



OSCE Human Dimension Implementation Meeting 2009, Warsaw

Intervention by the Netherlands Helsinki Committee

**Tuesday, 6 October 2009: Working sessions 12-13 (specifically selected topic) -
Freedom of expression, free media and information**

Problems related to non-abidance by OSCE principles on freedom of expression, free media and access to information persist and take various forms, including censorship and persecution of critical voices; undue controls over public and independent media; denial of access to information of public importance; measures taken to suppress the emergence of new media outlets; as well as inadequate laws on defamation and “extremism”, and their application. In Western Europe, a lively debate is ongoing on the delicate balance between freedom of expression and other freedoms, such as freedom of religion.

Turkmenistan¹ has no independent mass media; all are state-owned, their editors are appointed by the president, and no critical information is published. Foreign press is unavailable for ordinary people, including the few Uzbek newspapers that were legally distributed still a few years ago. Private satellite dishes have recently been removed under the pretext that they are not esthetic on residential buildings, and replaced by collective antennas with a limited choice of channels. The Internet was officially introduced as a sign of democratization, but sites that are critical of the government are blocked, and the low speed of data transfer, combined with high costs, make the Internet available only to a small fraction of the population. The systematic persecution of journalists by special services continues unabated, making all attempts to retrieve information risky endeavors. Journalists suspected of connections to foreign reporters are threatened, dismissed from work, or can even be confined to a psychiatric hospital, and their relatives are excluded from higher education and/or punished otherwise.

Criminal libel provisions have a chilling effect on the media freedom in **Tajikistan**² and remain in force despite clear OSCE and other international calls³ that urge to deal with defamation within the Civil Code. Articles 137 and 330 specifically protect the president and other public authorities from “insult” and provide them with a higher level of protection than other citizens, which contradicts principles of international law. Fortunately, thus far no journalists have been imprisoned on the basis of these articles; in such cases friendly settlements have been reached between the parties. Since the Tajik Civil Code also envisages responsibility for defamation, the Criminal Code provisions are clearly superfluous and should be abolished. When considering Tajikistan’s periodic report under the ICCPR, the UN Human Rights Committee in 2005 noted that Tajikistan’s broadly-worded provisions such as “injuring the honour and dignity of the President” and “attempt against the constitutional order” were not in line with the ICCPR.⁴ However, instead of improving legislation, Tajik authorities in 2007 further amended Criminal Code articles on libel, insult and false statements so as to expand their application also to Internet publications.⁵

In **Russia**, the fight against “extremism” continues to be used as a tool for intimidating and punishing individuals and groups who represent views different from those officially sanctioned, thus stifling open

¹ Information received from Turkmen Initiative for Human Rights (TIHR), 12 September 2009. See also TIHR, Report on the mass media, the right to freedom of speech and free access to information in Turkmenistan, September 2008, at <http://www.chrono-tm.org/en/?heading=29>

² Information received from the Bureau for Human Rights and Rule of Law in Tajikistan, 14 September 2009.

³ See, for example, OSCE, Ending the Chilling Effect - Working to Repeal Criminal Libel and Insult Laws, 2004, at <http://www.osce.org/item/13541.html>

⁴ Concluding observations of the Human Rights Committee: Tajikistan. 18/07/2005. CCPR/CO/84/TJK. 18 July 2005, para. 22, at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/55e8730f3e8f767bc125704b0050c572?Opendocument>

⁵ One of the latest defamation case concerned Hosabekov Ozodbek of the newspaper Asia Plus, who was sentenced to 200 hours of compulsory community service on 23 July 2008 for publishing a letter criticizing the work of the Administration of Capital Construction under the hukumat of Gorno-Badakhshanskaya autonomous region. The letter was addressed to Deputy Prime Minister A. Gulyamov and asked “Where has the money gone?” (Asia Plus, No. 2 (416), 10 January 2008). For details on the case, see NANSMIT, at <http://nansmit.tj/monitoring/?id=69>.

