Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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Access to information by the media in the OSCE region: trends and recommendations

Summary of preliminary results of the survey[1]

Vienna, 30 April 2007

With the support of the 2006 Belgian OSCE Chairmanship, the Office of RFOM started a survey in May 2006 on access to information by the media in the OSCE participating States. RFOM sent a Questionnaire to all Governments of the OSCE participating States on the state of relevant legislation and practice in their nations.

This summary presents the preliminary results of the survey to the Permanent Council of the OSCE. The underlying 450-page database, compiled from the answers, remains an open document which will be updated as more Governments reply and laws change. Both this report and the database will be uploaded on the www.osce.org/fom website[2].

Although data for some countries are not yet complete, the survey enables us to draw up the **major trends in deficiencies**, and offer **best practices** for consideration.

The four surveyed areas

The survey covered four basic issues that inform the level of journalists' access to governmental data.

Freedom of information laws (FOI)
Modern FOI principles constitute a Copernican revolution for the development of the free press. By passing them either as Constitutional amendments or basic laws, the states give up their absolute right to withhold information, and introduce the primacy of their citizens' right to know about the government, making it an exception defined in law when the government still has the right to classify information.

Classification rules ("What is a secret?")

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[1] Based on the analysis of the responses by David Banisar, Director of the FOI Project of Privacy International, London. See the analysis at www.privacyinternational.org/foi.

[2] So far, 41 Governments of the OSCE participating States (over 70 per cent) have filled out the Questionnaire. With the responses from OSCE field operations, local NGOs and experts, the responses cover 48 out of 56 participating States.

They define the scope and the oversight mechanism of classification, and determine the amount of governmental information available for the media by default or by request. These rules should be adjusted to FOI principles, defining state secrets as narrowly as appropriate for the sake of openness.

Punitive laws and practices ("Breach of secrecy")
As the media often recur to unauthorised disclosure of classified information, opportunities for investigative journalism to access information will also be defined by the 'breach of secrecy' provisions of the penal code. Is 'breach of secrecy' only applied to the officials who fail to protect the secrets, or also to civilians who pass them on, journalists among them? Penal sanctions also should be consistent with FOI principles, and should enable courts to look into the public-interest value of questionable publications.

Protection of journalists' confidential sources
For the sake of freedom of investigative reporting, in a modern FOI regime media workers should not be forced to reveal their confidential sources to law enforcement agencies or to testify about them in court. This privilege also includes the protection of journalists' records, exemption from searches of their homes and offices, and from interception of journalists' communications, if these are done in order to identify their sources.

I. FREEDOM OF INFORMATION LAWS

The FOI trend in the OSCE participating States is positive. Out of 56 OSCE participating States, 45 started their "Copernican revolution" in favour of the public's right to know, by adopting national laws on access to information. This happened in equally high numbers in all regions of the OSCE area.

- In the past 10 years, dozens of OSCE states have adopted FOI laws. These include older democracies such as the **UK** (2000), **Switzerland** (2004), and **Germany** (2005), and new democracies such as **Armenia** (2003), **Kyrgyzstan** and **Azerbaijan** (both 2006).
- Of the remaining states, a number, including **Luxembourg**, **the Russian Federation** and **Malta**, are currently developing or considering proposals for FOI laws.

However, behind the composite good news hides the fact that FOI principles in many participating States remain only on paper.

Deficiencies despite successes

The mere existence of FOI laws does not ensure their appropriate implementation and functioning.

Adopting freedom of information laws is part of **a culture shift that can take time**. In some countries, the problem is often related to inherited difficulties with freedom of expression.

- In **Tajikistan**, a monitoring project found that basic information, including the number of persons sick from typhoid fever, anthrax, brucellosis and flu, statistics of divorce cases, the number of suicides, funds spent for events on the Day of Youth, the total amount of drugs seized by the police, bathing deaths and natural disasters, was being denied.[3]
- In **Uzbekistan**, since the incident in Andijan, access about what happened there has been limited.

