director, Niko Franjic who were killed by a car bomb in Croatia in 2008.

These incidents are still just a small portion of innumerable examples. They by no means exhaust the list of obstacles journalists face. This is the disturbing truth of the state of media freedom in many countries within the OSCE region.

In Turkey as well, there have been cases that must not be forgotten. The murder of Hrant Dink (*Agos*), a Turkish-Armenian journalist who was shot in 2007, has raised many questions about freedom of expression and the rights of journalists. A then 17-year-old was arrested for confessing to the murder – and recently he was convicted for the assassination. However, it is

⁵ See: <http://www.osce.org/fom/31232>, page 21.

⁶ See: <http://www.osce.org/odjhr/43677>

suspected that he merely pulled the trigger. Questions linger about the real masterminds behind Dink's death as the trial deepens, and more people are questioned and brought to trial.

1.3 Journalists are regularly attacked and beaten

In the last year alone, there have been innumerable attempts to intimidate journalists around the world. In Belarus for instance, the post-election violence in December 2010 against members of the foreign and Belarusian press corps shocked the world. In November 2010 in the Russian Federation, Oleg Kashin of the daily *Kommersant* was brutally attacked in Moscow by unidentified individuals. In Bulgaria in February 2011 there was an explosion just outside the Sofia office of the *Galeria* weekly. During the same month opponents in Serbia pasted poster-sized death notices around the town of Lazarevac, listing the names of prominent *B92* journalists. In July 2010, Teofil Pančić, a political columnist for the Serbian weekly *Vreme*, who was known for his critical coverage of Serbian nationalists and sports hooligans, was physically attacked in public. In July-August 2011, a total of four delivery vehicles were set on fire in front of the office of the newspaper *Vijesti* in Podgorica. Three attacks against the *Vijesti* newspaper had occurred within two months; this exerts a 'chilling effect' on all journalists in Montenegro who help uncover facts that powerful individuals try to keep hidden.

Two of the most prominent Turkish journalists to be harassed in this manner are Nedim Şener and Ahmet Şık. Both are facing criminal charges in a number of trials, and have been in pre-trial detention since March of this year in the well known *Ergenekon* case.

In France, in January 2011, Michael Szames (reporter for *France 24*) was allegedly the victim of a violent attack. The reporter filed a complaint with the police accusing eight security staff of the National Front Party of having beaten and insulted him as he was covering a party congress.

In the same month, there was a case in Spain where Fernando Santiago, President of the Press Association of Cadiz, was brutally attacked in response to a newspaper article about the use of public funds to rescue Delphi, a struggling automobile parts company.

Earlier in the year, Fabio Cosmo Colombo, a journalist for the Italian newspaper *Metropolis*, was attacked and left unconscious, while police allegedly looked on but did not intervene. Colombo was reporting on the death of a young man – later declared a suicide – when the attack took place.

Still, journalists across the OSCE region continue to carry out their jobs and to provide the public with news necessary in a democratic society.

1.4 Impunity – a blatant neglect of human rights

Soon after the murder of Anna Politkovskaya, the suspected killer was identified. He fled the country and was only recently arrested in Chechnya. However, several others accused of involvement in the murder had been apprehended earlier. Two brothers and a former officer from the organised crime squad went on trial accused of having helped to organise the killing. The prosecution also alleged that a serving officer from the FSB, the Russian intelligence service, had played a major part in planning Anna Politkovskaya's assassination.

Three years after the murder, in February 2009, all four were acquitted and immediately released. The prosecution objected to the acquittals. Later the same year, the Russian Supreme Court upheld the prosecution's complaint and ordered a new trial, which is still pending. The suspected mastermind of Anna Politkovskaya's murder, a former Interior Ministry official, was arrested in August this year.

To date no one has been sentenced by a court for the murder of Anna Politkovskaya. The one who held the gun has been identified. But it has been much more difficult to name the ones who ordered and financed the murders, let alone to prosecute, judge and punish them.

Impunity has become a key word in understanding the state of the press in Europe. Impunity is the blatant neglect of human rights by the authorities, which allows the perpetrators to remain

unpunished. Over the years we have witnessed the unwillingness of authorities to confirm that murders are related to journalism activities. As a result, investigations are not swift, thorough or successful in many OSCE countries.