debate and pluralism in the country. The core of the problem is the country's broadly and vaguely worded anti-extremism legislation, which lends itself to arbitrary and discriminatory implementation infringing freedom of expression and other fundamental rights.⁶ Numerous political opponents, civil society activists and others criticizing the current state of affairs in Russia have been accused of "extremism" and face investigation and criminal prosecution on these grounds.⁷ In a court process currently under way in the Russian Krasnodar region, a human rights group is under threat of being closed down for using the purportedly extremist slogan "freedom isn't granted, it's taken" during a picket to protest the policies of regional authorities.⁸ In another case, the organizers of a Moscow art exhibition aimed at promoting discussion about the problem of censorship in contemporary art in Russia have been charged with inciting ethnic and religious hatred and could face up to five years in prison.⁹ In yet a third case, authorities in south-east Russia have called for an investigation of an online forum discussion about increased customs duties on imported cars, alleging that some postings constituted incitement to hatred against "the owners of Russian cars".¹⁰

In **Bosnia and Herzegovina**,¹¹ the decriminalization of defamation and the adoption of a law on free access to information created a favourable legal framework for free expression. This freedom, however, is jeopardized. Firstly, the public broadcasting system is still not completely reformed and it remains under political influence. This includes heavy political influence on the Regulatory Agency for Communications. In addition, the few media outlets and journalists who engage in critical reporting are increasingly subjected to political pressure and physical violence. Moreover, due to the poor application of the law on free access to information, some information of public importance remain undisclosed even to members of parliament whose decision-making can thereby be impaired and manipulated. Another issue that falls within freedom of expression in its broadest sense, is the failure by a number of public authorities in Bosnia and Herzegovina to respect the national or sexual self-identification by individuals. This applies especially to individuals identifying themselves as "Bosnians" and not as members of any of the officially recognized "constitutional ethnicities" (Bosniaks, Serbs or Croats).

In **Armenia**,¹² the inadequate executive control over broadcast media and the absence of independent outlets are among the burning issues regarding freedom of expression. These problems have been addressed by virtually all Council of Europe monitoring reports and PACE resolutions on Armenia, as well as in OSCE/ODIHR communications. Despite having acknowledged the need to honour international standards and commitments in this respect, the government on 10 September 2008 rushed through legal amendments to declare a moratorium on all tenders for broadcasting frequencies until July 2010, thereby acting in direct contradiction to PACE Resolution 1620 that stressed the necessity for diversity of opinions in the Armenian electronic media. Fifty-four tenders scheduled for 2009 were postponed, blocking for another year the desired emergence of new media and variety in reporting that international institutions and the public have called for. It was claimed that the moratorium was necessary due to the digitalisation of the broadcast media – a pretext that both PACE¹³ and the OSCE Representative on Freedom of the Media¹⁴ have cautioned against.

⁶ For a detailed analysis of Russian anti-extremism legislation, see SOVA Center for Information and Analysis, *Anti-Extremist Legislation and Its Enforcement*, September 2007. The report is available in English at <http://xeno.sova-center.ru/6BA2468/6BB4208/9D8E370> and in Russian at <http://xeno.sova-center.ru/29481C8/9CCB151>

⁷ Organizations and media outlets may be warned and closed down for "extremist" activities, and publications banned for "extremist" content, under the Russian Law on Combating Extremist Activity. Individuals may be prosecuted under the Russian Criminal Code for making "public calls" to "extremism" or for crimes considered to be of an "extremist" character, such as "inciting hatred" or "humiliating the dignity" of others on the basis of religion, nationality or other grounds (article 282).

⁸ *Novaya Gazeta*, "Nachalsya sood o priznanii Novorossiyskogo komityeta po pravam chelovyeka ekstryemistskoy organizatsiyey", 17 September 2009, at <http://www.novayagazeta.ru/news/627041.html>

⁹ For more information about this case, see "Written statement by SOVA Center for Information and Analysis and International Partnership for Human Rights to the OSCE Supplementary Human Dimension Meeting on Freedom of Religion or Belief, Vienna, 9-10 July, 2009," at <http://www.iphronline.org/news.html?15>

¹⁰ SOVA Center for Information and Analysis, "O sotsial'noy grooppye «vladyel'tsi otyechyestvyennogo avtotransporta", 5 August 2009, at <http://xeno.sova-center.ru/89CCE27/89CD1C9/D61163F>

¹¹ Information from the Helsinki Committee for Human Rights in Bosnia and Herzegovina, 12 September 2009.