In other places, the laws themselves are **not adequate**.

- In **Italy**, the 1990 law on Administrative Procedure limits access to "stakeholders" who have a "direct, practical, and actual interest based on a legally regulated case in relation to the document for which access is required."[4]
- In **Austria**, the broadly defined exemptions in the law have led commentators to describe the right of access as "often illusory".[5]
- The **Spanish** law on administrative procedures gives citizens a right to access files and records held by authorities but the Spanish government does not recognize it as a freedom of information act and a study found that requests are not answered. [6]

Finally, there has been some **withdrawing of openness** even in countries with advanced FOI regimes. Those happened either due to heightened security needs, or by introducing more restrictive fees for FOI requests:

- In the **United States**, there has been considerable controversy over reductions on access to data on internal decision-making, based on the claim of 'Executive Privilege'[7]. However, the Congress is in the process of amending legislation to resolve these problems.[8]
- In **Ireland**, amendments to the Freedom of Information Act imposing high fees on applications and appeals have reduced the use of the act significantly. The changes have had an especially strong effect on the media, whose requests declined by 83 per cent between 2003 and 2004.[9]
- In the **United Kingdom**, the Government expects a pending proposal to impose fees significantly to reduce media use of the FOI Act.[10] The Lord Chancellor said: "Freedom of information was never considered to be, and for our part will never be considered to be, a research arm for the media".[11]

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[3] NANSMIT, Monitoring 2005. http://old.cafspeech.kz/tj/monitoring_en.htm

[4] Law No. 241 of 7 August 1990, §22(1).

[5] ARTICLE 19, Advance Summary of Concerns on Respect for Freedom of Expression in Austria, Submission to the United Nations Human Rights Committee, March 2007.

[6] Transparencia y Silencio" Estudio Sobre el Acceso a la Información en España, Octubre de 2005. http://www.sustentia.com/transparencia_y_silencio_espana.pdf

[7] See OpentheGovernment Coalition, Secrecy Report Card 2006. http://www.openthegovernment.org/

[8] House Passes Open-Government Bills, Washington Post, 15 March 2007.

[9] Office of the Information Commissioner, Review of the Operation of the Freedom of Information (Amendment) Act 2003, June 2004.

[10] See CFOI, The Government's proposals to restrict the Freedom of Information Act. http://www.cfoi.org.uk/feesproposals.html#otherresponses

[11] Speech by Lord Chancellor and Secretary of State for Constitutional Affairs Lord Falconer of Thoroton, Lord Williams of Mostyn Memorial Lecture, 21 March 2007. http://www.dca.gov.uk/speeches/2007/sp070321.htm

- In **Bulgaria**, the Government has proposed amendments to require that some requestors show that they are "interested persons" and would extend timeframes and increase fees.[12]

Recommendations on FOI laws

For the sake of free flow of information in society in general, and for freedom of the media in particular:

All participating States should adopt freedom of information legislation that gives a legal right to all persons and organizations to demand and obtain information from public bodies and those who are performing public functions. Individuals should also have a right to access and correct all personal information held about themselves.

Public bodies should be required in law to respond promptly to all requests for information. Requests for information that are time-sensitive or relate to an imminent threat to health or safety should be responded to immediately. The process for requesting information should be simple and free or low-cost.

Some information of a sensitive nature may be subject to withholding for a limited, specified time for the period it is sensitive. The exemptions should be limited in scope. The official who wishes to withhold the information must identify the harm that would occur for each case of withholding. The public interest in disclosure should be considered in each case. In cases where information may be deemed sensitive by any other law, the FOI law must have precedence.

There should be an adequate mechanism for appealing each refusal to disclose. This should include having an independent oversight body such as an Ombudsman or Commission which can investigate and order releases. The body should also promote and educate on freedom of information.