This sends a depressing message, not only to all those who want to protect free expression and media freedom. More importantly it aims to scare and silence investigative and political journalists. It sends a dangerous signal to society that it cannot rely on the courage of the press to report on wrongdoings of the powers that be, to expose corruption and to change life for the better. This develops into a “vicious circle” when passive acceptance by the public authorities only leads to more bloodshed and less journalism. Such trends and feelings undermine security and co-operation in a nation; in the end they undermine security and co-operation in Europe.

Miklós Haraszti, my distinguished predecessor, recently said: “Impunity breeds further violence, and practically blesses the most brutal type of censorship without saying so.”

Unfortunately, today’s media in much of the OSCE area do not have much hope that the murders of their colleagues will result in swift and successful prosecutions. Most perpetrators of such crimes have not been caught and brought to justice, which casts serious doubts on the effectiveness of law-enforcement bodies and of the judiciary. Very often this is not an issue relating to their competence and training, but rather of the willingness of the authorities to disclose the truth.

Of the almost 30 murders of journalists in the OSCE-region since 2007, only one-tenth resulted in the apprehension of suspects and successful prosecutions. No doubt there are many reasons for these failures, but whether it is prosecutorial passivity or lack of resources, this sends the wrong message to society and, equally importantly, to those who committed the crimes. This of course can lead to further violence and breeds an atmosphere of passive acceptance of these attacks.

II. The importance of human rights law – legal standards relating to the protection of journalism

Freedom of opinion and expression are acknowledged as human rights in international human rights law and in other international standards. These rights are enshrined in the Universal Declaration of Human Rights,⁷ the European Convention on Human Rights,⁸ the Charter of Fundamental Rights of the European Union⁹ and in the International Covenant on Civil and Political Rights.¹⁰

In addition, the European Convention on Human Rights (ECHR), in Article 2, protects the right to life. The European Court of Human Rights has repeatedly stated that the first sentence of Article 2 § 1 “enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction”.¹¹ According to the

⁷ Universal Declaration of Human Rights, Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas *through any media* and regardless of frontiers.

⁸ European Convention on Human Rights, Article 10: Freedom of expression, 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (...).

⁹ Charter of Fundamental Rights of the European Union, Article 11: Freedom of expression and information, 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

¹⁰ International Covenant on Civil and Political Rights, Article 19: 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

¹¹ See for instance the case of *Gongadze v. Ukraine*, Appl. No. 34056/02, judgment of 8 November 2005, § 164. The Court added: “This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive

Court, Article 2 also requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.

The Court found for instance that there had been a violation of Article 2 following the authorities' failure to protect the life of Georgiy Gongadze. Moreover, the Court considered that, during the investigation, the State authorities were more preoccupied with proving the lack of involvement of high-level State officials in the case than discovering the truth about the circumstances of Gongadze's disappearance and death. The Court therefore concluded that there had been a violation of Article 2 concerning the failure to conduct an effective investigation into the case.

In 2010, the Court issued a judgment in the case of *Dink v. Turkey*.¹² The Court concluded that by abandoning the criminal proceedings against the responsible policemen (for negligence in the protection of Hrant Dink's life), the government had been in breach of its obligation to protect Dink's right to life. More recently, two officers and four non-commissioned officers of the Turkish Gendarmerie were sentenced for negligence and failure to act on intelligence on Dink's potential assassination.

Practical guarantees of nondisclosure of confidential sources of journalists are also a tool to avoid unnecessary risks of the profession.

In 1996, the European Court of Human Rights stated that "[p]rotection of journalistic sources is one of the basic conditions for press freedom ... Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected"¹³. The Court concluded that in the absence of "an overriding requirement in the public interest", an order to disclose sources would violate the guarantee of free expression enshrined in Article 10 of the ECHR.

