



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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-CHECK AGAINST DELIVERY-

14 July 2005

Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

This is my second regular report in 2005.

Over the past months I have raised several issues in our region, among them:

- The criminal court case in **Serbia and Montenegro** against journalist Dominic Hipkins, and his aides Jovo Martinovic, Sinisa Nadazdin, Dragan Radevic and Nenad Zecevic on charges of violation of the reputation of the Republic of Montenegro.
- In **Croatia**, about the decision of the Split County Court to uphold a two-month suspended prison sentence given to journalist Ljubica Letinic for libel. I also raised the sentencing of Mario Pavicic, editor-in-chief of *Šilo* magazine, to six months imprisonment to be changed to one-year probation for defamation in Pozega.
- In **the Russian Federation**, I commended the Decision by the Plenum of the Supreme Court “On court practices related to cases of protecting honour and dignity of citizens, as well as business reputation of citizens and judicial bodies.” The court guidelines order the courts of Russia to use reasonable limits in fines for defamation. However, I also raised two cases of criminal libel with the Justice Minister that both led to imprisonment of journalists for their work. Separately, I raised the case of three Polish reporters arrested in Ingushetia.
- In **Albania**, I congratulated the authorities on the approval of the Draft Law on amendments to the Criminal Code of Albania and the Draft Law on amendments to the Civil Code of Albania by the Committee on Education and Media of the Assembly of the Republic of Albania. These amendments almost completely decriminalize defamation.
- I raised the liquidation of the newspaper *Respublika. Delovoe obozrenie*, and the partial seizure of print runs of *Soz* and *Set.kz* (former *Respublika*) in **Kazakhstan**.
- In **Tajikistan**, I raised the cases of journalist Jumaboy Tolibov detained for hooliganism and obstructing an officer; and of editor Vahho Odinaev for libel.
- In the **Ukraine**, I asked for the suspension of mandatory registration of websites.
- In the **US**, I intervened concerning the protection of sources’ cases of journalists Judith Miller and Matt Cooper, asking the prosecution to drop their demand for sources of these journalists. Last week I also raised the actual imprisonment of Ms. Miller who refused to provide information on her confidential sources.

- In **Belarus**, I raised the detention of two Russian journalists in Minsk and the assault on a Belarusian journalist by agents of the Belarusian Special Service; and concerning the new Decree issued by President Alexander Lukashenko, which forbids non-governmental organisations and enterprises, therefore also the media, to include the words “national” or “Belarusian” in their official titles and names.
- Last month, I held the **Third Internet Conference** in Amsterdam, thanks to the generous support of The Netherlands. The conference brought together leading international experts on human rights and the Internet from Western and Eastern Europe, the Caucasus, Central Asia and North America.

I have also issued five reports: on the media situation in Azerbaijan, on the Gasparri Law in Italy, on the coverage of events and the governmental handling of the media in the Andijan crisis in Uzbekistan, on the new penal code in Turkey, and my final report on Kosovo.

Visit to Azerbaijan

Although my assessment visit to **Azerbaijan** had been agreed and prepared long before it took place on 11-15 April, the recent murder of the prominent editor and journalist Elmar Huseynov unavoidably became one of the focal points of my stay. This case has gained world-wide attention and has placed media issues in the country under international scrutiny.

The crime was strongly condemned by the President, and it has been declared to have been solved with Georgian citizens identified as perpetrators. Nevertheless, in actual fact very limited information was released to the public about the investigation, the suspects, or their alleged motives.

After the Huseynov murder in March this year, a practical moratorium on criminal or civil libel suits by officials against journalists or media outlets was put in place. The initiative for the moratorium came personally from the President of the Republic.

Violence against journalists also occurred in the country, especially after the 15-16 October 2003 mass demonstrations in the wake of the Presidential elections. No law enforcement officers were charged with perpetrating violence against journalists. In a positive development, when in May 2005 a journalist was again been assaulted by police during a demonstration, the officer responsible was disciplined.

Quite a number of adequate legal provisions have been adopted since the country's independence, like the Law on Mass Media in 1999, the Law on Freedom of Information in 1998, the Law on TV and Radio Broadcasting in 2002, and the Law on Public Television in 2003/2004.

The multitude of views expressed, even high politicisation, in the printed press indicates that pluralism has taken hold. However, diversity does not extend much beyond the print media which has a very low circulation, and is financially and professionally weak.

In this situation it is hard to overestimate the importance of television, the main source of information for the citizens. Unfortunately, the new broadcasting laws have not remedied the situation in the electronic media. No new licenses were issued to private televisions. The transformation of state broadcasting has only concerned *Channel 2*, while *Channel 1* will continue

to be state-run. The management chosen to run these new television stations had widely been criticised as not independent.