Government bodies should be required by law affirmatively to publish information about their structures, personnel, activities, rules, guidance, decisions, procurement, and other information of public interest on a regular basis in formats including the use of ICTs and in public reading rooms or libraries to ensure easy and widespread access.

There should be sanctions available in cases where it is shown than an official or body is deliberately withholding information in violation of the law.

II. CLASSIFICATION RULES

Unfortunately, many countries retained the right to classify a too wide array of information as 'state secrets'. In fact, the majority of the OSCE participating States have not yet adjusted their rules of classification to the FOI principles, that is, they disregard the primacy of the public's right to know.

[12] See OSCE Representative urges Bulgaria to prosecute attackers of journalists, warns against changes to law on information, 23 March 2007.

The survey offers a large spectrum of best practices from the point of view of media freedom.

Best classification practices (and some not so good ones)

Types of Information to be Protected. A FOI-friendly state secrets act protects only information the disclosure of which would seriously undermine national security or the territorial integrity of a nation.

- In **Lithuania**, a state secret is limited to information that would "violate the sovereignty of the Republic of Lithuania, defence or economic power, pose harm to the constitutional system and political interests of the Republic of Lithuania, pose danger to the life, health and constitutional rights of individuals".[13]
- In **the former Yugoslav Republic of Macedonia**, the information must be related to the "county's security and defense, its territorial integrity and sovereignty, constitutional order, public interest, human and citizen freedom and rights."[14]
- The **U.S**. Executive Order on Classification sets out eight areas that are eligible for classification:

  - military plans, weapons systems, or operations;
  - foreign government information;
  - intelligence activities (including special activities), intelligence sources or methods, or cryptology;
  - foreign relations or foreign activities of the US, including confidential sources;
  - scientific, technological or economic matters relating to national security, which include defence against trans-national terrorism;
  - U.S. government programs for safeguarding nuclear materials or facilities;
  - vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security, which includes defence against trans-national terrorism;
  - weapons of mass destruction.[15]

Duration. For the media, it is very important that classified information had a short "life cycle"[16]. Modern state secrets acts classify information for only as long as it is necessary for the protection of the interests involved.

[13] Law on State Secrets and Official Secrets, §2(2).

[14] Law on Classified Information, §5(2).

[15] Executive Order 13,292, Further Amendment to Executive Order 12958 Classified National Security Information, March 28, 2003. Also See Ireland Freedom of Information Act, Section 24; Canadian Access to Information Act, Section 15; Bulgarian Law for the Protection of Classified Information, Appendix No. 1 of Article 25.

[16] See Background on the Principles and Process of "Life Cycle Risk Assessment", http://www.opsec.org/opsnews/Sep97/protected/Secrecy.html

- The Law on Classified Information of **the former Yugoslav Republic of Macedonia** limits State Secrets to 10 years, Highly Confidential information to five years, Confidential information to three years and Internal information to two years.
- In **Albania**, secrets are limited to ten years under the Law on Classified Information. The U.S. Executive Order sets a default of ten years unless it can be shown that it needs a longer duration.

A few laws impose long or no limits. This results in information being kept secret for far longer than its sensitivity requires.

- In **Hungary**, information can be classified for 90 years (a reform is pending).
- Most of the laws in **Central Asia** do not provide for set limits.
- The current and proposed laws on secrets in **Croatia** do not set any firm time limits.

Reviews. FOI principles require that there are periodic reviews of classification.

- The **Georgian** and **Estonian** State Secrets Act require that each possessor of secrets review the classification yearly and note when it has been declassified.
- In **Sweden**, the classification is re-evaluated each time the document is accessed.
- In **Moldova**, the reviews must happen "regularly".
- **Uzbekistan** and **Turkmenistan** require that information is reviewed every five years.

Prohibitions on the Classification of Information. FOI-capable secrets acts typically ban certain categories of information from being classified.

