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Challenges for Press Freedom and Journalism in Europe

Keynote speech by Thomas Hammarberg
Commissioner for Human Rights, Council of Europe
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One week ago a journalist and publisher in Azerbaijan was sentenced to eight years and a half in prison. The Court for Grave Crimes in Baku convicted Eynulla Fatullayev for libel, insult, incitement to ethnic hatred, threat of terrorism and tax evasion.

I have studied information on this case, discussed it with the authorities and also talked recently with Fatullayev himself in an arrest cell at the Ministry of Security. I am convinced that the treatment of him violates important human rights. The purpose of the process against him is obviously to silence a critical voice. Fatullayev is a well-known, tough journalist and the founder of the two newspapers Realny Azerbaijan and Gundelik Azerbaijan.

On top of the prison term, he was sentenced to pay a fine on about 160.000 euros and 23 computers taken at his newspapers were confiscated. This is likely to ruin his two papers. Already when he was arrested, they were stopped from going into print.

The extreme sentence against Fatullayev is a reminder that freedom of expression is not fully protected in Europe of today. In fact, journalists are still threatened or even put in prison for merely doing their job in several countries.

During my missions I have to repeat that the purpose of journalism is not to please power-holders or be the mouth-piece of governments.

I have also to stress the obvious, that the media have an important role as a “public watchdog” and to inform the public about relevant developments in society, including those which may embarrass the powerful and wealthy.

The Court of Human Rights in Strasbourg has stated that freedom of expression might include the dissemination of information that “offend, shock or disturb”. This was an important clarification and underlined that it must be possible for the media to be controversial.

This does not mean that there are no limits to the freedom. Hate speech, incitement to violence and the dissemination of child pornography are not allowed. The European Convention clarifies that the state is allowed to introduce restrictions, for instance, to protect national security and public safety.

The room for such exceptions must however be regulated by law and be interpreted narrowly. It must be clear that critical reporting is allowed, including about activities of authorities or private companies as well as individual politicians or businessmen.

It is therefore a major problem that *defamation* is still criminalized in several parts of Europe. Laws are in place which make it a criminal offence to say or publish true or false facts or opinions that offend a person or undermine his or her reputation. Journalists are put in prison for what they have reported.

The OSCE Representative on Freedom of the Media, Miklos Haraszti, has recommended that offences against “honor and dignity” should be de-criminalized and that such cases in the future would be dealt with in civil-law courts. I fully agree with that position. The mere existence of criminal defamation laws could intimidate journalists and cause an unfortunate self-censorship.

The Parliamentary Assembly of the Council of Europe recently suggested that prison sentences no longer be used in cases of defamation. Furthermore, it made the important point that public figures should not have more protection in defamation laws than ordinary citizens.

Indeed, it has already been established that the margin for criticism must be broader in the case of politicians, they have to accept that their words and actions are open to a higher degree of scrutiny by both journalists and the public at large.

This discussion is of paramount importance and should include the role of *self-regulatory mechanisms* within the media. There have been encouraging results in countries where media representatives have developed Codes of Ethics and designed their own special procedures to enforce professional standards, for instance, through Press Councils or Press Ombudsmen. Media outlets have matured, the public have got better protection against abuse and the right of reply has been enhanced.

Decriminalizing defamation and increasing the relevance of self-regulatory mechanisms would not protect the media from civil-law charges. There will also be a need to tackle the problem of very high damages which are not in proportion to the actual injury. If such charges potentially target individual journalists, this might have a chilling effect.

Some of the problems I have mentioned here are more acute in the former Communist countries. In other parts of Europe there is of course a longer tradition of respecting media freedom. It is therefore particularly sad that there has not been a stronger protection for independent journalism all over Europe during recent years of combat against terrorism.

Aidan White, General Secretary of the International Federation of Journalists, has written about the activities of security agencies against individual journalists: that reporters have been spied upon, that security services have used paid informers inside media and that media telephones have been routinely tapped. The use of such surveillance methods is clearly a serious infringement of freedom of expression and therefore a threat against full democracy.

However, the threats against the freedom and independence of media do not only come from governments. In some countries the owners of newspaper, radio and television corporations act without consideration of ethical standards.

Media enterprises are bought or set up to serve particular political or business interests. I have received reports of clearly ruthless methods used by some such media companies, including extortion or blackmail. Ministers have been threatened to be targeted in fake scandal reporting if they did not take certain decisions.

These are extreme cases of the general problem on how the relationship between journalists and the media owners could be regulated to ensure that the journalism is free and independent. One absolute minimum requirement is of course that the media are transparent about the ownership.

Business developments in the media world have – together with technological changes - had some negative consequences on the quality of reporting. There have been worrying cutbacks on full-time employment and investigative journalism.

We need free, independent and high quality journalism for the sake of democracy and human rights. A rights-based governmental media policy would go a long way to set the frame of such a media landscape, but I believe also that the journalists themselves must be the key defenders of these very values.

I have noted with great interest the IFJ initiative for *Ethical Journalism* aimed at helping journalists and media rebuild confidence in quality journalism.

I understand that the initiative seeks to promote a debate on the meaning of self-regulation (as different from self-censorship); to promote ways of finding relevant information as protection against manipulation; to promote principles of ethical journalism in sensitive areas like migration and terrorism; to promote the recruitment of minority representatives to the news rooms; and to promote contacts with other civil society groups to discuss these problems – without, of course, compromising editorial independence.

Few efforts could be more important than these.

Thank you.