



Freedom and Responsibility

REPRESENTATIVE ON
FREEDOM OF THE MEDIA

YEARBOOK 2005

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Organization for Security and Co-operation in Europe (OSCE)
Kärntner Ring 5–7, Top 14, 2. DG,
A-1010 Vienna, Austria
Tel.: +43-1 512 21 450
Fax: +43-1 512 21 459
E-mail: pm-fom@osce.org
<http://www.osce.org/fom>



THE REPRESENTATIVE ON FREEDOM OF THE MEDIA
Miklós Haraszti

Freedom and Responsibility
YEARBOOK 2005

Vienna 2006

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Dimitrij Rupel
Preface

Freedom of the media and freedom of expression are two fundamental rights which are essential for free and pluralistic democracy. There are numerous OSCE commitments ensuring the individual's freedom of expression and freedom of information, and the freedom of the media. The strategic assumption of these commitments is to place the media into the custody of society rather than in the custody of the State, where they have been in most countries before democratization.

Therefore I commend the work and activities of the OSCE Representative on Freedom of the Media, Miklós Haraszti. In 2005, I co-operated closely with Professor Haraszti and his Office on many projects, including the Internet Conference, the media conferences held in Central Asia and the Caucasus, legal reviews, freedom of the media and hate speech, decriminalization of libel, silent diplomacy demarches defending individual cases, etc.

At the beginning of 2005, the Office presented a matrix on libel and insult laws. Decriminalization of libel, by making its handling civil-law based, was promoted throughout 2005 in order to reduce the level of misuse of criminal law against journalists or even their detention for political reasons in the OSCE region. Special attention was given also to the issue of access to public information, which in many cases is guaranteed by the Constitution. In practice, citizens are often deprived of obtaining public information due to official and state secrets.

The Republic of Slovenia has included freedom of the media among the priority fields of its 2005 OSCE Chairmanship. A whole day of the second part of the 2005 Human Dimension Implementation Meeting was devoted to the freedom of the media, specifically the discussion focusing on "the situation of the media in the OSCE region and the role of State and non-State actors in promoting media freedom". The discussion, for example, helped to identify new challenges, such as media concentration, which might turn out to be an obstacle for free and pluralistic media. Further themes that were discussed comprised the public's right to government information

and the practice of defining “state secrets” as well as ways of reporting and governmental handling of the press in crisis situations, such as civil unrest and terrorist attacks.

A variety of activities regarding the freedom of expression on the Internet, including the third Amsterdam Internet Conference, also took place. The novel Internet media types are endangered by over-regulation, triggered by “bad content” as perceived by governments or the civil society.

At the same time, the events in 2005 brought the discussion on the relationship between the freedom of the media and the freedom of religion or belief to the highest political levels. I am convinced that the freedom of expression should be exercised with due respect to religious beliefs and convictions, and that it is not absolute. Having in mind the new challenges to human security, the OSCE Ministerial Council expressed its support to the UN Alliance of Civilisations initiative launched in November 2005. The OSCE participating States also reaffirmed that they are fully committed to fostering a climate of tolerance, mutual respect and understanding – in this regard the media also have an important role to play. I am convinced that interreligious and intercultural dialogue should be strengthened, deepened and encouraged in the coming years, and that the media had, and in the future will have, an extremely important role to play. Therefore, I would like to conclude by emphasizing that as far as the media are concerned it is not enough to be free. The media also have to act in a democratic, balanced and respectful way. Let me also express once again my gratitude to the work of Miklós Haraszti in promoting the freedom of the media, which, in a way, is a “never-ending story”.

Dr. Dimitrij Rupel is Minister of Foreign Affairs of the Republic of Slovenia and was Chairman-in-Office of the OSCE in 2005.

Miklós Haraszti

Foreword

2005 has been my second year as Representative and the eighth year of this unique institution. The Office of the OSCE Representative on Freedom of the Media – the only independent inter-governmental media freedom institution – continued to fulfil its special and vital task in 2005.

It is our mandate that defines our responsibility within the OSCE: To intervene and address media freedom violations anywhere in the OSCE area, and to assist governments in meeting their media freedom obligations.

Freedom of the media in the OSCE region unfortunately remained at risk in 2005. I was obliged to intervene in 63 individual cases in 22 participating States both east and west of Vienna because media freedom commitments had been endangered or violated. I wrote letters to the appropriate governmental bodies, issued press releases and filed reports to the OSCE Permanent Council.

In 2005 my Office continued to provide legal assistance to the OSCE field presences and participating States. We commissioned a total of 12 legal reviews from independent international media experts. Five of the reviews were made on draft legislation and seven on current legislation in the OSCE region. All reviews include recommendations on how to bring the legislation in line with OSCE commitments and other international standards.

Our reviews typically focused on one or more particular laws or draft laws that address media activities. However, some analyses had a thematic focus. The reviews analysed all norms which impact the theme, leading to an overview of the overall situation in the country. Such comprehensive legal reviews were made, for example, on issues of decriminalization of journalistic offences, and the transformation, privatization and pluralization of broadcast systems. These are reforms which require changes in criminal, civil, and even in constitutional laws.

In 2005 I continued my series of country assessment and familiarization visits.

Extensive country reports have been published after assessment visits to Azerbaijan, Belarus, Italy, Macedonia, the Transdnestrian Region of the Republic of Moldova as well as on the handling of the press during the Andijan Crisis in Uzbekistan.

Personally, I believe that the report on the Italian Gasparri Law, for example, will remain a valuable tool for improving media legislation in the digital age – relevant not just now and not only in Italy.

Project work has become an integral part of the activities of my Office and our practical work in this sphere continued in 2005.

The Third Amsterdam Internet Conference in June focused on Central Asia. The event was attended by leading international experts on human rights and the Internet from Western and Eastern Europe, the Caucasus, Central Asia and North America. The Russian version of the *Media Freedom Internet Cookbook* was published. Furthermore, a Joint Declaration was issued together with Reporters Without Borders on the main principles of guaranteeing media freedom on the Internet.

The Seventh Central Asian Media Conference in October in Almaty and the Second South Caucasus Media Conference in November in Tbilisi continued a successful series of meetings in these regions. Both conferences were attended by government representatives and journalists from all the countries in the respective region. The conference declarations on pluralism in the media and other pressing issues were conveyed to a wide audience in the South Caucasian and Central Asian republics.

My Office also started a long-term assistance project dealing with government-media relations and access to information. Two training courses for government press officers and media professionals were held in Azerbaijan and Kyrgyzstan. The topics included journalists' rights to access information, the proper functioning of press offices, and professionalism on both sides of government-media relations. Similar training sessions in Kazakhstan, Tajikistan, in several regions of Ukraine, and again in Kyrgyzstan, this time for regional journalists, are planned for 2006. I also offered my assistance to the Governments of Uzbekistan and Turkmenistan and hope they will agree to this co-operation.

2005 was a special year for dealing with the chilling effect that criminalization of speech offences exerts on the free debate of public issues. A comprehensive database on criminal and civil defamation provisions and court practices in the OSCE participating States was released in March. The database, the first of its kind, serves as a useful tool in my campaign against criminal sanctions for defamation and excessive awards in civil cases.

My Office's efforts in this direction continued to gather momentum and I hope that in the foreseeable future we will witness even more OSCE participating States liberating their media from fear of punishment for speech.

I feel quite assured that in 2005, overall, our region moved nearer to our broad goal of media democratization. The essence of this is to move from state custody of the media to civil society control and ownership; from monopoly to pluralism; from state-owned printing presses and distribution networks to liberalized networks; from hardship in the working environment of the press to a common understanding that a free press is in everyone's interests in a democracy.

I am grateful to the OSCE participating States and to our civil society partners for their ongoing co-operation. I hope for continued efforts and successes in 2006.

I. Views and Commentaries

Christian Möller

Internet Governance

Vera Hanus

**Addressing Issues of Media Freedom in
the South Caucasus**

**Media Voices Speak Out about Pluralism in the
Media and the Internet in Central Asia**

**Media Voices Speak Out about Public Service
Broadcasting and the Internet in the
South Caucasus**

Christian Möller
Internet Governance

Many of us use the Internet in our daily life and work and do not spare a thought for how it actually works. We take for granted that we can send and receive e-mails across the globe (or just to a colleague next door), read online news from the other side of the Atlantic, book flights or go shopping for books or the latest electronic gadgets.

Yet all this is possible because there is an underlying multilevel infrastructure consisting of both real machines and software code.

Network Architecture

First of all there is the technical level or physical layer that connects the computer through telephone lines, network cables, fibre optics and increasingly by means of wireless radio networks. This very basic connection of hardware is of course the prerequisite to form a network but it is by far not enough. Once the machines are physically connected, there has to be a common language to enable them to exchange information.

This is done by the network layer with its protocols that make computers “understand each other”. Actually, it was the development of such protocols to enable different machines to “talk to each other” that led to the birth of the Internet once they were invented in the 1970s.

Before, many different operating systems and missing interfaces made it next to impossible to send information from one computer to the other, a problem that most affected scientists and academics who were the biggest group of computer users in those days.

Funded from US research grants, the Defense Advanced Research Projects Agency (DARPA) started to develop a protocol – a computer language – that enabled computers with different applications to exchange data across different networks, no matter which operating system they were running on. The Internet was born.

Once data has been exchanged on the transport layer, the application

layer will take over and reassemble the packaged information into websites or e-mails, word attachments or music files.

It is often quoted that this protocol will run through “two tin cans and a string” – a fact without which the rapid development of the Internet and the information society as we know it today would not be thinkable and which certainly is one reason for its fast and all-embracing growth.

Code is Law

The different layers, the programmed code and the software we use not only enable us to exchange information over the Internet. At the same time they also prescribe how we do it and what we are able to do.

An example: the music file format “mp3” allows for the unlimited distribution, listening, copying and burning of songs. Other, proprietary, file formats restrict this freedom. For example, the number of times a song can be copied can be limited by the software code. Digital Rights Management (DRM) is a tool more and more often used to control the use of copyrighted material.

It is possible to define how a software can be used from its very inception. The way it can and cannot be used is already written into the software that constructs the technology.