- The **US** Executive Order states that information cannot be classified to "conceal violations of law, inefficiency, or administrative error, prevent embarrassment to a person, organization or agency, retain competition, or prevent or delay the release of information that does not require protection in the interest of national security information". It also prohibits basic scientific information not clearly related to national security from being classified.
- The **Moldovan** Law on State Secrets prohibits classification of the "true situation in the sphere of education, health protection, ecology, agriculture, trade, and justice".
- The **Georgian** Law on State Secrets prohibits classification of information on "natural disasters, catastrophes and other extraordinary events which have already occurred or may occur and which threaten the safety of the citizens".

Oversight. In good state secrets laws, a specialized body is created to make decisions on the categories of information to be classified, and provide vetting of those who are authorized to access classified information. It can also review decisions on classification.

- In **Bulgaria**, the Law for the Protection of Classified Information created the State Commission for the Security of Information (SCSI).[17] The SCSI controls the handling of classified information and even provides training.

[17] Law for the Protection of the Classified Information. Prom. SG. 45/30 Apr 2002, corr. SG. 5/17 Jan 2003.

- In **France**, the 1998 law on classification of national security information[18] created the *Commission consultative du secret de la défense nationale* (CCSDN). This gives advice on the declassification and release of national security information in court cases. The advice is published in the Official Journal.[19]
- In **Hungary**, under the Secrecy Act of 1995, the Parliamentary Commissioner for Data Protection and Freedom of Information is entitled to change the classification of state and official secrets.[20]
- In **Slovenia**, the Information Commissioner can check the accuracy of the classification.

Recommendations on classification rules

The definition of state secrets should be limited only to data that directly relate to the national security of the state and where their unauthorized release would have identifiable and serious consequences. Information designated as "Official" or "work secrets" should not be considered for classification as state secrets. Limits on their disclosure should be found in the access to information law.

Information relating to violations of the law or human rights, maladministration or administrative errors, threats to public health or the environment, the health of senior elected officials, statistical, social-economic or cultural information, basic scientific information, or that which is merely embarrassing to individuals or organisations should not be classified as a state or official secret.

Information should only be classified as a state secret for a limited period of time where the release of the information would cause a serious harm to the interests of the nation. Information that is classified should be regularly reviewed and have a date after which it will be declassified and released. It should be presumed that no information should be classified for more than 15 years unless compelling reasons can be show for withholding it.

Governments should institute a review of all secret information over 15 years old and automatically declassify and release it. All information that was designated as secret by a previous non-democratic government should be declassified and presumptively released unless it is shown that its release would endanger the national security or be an unwarranted invasion of privacy.

An independent body that is not part of the intelligence, military or security services should have oversight over classified information and ensure that the system is operating properly, receive complaints about improperly classified information and review and order the declassification of information.

[18] Loi no 98-567 du 8 juillet 1998 instituant une Commission consultative du secret de la défense nationale, http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=DEFX9700140L See Rapport 2001 de la Commission consultative du secret de la défense nationale, http://www.ladocumentationfrancaise.fr/brp/notices/014000754.shtml

[19] For a copy of decisions, see http://www.reseauvoltaire.net/rubrique387.html

[20] Hungary, Act LXV of 1995 on State Secrets and Official Secrets.

There should be sanctions for those who deliberately and improperly designate information as secret or maintain excessive secrecy.

III. CRIMINAL SANCTIONS

The lack of adjustment of criminal law and practice to FOI principles is one of the greatest dangers for the free flow of information and fearless journalism. Many journalists in the OSCE participating States are prosecuted for unearthing information that the public should know about even if it is classified.

In at least 29 OSCE participating States, the criminalisation of "breach of secrecy" is not limited to those who have a duty to protect the secrets but mechanically extends to each and every citizen who played a role in passing on or publishing classified data.

The courts in these countries are not allowed to acquit any citizen caught with governmental secrets, not even in case of obvious public interest in the disseminated information. In most cases, the only way for journalists to avoid conviction – which may come with imprisonment – is to prove that the data was insufficiently classified.