¹² Information from the Helsinki Committee in Armenia, 15 September 2009.

¹³ PACE Resolution 1643, para. 10.1., reads: "...the technical requirements for the introduction of digital broadcasting should not be used by the authorities to unduly delay the holding of an open, fair and transparent tender for broadcasting licenses, as demanded by the Assembly". At <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1643.htm>

¹⁴ Just prior to enacting the amendments, the OSCE Representative on Freedom of the Media asked the government of Armenia to review the adopted decision stressing that otherwise Armenia will not be able to comply with the June 2008

In **Serbia**,¹⁵ the Law on Public Information was amended on 31 August 2009 and it came into force on 8 September. While the law contains some positive attempts toward better management of the media landscape, its summary adoption process excluded opportunity for public debate. Also, many of its provisions demonstrate that the main purpose of the law is to keep in place efficient mechanisms to control the media. For example, media owners are not only obliged to produce high sums of money to set up a media outlet but also to submit to law enforcement agencies monthly financial statements. Those breaching the law can be fined before a court decision on their guilt, which undermines the principle of presumption of innocence. Moreover, the law provides for what appears to be a mandatory suspension within 12 hours of a media outlet, and high fines, to those who try to register an outlet under the same or similar name that has been previously deleted from the media register. A media outlet can be founded only by a domestic legal entity (not by physical persons). Most importantly, unlike the previous version of the law, the amended law no longer penalizes hate speech, which is perhaps the most serious problem in the Serbian media scene.

Individuals who speak out for the defence of human rights continue to be gagged in various parts of the OSCE region. As we speak, our **Kazakh** colleague Yevgenyi Zhovtis, a lawyer and director of the Kazakh Bureau for Human Rights and the Rule of Law, is being held imprisoned on charges of manslaughter and violations of traffic regulations following an August automobile accident that tragically killed a man. His trial fell seriously short of international standards for due process through grave violations of the principle of equality of arms. Regrettably, his trial appeared to be used as a weapon to silence one of the most prominent human rights defenders in Central Asia just months before Kazakhstan will take over OSCE Chairmanship.¹⁶

In **Azerbaijan**,¹⁷ Novruzali Mammedov, a minority rights activists and editor-in-chief of the Talysh-language newspaper *Tolyshi Sedo* died in prison in August 2009 under suspicious circumstances. He was serving a sentence for high treason but was believed to have been punished for his minority rights activities and for promoting the Talysh culture. Three other critical journalists, Eynulla Fatullayev, Qanimat Zahid and Mushfiq Huseynov, are also in detention under various pretexts. Finally, the trial of two bloggers, Adnan Hadjizade and Emin Milli, accused of alleged hooliganism, is underway. Local and international human rights organizations believe that all these journalists and bloggers have been detained and charged solely on account of their critical reporting.

In **Greece**,¹⁸ three Roma rights activists are due to appear before court on 9 October 2009 on allegations of "threats", "disturbance of public offices" and "insult",¹⁹ punishable by a fine or prison terms between six months and five years. The activists are Vasilis, Thanasis and Lefteris Sampanis.²⁰ The complaint against the three men was filed by the mayor of Aspropyrgos and is related to events that allegedly took place during a two-hour meeting on 4 July 2007 between Messrs Sampanis and the mayor in his office, in the presence of other citizens, media and police. However, other participants in the meeting are not aware of such illegal behaviour. Legal action was nevertheless taken, after a judicial investigation during which eyewitnesses of the events were not heard, thus raising suspicion that the men are subject to judicial harassment because of their human rights activities.

ruling of the European Court of Human Rights that upheld the case of radio station "A1+" and that digitalisation should not be allowed to reduce diversity and plurality or preserve a lack of thereof. See "Armenia should lift moratorium on licensing broadcasters to ensure media pluralism, says OSCE media freedom representative, 27 September 2008", at <http://www.osce.org/item/33196.html>

¹⁵ Lawyers' Committee for Human Rights, Human Rights and Democracy Violation, Early Warning Weekly Newsletter No. 43. See also Committee for Human Rights in Serbia, Helsinki Bulletin, No. 37, September 2009, at <http://www.helsinki.org.yu/doc/HB-No37.pdf>

¹⁶ For more information, see a letter by the Netherlands Helsinki Committee, the Humanist Institute for Development Cooperation (Hivos) and International Partnership for Human Rights to OSCE delegations, 14 September 2009, at <http://iphronline.org/news.html?18> and www.nhc.nl

¹⁷ Information from the Human Rights Center of Azerbaijan, 25 September 2009.