The US university professor Lawrence Lessig coined the idiom “code is law”¹ to convey the fact that the Internet is not only regulated by classic regulatory bodies but also by its very own architecture and the way it is built.

It is important for state actors and other stakeholders in the field of Internet regulation to remember that it is not only legislation or codes of conduct which are governing the Internet but also its architecture, the code of the Internet itself. However, this architecture did not drop out of the sky but was developed – on purpose or not. And – on purpose or not – it is also defining the level of freedom of expression on the Internet. Or to use Lessig’s words:

“This code presents the greatest threat to liberal or libertarian ideals, as well as their greatest promise. We can build, or architect, or code cyberspace

1 Lawrence Lessig (1999) *Code and other Laws of Cyberspace*. After William J. Mitchell, *City of Bits: Space, Place, and the Infobahn* (Cambridge Mass.: MIT Press, 1995).

to protect values that we believe are fundamental, or we can build, or architect, or code cyberspace to allow those values to disappear. There is no middle ground. There is no choice that does not include some kind of building. Code is never found; it is only ever made, and only ever made by us.”²

“Code is law” – this is something policy makers and legislators need to keep in mind when they are addressing the Internet so as not to lose this window of opportunity.

Regarding the growing number of international directives or conventions, it has become clear that the process of designing the regulatory framework for the Internet is rapidly taking place at this moment. And, as described above, all this is happening while the practical constraints formed by the underlying code are narrowing the number of choices and are setting standards themselves. At the same time, there have not been many studies on the effects of new laws on the Internet’s infrastructure and their consequences for the free flow of information and development of society.

Internet Governance

The World Summit on the Information Society (WSIS), held in 2003 in Geneva and 2005 in Tunis, was a milestone for a number of UN activities in the field of Internet governance. It was not, however, the conclusion, as further initiatives have been established by the Tunis agenda.

The Internet Governance Forum (IGF) was initiated to “discuss public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet [...]”³.

In the forerun of the WSIS there was a dispute about the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is a private Californian non-profit corporation consisting largely of Internet society members, and was created under US government contract in 1998 in order to take over a number of Internet-related tasks previously performed on behalf of the US Government by other organizations

2 Lawrence Lessig (1999) *Code and other Laws of Cyberspace*.

3 IGF Mandate, Tunis Agenda, para. 72, <<http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>>

Critics argued that through ICANN the Internet was unjustifiably dominated by US influence and wanted control of the domain name system (DNS) to be transferred from ICANN to a UN body. Different alternatives were discussed at length, however without result – or as their adversaries argued “if it ain’t broke don’t try to fix it”.

While the role of ICANN remained unchanged after the WSIS the IGF will convene for the first time in Athens in November 2006 and is currently being prepared by an Advisory Group in Geneva for the Secretary General of the UN.

Guaranteeing Media Freedom on the Internet

The OSCE Representative on Freedom of the Media is participating in this process as an observer and at the same time will continue to implement his own programme *Guaranteeing Media Freedom on the Internet*.

The three Amsterdam Internet Conferences (2003–2005) built a strong foundation for further projects and found a wide audience that went beyond the OSCE context. The Representative will continue to monitor the state of freedom of the media on the Internet and assist OSCE participating States in the furthering of free, independent and pluralistic media online. This by now has become an integral part of fulfilling his mandate and is as such a cutting-edge role within the family of international organizations in Europe and worldwide.

Vera Hanus

Addressing Issues of Media Freedom in the South Caucasus

The quality of public service broadcasting and media freedom on the Internet in Georgia, Armenia and Azerbaijan were the major themes of the Second South Caucasus Media Conference, held in the Georgian capital Tbilisi on 17 to 18 November 2005.

The gathering was organized by the OSCE Representative on Freedom of the Media, Miklós Haraszti, in co-operation with the OSCE Mission to Georgia. It provided a valuable forum for around 70 journalists, media representatives, state officials and international experts to discuss recent developments in the region.

The lively nature of the debate among the participants underlined concerns on the state of media freedom in the South Caucasus. Despite the fact that progress has been made in some areas, the transition process and the development of free and independent media still face substantial difficulties.

Among the points raised by the speakers were media ownership structures, the formal and informal interdependence of state authorities and media outlets, as well as access to information and Internet policies.

The State of Media Freedom in the Region

During the introductory session, speakers gave an overview of the current state of media freedom in their respective countries. The editor of the Yerevan Press Club Weekly Newsletter, Elina Poghosbekian, criticized the wide gap between the firm legal basis for media freedom in Armenia and the insufficiency of its real-world implementation.

“A system is being built up where *de jure* democratic institutions are created (such as institutions, laws, procedures, etc.) but *de facto* total control and unvoiced censorship over the main channels of influencing public opinion is established,” said Poghosbekian.

Similarly, Arif Aliyev of the Yeni Nesil Journalists’ Union of Azerbaijan gave a critical assessment of the situation regarding free speech in his country. According to Aliyev, there is often a high degree of interdependence between

journalism and politics, which leads to self-censorship by media outlets.

Eka Kvesitadze, a freelance journalist from Georgia, painted a gloomy picture of the situation there. She underlined that even though the problems in Georgia are very complex, it would be unfair to blame only journalists, media owners or the Government.

Challenges Facing Public Service Broadcasting

The conference also focused on the challenges and prospects for public service broadcasting in transition countries. The participants examined topics such as the structural distinction between public and private television and radio, developments in the advertising and TV markets and the independence of broadcast media outlets.

Two international experts – the Managing Director of the Media Development Centre in Sofia, Ognian Zlatev, and the Director of the Institute for Media Rights in Kyiv, Taras Shevchenko – spoke about the lessons learned from the transition in their countries.

Both speakers recognized the dominant role of private television and advertising markets during the public service broadcasting transformation process, as well as the paramount importance of a financially, legally and substantively independent public television and radio sector.

The Internet: Obstacles to the Free Flow of Information

The future role of the Internet was the topic for the third session of the conference, sparking off particularly lively discussions among the participants.

The Regional Program Manager for Eurasia of the Internet Access and Training Program (IATP/IREX), Colin Guard, gave a technical presentation covering matters such as the state of Internet penetration and infrastructure within the region, while other speakers outlined legal frameworks for Internet policies, as well as its potential political impact within and between the States of the South Caucasus.

The considerable potential of the Internet as a source of public information in transition countries and as a useful tool to enhance the democratization process was also highlighted by the Director of the Georgian Young Lawyers' Association, Ana Dolidze.

Making a Difference: The Tbilisi Declaration 2005

Following two days of debate, the conference participants agreed on a comprehensive set of policy principles, known as the Tbilisi Declaration on Public Service Broadcasting and the Internet, for the region.

Overall, the gathering was rated as “an outstanding opportunity to exchange ideas and to build a network with journalists and the media across borders and nationalities,” according to Georgian journalists Ia Bobokhidze and Eter Turadze.

The Second South Caucasus Media Conference was, as many participants noted, “an important contribution to progress in the region.”

Media Voices Speak Out about Pluralism in the Media and the Internet in Central Asia*

“Ensuring that libel law does not infringe the right to freedom of expression is fundamental to strengthening the role of the media and a robust democratic society. Libel law serves to protect the reputations of individuals, however the scope for abuse of these laws to stifle open debate on matters of public interest and the legitimate criticism of wrongdoing by officials is well established. It is crucial that defamation laws are not used to silence critics of the political bodies and public figures. When criticism of public institutions is silenced, the public’s ability to formulate opinions about its government, officials and other matters of public interest suffers. The media is not able to play its critical role of acting as a watchdog and providing the public with information, exposing corruption and inspiring political debate.”

Sophie Redmond, Legal Officer, Article 19, United Kingdom

“The disgraceful game of taming the press will go on and on as long as the main incentive to the officials remains their superiors’ approval or disapproval as well as their own petty gains and conveniences, and not observance of the citizens’ constitutional right to freedom of receiving and disseminating information, and as long as the journalists themselves remain ignorant of their main civic mission.”

**Tamara Kalejeva, International Foundation for
Freedom of Speech Adil Soz, Kazakhstan**

“There is also a whole series of taboos: the opposition and its leaders, the shadow economy and corruption, the head of state and his family, government ‘secrets’ and much more. In addition, there are so-called unofficial

* The following quotations are from the presentations at the Seventh Central Asian Media Conference held in Almaty in October 2005. See also the *Almaty Declaration on Pluralism in the Media and the Internet* on p. 166.

censors to whom media bosses themselves turn for assistance (as a rule they are former censors), as well as backstage consultants, acting on the instructions of the authorities and making recommendations to editorial boards on what can or cannot be published or broadcast.

Criticism is permitted when it is sanctioned by the authorities. There is a high level of self-censorship among journalists working for Uzbekistan's media, irrespective of their form of ownership. They are 'scared to death' to cover anything that has to do with public life. Ignorance of the law is another reason why journalists are, as a rule, unwilling to undertake labour-intensive genres, such as a critical article, journalistic inquiry or various analytical reviews. They are afraid of both the authorities and of making a gaffe owing to their ignorance of the law."

"Overall, the situation in Uzbekistan shows that society is in need of democratic renewal and genuine openness, above all in the mass media. I believe, however, that the authorities will crack down on the media even more harshly rather than change their current attitude to them. All the mass media in the country, irrespective of their form of ownership, are now under government control.

The Internet is the only alternative source of information in Uzbekistan. In spite of the Internet's limitations due to the somewhat underdeveloped communications system and relatively high cost of providers' services (in relation to wages) in the country, it enjoys much greater trust and interest than the official press. People stress that virtual space offers more information on what is going on in the country and abroad."

Sayora Ruzikulova, *O'zbekim Taronasi* radio, Uzbekistan
Nadezhda Stepanova, *Mir novostey* newspaper, Uzbekistan

"The press in the Kyrgyz Republic is currently subject to the same taxes as producers of alcohol and sausage. For this reason, the 20 per cent VAT might easily play the part of the executioner's axe, not only for small regional papers, but also for the most established media. As a result, the population may be deprived of its guaranteed constitutional right of access to

information and left with only simple advertising publications that need commercial advertisements rather than serious articles.

