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**Libel and insult laws :
what more can be done to decriminalise libel and repeal insult laws ?**

24 - 25 November 2003 - Paris

Recommendations

The participants at the conference on Libel and Insult Laws, organised by the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media and Reporters Without Borders (RSF) and held in Paris (France) on 24-25 November 2003, discussed existing libel legislation in OSCE participating States. They took into account international standards relating to freedom of expression, including article 19 of the United Nations Universal Declaration of Human Rights and shared standards and commitments of OSCE participating States. They focused on decriminalising libel and repealing insult laws that provide undue protection for public officials.

They agreed that over-use or misuse of libel and insult laws to protect the authorities or silence the media were clear violations of the right to free expression and to information and should be condemned.

The participants approved the following recommendations to governments/officials, legislatures, judicial bodies and funding agencies in OSCE participating States:

To governments/officials:

- Governments should support decriminalisation of libel and the repeal of so-called insult laws, particularly to the extent that they provide special protection for the “honour and dignity” of public officials.
- The party claiming to have been defamed should bear the onus of bringing a defamation suit at all stages of the proceedings; public prosecutors should play no role in this process.
- Public officials, including senior government officers, should be open to more public scrutiny and criticism. They should exercise restraint in filing suits for defamation against the media and should never do so with a view to punishing the media.

To legislatures:

- Criminal libel and defamation laws should be repealed and replaced, where necessary, with appropriate civil laws.
- In cases where they are retained, the presumption of innocence should be applied.
- So-called insult laws, particularly those that provide undue protection for public officials, should be repealed.
- Civil defamation laws should be amended, as necessary, to conform to the following principles:
 - only physical or legal persons should be allowed to institute defamation suits, not public or governmental bodies;
 - State symbols and other objects (such as flags, religious symbols) should not be protected by defamation laws;
 - proof of truth should be a complete defence in a defamation case;
 - in cases involving statements on matters of public interest, defamation defendants should benefit from a defence of reasonable publication where, in all the circumstances, it was reasonable to disseminate the statement, even if it later proves to be inaccurate; and
 - reasonable ceilings should be introduced for defamation penalties, based on the current economic situation in each country.

To judicial bodies:

- The scope of what is considered to be defamatory should be interpreted narrowly and, to the extent possible, restricted to statements of fact and not opinions.
- Where libel is still a criminal offence, the presumption of innocence should be applied so that the party bringing the case has to prove all of the elements of the offence, including that the statements are false, that they were made with knowledge of falsity or reckless disregard for the truth and that they were made with an intention to cause harm.
- Where libel is still a criminal offence, courts should refrain from imposing prison sentences, including suspended ones.
- Non-pecuniary remedies, including self-regulatory remedies, should, to the extent that they redress the harm done, be preferred over financial penalties.
- Any financial penalties should be proportionate, taking into account any self-regulatory or non-pecuniary remedies, and refer to demonstrable damages only, not punitive damages.
- Defamation laws should not be used to bankrupt the media.

To funding agencies:

- Funding agencies, in providing aid to OSCE participating States, must take into account the attitude of regimes that crack down on freedom of expression, notably through the misuse of libel.