



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Miklós Haraszti**

-CHECK AGAINST DELIVERY-

10 March 2005

Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

This is my first quarterly report in 2005.

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

The suspension of the local chapter of Internyus in **Uzbekistan**;
The murder of Elmar Huseynov in **Azerbaijan**; I expect the authorities to conduct a swift investigation into this killing;
The sentencing of Jerzy Urban in **Poland**;
The sentencing of Austrian author Gerhard Haderer in **Greece**;
The draft Print Media Law in **Albania**;
Several articles in the Penal Code in **Turkey**.

With great interest I am following developments in the Gongadze case in **Ukraine**. This Office has been actively involved in monitoring the investigation into the murder of journalist Georgiy Gongadze. I am very much heartened by the latest news that there seems to be progress made. I look forward to receiving additional information on this case.

I held a round-table on libel in Belgrade, and had promising talks on the side with cabinet ministers on possible “de-prisonisation” of the country’s defamation laws.

My Office has also conducted two visits in order to get acquainted with the state of the media. I went to Belarus, and one of my advisers went to the Transdnestrrian Region in Moldova.

Visit to Belarus

In February, at the invitation of the Belarus Foreign Ministry, I for the first time visited Minsk where I had meetings with government officials, parliamentarians, journalists and with the NGO community.

Last week, we circulated the report to the esteemed Delegations.

First of all, I would like to stress the cooperative approach taken by the Belarus Government and their willingness to open a dialog with my Office at a high level. My report and recommendations were prepared in the same spirit. I hope this dialog will lead to us jointly working towards improving the situation.

Overall, the media situation has deteriorated in Belarus over the past couple of years. The number of independent media outlets has been declining; the number of administrative warnings and suspensions has been growing. The state media, speaking with one voice, overwhelmingly dominate on the market. In the broadcast sector, all national TV channels are state-owned or controlled. In the print sector, the few independent media outlets are struggling to survive. Libel and insult laws and even prison sentences are effectively contributing to a lack of free debate in the media.

The independent editors, in their meeting with the Representative, identified “filters” that are pushing their newspapers out of the market:

- Registration and re-registration of periodicals.
- A media outlet has to have a business address to be registered.
- Difficulties with holding on to rented premises.
- Virtual monopoly on subscription/retail distribution of print media.
- Virtual printing monopoly.
- Tax inspections.
- Pressure on advertisers to withdraw their contracts.
- Limited access to information.

Here are a few examples of how the “filters” work:

- Mandatory registrations and re-registrations bestow a right of discretion to the Ministry of Information over the existence of all newspapers.
- Six of the few remaining independent titles are printed in Russia since they could not find a publishing house in Belarus that was willing to print them.
- *Belorusskaya Delovaya Gazeta* was refused distribution after a three months suspension by the Ministry of Information, claiming the paper did not fulfil the circulation requirements stated in the contract, this shortcoming being caused by the suspension.
- The leading independent news agency *Belapan*, and the office of *Radio Free Europe-Radio Liberty* were told to vacate their premises.

As a result of these “filtering” difficulties, according to the *Belarus Association of Journalists*, the number of independent media outlets in 2004 fell from 50 to 18. There is only one independent daily in the country, *Narodnaya Volya*. The rest are weeklies or even more irregular publications. The combined weekly circulation of all independent media taken together is only a fraction of the daily circulation of *Sovetskaya Belorussiya-Belarus Segodnya* alone.

The official numbers corroborate these findings. According to the Ministry of Information, the number of new newspapers registered showed a sharp decrease in 2004:

2000	132
2001	199
2002	200
2003	230
2004	51

The number of newspapers warned by the Ministry showed a sharp increase in 2004:

2000	60
2001	27

2002	19
2003	52
2004	81 (these 81 titles received 160 warnings)

The number of newspaper suspensions showed a sharp increase in 2004:

2000	0
2001	0
2002	0
2003	9
2004	25

Pluralism fares worse in the broadcast field. No broadcasting outlets are functioning in Belarus which would match the triple criteria of independence, that is, organizational, financial, and editorial autonomy. Although many privately owned local radio stations exist, they are all in the entertainment field, with no coverage of the political disputes in the country. All nationwide Belarusian electronic media are controlled by the Presidential Administration and/or the Ministry of Information. The exceptions are the Russian Federation TV Channels *NTV* and *RTR*, but they generally do not provide significant coverage of Belarusian political developments.