The Government could, for example, exempt the government-owned media from taxes, at least for two years, until they reach a minimum break-even level. In addition, funds could be allocated in the budgets of any level so that official materials can be published on the same terms as advertisements. Official information must be made public in any case, but it would then also serve as important financial support for the newly-born independent press.”

“It is widely believed in the country that, in the current socio-political situation, it is still too early to say goodbye to the official press. For example, it is precisely the government-run media that are considered capable of publishing the entire range of political opinions and points of view, while holding firmly to centrist positions. It is just such publications that are in extremely short supply in post-revolutionary society. Radical political ideas are still making the rounds.”

Igor Shestakov, media consultant for Pen-Centre, Kyrgyzstan

“I have been to Uzbekistan twice. Of those people that I used to work and meet with, two have received prison sentences, two have emigrated and the rest have either lost their jobs or prefer not to know anything any more. The atmosphere, even before the terrorist attacks in Tashkent and Andijan, was paranoid. When you have a meeting with a local journalist, this person tells you that the previous person you met works for the Government, and this goes on and on. Journalists, who in an ideal world are supposed to work together to fight for freedom of speech, are going slightly mad.”

“As a conclusion I want to get back to the concept of pluralism. If we talk about pluralism together with democracy and democracy together with transparency, there is one thing, which I have already mentioned, that stops this development from taking place in Central Asia. That is corruption and the overwhelming power that the presidents in all of the countries have over judiciary and executive.

Just as Askar Akaev in Kyrgyzstan promised to fight against corruption, and it turned out that his Government and family are very much involved, in other countries the presidents denounce corruption and still think it is normal that their family members get jobs as ambassadors or heads of big companies.”

“All the years I have spent in Central Asia have taught me one thing: as long as tribalism and corrupt practices are as widespread as they are, on all the levels of all the societies, from kindergarten to the highest instances of power, little will be achieved. The thing that really has to change is that it is time to understand that presidency of a country is not a family business. This is where corruption begins, and dreams about pluralism remain dreams.”

Salla Nazarenko, International Freedom of Expression Exchange (IFEX)

“For the sake of fairness, it should be noted that these non-governmental newspapers made their own contribution to the development of pluralism in Tajikistan. For the first time since the 1992 civil war, Tajikistan’s journalists had conquered their fears and had begun to cover issues that worried the public. There were a vast number of such problems: presidential and parliamentary elections, bureaucracy, corruption, unemployment, and the narcomafia, to name a few.

Non-governmental media began to cover these issues in particular. We believe that they made mistakes: for example, instead of carrying out their indirect responsibilities (i.e., impartially covering existing problems), they began to passionately accuse the Government and President of all the deadly sins. It is no secret that the Tajik authorities have a great many shortcomings. It would therefore have been more correct for the media to use analyst and expert opinions rather than make crude personal attacks.”

“We then saw that the government media began to talk about the Government only in positive terms, while the independent media spoke of it only negatively. It is unimportant whether the government media began to harshly criticize independent newspapers and their heroes voluntarily or because they were ordered. Government figures, who had once been influential but

were now chafing under their retirement, became the main heroes of the non-governmental papers.”

“Meanwhile, the official media write about President Rakhmonov’s wise politics, and nothing else. The founders and chief editors of newspapers do not want them to be closed down due to their criticism of the President, the Government, or the ruling party. Now that among the six political parties only two have their own press organs, it is only natural that they use the independent media for their own ends. The experience of Tajikistan media shows that they do not care a sixpence about journalist ethics, because the main goal of any political party is coming to power.”

Nurali Davlatov, independent journalist, Tajikistan

Adolat Umarova, editor-in-chief of Millat newspaper, Tajikistan

“Access to government information is widely recognized as both an important right and a key legal and administrative mechanism for promoting government accountability.

In Central Asia, the legal rights of access to information are limited. Freedom of Information (FOI) laws are weak or non-existent. There are also continuing problems with overbroad state secrets acts that are used to suppress even basic information in some countries.”

“Generally, the situation of access to information has remained poor in the region. No country in the region has successfully adopted and implemented a freedom of information law. State secrecy laws remain overbroad and are often used to suppress information and harass and prosecute journalists. Media laws provide little rights of access.”

**David Banisar, Director FOI Project,
Privacy International, United Kingdom**

“Although the right of journalists – just as that of every citizen – to freedom of receiving and disseminating information (except such information as may constitute a state secret) is guaranteed by the country’s Constitution

and the relevant laws, the former authorities of Kyrgyzstan used all sorts of methods to limit journalists' access to socially significant information. These methods included direct and indirect refusal by government officials to make information available to journalists, as well as illegitimate denial of accreditation. Furthermore, preferences and privileges were given to the government-controlled media, while others were restricted in gaining access to meetings of government agencies, court sessions, and press conferences held by high-ranking officials."

Bakyt Ibraimov, independent journalist, Kyrgyzstan

"About a month before the actual abolition of the institution of censorship, a meeting was held in the journalists' club, at which the deputy editor-in-chief of another Tashkent-based independent newspaper boasted that they had no censorship and printed their newspaper without a censor's small stamp and signature. A colleague of his from another newspaper advised him to take on a censor and pay him a salary, so that the editor and the author might both sleep peacefully."

"We live, however, in the real world, under real conditions that have taken shape over a longer period than just the last decade and a half. The people's mentality, based on local traditions, cannot be changed overnight, nor should it be, since much in this mentality is worthy of emulation: industriousness, collectivism, sincerity in relations, respect for the old, hospitality, and love of children. Yet who would condemn reverence for and fear of authority and of consumerism?"

"In central, republican newspapers, where each department has been headed for many years by one and the same, ideologically diehard people, it is quite difficult to find examples of pluralism, even on such issues as public utilities, tourism and the environment. And their first commandment is: thou shalt not criticize the local authorities! Because, if you do, you infringe on the interests of the entire system. For this reason, a multi-level defence mechanism comes into play within the system and the material is simply

rejected. The situation in the regions is no better, but is even more a matter of routine.”

Stepan Balakin, *Novosti Uzbekistana* newspaper, Uzbekistan

“Self-censorship, taboos, ‘sacred cows.’ As a result, high-ranking corruptionists, the military, the police, narcobaron, the Government, Parliament and the President are kept well out of the media’s reach, with the curtain lifted an inch or two only when it comes to scandals looked into by the Prosecutor General’s Office or the Supreme Court.”

Turko Dikaev, independent regional correspondent, Tajikistan

“The online media situation in Uzbekistan can be illustrated by the following example. At the recent national Internet festival, independent media were not even entered in the website competition by the qualifying jury for the alleged reason that there was no access to the sites in question from Uzbekistan.”

“The above-mentioned competition’s qualifying jury members – IT experts and journalists – named 44 winners in various nominations and concluded, without further ado, that ‘if a site would not open, it is its owner’s problem rather than that of the local providers.’”

“The shame list of providers and other entities caught censoring Internet media is continuously added to at www.shamelist.ru (incidentally, this website is blocked in Uzbekistan).”

Alo Khodjaev, editor-in-chief of <www.tribune-uz.info>, Uzbekistan

“On the other hand, the level of knowledge among journalists about the opportunities offered by the Internet is not high enough. It is regarded merely as a library, a source of information for adding to the large number of pages of periodical publications – hence the scant attention paid to interactive opportunities.”

“One cannot but be amazed by journalists who ask questions such as: ‘Would you tell our readers what the Internet is and how it can be used?’ or ‘Is it true that viruses are going to kill the Internet next year?’ These questions would often have been understandable five to six years ago, but they are out of place today.”

“Each solution of genius always passes through three stages: ‘this is totally absurd’, ‘there is something in this’ and ‘how did we live without this?’

In Kazakhstan, the Internet is currently in the second stage, which is dragging out. At the turn of the century, the hopes were much rosier than current reality. Even so, though not as fast as one might wish, the audience is expanding, channels are expanding, and the number of sites is growing and their content is improving.

At the same time, the Internet has not yet become a vital daily requirement for a substantial part of the population. The creation of sites is mostly the business of enthusiasts working ‘for the sake of an idea.’ There is no acute need on the part of the education sector, the business community, government authorities or the mass media for new information technologies. They can get by without them for the time being.”

“The authorities tend, for some reason, to regard the Internet as a distributor of inappropriate information, rather than a mechanism for implementing government policy. This is a serious but, unfortunately, widespread misconception. In reality, the Internet cannot, in itself, be either ‘good’ or ‘bad.’ It is no more than a tool, and the winner is the one who makes the best of it.”

Alexander Kolosov, Kazakhstan Internet Federation

Media Voices Speak Out about Public Service Broadcasting and the Internet in the South Caucasus*

“The general problem is a low level of economic development. This is a classic chicken and egg problem. As the number of Internet consumers increases, the cost of service decreases, but that process cannot take place if citizens do not have money to buy computers and connect them to the Internet at current prices. An improving economy in and of itself will go a long way toward addressing this problem, but in the meantime, a comprehensive approach to Internet development seems to work best. What this means is that training in Internet use is of no value if citizens do not have hardware or connectivity, connectivity is useless without hardware and training, and hardware is useless without training and connectivity.”

Colin Guard, Regional Program Manager, IREX, Ukraine

“Mistakes often happen when policy makers try to apply traditional legal formulas to new communication means.

Armenian legislation is a classic example of such a mistake. According to the definition of ‘media product’, individuals’ websites could be treated as a media product and, therefore, would have to publish ‘issue data’ and the source of funding (income and expenditures related to the publication of the website). The requirement to publish information about the owner of a ‘network media’ contradicts the right of privacy and protection of personal data.”

**David Sandukhchyan, Head of the Legal Department,
Internews Media Support, Armenia**

“There are a number of agencies which decline to provide information

* The following quotations are from the presentations at the Second South Caucasus Media Conference *Public Service Broadcasting and the Internet* held in Tbilisi in November 2005. See also the *Tbilisi Declaration on Public Service Broadcasting and the Internet*, p. 169.

not by an official refusal, but through failing to provide any response to the request. In such cases, the person who made the request does not receive any kind of explanation about his or her request within any time limit.”