Let us add to the list of dangers that criminalisation of 'breach of secrecy' punishes not professionally weak journalism but precisely demanding investigative reporting that is essential for the role of the press.

Best practices

- In the **United States**, there are no provisions on disclosure of state secrets. The closest law is the Espionage Act adopted in 1917, which includes limited prohibitions on the disclosure of defence information with the intent to harm the US.[21] It is generally accepted that this does not apply to the publication of state secrets by newspapers, and there has never been a prosecution of a journalist or newspaper in the history of the law.

The necessary differentiation can be done in the punitive law or in the press law:

- In **Norway**, the duty of secrecy, defined in the Security Act and the Penal Code, does not apply to members of the public in general.
- In **Georgia**, the Law on Freedom of Speech and Expression says that the prohibition on publishing secrets only applies to officials and government employees.
- In contrast, the **Belarusian** Press Law bans the mass media from publishing state or other protected secrets.

The future belongs to the so-called 'public-interest scrutiny': ensuring that information of importance to the public is not suppressed because it is classified as secret. The protections can apply to both insiders (*whistleblowers*) and to the media.

[21] 18 USC 793 et sec.

- In **Austria**, the criminal code provides that state secrets are not violated when there is a justified public or private interest.[22]
- In **Moldova**, Article 7(5) of the Law on Access to Information states that no one can be punished if the public interest in knowing the information is larger than the damage that can result from its dissemination.
- In **Georgia**, the Law on Freedom of Speech and Expression says that those who disclose state secrets are not liable "if the purpose of disclosure of a secret was protection of the lawful interests of the society, and if the protected good exceed the caused damage".

Recent cases in OSCE participating States

In the past few years, thanks to prosecutors with no taste for the FOI principles, there has been an increase in the number of cases against the media. Fortunately, in many of these cases, the courts have found that the actions of the police or even the laws were damaging freedom of the press. As in the following:

- ***Canada*** - In January 2004, *Ottawa Citizen* reporter Juliet O'Neil was threatened with prosecution under the Security of Information Act and her home and office were searched after the *Citizen* published an article in November 2003 on the controversial arrest and transfer to Syria of Martian Arar on allegations of terrorism. The Ontario Court of Justice ruled in October 2006 that the Act violated the Canadian Charter of Rights and Freedoms.[23]
- ***Denmark*** - Two journalists and the editor of *Berlingske Tidende* were prosecuted under the Criminal Code in November 2006 after publishing material leaked from the Defense Ministry. The court found they had acted in the public interest in publishing the information and acquitted them.
- ***Germany*** - The *Cicero* editor-in-chief was charged and paid a €1,000 fine, but refutes any liability implied by having paid the fine. The Constitutional Court found in February 2007 that the police search and seizure of the offices of *Cicero* because of the publication of the state secret was unconstitutional.[24]
- ***Hungary*** - In November 2004, Rita Csik, a journalist with the *Nepszava* newspaper was charged under the Hungarian Penal Code for writing an article that quoted a police memorandum on an investigation of an MP. She was acquitted in November 2005 by the Budapest municipal court, which said that the document was not legally classified. The decision was affirmed by the Court of Appeals in May 2006.
  In December 2005, *HVG* magazine reporter Antónia Rádi was charged with disclosing classified information after writing an article on a police investigation of the mafia. The case is still pending.
- ***Lithuania*** - State Security officials raided the offices of *Laisvas Laikrastis* newspaper and arrested the editor for possession of a state secret in September 2006 after the newspaper wrote a story about a corruption investigation.

[22] StGB §122(4).

[23] Canada (Attorney General) v. O'Neill, 2004 CanLII 41197 (ON S.C.), (2004), 192 C.C.C. (3d) 255.

[24] 1 BvR 538/06; 1 BvR 2045/06, 27 February 2007.

15,000 copies of the newspaper, computers and other equipment were seized.[25] The raid was strongly criticized by the President.