This case led the Council of Europe's Committee of Ministers to adopt Recommendation No. R (2000)7 on the right of journalists not to disclose their sources of information. This Recommendation gives guidance as to how member states should implement the protection of sources in their domestic legislation. More recently the Parliamentary Assembly adopted Recommendation 1950 (2011) on the protection of journalists' sources. In my capacity as the OSCE Representative on Freedom of the Media, I have also called on several participating States to respect this right.

2.1 Defamation – a way to silence media

Charges of defamation continue to put journalists in many participating States behind bars. The fact that these offences are still part of criminal law in many western European countries (even if they have not been applied for decades) means that the chilling effect of the possibility of imprisonment for published or broadcast words continues to curb free expression. Here "old democracies" provide a bad example to countries in transition. We all must realise that when we speak of the sanctions for defamatory and other potentially harmful materials and publications journalists are not equal to everyone else: like public servants, policemen and diplomats, they serve society at large, they protect democracy and in the line of duty they should enjoy special protection and privileges themselves.

The decriminalisation of defamation is an essential step for the protection of freedom of expression, and any reform should follow the standards established by the European Court of Human Rights.

The European Court underlined in several cases that "the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by

operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual."

¹² *Dink v. Turkey*, Appl. Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2010.

¹³ *Goodwin v. the United Kingdom*, Appl. No. 17488/90, judgment of 27 March 1996, § 39. See also *Sanoma Uitgevers B.V. v. the Netherlands*, Appl. No. 38224/03, judgment of 14 September 2010.

Article 10 of the ECHR only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence".¹⁴

So far 13 OSCE participating States have decriminalised libel and defamation; most of them carried out this very important reform quite recently.¹⁵

It is of paramount importance that journalists not be imprisoned for their words, for their professional activities, for insults or for slander. There are sufficient sanctions in administrative and civil law for justice to prevail in defamation conflicts – although sanctions must be appropriate and proportionate.

III. Protection of journalists against violence

Violence with the aim to silence journalists can take many forms, from physical attacks to verbal threats. Public authorities, civil society and the international community, as well as media owners and journalists' organisations, all have important roles to play in ensuring the safety of journalists. There are some encouraging examples of how different actors have worked together in order to protect journalists under threat.

In 2007 Eynulla Fatullayev, an Azerbaijani journalist and editor-in-chief of independent newspapers in Baku, was sentenced to prison on defamation charges in relation to an internet posting on a 1992 massacre during the Nagorno-Karabakh conflict. His release in May 2011 was preceded by a number of international activities:

- In 2009 the Committee to Protect Journalists honoured Fatullayev with its annual International Press Freedom Award for "defending press freedom in the face of attacks, threats or imprisonment";
- In the course of a visit to Azerbaijan in March 2010 the Council of Europe Commissioner for Human Rights visited Fatullayev in the detention centre where he was held. The Commissioner urged the authorities to release him without delay and stressed that all journalists and any other persons imprisoned because of views or opinions expressed should be released immediately.¹⁶ I also visited him in my capacity as the OSCE Representative on Freedom of the Media, and so did my predecessor, Miklos Haraszti. My Office, as well as many NGOs, had been putting considerable efforts into his release from prison over the years;
- In a judgment of 22 April 2010,¹⁷ the European Court of Human Rights concluded that there had been two violations of Article 10 of the European Convention on Human Rights, as well as a violation of Articles 6 §1, as his case was not heard by an independent tribunal, and 6 §2 (violation of the presumption of innocence). Moreover, the Court found it not acceptable that he still remained imprisoned and called upon the Azerbaijani authorities to secure Mr Fatullayev's immediate release, in order to put an end to the violations of Article 10 of the Convention. Despite this the journalist remained behind bars;
- In May 2011 I visited Azerbaijan in my role as OSCE Representative on Freedom of the Media. I met with President Ilham Aliyev and top officials in Baku, in order to voice

¹⁴ *Mahmudov and Agazade v. Azerbaijan*, Appl. No. 35877/04, judgment of 18 December 2008, § 50.

¹⁵ The 13 participating states in the OSCE region who, as per 11 July 2011, had fully decriminalized defamation are Armenia, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Kyrgyzstan, Moldova, Romania, Ireland, United Kingdom, Ukraine, Montenegro, USA.