A Senior Foreign Ministry official acknowledged that there were problems in the media field. He presumed, however, that these problems were not different from those that characterized most post-Soviet and post-Socialist countries.

In this situation, I offered my good offices to assist the Government, identifying desirable improvements both of an **immediate** and of a **longer-term** character. Apart from the necessary liberalizing legal reform, the Government is in the position to cease from one day to another several restrictive practices that are authorized but not prescribed under current regulations.

Here are the main recommendations I made in the Report:

- The current Media Law allows the Government to be highly intrusive in the media field. The Ministry of Information has broad powers to sanction and it has been using these powers exceedingly in the past two years. The Ministry of Information should immediately cease the practice of issuing warnings and suspending newspapers.
- The Media Law should be liberalized. In this situation, my Office has offered concrete forms of assistance to the Government in improving media-related legislation.
- Belarus has harsh libel and insult legislation, which it regularly applies. It is the only country in the OSCE region where two people are serving prison sentences for insulting the dignity of the Head of State. The authorities should be encouraged to liberalize their libel legislation and repeal the insult laws.
- The state media are heavily subsidized by the Government. Instead, a project of privatization of the state-owned newspapers should be developed and executed. They do not provide space to voices that are not in conformity with the government. The state media should be encouraged to open itself to alternative voices. In addition, training courses in pluralistic coverage could be organized for journalists of both state and independent press.

- The independent media are under constant pressure through judicial, extra-judicial and economic means. A multitude of “filters” are used to push the independent media out of the market. The authorities should cease administrative and economic discrimination. OSCE should further support the independent media.
- The most important source of information for the people of Belarus remains television. There is no independent nationwide TV Channel in Belarus; the two national TV channels, the two other TV Channels with large coverage, and the new satellite channel, *Belarus TV*, are either owned or controlled by the state. The Government should be urged to privatize one national channel and allow the transformation of the other into independent public broadcaster.
- The Government should be encouraged to refrain from Internet filtering and blocking activities. The dialogue on drafting Internet legislation in line with international standards initiated by the relevant Parliamentary Committee should be continued.

Visit to the Transdnestrian Region in Moldova

My Senior Adviser, Alexander Ivanko, visited the Transdnestrian Region of Moldova on 31 January-2 February. I tried personally to visit that area during my assessment trip to Moldova last year but was discouraged to do so by the regional authorities. We have also circulated this report last week.

The situation of the independent media is very difficult, with different methods of pressure applied on those few journalists who do not follow the official line. However, the regional leadership seemed to be open to a dialog with the OSCE which is very much needed for an easing of the constrained environment in which the independent media work. This dialog should continue.

The general media climate in the region can be described as restrictive, although generally short of open harassment, of the few media outlets that proclaim themselves as independent (except for one example). Only three newspapers are non-governmental, not only organisationally and financially, but also providing a political coverage that is independent of the government line: *Chelovek i Ego Prava* from Tiraspol, *Novaya Gazeta* from Benderi, and *Dobrii Den* in Ribnitsa. All other outlets are either “state-controlled”, or published by local non-government organizations close to the “state”.

Open pressure, including violent tactics, were recently used against the newspaper *Chelovek i Ego Prava* (*The Individual and His Rights*) and its two founders. Other independent newspapers reported civil libel suits and threatening phone calls from local authorities. In addition, methods of administrative discrimination are often utilized: increased fees for printing services, for renting of facilities, etc. Several editors mentioned that their distributors had been threatened.

There are two region-wide TV channels: one owned by the authorities and one private. However, the private channel, *TSTV*, although it produces better programmes and has the best equipped studio in Moldova, in its editorial policy it is not very much different from the “state” channel.