“Often, certain public agencies decline to provide public information not through a direct refusal, but through refusing or avoiding registering the request for public information. In certain cases, technical reasons are given as an excuse, such as lack of copying equipment, absence of technical personnel who are tasked with registering such applications etc.”

Ana Dolidze, Director, Georgian Young Lawyers Association

“[F]iltering and blocking content on the Internet is not only easy to circumvent but, as studies have shown, it is simultaneously ‘under-effective’ and ‘over-blocking.’ A complete blockade is merely Utopian for democratic States. ‘Mirroring’ of sites will make such an absolute achievement quite difficult to attain. At the same time blocking always goes further than the limits one first sets. This is because it is anything but an exact science. Even worse, different attempts to block content [...] endanger basic functionalities of the Internet such as the sending and receiving of e-mails.”

**Christian Möller, Project Officer,
Office of the OSCE Representative on Freedom of the Media**

“The public television and radio broadcasting station in Azerbaijan is frequently called the second governmental channel. In contrast to public broadcasting, government television (*AzTV*) is, according to its legal status, under the direct control of the Azerbaijan presidential staff.

Public broadcasting did not make its appearance in Azerbaijan in the same way as in other post-communist countries. The main difference is that Azerbaijan did not transform government broadcasting into a public service and did not close this down. Azerbaijan simply created a new television and radio broadcasting service, which it calls public broadcasting, but finances from the national budget. Now the country has two national broadcasting channels financed from the national budget. The first is the old governmental

channel, which, in terms of its legal status, is still controlled by the Government. The second should be fully independent of any political influence, according to the law on public broadcasting, but it nevertheless is also under the control of the powers that be.”

“This all goes to show that real public television can only exist where there is democratic governance, effective division of power, the rule of law, and a strong and efficient civil society.”

“The further development of public broadcasting in Azerbaijan will depend on many factors. Moreover, at this stage, political factors are playing an important, if not crucial, role. The journalists’ professionalism, as well as the expertise and managerial skills of the members of the Broadcasting Council and executive personnel are also very important. These questions should be given special attention.”

“Only by means of targeted efforts aimed at bringing public television up to the standards and rules generally accepted for public broadcasting can PBS stop being merely a tool in the hands of the powers that be, and become a truly public service aimed at providing people with an opportunity to raise, discuss, and analyse the problems crucial and of interest to them. Only in this way can public broadcasting become a force capable of ensuring democracy, as well as a ‘watchdog’ which, concerned with public interests, sees to it that the Government conscientiously fulfils its functions.”

Rashid Hajili, Chairman, Media Rights Institute

“The following major tasks are challenging the new management of the Georgian Public Broadcaster today:

- Implementing a new management at all levels;
- Converting the newsroom into digital format and implementing convergence newsroom principles;
- Ensuring transmission and high quality of the public broadcasting signal throughout Georgia;
- Ensuring public participation in the subjects covered by the broadcasting;

- Diversified coverage of minority problems and the professional promotion of these issues;
- Systemization of the materials preserved in video, audio archives and the ‘Gold Fund’; transforming them into modern technological format and introducing them to the public.”

**Tamar (Tamuna) Kintsurashvili, Director General,
Public Service Broadcaster**

“The annual budget of Armenia’s Public Television (*APTV*) is a thousand times smaller than the budget of the *BBC*, Europe’s leading TV broadcaster. This may not be interesting, but it is definitely a fact. We offer this comparison because we are always ready to adopt (and do adopt) the *BBC* model for organizing and managing television production, and its formulas for streamlining the flow of information. Some of these, however, either do not work at all under our realities, or work for just one week, or – saddest of all – work in such a way that we were better off without them. The thousandfold difference in the budgets of our two organizations once again shows how much difference there is between television realities, ultimate goals, public expectations, and the challenges facing the two countries – where one is the cradle of European democracy, and the other has only recently won its independence.”

“The problem is not that there are few or no programmes about political figures. I’m not saying that. It is simply that they and our democratic imperatives appear on-air only in our half-hour news programme, and that’s it! Imagine a situation in which Othello appears on stage only at the moment of Desdemona’s murder, and the rest of the time he spends off-stage, dealing with personal matters.

In our programming, democratic values are assigned just such a non-sensical role: they come on stage at the most dramatic moment. And do you know why? Because only our news programme is acknowledged – that is, the moment of Desdemona’s murder. What happened prior to that moment is not clear. One other thing is clear: it is the authorities who perform the role

of Othello; the opposition that plays Desdemona; black PR that is Iago; and the handkerchief is the incriminating evidence. However, we are journalists and not Shakespeare.

This is perhaps one of the reasons that there is a thousandfold difference between us and the most powerful television broadcaster in the land of the Great Bard.”

Gnel Nalbandyan, Executive Director, Council for Public TV and Radio

“The principles of freedom of speech mean that the State and the mass media ought to be clearly differentiated, just as freedom of religion demands the separation of church and State. If the mass media are government-owned, there can be no freedom of speech. Mass media that are not independent cannot perform their main function in society – that of a watchdog of democracy. It is not for nothing that journalists are referred to as ‘the fourth estate’: they are part of a system of checks and balances that prevent other branches of power from overlooking abuses. For just this reason, creating public broadcasting is for most countries the path to democratic reform of government-owned television and radio [...]. Public broadcasting’s independence, both from the government and from big business, is an extremely important feature that distinguishes such broadcasting from its governmental and commercial counterparts.”

Taras Shevchenko, media lawyer, Internews Network, Kiev, Ukraine

“Media coverage of parliamentary elections was marked, as in previous years, by violations of the law, international principles and ethical canons. An overwhelming majority of politically committed newspapers and TV companies vigorously campaigned for ‘their’ candidates, engaged in canvassing for hidden votes and defamation. This is confirmed by the data of election monitoring conducted by the Council of Europe and OSCE in Azerbaijan. Drawing on past experience, it is safe to claim that no monitoring, training, laws and codes of ethics will rectify the situation for as long as the nation’s mass media remain practically dependent on the Government and its politi-

cal machinery. This is not to say that journalists are ignorant of their duties, of the laws and rules of election coverage. On the contrary, they are well versed in all that, as certified professional journalists should be. In practice, their special knowledge is of no use to them. They have their political assignments to fulfil, and failing to do so will doom the media outlet they work for to a tough and, more often than not, losing struggle for survival. An independent company stands practically no chance of obtaining a broadcasting licence, the printed media product distribution system is in decline and 75-per cent government controlled (at a conservative estimate). The same is true of the advertising market. This is where changes are to be made first and foremost if the mass media situation in Azerbaijan is to show any improvement at all.”

**Arif Aliev, Yeni Nesil Journalists Union of Azerbaijan,
editor-in-chief, *Gun Seher* newspaper**

“To sum up, we are now tackling two media problems: pressure from the Government and professional crisis within the media. These problems are interdependent because the media need media freedom for their professional advancement – and that’s exactly what the Georgian Government is in no position to give them now, most people believe.

This is not a problem that can be solved overnight. New independent players with purely business interests in mind will hardly emerge on the media market in the foreseeable future to impose new and more exacting requirements on journalists.

Unless there is demand for a more professional media, journalists will have no motivation for professional advancement. Such demand should come either from the public, or from the owner. At this juncture, media owners care little for their hired journalists’ professionalism and ethics; therefore, it is up to the public to give them an impetus to do their professional best and to set higher standards of achievement for them.”

Eka Kvesitadze, freelance journalist

II. Overview – What We Have Done

Mandate

of the OSCE Representative on Freedom of the Media

Reports and Statements

to the OSCE Permanent Council and other OSCE Fora

- *Statement by the Representative on Freedom of the Media at the Fourth Winter Meeting of the OSCE Parliamentary Assembly in Vienna on 25 February 2005*
- *Regular Report to the Permanent Council of 10 March 2005*
- *Visit to Belarus: Observations and Recommendations, 10 March 2005*
- *Assessment Visit to the Transdnestrian Region of the Republic of Moldova: Observations and Recommendations, 10 March 2005*
- *Visit to Italy: The Gasparri Law: Observations and Recommendations, 7 June 2005*
- *Coverage of the Events and Governmental Handling of the Press During the Andijan Crisis in Uzbekistan: Observations and Recommendations, 15 June 2005*
- *Regular Report to the Permanent Council of 14 July 2005*
- *Review of the Draft Turkish Penal Code: Freedom of Media Concerns, May 2005*
- *Assessment Visit to Azerbaijan: Observations and Recommendations, 14 July 2005*
- *Speech by Miklós Haraszti at the Opening Session of the Human Dimension Implementation Meeting in Warsaw on 19 September 2005*
- *The State of Media Freedom in the former Yugoslav Republic of Macedonia: Observations and Recommendations, 9 December 2005*
- *Regular Report to the Permanent Council of 15 December 2005*

Declarations and Projects

- Joint Statement by the Special Rapporteur of the Commission of Human Rights on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur for freedom of expression of the Organization of American States, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, and the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights

On the occasion of the World Press Freedom Day, 3 May 2005

- Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

International Mechanisms for Promoting Freedom of Expression, 21 December 2005

- Third Internet Conference of the OSCE Representative on Freedom of the Media, 17–18 June 2005, Amsterdam

Joint Declaration of the OSCE Representative on Freedom of the Media & Reporters Sans Frontières on Guaranteeing Media Freedom on the Internet

- Seventh Central Asian Media Conference

13–14 October 2005, Almaty

Almaty Declaration on Pluralism in the Media and the Internet

- Second South Caucasus Media Conference

17–18 November 2005, Tbilisi

Tbilisi Declaration on Public Service Broadcasting and the Internet

- Legal Assistance in 2005

- Campaign against Criminal Libel Laws and Disproportionate Civil Damages

Press Releases

Visits and Interventions

Meetings and Conferences

Publications

Mandate of the OSCE Representative on Freedom of the Media

PC.DEC No. 193
Organization for Security and Co-operation in Europe
5 November 1997

137th Plenary Meeting
PC Journal No. 137, Agenda item 1

1. The participating States reaffirm the principles and commitments they have adhered to in the field of free media. They recall in particular that freedom of expression is a fundamental and internationally recognized human right and a basic component of a democratic society and that free, independent and pluralistic media are essential to a free and open society and accountable systems of government. Bearing in mind the principles and commitments they have subscribed to within the OSCE, and fully committed to the implementation of paragraph 11 of the Lisbon Summit Declaration, the participating States decide to establish, under the aegis of the permanent Council, an OSCE Representative on Freedom of the Media. The objective is to strengthen the implementation of relevant OSCE principles and commitments as well as to improve the effectiveness of concerted action by the participating States based on their common values. The participating States confirm that they will co-operate fully with the OSCE Representative on Freedom of the Media. He or she will assist the participating States, in a spirit of co-operation, in their continuing commitment to the furthering of free, independent and pluralistic media.