¹⁸ Information from Greek Helsinki Monitor – Minority Rights Group/ Greece, 10 September 2009. For details, see World Organization Against Torture (O Committee for Human Rights in Serbia, Helsinki Bulletin, No. 37, September 2009, at <http://www.helsinki.org.yu/doc/HB-No37.pdf> OMCT), "Greece: Judicial harassment against Messrs. Vasilis Sampanis, Thanasis Sampanis and Lefteris Sampanis," 19 August 2009, at <http://omct.org/index.php?id=OBS&lang=eng&actualPageNumber=1&articleSet=Appeal&articleId=8752>

¹⁹ Articles 333, 334 (3) and 361 (1), respectively.

²⁰ The first is the president of the Cultural and Housing Association of Greek Gypsies Agios Ioannis Psari - Aspropyrgos, the two others are member of the same association.

In the **Netherlands**,²¹ host to people from a number of cultural backgrounds, the fragile balance between free speech and freedom of religion is under lively debate. Questions are raised, for example, about the limitations to these rights, and whether clear legal regulations or case law can be established to deal with all cases where a contradiction between the different freedoms occurs. In addition, the country's blasphemy law has been questioned for providing religious people with broader legal protection than others. The fragile balance between freedoms was demonstrated, for example, when a museum in The Hague refused to exhibit photographs displaying Muslim homosexuals wearing a masks depicting Prophet Mohammed and his son-in-law²²; in the charges expected to be raised against a cartoonist for making fun of multicultural issues and religious people, frequently targeting Muslims²³; and in the charges to the maker of the film *Fitna*, which is critical of Islam and its influence in the Netherlands.²⁴ At the same time the Commissioner for Human Rights of the Council of Europe during his visit to The Netherlands in September 2008 learned that in general, knowledge of the Dutch constitution, its fundamental rights and human rights in the Netherlands is not well developed. The Commissioner, therefore, believes that human rights education should be firmly anchored in a comprehensive manner in primary and secondary school education.²⁵

Also, 'Islamophobia' is spreading in the Netherlands, both in terms of growing negative climate, and violence against Muslims increasing. The European Commission against Racism and Intolerance (ECRI) has called on the Dutch government to prohibit every public expression of 'Islamophobia' and take a leading role in the promotion of integration and fight against racist and xenophobic use of language.²⁶

²¹ Netherlands Helsinki Committee, Human Rights in the Netherlands, due to be published later this year.

²² The photos were made by the Iranian artist Sooreh Hera. Volkspartij voor Vrijheid en democratie, "VVD en PVV openen vrijdenkersruimte", 3 July 2008, at <http://www.vvd.nl/index.aspx?Contentid=8610&Chapterid=1147&Filterid=974>

²³ The charges against Gregorius Nekschot are expected to be initiated on grounds of discriminatory speech, insulting certain groups in society on the basis of their race or beliefs, and possibly also for inciting hatred. De Pers, "Cartoonist in de cel gezet", 16 May 2008, at <http://www.depers.nl/binnenland/202231/Cartoonist-in-cel-gezet.html>; Minister van Justitie, "31200 VI 183 Brief van de minister van justitie", 28 July 2008, at <http://rijksbegroting.minfin.nl/2008/kamerstukken,2008/8/1/kst121385.html>

²⁴ In January 2009, parliamentarian Geert Wilders was charged with inciting hatred and discrimination, and insulting Muslims, on the basis of his film *Fitna*. Gerechtshof Amsterdam, Hof Amsterdam beveelt de strafvervolgning van het Tweede Kamerlid Geert Wilders, 21 January 2009, at <http://www.allepersberichten.nl/persbericht/3812/1/Hof-Amsterdam-beveelt-de-strafvervolgning-van-het-Tweede-Kamerlid-Geert-Wilders/>