My report contains a wide range of recommendations to the authorities on how to rectify the situation.

Some of the most important ones are the following:

- So long as the real motives of the perpetrators of the murder of Elmar Huseynov are not identified and proven in court, the public can not consider the case as being closed, and confidence in the investigation stands in jeopardy.
- All cases of violence against journalists should be thoroughly investigated.
- The adequate legal and institutional framework for licensing for new, independent private broadcasters should be established as soon as possible.
- In view of the upcoming parliamentary elections, at least the open frequencies could be issued to new broadcasters tendering for a license.
- *Channel 1* should also be transformed into public TV.
- The government should start the privatization of its newspapers, along the lines of broadcast licensing.

Assistance project launched

In consultation with the Azerbaijani government officials, my Office is ready to launch a pilot assistance training project on government-media relations, originally proposed by Foreign Minister Mammadyarov. The first workshop, with participation of governmental press and communication officers as well as journalists, will take place on 18-20 July in Baku.

In the coming months, based on interest from quite a number of participating States, we hope to organise similar workshops for other governments as well.

Visit to Italy: The Gasparri Media Law¹

On 30 March – 1 April, I visited Italy. The purpose of the trip was to assess the current situation in the television broadcasting sector, one year after the adoption in 2004 of the **Gasparri Law**, Italy's first comprehensive regulation of all broadcast media, and of the **Frattini Law**, on the conflicts between public duty and private interests of public officials. The Gasparri Law was enacted after repeated calls by Italy's Constitutional Court, as well as by European political bodies, for an overhaul of the highly concentrated television system in Italy.

¹ The full text of the report *Visit to Italy: The Gasparri Law. Observations and Recommendations* can be found at http://www.osce.org/documents/html/pdftohtml/15459_en.pdf.html

Freedom of expression and press freedoms are in a healthy state in Italy. However, there is one media sector that is regularly referred to as the “Italian anomaly”, the television broadcasting market.

The enduring *RAI-Mediaset* duopoly, and especially the quasi-monopoly of *Mediaset* within the commercial television market, have deprived the Italian audiences of an effective variety of sources of information, and have thereby weakened the guarantees of pluralism.

Italy has an ongoing record of control over public-service television by political parties and governments. As the Prime Minister is also the country’s main media entrepreneur, co-owning Mediaset, the ‘traditional’ fears of governmental control of RAI are aggravated by worries of a general governmental control of the nation’s most important information source, television.

Some of the **Gasparri Law**’s concepts are novel or even the first of their kind, not only in Italy but in the whole of Europe. They are leading the way towards a multiplication of the broadcasting channels, and creating opportunities for diversification and synergies between the channels.

In a worldwide breakthrough, based on the anticipated digitalisation, private broadcasting ceases to be a concession by the State, and it is becoming, just like newspaper publishing, an ordinary entrepreneurial start-up. That is a major step for the broadcast media on their way to true independence.

However, despite its pioneering features and its modernising effect on the media market, the Gasparri Law cannot correct the television anomaly, nor bring about a de-monopolised television environment in Italy.

As a result of its lack of special rules to achieve pluralism in today’s television, the Law is likely to reproduce in the digital era, rather than to eliminate, the duopoly, the high concentration in commercial television, and the domination of RAI by politics.

My report contains concrete **recommendations concerning the Gasparri Law**. Italy’s new comprehensive digital-era media law needs a careful legislative review in order to address the present dominations.

Concerning the **Frattini Law**, this law did settle, from a legal point of view, the conflict between Prime Minister Berlusconi’s public office and his media holdings. However, from a quality of democracy point of view, it continues to raise compatibility concerns, as the chosen legal formula does not fully distance the Prime Minister from his media holdings. A more reassuring solution for the public would be a stricter regulation, such as a “blind trust” with a custodian.

The New Penal Code in Turkey²

In Turkey, I did a review of the draft Penal Code, many provisions of which stipulate that when an offence is committed through the print press or any mass media, then the penalty shall be automatically increased.

² The full text of the *Review of the Draft Turkish Penal Code: Freedom of Media Concerns* can be found at http://www.osce.org/documents/rfm/2005/03/14223_en.pdf

This kind of automatic punishment for media involvement means that when an offence has been committed via the press or the media, this will be considered as an aggravating circumstance. This approach amounts to a general measure against free speech. To automatically assume higher sanctions for the media is illegitimately hostile and threatens freedom of expression.

In cases of media involvement, regardless of whether the criminal provisions are actually directed mainly at the press or are only applicable to it, European democratic legal standards have enshrined the public-interest criteria.