2. Based on OSCE principles and commitments, the OSCE Representative on Freedom of the Media will observe relevant media developments in all participating States and will, on this basis, and in close co-ordination with the Chairman-in-Office, advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media. In this respect he or she will assume an early-warning function. He or she will address serious problems caused by, *inter alia*, obstruction of media activities and unfavourable working conditions for journalists. He or she will closely co-operate with the participating States, the

Permanent Council, the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities and, where appropriate, other OSCE bodies, as well as with national and international media associations.

3. The OSCE Representative on Freedom of the Media will concentrate, as outlined in this paragraph, on rapid response to serious non-compliance with OSCE principles and commitments by participating States in respect of freedom of expression and free media. In the case of an allegation of serious non-compliance therewith, the OSCE Representative on Freedom of the Media will seek direct contacts, in an appropriate manner, with the participating State and with other parties concerned, assess the facts, assist the participating State, and contribute to the resolution of the issue. He or she will keep the Chairman-in-Office informed about his or her activities and report to the Permanent Council on their results, and on his or her observations and recommendations.

4. The OSCE Representative on Freedom of the Media does not exercise a juridical function, nor can his or her involvement in any way prejudge national or international legal proceedings concerning alleged human rights violations. Equally, national or international proceedings concerning alleged human rights violations will not necessarily preclude the performance of his or her tasks as outlined in this mandate.

5. The OSCE Representative on Freedom of the Media may collect and receive information on the situation of the media from all bona fide sources. He or she will in particular draw on information and assessments provided by the ODIHR. The OSCE Representative on Freedom of the Media will support the ODIHR in assessing conditions for the functioning of free, independent and pluralistic media before, during and after elections.

6. The OSCE Representative on Freedom of the Media may at all times collect and receive from participating States and other interested parties (e.g. from organizations or institutions, from media and their representatives, and from relevant NGOs) requests, suggestions and comments related to strengthening and further developing compliance with relevant OSCE principles and commitments, including alleged serious instances of intolerance by participating States which utilize media in violation of the principles referred to in the Budapest Document, Chapter VIII, paragraph 25, and in the Decisions of the Rome Council Meeting, Chapter X. He or she may forward requests, suggestions and comments to the Permanent Council, recommending further action where appropriate.

7. The OSCE Representative on Freedom of the Media will also routinely consult with the Chairman-in-Office and report on a regular basis to the Permanent Council. He or she may be invited to the Permanent Council to present reports, within this mandate, on specific matters related to freedom of expression and free, independent and pluralistic media. He or she will report annually to the Implementation Meeting on Human Dimension Issues or to the OSCE Review Meeting on the status of the implementation of OSCE principles and commitments in respect of freedom of expression and free media in OSCE participating States.

8. The OSCE Representative on Freedom of the Media will not communicate with and will not acknowledge communications from any person or organization which practices or publicly condones terrorism or violence.

9. The OSCE Representative on Freedom of the Media will be an eminent international personality with long-standing relevant experience from whom an impartial performance of the function would be expected. In the performance of his or her duty the OSCE Representative on Freedom of the Media will be guided by his or her independent and objective assessment regarding the specific paragraphs composing this mandate.

10. The OSCE Representative on Freedom of the Media will consider serious cases arising in the context of this mandate and occurring in the participating State of which he or she is a national or resident if all the parties directly involved agree, including the participating State concerned. In the absence of such agreement, the matter will be referred to the Chairman-in-Office, who may appoint a Special Representative to address this particular case.

11. The OSCE Representative on Freedom of the Media will co-operate, on the basis of regular contacts, with relevant international organizations, including the United Nations and its specialized agencies and the Council of Europe, with a view to enhancing co-ordination and avoiding duplication.

12. The OSCE Representative on Freedom of the Media will be appointed in accordance with OSCE procedures by the Ministerial Council upon the recommendation of the Chairman-in-Office after consultation with the participating States. He or she will serve for a period of three years which may be extended under the same procedure for one further term of three years.

13. The OSCE Representative on Freedom of the Media will be established and staffed in accordance with this mandate and with OSCE Staff Regulations. The OSCE Representative on Freedom of the Media, and his or her Office, will be funded by the participating States through the OSCE budget according to OSCE financial regulations. Details will be worked out by the informal Financial Committee and approved by the Permanent Council.

14. The Office of the OSCE Representative on Freedom of the Media will be located in Vienna.

Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations

PC.DEC/193
5 November 1997
Annex

By the delegation of France:

“The following Member States of the Council of Europe reaffirm their commitment to the provisions relating to freedom of expression, including the freedom of the media, in the European Convention on Human Rights, to which they are all contracting parties.

In their view, the OSCE Representative on Freedom of the Media should also be guided by these provisions in the fulfillment of his/her mandate.

Our countries invite all other parties to the European Convention on Human Rights to subscribe to this statement.

Albania	Latvia
Germany	Liechtenstein
Austria	Lithuania
Belgium	Luxembourg
Bulgaria	Malta
Cyprus	Moldova
Denmark	Norway
Spain	Netherlands
Estonia	Poland
Finland	Portugal
France	Romania
United Kingdom	Slovak Republic
Greece	Slovenia
Hungary	Sweden
Ireland	Czech Republic
Italy	Turkey

<http://www.osce.org/fom/mandate/files/fom_mandate.pdf>

**Reports and Statements
to the Permanent Council
and other OSCE Fora**

Statement by the Representative on Freedom of the Media at the Fourth Winter Meeting of the OSCE Parliamentary Assembly in Vienna on 25 February 2005

Ladies and Gentlemen,

It is with pleasure that I address you – the legislators of the OSCE participating States – on the subject of reforming defamation provisions in the OSCE area.

I would like to ask for your support of my campaign against criminal libel and insult laws and disproportionate civil damages. I hope that you as members of your national parliaments will convey my aspirations to your colleagues at home. I would like our co-operation to result in more speech-friendly legal frameworks across the OSCE area.

I assume that many people in this hall do not like dealing with journalists. Journalists may misquote you, violate your privacy or just be irritating. However, most of you learned how to live with this, having realized that such is your faith as public servants.

Still, criminal defamation laws remain the major instrument of oppression which is constantly used against journalists and editors in the OSCE area. Most criminal charges brought against them are based on libel and insult laws. Defamation is the most common reason for putting media workers in prison.

Here are our standards:

Based on Article 19 of the Universal Declaration of Human Rights, Article 10 of the European Convention of Human Rights and the constitutional principle of freedom of expression – the cornerstone of all modern democracies – the European Court of Human Rights, the US Supreme Court, the UN Rapporteur on Freedom of Opinion and Expression, the OAS Special Rapporteur on Freedom of Expression, the OSCE Representative on Freedom of the Media, constitutional and supreme courts of many countries, and respected international media NGOs have repeatedly stated that criminal defamation laws are not acceptable in modern democracies. These laws directly threaten free speech and inhibit discussion of important public issues by practically penalizing political discourse.

The solution that all of them prefer and propose is to transfer the handling of libel and defamation from the criminal domain to the civil law domain. The European Court of Human Rights **always** finds imprisonment a disproportionate punishment for libel and insult.

First of all, I have some good news for you. I am pleased to announce that most of the OSCE participating States have realized that their criminal libel and insult laws must be changed. It takes much time and effort to change one's mind, but even more to change the law in the books. However, we can work on this together and I believe that we will succeed!

In 1997, when the post of the OSCE Representative on Freedom of the Media was established, there was only one country in the OSCE area which did not envisage criminal liability for defamation at the federal level: the United States of America. Since then – within only five years – five more States have taken criminal libel off their books. They are Bosnia and Herzegovina, Cyprus, Georgia, Moldova and Ukraine. This vanguard of the OSCE participating States has liberated their journalists from fear of criminal prosecution for their words.

In those countries where criminal defamation laws are applied, the number of cases against journalists has been growing. My Office found out that at least 30,000 people in the OSCE area have been convicted for libel and insult under criminal charges within two and a half years. This amount includes both journalists and non-journalists.

My optimism is boosted by the results of the comprehensive study on defamation provisions and court practices in the OSCE area. It revealed a few remarkable trends that I would like to share with you.

First of all, around 70 per cent of the OSCE participating States have realized that the application of their obsolete defamation laws is against free speech. They have been, to different extents, involved in reform liberalizing their defamation legislation within the past ten years. However, understandably, initiating an abolition of these laws is a lengthy process.

Second, the liberalization is continuing, with current plans to amend criminal provisions in at least 14 OSCE participating States.

Third, only nine out of the 55 countries of the OSCE region admitted having applied actual incarceration for defamation. This shows that actual court practices in most of the countries of 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.

To promote full decriminalization is a mighty task and here the role of stakeholders – members of parliament, local journalistic community, and media NGOs – is hard to overestimate.

For many evolving democracies adopting liberal libel legislation is vital for enhancing their democratic status. Remarkably, it is them who have taken the lead in decriminalizing defamation.

I call on the members of the European Union to abolish all their criminal libel and insult laws. Even though they rarely, if ever, apply these laws, their mere existence allows new democracies to use this fact to justify having similar laws on their books and applying them. The possibility for them to point fingers at the established democracies should be eliminated.

Unfortunately, two new EU members – my home country Hungary and Poland – have recently applied criminal libel laws. I ask these countries to stop this practice.