¹⁶ See Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March 2010: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1642017&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

¹⁷ *Fatullayev v. Azerbaijan*, Appl. No. 40984/07, judgment of 22 April 2010.

concerns regarding the media freedom situation in the country and to call again for the authorities to free Fatullayev;

- On 24 May 2011, UK journalists including Jon Snow of Channel 4 News and John Mulholland, editor of *The Observer*, joined Amnesty International in issuing a "mass tweet" on Fatullayev's behalf: the journalists photographed themselves with placards reading "Free Eynulla Fatullayev!" and tweeted the photos to President Aliyev.

Fatullayev received a full pardon two days later, and was released after serving four years of his eight-year sentence. He attributed his release to the work of the activists, saying, "In my opinion, you saved me. Thank you to all those who tweeted." This is a vivid example of what Commissioner Hammarberg calls mobilisation of "effective pressure".

Another example of a joint effort is the release from detention of the Tajik journalist Urunbek Usmonov in July 2011, which was a result of an outcry by international organisations, but also of protests by numerous citizen groups and media outlets – including his employer, the BBC.

In order to make progress in better protecting journalists, we need to be realistic and open about the problems we currently face in many countries, and aware of what kind of protection journalists need. Professor Mikhail Fedotov, Chairman of the Council of the President of the Russian Federation on Development of Civil Society and Human Rights, has described the main components of journalists' safety to be the following: physical safety, legal safety, information safety, economic safety, and psychological safety.¹⁸

It takes strong commitment and co-operation from governments, international organisations, civil society, the media industry and journalists' own organisations to cover all these areas.

3.1 Responses from journalists' organisations, the media industry, and NGOs

The phenomenon of attacking journalists is nothing new. However, what we do not hear enough is that in some instances, attacks against journalists actually make the media community stronger, not weaker; it makes them braver, not more passive. There are a number of methods that have been used to strengthen the right of journalists to carry out their work under safe conditions.

Journalists' own organisations can work proactively by:

- Monitoring employers' actions regarding protection;
- Training journalists concerning their rights and security measures;
- Showing solidarity and exchanging experiences;
- Giving input to the drafting of media legislation;
- Providing legal support for journalists in conflict with their employers.

The owners – the media industry – obviously have a special obligation to support and protect their employees. Their safety precautions should include:

- Assessing the level of danger together with the journalist in question;
- Providing security arrangements for journalists working on sensitive cases or who are on dangerous missions, such as individual protection equipment and emergency communication means;
- Special training;
- Additional insurance for journalists in conflict zones or in danger;
- Observing the social and labour rights of journalists;
- Debriefing and support, both before and after an assignment;

¹⁸ See: <http://www.osce.org/fom/78737>. *Journalism Between Safety and Impunity*. Presentation by Prof. Mikhail Fedotov, Chairman, Council of the President of the Russian Federation on Development of Civil Society and Human Rights at the Conference on Safety of Journalists in the OSCE Region, Vilnius, 7 June 2011.

- Not to assign journalists to illegal editorial missions, as they not only put the reporters in danger, but also tarnish the profession.

There are several NGOs that play a vital role in the protection of journalists against violence by:

- Monitoring cases of violence and threats;
- Collecting and disseminating information in reports and press releases etc.;
- Engaging the public;
- Demanding answers and results from authorities and others concerned;
- Providing an impact on the legislative process;
- Creating a public consensus and understanding for the role of journalism and media in modern society.

Some examples of prominent organisations working with media freedom issues are:

- Amnesty international
- Article 19
- Reporters without Borders
- The Association of European Journalists
- The Centre for Journalism in Extreme Situations
- The Committee to Protect Journalists
- The European Newspaper Publishers Association,
- The Freedom House
- The International Federation of Journalists
- The International Press Institute
- The South East Europe Media Organization

In parallel with their own proactive work, international and national human rights and media organisations – media-business organisations as well as unions – can forge alliances that actively and in different manners identify and prevent violations of media freedom.

Regarding new media and citizen journalism, the strategies to increase their safety are the same. When monitoring media freedom problems, we do not determine who is a journalist; we simply look at the human right to free expression. Citizen journalists are more numerous than professionals and sometimes more united – here lies their strength vis-à-vis threats and intimidation.