- ***The Netherlands*** - Reporter Peter de Vries was charged in December 2005 under the Criminal Code after he revealed information on his television show from two disks left by an intelligence officer in a leased car two years earlier. In February 2006, the public prosecutor announced that he would not be prosecuted.
- ***Romania*** - In February 2006, six journalists were questioned and two were arrested for receiving classified information on military forces in Iraq and Afghanistan from a former soldier. The journalists did not publish the information and handed over the information to the government. The Supreme Court ordered the release of one journalist after she had been detained for two days.
- ***Switzerland*** -Two *Sonntags Blick* reporters and the editor were prosecuted under the military penal code for publication of Swiss military interception of an Egyptian government fax about press reports on secret prisons run by the US government. On 17 April 2007, they were acquitted by a military tribunal of having inflicted damage to the defence capabilities of the Swiss Army.
  In 2003, the government opened proceedings against the editor of *Sonntags Blick* for publishing photos of an underground military establishment.
- ***UK*** - Neil Garrett of *ITV News* was arrested in October 2005 under the Official Secrets Act after publishing internal police information on the mistaken shooting of Jean Charles de Menezes. In November 2005, the government threatened to charge several newspapers with violating the Official Secrets Act if they published stories based on a leaked transcript of conversations between PM Tony Blair and President George Bush about bombing *Al Jazeera* television.
- In ***Ireland***, *Sunday Tribune* journalist Mick McCaffrey was arrested in February 2007 under the Commission of Investigations Act for publishing information from a leaked report on how the police had mishandled a murder investigation in 1997.
  Two journalists from the *Irish Times* are also under investigation after published leaked information about the investigation of the Prime Minister for receiving payments from a businessman.[26] The Supreme Court rejected an effort by the Tribunal to prohibit the newspaper from publishing related information in March 2007.[27]

Recommendations on criminal sanctions for 'breach of secrecy':

Criminal and Civil Code prohibitions should only apply to officials and others who have a specific legal duty to maintain confidentiality.

[25] Committee to Protect Journalists, Newspaper issue seized; editor briefly detained; newsroom, editor's home searched and hard drives confiscated, 11 September 2006.

[26] Committee for the Protection of Journalists, Journalist arrested in Ireland; two others investigated, March 5, 2007.

[27] Mahon -v- Post Publications [2007] IESC 15 (29 March 2007).

'Whistleblowers' who disclose secret information of public interest to the media should not be subject to legal, administrative or employment-related sanctions.

The test of public interest in the publication should become an integral part of jurisprudence on disclosure of information.

IV. PROTECTION OF SOURCES

Prosecutors recently have been attempting not only to put journalists themselves on the bench of the accused for the crime of 'breaching secrecy'. In the wake of heightened security concerns there have been many attempts to force journalists to reveal their confidential sources, using the citizen's duty to testify.

Protection of confidential sources is crucial for the media's ability to gather information. As noted by European Court of Human Rights:

"*Without such protection, sources may be deterred from assisting the press in informing the public in 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.*"[28]

Protections should extend to the use of searches and wiretaps to obtain information on sources.

Unfortunately, the trend is the worst of all among the covered dimensions of access to information. Only a minority of the OSCE participating States have 'shields' for journalists from demands to reveal sources.

Best practices

- **Belgium** is one of the few countries that have adopted a free standing law on a comprehensive system of protection of sources. Such laws also exist in more than 30 **U.S.** States, but, ominously, not on the federal U.S. level.
- Good 'shield' provisions are also at work in **Armenia, Austria, Croatia, Cyprus, Denmark, Finland, France, fYR Macedonia, Georgia, Germany, Liechtenstein, Lithuania, Malta, Norway, Poland, Portugal, Romania, Sweden,** and **Turkey**.
- They could be given in constitutions, press laws, criminal procedure rules, or, as in **Germany** since the *Cicero* case, in Constitutional Court case law. In the **UK**, the protection is included in the Contempt of Court Act.