For those countries who have the wish to decriminalize libel and insult, my Office is always there to assist: through dialogue with state officials, MPs, partner international organizations and journalists; intervening in individual criminal defamation cases; and reviewing current and draft legislation.

We have also prepared some useful tools to assist reform. The comprehensive study – the Matrix – of criminal and civil defamation provisions and court practices will be accessible on our website from March 2005. The Matrix is a database which provides reference to experiences of handling defamation cases across the OSCE region and is a good aide for research and highlighting best practices.

I ask you to take an active approach in decriminalization of defamation in your countries and at an inter-parliamentary level and I hope that your joint effort will yield positive results in the near future.

I wish all of us success in our important endeavour.

ADDENDUM

Excerpts from Final Declarations of the OSCE Parliamentary Assembly concerning defamation

[The OSCE PA] Recognizes that the maintenance of a free, open and democratic society requires the widest possible latitude for freedom of speech and expression, for the media and for society as a whole. Accordingly, laws which provide criminal penalties for the defamation of public figures, or which penalize the defamation of the State, State organs, or public officials as such, chill free speech and undermine democracy and should be repealed where they exist;

Warsaw Declaration of the OSCE Parliamentary Assembly, 1997

Noting that laws which provide criminal penalties for the defamation of public figures, or which penalize the defamation of the State, State organs, or public officials as such, are used to target journalists investigating corruption; reiterating the call from the Warsaw Declaration for participating States that have not already done so to repeal laws which provide criminal penalties for the defamation of public figures, or which penalize the defamation of the State, State organs or public officials as such;

Bucharest Declaration of the OSCE Parliamentary Assembly, 2000

[The OSCE PA] Calls for the elimination of all defamation and insult laws which aim specifically to shield public officials from criticism, believing that such laws severely inhibit free expression and open public debate, and contravene commitments to freedom of expression contained in OSCE and other international agreements;

Paris Declaration of the OSCE Parliamentary Assembly, 2001

<<http://www.osce.org/item/4313.html>>

Regular Report to the Permanent Council of 10 March 2005

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-prisonization” 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 Transdnistrian 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 the NGO community. Last week, we circulated the report to the esteemed Delegations.

First of all, I would like to stress the co-operative approach taken by the Belarus Government and their willingness to open a dialogue with my Office at a high level. My report and recommendations were prepared in the same spirit. I hope this dialogue 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-month 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 an 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 from 31 January to 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 dialogue with the OSCE which is very much needed for an easing of the constrained environment in which the independent media work. This dialogue 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 organizationally 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, *TSV*, 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 encour-

age 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 monopolized 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 just started. The study already revealed a few remarkable and promising trends that I would like to share with you.

- 70 per cent of OSCE participating States have realized 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 frontières* and local media NGOs who assisted my Office in the compilation of this database.

<<http://www.osce.org/item/4371.html>>

Visit to Belarus: Observations and Recommendations 10 March 2005

The OSCE Representative on Freedom of the Media Miklós Haraszti, accompanied by Adviser Alexander Ivanko, and Research Officer Ana Karlsreiter, visited Minsk, Belarus, from 9 to 11 February 2005. The trip was made at the invitation of the Government of Belarus. It was organized by the Ministry for Foreign Affairs and by the OSCE Office in Minsk. The purpose of the trip was to get acquainted with the current state of media freedom in the country and to provide the authorities with recommendations.

Miklós Haraszti met with government officials, parliamentarians, journalists, and representatives of non-governmental organizations. Among those he had talks with were, in order of the meetings:

- Telephone conversation with Foreign Minister Sergei Martynov;
- Senior Foreign Ministry officials;
- Minister of Communications and Informatization (*informatizatsiya*) Vladimir Goncharenko;
- Chairman of the Standing Committee on Human Rights, National Relations and Mass Media Yury Kulakovsky;
- Minister of Information Vladimir Russakevich;
- Meetings with journalists, editors and managers from different media outlets, both from the state and non-state sector.

These meetings provided the Representative with an excellent opportunity to collect first-hand information on the situation of the Belarus media.

Given the welcome fact of the visit and the high-level meetings in co-operative spirit, the OSCE Media Representative hopes that it marked the beginning of a dialogue between the Government of the Republic of Belarus and his Office.

General State of Media Freedom in Belarus

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 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 a free debate in the media.

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

The OSCE Representative has offered his good offices to assist the Government in both immediate and long-term improvements in the media field. Apart from legal reforms, 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.

Belarus Media Law

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 current Media Law with its numerous restrictive provisions allows for several ways to put pressure on the media. It also forces them to exercise self-censorship.

According to Article 1, the Ministry of Information is given extensive powers over the media. Article 16 allows the Ministry to issue warnings, suspend media outlets for one to three months or even to permanently close down a media outlet for violating other articles. Besides warnings for different administrative and technical irregularities, warnings related to content can also be issued under Article 5 (“Abuse of freedom of information”). For example, this article allows the media outlet to be warned for “defaming the honour and dignity of the President”; this offence can also lead to suspensions and closure. In addition to this media law provision, the same offence exists in the Criminal Code.

In the last two years, these powers have been exceedingly used by the Ministry. According to official figures provided kindly by 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	(with 160 warnings)

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

2000	0
2001	0
2002	0
2003	9
2004	25

In a meeting with the Representative, Minister Russakevich insisted that his Ministry's warnings could be appealed in a court of law. However, in 2003 courts dismissed all eight appeals filed by newspapers against the Ministry of Information decisions. No information was available for 2004. The court statistics of 2003 prove that the only remedy against administrative intrusion in the media is to bring to a stop the exercise of this particular power, and erase it from the media law altogether.

The Representative observed, from accounts by both independent and official sources, that the ministerial warning/suspending power was overwhelmingly used against non-state and independent newspapers (*Belorusskaya Delovaya Gazeta, Zhoda, Narodnaya Volya, Vecherni Stolin, Novaya Gazeta Smorgoni*, etc.) The Office of the Representative was not able to track down one warning for content issued to a government media outlet.

According to Professor Mikhail Pastykhov who leads the Belarusian Association of Journalists (BAJ) Law Centre, no new political independent newspapers have been registered in the past two years.

Amendments to the Media Law

The Media Law should be liberalized. In this situation, the OSCE Representative has offered concrete forms of assistance to the Government in improving media-related legislation.

During his visit to Minsk the Representative was informed that amendments to the existing media law were currently being prepared, and that they should be submitted to the National Assembly in March. The Chairman of the Standing Committee for Human Rights, National Relations and Media, Yury Kulakovsky said that these amendments would “liberalize” the law.

Nevertheless, the Representative did not observe an open public debate on the proposed amendments. Non-state journalists expressed concern that if the draft would be made public only when tabled in Parliament it might be too late to have a discussion. In addition, several interlocutors believed that these amendments would make the law even more restrictive and intrusive.

According to *Belapan* news agency, Information Minister Russakevich, speaking at the Ministry’s board meeting on 28 January, said that “efficient measures will be resolutely, uncompromisingly put in future in the way of any attempts to bypass the law or try our patience.”

He stressed that the Ministry would ensure the legislative protection of Belarus’s information space. “It is not unlikely that we will have to adopt new regulations and provisions in the sphere of the media in the near future,” he added.

But during their meeting, Mr. Russakevich did not reject the proposal made by the OSCE Representative to provide legal assistance on the amendments. The Representative offered to conduct a round table, either in Minsk or in Vienna. According to this proposal, the participants would represent three parties from Belarus: experts from BAJ, experts from the Belarusian Union of Journalists (BUJ), and the Ministry of Information. The Representative would provide international expertise.

The Representative would see this as a first step and an act of goodwill towards improving the legal framework for the media.

Libel and Insult Provisions, Imprisonments

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.

Current legislation criminalizes libel. It also offers elevated protection to officials, including the Head of State.

Over the last ten years liability for libel and insult has changed for the worse. In 1999, the Criminal Code for the first time established liability for insulting a representative of the authorities (Article 369). In addition, the 1999 Code established, again for the first time, criminal liability for defaming the President. Both include the possibility of a prison sentence.

The Civil Code establishes liability for dissemination of information which is untrue and denigrating to the honour, dignity and business reputation of an individual.

All these provisions have been used on a number of occasions. They have resulted in curtailing freedom of speech.

Standing Committee Chairman Kulakovsky insisted that “the libel and insult provisions were based on similar legislation in several European countries. We didn’t invent these legal norms.” He also stressed that “because of our mentality we need restrictions including those that defend the honour of the President.”

The Representative found that the libel and defamation provisions in Belarus are being specifically used to induce a chilling effect on journalists.

The Representative will continue a dialogue with the authorities in order to liberalize their legislation on libel and insult. He will also continue appealing to the authorities to free Valery Levonevsky and Alexander Vasilyev, who are serving a prison sentence for insulting the Head of State for distributing satirical verses.

Court Statistics (Official):

Criminal: 56 people have been accused of criminal defamation. 50 have been convicted within the period of 1 January 2002 to 30 June 2004.

Civil: During the same period, courts in Belarus heard 310 cases dealing with the protection of honour, dignity and business reputation of individuals.

State Print Media

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.

State newspapers receive large subsidies in the form of privileges and direct financial support. Minister Russakevich acknowledged that in 2004 his Agency

supported 32 newspapers (and one TV channel). In 2005, the State plans to subsidize this sector with 41 million USD.

The Representative was informed that a system of forced subscriptions to state newspapers is regularly implemented. State bodies and organizations, such as the Academy of Science, universities, schools, entrepreneurs, and commercial organizations have received orders from local authorities to subscribe individually and collectively to state-owned newspapers.

The Media Representative visited the main state newspaper *Sovetskaya Belorussiya-Belarus Segodnya*. The editor of *Sovetskaya Belorussiya-Belarus Segodnya* Pavel Yakubovich briefed the Representative in detail about his newspaper, the largest in the country (290,000 subscribers alone this year, while the actual number of copies distributed is near to half a million). In his view, it didn't really matter if a newspaper was controlled or not by the Government; what mattered was its quality. "There is no such thing as independent media; everybody is dependent either on political circles or on money," he said. Yakubovich insisted that he did not receive any instructions from state officials and that he tried to cover all important events.