In a way, guarantees of the freedom and safety of journalists lie not only in politics and law but also in technology. The very existence of open telecommunications networks, of Twitter and other social networks on the Internet is creating a new environment for traditional media as some of the restrictions on them become pointless due to the spread of new technologies.

3.2 *How to counterbalance state interference*

Self-regulation, good ethics and an exchange of best practices are good methods to protect the media from “lessons” by governments and to counterbalance state interference. They are usually effective – and also have positive effects on journalism itself.

Strong self-regulation mechanisms, such as press councils, build public trust for the media and strengthen solidarity among journalists – at least among responsible journalists. At the same time self-regulation is a double-edged sword: to be effective it has to be owned by the journalists – or, at least, the journalists must be loyal to it. Alas, this has not worked in many countries, no matter what part of Europe we look at.

Education and training, including a legal component, is another strong instrument to protect journalists. Joint training of journalists and judges to counter mutual mistrust is welcome. Best practices in one participating State should be shared among professionals. Here we rely on the support of the media business.

3.3 Responses from international organisations

Through monitoring, setting universal standards and giving assistance, international organisations can enhance the general conditions for the safety of journalists – especially when they all work towards a common goal. Two international organisations in Europe devoted to this are the OSCE and the Council of Europe.

The Office of the OSCE Representative on Freedom of the Media

The safety of journalists is the main focus and goal of the Office of the OSCE Representative on Freedom of the Media. Ever since it was created in 1997, the Office has been drawing attention to the alarming increase in violent attacks against journalists. The Mandate for this Office is to remind the 56 participating States to live up to the set of commitments to uphold and foster media freedom that they agreed to as members of this international body. In declaration after declaration, dating back to the Helsinki Accords of 1975, the nations that make up the OSCE have agreed to create societies that respect the universal right to free expression and free speech.

The OSCE commitments oblige all participating States to provide safety to journalists, not just for the sake of justice but also for the sake of democracy, which is just a meaningless word without fearless fact-finding and discussion by and within the media. Unfortunately, the practise in many countries falls far short of the ideal.

The institutions of the Council of Europe

Various Council of Europe bodies are contributing to ensuring free and independent media, as enshrined in the 1950 European Convention on Human Rights.¹⁹

The issue is for instance a prioritised theme for the Office of the Commissioner for Human Rights. The Commissioner gathers information, identifies shortcomings and provides advice on ways to improve media freedom and the protection of journalists. He also supports initiatives aimed at strengthening media professionalism and ethical journalism and the establishment of self-regulatory mechanisms.²⁰

In its Recommendation 1897 (2010) on respect for media freedom the Parliamentary Assembly of the Council of Europe noted “with great concern” that the number of attacks on the media and journalists and other serious violations of media freedom have increased.

The Assembly recommended that the Committee of Ministers assist member states in training their judges, law enforcement authorities and police in respecting media freedom, in particular as regards the protection of journalists and media against violent threats. The Assembly also encouraged the Secretary General of the Council of Europe to set up continuous monitoring on media freedom violations in member states, using information from journalists and human rights groups.²¹

3.4 Responses from governments

I am pleased to state that there is also good news to report when looking at governmental reactions to violence against journalists. We saw the swift condemnation in the summer of 2010 by Greek authorities of the attack on Sokratis Giokias as well as the instigation of an investigation into his murder.

¹⁹ See: <http://www.coe.int/portal/web/coe-portal/what-we-do/media-and-communication/media-freedom?dynLink=true&layoutId=42&dlgroupId=10226&fromArticleId>

²⁰ See: http://www.coe.int/t/commissioner/activities/themes/MediaFreedom/Default_en.asp

²¹ See: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/EREC1897.htm>

In Serbia Veran Matić, journalist and Editor-in-Chief of the Belgrade-based television station *B92*, is under 24-hour police protection. The same kind of police protection is being provided to Brankica Stanković, another *B92* journalist, due to ongoing concerns for her security.