Here are some of the recommendations I made in my report:

- As freedom of the press is incompatible with state ownership in the print press, the international organizations, with the support of Chisinau, should encourage the authorities to

privatize at least the three “state”-owned newspapers. The practice of registering newspapers should stop. The control exercised by the “Ministry of Information and Telecommunications” should be replaced by a Moldovan country-wide broadcasting licensing body.

- With the situation currently in limbo, at least for the time being “state”-owned media should offer their pages and broadcasting time to different political groups that exist in Transdnistria.
- A local company, *Sheriff*, which owns *TSV*, has monopolised not only the private broadcasting sector, but also the overall local telecommunications market. A plan should be developed to deal with this problem after a political settlement is reached in the region.
- The local trade union weekly, *Profsoyuznie Vesti*, although nominally independent, is not covering opposition activities. However, it has published articles on corruption, and in general does not follow the official line. For the sake of pluralism, the possibility of providing assistance to this newspaper should be explored.
- International organizations should provide moral, material, financial, and technical support to *Dobrii Den’* and *Novaya Gazeta*. They could, for example, be supported with donations of equipment. *Dobrii Den’*, which is short of journalists, could be provided with a professional journalist-trainer, preferably from Russia or Ukraine, to raise its editorial level and train new staff.
- The only human rights newspaper in the region is under constant pressure; a campaign of both physical and psychological intimidation has been organized against the newspaper’s two co-founders, Alexander Radchenko and Nikolai Buchatskii. The authorities should cease this campaign immediately. International donors should look for a possibility to fund this newspaper.

The Matrix

Trends go against criminal libel laws

I am happy to report to you that my Office, as promised, has uploaded on our website the first version of a unique international database never before compiled on libel and defamation practices. It is a useful tool to assist press freedom reform across the OSCE area. This comprehensive study – the Matrix – deals with criminal and civil defamation provisions and court practices.

The analysis of the material has only started. The study already revealed a few remarkable and promising trends that I would like to share with you.

- 70 percent of OSCE participating States have realised that the application of their obsolete defamation laws is against free speech. They have been, to different extents, involved in liberalizing their defamation legislation within the past ten years. However, understandably, initiating an abolition of these laws is a lengthy process.
- This liberalization is continuing, with current plans to amend criminal provisions in at least 14 OSCE participating States.

- Only nine out of the 55 countries in the OSCE region admitted having applied incarceration for defamation.
- Only three of them had more than ten people imprisoned for defamation between 1 January 2002 and 30 June 2004.
- The Matrix shows that actual court practices in most of the countries in the OSCE area follow the case law of the European Court of Human Rights. The Court has always ruled against imprisonment as a disproportionate punishment for libel and insult.
- Five countries have decriminalized libel over the past five years.
- Three states have revoked imprisonment as an option for punishment for libel and insult. Bulgaria and the Republic of Montenegro (Serbia and Montenegro) have already enforced these changes. The new Romanian Criminal Code which ‘de-prisonized’ defamation will enter into force on 29 June 2005.

All these positive developments, however, happened while most of the countries in our region still have criminal libel on the books.

The next steps

- The actual goal in all OSCE participating States where incarceration of citizens for defamation is still possible, should be to repeal these provisions. These offences should be dealt with under relevant civil code provisions.
- More immediately, at least “de-incarceration” should be achieved. Incarceration is an unacceptably disproportionate sanction for these offences, strongly opposed by the European Court of Human Rights. Incarceration creates a chilling effect on the press, and in quite a few countries it is widely used precisely for that effect.
- Introducing a moratorium on application of criminal defamation provisions could also be a solution in countries where speedy reform is not possible for different reasons. Such a moratorium proved to be successful as the first step to abolish the death penalty.

I would like to thank the Governments of Germany, the United Kingdom and the United States of America for their generous support of this project.

I would also like to thank the Governments of the OSCE participating States for having sent us official information for the libel Matrix, as well as the OSCE field operations, *Reporters sans frontiers* and local media NGOs who assisted my Office in the compilation of this database.

Thank you.