The day the Representative left Belarus this newspaper published a transcript of a round table on freedom of expression, where all participants stressed the importance of responsibility and even criticized the Russian media for being "very irresponsible." (Previously, during the meeting with the Representative, the editor did not mention that such a round-table discussion, dealing with the same questions as their conversation, had just taken place and would be published the next day.)

No journalists from the state media were present at the Representative's press conference although they were informed beforehand.

Independent Print Media

The independent media are under constant pressure through judicial, extra-judicial and economic means. According to BAJ, the number of such outlets has drastically fallen over the past year, from 50 to 18. A multitude of "filters" are pushing the independent media out of the market. The authorities should cease administrative and economic discrimination. OSCE should further support through different means the independent media.

The Representative had several meetings with independent journalists and editors from the print media. This media do not receive any taxpayers' money. They are not in any way dependent on the State. They also report independently on political and social developments in the country.

The journalists painted a very bleak picture of their own state of affairs. The numbers corroborate this picture. There is only one independent daily in the

country, *Narodnaya Volya*. Its circulation is just under 30,000. The rest are weeklies or even more irregular publications. The overall weekly circulation of all independent media taken together is only a fraction of the daily circulation of *Sovetskaya Belorussiya-Belarus Segodnya* alone.

According to BAJ, as a result of the operation of several “filters”, the numbers of independent media outlets fell from 50 to 18 over the past year.

Here are some “filters” that have been identified by several independent editors:

- **Registration and re-registration of newspapers.** The mere existence of such a system is in violation of internationally accepted standards, because it provides for arbitrary decision instead of an automatic right to life. On numerous occasions independent newspapers were refused registration. Mandatory re-registration also allows weeding out critical independent media at any point in time.
- **A media outlet has to have a business address to be registered.** However, premises are often denied to independent media.
- **Difficulties with holding on to rented premises.** Just recently, two media outlets, the leading independent news agency *Belapan*, and the office of *RFE-RL*, were told to vacate their premises.
- **Virtual monopoly on subscription/retail distribution of print media.** Belarus state-owned companies *Belpochta* (postal services) and *Belsoyuzpechat'* (retail and subscription distribution) and its regional branches in several cases refused to continue distribution/subscription of independent print media, and unilaterally cancelled subscription, delivery and retail contracts. In addition, private distribution companies need a special licence issued by the Ministry of Communication and Informatization (*informatizatsiya*). Such a licence was refused to several private newspaper distributors. *Belorusskaya Delovaya Gazeta* was refused distribution after a three-month suspension by the Ministry of Information, claiming the paper did not fulfil the circulation required by the contract. That shortcoming, however, was caused by the suspension.
- **Virtual printing monopoly.** The independent media have difficulty getting their newspapers printed. Since 11 February 2004 all Belarusian publishers and printing facilities were required to apply to the Ministry of Information for new licences regardless of when their current licences had expired and in some

case re-registration was refused. Recently, six newspapers (*Vremja, Tovarisht, Mestnaya Gazeta, Belorusskaya Delovaya Gazeta, Den, Solidarnost*) started to print in Smolensk, Russia, since they could not find a publishing house in Belarus that was willing to print them. On one occasion, an editor was asked to replace a collage in his newspaper by the director of the publishing house and he had to agree so as to be able to continue to be printed.

- **Tax inspections.**
- **Pressure on advertisers to withdraw their contracts.**
- **Limited access to information** which makes it impossible for the independent media to perform their duties in a professional manner.

The rights of independent journalists remain fragile in Belarus. A climate has been established which fosters widespread self-censorship among the media. Even the independent media, to avoid further pressure, have to exercise a certain level of restraint in their coverage of political events in Belarus. This was acknowledged by several editors.

In this situation the independent media can survive only with the support of international organizations and NGOs.

In democracies, the media should belong to the civil society, not to the State. In new democracies, where in the past all press was owned by the State, this cannot happen from one day to another, but economic and administrative discrimination against the independent periodicals should stop.

Electronic 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 of the national channels, and allow the transformation of the other into an independent public broadcaster.

All surface nationwide Belarusian electronic media, *BT1* (First National TV Channel), *ONT* (Nationwide TV), and *Radio BRI* (First Channel of Belarusian National Radio) are controlled by the Presidential Administration and the Ministry

of Information. So are the three other TV channels with a large footprint – the satellite channel *Belarus TV*, *TV Lad*, and *STV* (the latter is available in Minsk, in the regional capitals and some other areas).

No local broadcasting outlets are functioning in Belarus which would match the triple criteria of independence, that is, organizational, financial, and editorial autonomy. Although plenty of privately owned radio stations exist, they are all in entertainment, with no coverage of the political disputes in the country.

The Russian Federation TV channels *NTV* and *RTR* are available in Belarus, but generally do not provide significant coverage of Belarusian political developments, and there has been an overall decrease in the audience share of Russian TV broadcasts in Belarus.

The state channels cover political developments in a homogenized way. The Ministry of Information develops themes that the media are encouraged to pursue. For example, it is offering a tender for the production of TV programmes dedicated to the following subjects:

- “Healthy Way of Living”;
- “The Spiritual Revival of Belarus”;
- “The Gifted Children of Belarus”;
- “The 60th Anniversary of the Liberation of Belarus from the German-Fascist Invaders.”

The Representative visited the second national TV channel *ONT* which is 51 per cent owned by the Ministry of Information.

The management at *ONT* insisted that they are a commercial station that did not receive any state funding. When asked if they were covering political developments and disputes in the country, they described themselves as a “broadcaster working in a stable country, and thus we report only on what is of interest to the majority of the population and not what concerns a small minority.”

The same was the fate, that is, lack of any coverage on *ONT* or on any of the TV channels of the country, of a several thousand-strong demonstration by local entrepreneurs on 10 February against the new VAT rules. It lasted many hours in front of the Parliament building during the visit of the Representative with Committee Chairman Kulakovsky. (*Sovetskaya Belorussiya-Belarus Segodnya* did not cover the demonstration in its next day edition as a news event, but at least mentioned it in an opinion piece that praised the new tax regulations.)

ONT did show in 2004 the internationally controversial documentary, *The Road to Nowhere*, which was a scathing attack against the opposition. *ONT* management was not able to provide the Representative with the names of the producers of this programme which they obtained from “somewhere outside”.

Internet

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.

Belarus has one central Internet Service Provider, *Beltelecom*, controlled by the Ministry of Communications.

Although the Ministry of Communications is developing Internet access throughout the country, several problems have been mentioned to the Representative. For example, one needs to present an ID to use the Internet in a café.

According to *Digital Media News for Europe*, *Beltelecom* recently blocked access to both Belarusian and Russian sites. The Representative was told by the Minister of Communication, Mr. Goncharenko, that he is not aware of these cases. He assured the Representative that no filtering mechanisms are planned at the state provider.

Complying with the request by the Chairman of the Standing Committee for Human Rights, National Relations and Media, Mr. Yuri Kulakovskiy, the Representative offered his support to the Committee in its efforts to draft Internet legislation in line with international standards. The dialogue on this important matter is to be continued.

Recommendations

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 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.

- Given the welcome fact of the visit and the high-level meetings in co-operative spirit, the OSCE Media Representative hopes that it marked the beginning of a dialogue between the Government of the Republic of Belarus and his Office.
- The OSCE Representative has offered his good offices to assist the Government in both immediate and long-term improvements in the media field. Apart from legal reforms, 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.

- 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, the OSCE Representative has offered concrete forms of assistance to the Government in improving media-related legislation.
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- 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.
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- 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 of the national channels, and allow the transformation of the other into an 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.

<http://osce.org/documents/rfm/2005/03/4390_en.pdf>

Assessment Visit to the Transdnestrian Region of the Republic of Moldova Observations and Recommendations 10 March 2005

The OSCE Representative on Freedom of the Media Miklós Haraszti sent his Senior Adviser Alexander Ivanko on an assessment visit to the Transdnestrian Region of the Republic of Moldova from 31 January to 2 February 2005. A previous assessment visit personally by the Representative was prepared in October 2004, but was in the last minute deemed “inopportune” by the local authorities, and was cancelled.

This was the Senior Adviser’s third trip to the region over the past five years. The trip was organized by the OSCE Mission to Moldova, and co-ordinated with the Delegation of Moldova to the OSCE. The purpose of the trip was to assess the current state of media freedom in Transdnestria, and to provide relevant recommendations. The report was prepared with the assistance of the OSCE Mission to Moldova.

The Senior Adviser met with regional officials, journalists from “state-controlled” and independent media outlets, and representatives of non-governmental organizations. Among those he had talks with were, in order of the meetings:

- Chairman of the Supreme Soviet of Transdnestria Grigory Maracutsa;
- Deputy Chairman Evgeniy Schevchuk;
- Chairman of the Committee on Science, Culture, Media and Sports Maria Makarova;
- “Deputy Foreign Minister” Vitaliy Yankovskiy;
- Meetings with journalists and editors from “state” media;
- Meetings with journalists and editors from the only private regional broadcaster *TSV*;
- Meetings with independent journalists in Tiraspol and Ribnitsa.

The General Media Situation in the Region

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 dialogue with the OSCE which is very much needed for an easing of the constrained environment in which the independent media work. This dialogue should continue.

The general media climate in the region can be described as restrictive, although short of open harassment of the few media outlets that proclaim themselves as independent. Only three newspapers are non-governmental, not only organizationally and financially, but also providing political journalism 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-governmental organizations close to the "State".

Open pressure, including violent tactics, was recently used against the newspaper *Chelovek i Ego Prava* (The Individual and His Rights) and its two founders (for more details see the chapter below). 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.

Under such circumstances, the majority of journalists, even those working for private media outlets, exercise a level of self-censorship rarely seen in the OSCE region. Several media outlets are privately owned but are carefully avoiding open criticism of those in power.

On the positive side, "The Chairman of the Supreme Soviet" did acknowledge "many problems" in the media field. The authorities were also open to the OSCE Media Representative providing legal advice regarding regional media legislation, including on decriminalizing libel.