The Criminal Code of Serbia was amended in 2009 to introduce 'endangering of the safety of a journalist' as a crime punishable by imprisonment ranging from one to eight years. This provision was applied for the first time in 2010 when three persons were convicted for threatening Brankica Stanković. In August 2010, I welcomed the Serbian government's swift investigation into the attacks against her and Teofil Pančić, political columnist for the weekly *Vreme*.

In Russia, where many problems have festered over the past 20 years, it is especially heartening to learn that authorities at the top level of government are taking a proactive role in solving murder cases against journalists. Another encouraging example is that Aleksandr Bastrykin, the head of the Investigative Committee, ordered a review of all criminal cases opened in relation to attacks against media. Bastrykin instructed his staff to pay special attention to cases that were closed or suspended before the creation of the committee he heads.

The sentencings of the killer of journalist Igor Domnikov (*Novaya gazeta*) and the murderers of journalist Anastasia Baburova (*Novaya gazeta*) and human rights lawyer Stanislav Markelov are welcome. While the latter case is now on appeal, the verdicts give hope to society as a whole and prove that crime will not go unpunished. This is the right way forward.

Governments must understand why violence against journalists is not an ordinary crime. It is a crime against democratic values. However, rhetoric is not enough. Dynamic words do not always translate into dynamic action. What we need to achieve is the transformation of these dignified goals into concrete and effective action.

All states need to commit themselves to treating violence against journalists as crimes aimed at undermining public order and democratic governance.

Appropriate amendments need to be made to criminal law. Governmental authorities, politicians and law-enforcement agencies must treat these crimes with the full political, administrative and technical resources available to them to make sure the criminals and those behind them do not escape justice.

Conclusions

Violence against journalists – whether murder, physical harm, or psychological violence – remains a special category of crime, as it is a direct attack on society and democracy itself. As such, it must be met with harsh condemnation and prosecution. The professional activity of a journalist, who has been the victim of a violent crime, must be considered and investigated as a priority.

However, most perpetrators of such crimes have not been caught and brought to justice, which casts serious doubts on the effectiveness of the law-enforcement bodies and judiciary. Very often this is not an issue related to their competence and training, but rather of the willingness of the authorities to uncover the truth.

Of the almost 30 murders mentioned above, only one-tenth resulted in the apprehension of suspects and successful prosecutions. This is not acceptable. The reasons for this failure could be numerous, including prosecutorial passivity or lack of resources – but what it amounts to is a message to society and, even more importantly, to those who committed the crimes. Impunity can cause further violence and breed an atmosphere of passive acceptance of these attacks.

It is also of paramount importance that journalists not be imprisoned for their words, for their professional activities, for insults or for slander. There are sufficient sanctions in administrative and civil law for justice to prevail in defamation conflicts.

While the 56 participating States of the OSCE have long ago recognised the necessity of free media in a democracy, a positive climate only appears when governments themselves show more openness and more tolerance towards critical or dissenting views. Public officials must show examples of how to accept a higher level of criticism and not consider it a threat to national security or a form of extremist activity. It is also important for them to give more recognition to the work of journalists, to pay respect and thus give more dignity to this profession.

Guarantees of the freedom of the media involve three sets of commitments which governments have to make:

- Firstly, the authorities may not interfere with this freedom in contradiction with the agreed international human rights standards;
- Secondly, they are to protect people pursuing this profession from being harassed by others and exposed to violence;
- Thirdly, probably the hardest and most complex obligation: Governments should develop conditions which would make it possible for free media and freedom of expression to flourish. A basic foundation for that is a full recognition that the safety of journalists and journalism is an absolute prerequisite for democracy.

The Strasbourg Court has made it clear that governments have an obligation (under the European Convention on Human Rights) to protect the lives of threatened journalists and that murders of media professionals need to be investigated, prosecuted, tried and punished. No effort must be spared in apprehending and bringing to justice not only the actual killers, but also those who order these murders. Only if all this is taken seriously is it possible to break the vicious cycle of impunity.

Many NGOs, international organisations and media organisations are committed – and work together – to ensuring better implementation of these commitments. But it is only with the support and commitment of governments and authorities that we will see less intimidation and more freedom in this very noble profession.