In these states journalists cannot be ordered to reveal their confidential sources, or public-interest scrutiny is provided.

Paradoxical trends

[28] Goodwin v. The United Kingdom - 17488/90 [1996] ECHR 16 (27 March 1996).

One surprising result of the survey is that prosecutors are out against the journalists' privilege mostly in the countries which provide some 'shield'.

- 67 per cent of all cases when journalists were requested by prosecutors to give up their 'shield' privilege have been registered in the pre-1989 democracies. Most of these countries have some degree of sources protection.

The other paradox lies in the fact that these attempts were quite regularly overturned by the courts, except in federal cases in the **United States**. All recorded cases of journalists actually punished for not revealing sources have resulted from this legislative deficiency at the U.S. federal level.

- In the **U.S.**, at the federal level, there are guidelines for prosecutors issued by the U.S. Department of Justice which apply to subpoenas of the news media.[29] The guidelines as such amount to a protection of confidentiality of sources in 'public-interest' publications. Nevertheless, the current and the previous Attorney Generals have consistently attempted to break the journalists' privilege. Several bills are now pending in the US Congress to incorporate the provisions into law.

The final paradox is the insignificant amount of both 'breach of secrecy' and of 'protection of sources' cases in the **CIS region**. Here, prosecutors often apply other criminal provisions against journalists, so the small amount of such cases is probably caused by a relative underdevelopment of investigative journalism in the CIS region.

In **Central European states**, the number of cases is also small. It seems that courts or prosecutors there try to prevent leaks by prosecuting journalists for disclosure of secrets, rather than by demanding disclosure of their sources.

Recent cases

Regardless of the protections, there have been numerous cases in OSCE participating States in the past few years, where journalists have been arrested, newsrooms searched, and equipment seized in an effort to identify sources or force journalists to cooperate in investigations:

- In the **U.S.**, journalists have been incarcerated for 'contempt of court' after refusing to reveal their confidential sources. In 2005, Judith Miller of the *New York Times* spent 85 days in jail for refusing to reveal the identity of her source; in 2001, freelance writer Vanessa Leggett spent 168 days in jail for not providing her notes and tapes; in 2006, blogger Josh Wolf spent 226 days in jail for refusing to produce raw footage.
- In **the Netherlands**, two journalists from the newspaper *De Telegraaf* were detained in November 2006 after refusing to disclose the source of intelligence dossiers on a criminal.
- Police in **Italy** searched the offices of *La Repubblica* and the *Piccolo* newspapers and two journalists' homes for files in 2003. Also in 2003, the police raided *Il Giornale* and seized a reported 7,000 files.

[29] 28 C.F.R. § 50.10.

- In **Belgium**, *Stern* reporter Hans-Martin Tillack was detained and his office and home were searched after he wrote an investigative story based on internal documents from the European Union's Anti-Fraud Agency (OLAF). The European Court of Justice rejected a challenge in October 2006 to force the return of the documents. Belgium has since amended its law.
- In **France**, the police searched the offices of *Le Point* and *L'Equipe* and seized computers following the publication of stories about sports doping investigations. The Minister of Justice Pascal Clément promised in June 2006 to strengthen the law protecting journalists. However, in July 2006, police searched the offices of *Midi Libre* following a complaint that it broke professional secrecy.
- In **the Russian Federation**, twenty armed police searched the offices of *Permsky Obozrevatel* in August 2006 and seized computers and other equipment, claiming that the newspaper had obtained classified information.

Recommendations on protection of sources

Each participating State should adopt an explicit law on protection of sources to ensure these rights are recognized and protected.

Journalists should not be required to testify in criminal or civil trials or provide information as a witness unless the need is absolutely essential, the information is not available from any other means and there is no likelihood that doing so would endanger future health or well being of the journalist or restrict their or others ability to obtain information from similar sources in the future.