²⁵ Report by The Commissioner for Human Rights Mr Thomas Hammarberg On His Visit To The Netherlands 21 - 25 September 2008, CommDH(2009)2, see: <http://www.cmo.nl/pmre/Rapport-Hammarberg.pdf>

²⁶ ECRI, Third Report on the Netherlands, adopted on 29 June 2007, published on 12 February 2008, at http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_03/03_CbC_eng/NLD-CbC-III-2008-3-ENG.pdf

Recommendations

To authorities in **Turkmenistan**:

- To immediately launch fundamental reforms to bring the country's media freedom in line with OSCE principles and other international standards for freedom of expression, which are binding to Turkmenistan through its international human rights commitments.

To authorities in **Tajikistan**:

- To repeal articles 135 (libel) and 136 (insult), and articles 137 and 330 (insult of the president and other state authorities) from the Criminal Code;
- When dealing with defamation under the Civil Code, to make sure that the penalties provided are equal to all individuals, reasonable, and are not used to prevent legitimate criticism of public authorities.

To authorities in **Russia**:

- To revise anti-extremism legislation in force to limit the applicability of provisions on “extremism” to actions that involve the use of violence or incitement to violence and to ensure that such provisions do not lend themselves to arbitrary enforcement infringing freedom of thought, conscience and religion, freedom of expression and other fundamental liberties.

To authorities in **Bosnia and Herzegovina**:

- To fully and promptly complete the reform of the public broadcast media and ensure that the Regulatory Agency for Communications be protected against political pressure;
- To publicly condemn and investigate promptly all cases of violent attacks against critical journalists and media outlets, and bring the perpetrators to justice;
- To take immediate steps to ensure that the law on free access to information is fully implemented;
- To give clear orders to all levels of authorities to fully respect individuals' right to self-identification with regard to their nationality/ethnicity and sexual orientation, and to treat all on an equal footing.

To authorities in **Armenia**:

- To immediately reverse the moratorium on tenders for broadcasting frequencies and enable the allocation of new frequencies to applicants on an equal footing regardless of their political background.

To authorities in **Serbia**:²⁷

- To replace the current Law on Public Information with a new one that, prior to its adoption, will be submitted to scrutiny by experts and media professionals, and public debate. This law should serve as a basis for further legislation on the media.
- To amend the current regulations on the RTS - radio TV Serbia, as well as the whole RTS scheme (particularly with regard to topics such as war and war crimes, neighbours and minorities), which has not been changed following the Milosevic era.

To authorities in **Kazakhstan**:

- To immediately release human rights defender Yevgeny Zhovtis on the grounds that he has been imprisoned following an unfair trial, and ensure that a new trial be held for him in compliance with international standards for a due process.

To authorities in **Azerbaijan**:

- To promptly conduct an impartial and thorough investigation into the death of Novruzali Mammedov, who died in prison in August 2009 in suspicious circumstances;
- To immediately release the journalists Eynulla Fatullayev, Qanimat Zahid and Mushfiq Huseynov, as well as the bloggers Adnan Hadjizade and Emin Milli, who all have been detained for activities legitimate under international standards for freedom of expression and the media.

²⁷ From the Helsinki Committee for Human Rights in Serbia, 28 September 2009.

To authorities in **Greece**:

- To stop immediately all acts of harassment - including at the judicial level - against Roma and other human rights activists, in compliance with OSCE principles,²⁸ in accordance with the UN Declaration on Human Rights Defenders (1998), and in the spirit of the European Union Guidelines on Human Rights Defenders (2008).

To authorities in the **Netherlands**:

- To firmly anchor human rights education in a comprehensive manner in primary and secondary school education;
- To publicly promote tolerance, take firm steps to fight the increasing negative attitudes against Muslims, and to prevent any escalation of violence against Muslims living in the Netherlands.

²⁸ Spelled out, for example, in the Vienna (1989), Copenhagen (1990) and Budapest (1994) Documents.