No known forms of protection of freedom of public interest debates in society are present. Neither general provisions securing the right of journalists to report and discuss on public interest issues, nor specific circumstances under which criminal liability of journalists shall be reduced, are given in the Penal Code.

The revised Turkish Penal Code was finally approved by parliament on Wednesday, 29 June. I followed up on our Report and congratulated the Turkish authorities for introducing important changes to the Code. However, despite some improvements, the amendments do not sufficiently eliminate threats to freedom of expression and to a free press. Out of the 23 changes that I suggested, seven provisions have been brought into line with media freedom principles.

A welcome improvement is the deletion of most of the provisions which assumed stronger sanctions when the media was involved. Turkish lawmakers acknowledged that information about crimes could be in the interest of free discussion of public affairs.

There are three major areas where the Penal Code still needs to be more in line with media freedoms:

- the right of journalists to report and discuss on public-interest issues is not secured;
- restrictions on access and disclosure of information have not been lifted;
- defamation and insult provisions remain a criminal rather than a civil offence, thereby leaving the free discussion of public affairs at risk.

The Handling of the Media During the Andijan Crisis in Uzbekistan³

I also issued a report on the coverage of the events and governmental handling of the press during the Andijan Crisis in Uzbekistan in May 2005. This is my third report on the press coverage of events related to crisis situations after the ones on the Kosovo events in March 2004; and the Beslan tragedy in October 2004.

There was no accord between the official and the press accounts on the sequence and the nature of the Andijan events. The Government neither confirmed nor refuted several reported atrocities.

³ The full text of the report *Coverage of the Events and Governmental Handling of the Press during the Andijan Crisis in Uzbekistan. Observations and Recommendations* can be found at http://www.osce.org/documents/rfm/2005/03/15195_en.pdf

Similarly, the number of casualties is still a disputed issue. According to the latest government sources, 173 people were killed, 32 of them police officers. According to human rights groups, however, close to 750 died during these violent events.

The gap between the government and press reports on the events, and the differing casualty numbers, are telling signs of an information blockade; of a lack of mutually-agreed verification procedures; and of a lack of cooperation between the authorities and the press.

The Report provides information on many cases of news blockage. It lists cases of harassment of journalists, and of Internet and TV media outlets during and after the events in Andijan.

The Report also contains detailed recommendations. I stressed that working with the press in times of crisis is a learning process, but it is also an important contribution to peaceful solution of crises, as it is part of society's right to information. I offered to conduct a training course on government-press relations in times of crisis.

The Media Situation in Kosovo

As you know, last year I issued a report on the role of the media during and after the tragic events of March 2004. As a result, I appointed a temporary Special Representative for Kosovo for a six month period. The main task of the Special Representative was to assist in the implementation of the recommendations of the report. This week I sent out to you an item-to-item overview of our recommendations and how they were implemented.

The main task of the Special Representative was to contribute to faster progress in three crucial aspects of the media landscape in Kosovo: the amendment and adoption of the Law on the Independent Media Commission; the drafting and adoption of the Law establishing *RTK* as an Independent Broadcaster; and also promote the self regulatory aspects of the print media i.e. adoption of a code of conduct and creation of a press council.

On all three aspects significant progress has been achieved: both laws have been drafted (respectively re-drafted) and are in the final stages of being brought into force. The Code of Conduct has been adopted and the formation of a Press Council is in progress.

The other concern was the performance of the only public broadcaster, *RTK*. Here also, in addition to drafting the relevant Law, significant improvements were achieved. For example, *RTK* gave good public service coverage during a potentially critical situation, when the province's prime minister was indicted by the International Criminal Tribunal for the former Yugoslavia in The Hague.

While the progress made in Kosovo over the mentioned period is solid and promising it should be noted that these achievements are not the result of pressure by the international community on the Kosovar media. At every step, the respective media associations and the media themselves were involved and consulted.

The Temporary Media Commissioner, the OSCE Mission in Kosovo, and my Office only initiated, helped and advised the process. The situation was the same with the Code of Ethics. It was the Kosovar journalists who drafted it (an ethnically mixed group), while the international community only facilitated the process.

I would like to thank both OMiK and the United Kingdom for contributing to this project.

Future Plans

Apart from the assistance program that starts this month in Azerbaijan, I would like to inform the participating States that this autumn I will organize the Seventh Central Asian Media Conference and the Second South Caucasus Conference. I look forward to receiving voluntary contributions for both these important events which this year will concentrate on the state of public broadcasting, and on freedom of the Internet in these regions. The reason for this focus is that the Internet is rapidly becoming a real alternative source of pluralistic information compared to state-controlled television, and in some countries even replacing the print press in that function.

Thank you.