It is not clear if the constructive verbal exchange of ideas between the Office of the OSCE Representative and the authorities would lead to any positive developments. Nevertheless, since the authorities encouraged further contacts, this dialogue should continue.

The Role of the "State" and of the "Ministry of Information and Telecommunications" in Media Development

The "State" in Transdnistria has overwhelming control over the majority of the media, either through open ownership or through indirect control. 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.

Although the authorities insist that they only own six per cent of the regional media, even according to official sources another 45 per cent is owned by different “state” agencies, and political and public organizations, all fully controlled by Tiraspol. A leading local independent editor, Grigoriy Volovoi, told this Office that, in his opinion, only 10 to 15 per cent of all publications could be considered non-governmental.

Officials, in conversations, underline the importance of the role of the State in media development claiming that “we can’t really make any fundamental changes until we get independence” (“Supreme Soviet” Chairman Marakutsa).

The massive state property presence is also being justified with the “current political situation” in the former Soviet Union. A paper issued by the “Ministry of Information” (and provided to this Office) described “a newly fashionable pseudo-democratic assault in the post-Soviet region, in the wake of which in reality the legislation in several countries has been handed over to a bunch of bought and politically clueless young people and lumpenproletariat.” Under these circumstances the mentioned Ministry saw the role of the State as providing the population with “truthful” information.

Two additional reasons were given in favour of continuing to have a state press:

- To be able to inform the population about statements and decrees made and signed by the “President”;
- To provide the readers with subsidized and thus affordable newspapers.

The Ministry registers all publications with a circulation over 1,000, and also all broadcasting outlets. This practice allows the Ministry to be subjective which is in violation of international standards that require automatic registration. It even accredits all “foreign” journalists including those coming from Chisinau. Chairman Marakutsa explained the need for accreditation as a “security precaution”.

It seems unlikely that in the nearest future, without an overall political settlement in Moldova, the authorities would agree to abolish the Ministry of Information, and to free the three main “state” newspapers. Nevertheless, they should be encouraged to do so as well as to be provided with positive examples of similar reforms in the OSCE region.

“State”-Owned Media

With the situation currently being in limbo, at least for the time being “state”-owned media should offer their pages and broadcasting time to different political views that exist in Transdnestria.

The authorities own one TV channel (out of two regional ones), one radio station, three newspapers (in Russian, Ukrainian, and Moldovan), and one news agency. The Senior Adviser met with the editors of TV, radio, the news agency *Olvia-Press*, and two newspapers, *Pridniestrovie* and *Adevarul Nistrean*. All of them had more or less the same views. Also no difference of opinion was noted among the editors during a one hour meeting.

All insisted that their media provide for a variety of opinions, that censorship did not exist, that they were not told what to write or what to broadcast. However, after looking through several issues of different “state” newspapers, and talking to independent journalists, it became clear that this was not the case. As one local observer put it: “the newspapers smear the opposition, condemn any contacts with the right bank [Chisinau], they are very uninformed and slow.”

An editor of a local independent newspaper noted that the “state” media were “forcing us to believe that everybody in Moldova is our enemy.”

The editors in unison repeated on several occasions that they offered space to two prominent local opposition leaders, Alexander Radchenko and Nikolai Buchatskii, but both had declined to be interviewed. Buchatskii disputed that fact saying that, on the contrary, he had asked for air-time but was rebutted.

A transitory option that could be lobbied with the authorities is to at least provide some space for views that are not necessarily in line with those of the said authorities.

Television of Free Choice (TSV) and the Monopolization of the Telecommunications Market

A local company, Sheriff, which owns TSV, has monopolized not only the private broadcasting sector but 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 only regional TV channel that is privately owned is *TSV*. It was established just over four years ago by a local company Sheriff. It offers news, analytical programmes, entertainment, and sports. It started to develop its own talk shows. The editor of *TSV* Inna Zvyagintseva explained their editorial policy as one of “providing a positive image” to its viewers. She added that *TSV* avoided showing, for example, footage dealing with murders.

She and two of her colleagues, political editor Vadim Bulatovich and anchorman Igor Avrenev, insisted that they objectively covered all political developments, and offered air-time to all prevalent views. Several independent journalists confirmed

that *TSV* did provide better news coverage than “state” TV, although they still noted that *TSV* avoided openly criticizing the region’s leadership. *TSV* also has the best equipped studio in Moldova.

The owner of *TSV*, a local entity Sheriff, is currently the monopoly owner of telecommunications services in Transdniestria: telephone, including mobile, Internet access (it is the main provider in the region), and cable television. It is not clear how this company developed, or who are its owners. It is believed to have been established by three former police officers who took part in the 1992 conflict. Over the years, Sheriff has become the largest owner of supermarkets and other businesses in Transdniestria. It built one of the best football stadiums in Europe located in Tiraspol. It is in the process of constructing a luxury hotel and an entertainment centre.

It is clear that Sheriff’s monopoly over telecommunications is unhealthy for market reform, and that a strategy should be developed by international organizations in conjunction with Chisinau on how to solve this issue in the long-term.

Somewhere in the Middle: Profsoyuznie Vesti (Trade Union News)

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 tow the official line. For the sake of pluralism, the possibility of providing assistance to this newspaper should be explored.

Profsoyuznie Vesti is published by the local trade union, but it does not provide any financial support to this weekly. Its editor, Ludmila Koval’, told the Senior Adviser that the newspaper did not really have any problems with the authorities outside several civil libel cases filed by local officials. The newspaper focuses on social issues. To avoid being accused of opposition tendencies, *Profsoyuznie Vesti* always provides space for an official commentary.

“Most of the time, when somebody does not like our story, they will call and shout at me on the telephone, but not much more. Maybe it is also because only women work here,” said Koval’.

Koval’ said that her newspaper had two main problems: financial limitations and almost no access to information. “The authorities give information depending on how they feel,” she complained.

Independent Newspapers: Dobrii Den' in Ribnitsa and Novaya Gazeta in Benderi

International organizations should provide moral, material, financial, and technical support to *Dobrii Den'* and *Novaya Gazeta*. They could be supported, for example, 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 Senior Adviser visited the offices of *Dobrii Den'* in Ribnitsa in the north of the region. This was his second visit to this newspaper in two years. Previously, the newspaper was sued for libel for 30,000 USD. In the end the newspaper lost the lawsuit but paid a much smaller sum and did not go bankrupt. *Dobrii Den'* extensively covers corruption, especially concerning privatization schemes.

Dobrii Den' is involved in several joint projects with Moldovan newspapers, mostly dealing with social issues.

The owner of this newspaper, Svetlana Kotovskaya, informed the Office that the newspaper was not really under any serious pressure. "Of course, after you leave, I will be visited by the MGB ["state" security], but that happens so often I don't even consider it as a form of pressure," Kotovskaya told Senior Adviser Ivanko.

She considered the lack of access to information a much bigger problem. "We usually don't get any answers when we ask the authorities for information, they just ignore us," said Kotovskaya. "In a way that is also a form of pressure since we lose out to other publications, mostly state-controlled."

She added that recently the newspaper's distributors were pressured to drop *Dobrii Den'*. This has led to a fall in circulation. Also, publishing costs increased by 20 per cent, which forced her to raise the cover price.

In addition, Kotovskaya complained of a severe shortage of professional journalists willing to work in the region. She found it almost impossible to hire young journalists. This she saw as a major impediment to the future development of her newspaper business.

One idea that could be explored, would be to identify Russian or Ukrainian journalists who would be able to come to Ribnitsa for one to two months and to provide some initial training to interns who should be hired by Kotovskaya. This project could be funded through voluntary contributions.

The Senior Adviser also met with Andrei Safonov and Grigorii Volovoi, who edit *Novaya Gazeta*, an independent newspaper in Benderi. As was the case with *Dobrii Den'*, Safonov said that the authorities had stopped using open methods of pressure against his paper, and have become much more subtle in their approach to

most independent newspapers. [For an exception, see the chapter below on *Chelovek i Ego Prava*.] However, as Volovoi put it: “the authorities are doing everything to discourage anybody else from becoming an independent journalist or editor.”

“Just today, for example, they forced the local publishing house to raise our printing costs by 70 per cent,” said Safonov. Previously, *Novaya Gazeta* has had its print-runs confiscated on a regular basis (see the Office’s *Report on the Media Situation in Moldova* from December 2004). This newspaper also has no access to official information.

Volovoi and Safonov have filed for a broadcasting licence, but have been refused. They plan to appeal. They are also being investigated by the tax inspection.

The Harassment of Alexander Radchenko and Nikolai Buchatskii from *Chelovek i Ego Prava*

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.

Buchatskii provided extensive details to the Office concerning the campaign against him and Radchenko. Several local newspapers close to the region’s leadership ran smear campaigns against these journalists. For example, the local newspaper *Novii Dnestrovskii Kurier* (told by several interlocutors to be associated with MGB, the local security service) accused Buchatskii of being a “Satanist” and of involving his underage granddaughter in “satanic activities”. *Novii Dnestrovskii Kurier* has been conducting a smear campaign of both editors. It even editorialized that to criticize Transdnestria because of widespread corruption was “intolerable”.

Olvia Press, the official Transdnestrian agency, published a number of articles accusing Radchenko of treason, in particular of collaborating with Chisinau and various Western countries. Buchatskii was described to Ivanko by the editor of “state” radio as a “drunk and a traitor”.

The Office’s Senior Adviser visited the office of *Chelovek i Ego Prava* and saw that the building where they were renting space, and only that building in the neighbourhood, had been defaced with obscene graffiti, and most of its windows had been broken. Buchatskii and Radchenko were physically attacked on several occasions. The office is located next to the headquarters of the local leadership, and this area is heavily patrolled by security forces, none of which took any action to prevent assaults against persons and property of the paper.

Background Information on this Case

Several Transdniestrian “patriotic” organizations during the week of 13 to 17 December 2004 launched a campaign of defamation and physical attacks against Alexander Radchenko, the sole opposition deputy in the Transdniestrian Supreme Soviet. The action came on the eve of a government-inspired recall vote on 19 December, aimed at removing the sole independent voice from the left bank legislature.

Alexander Radchenko, a former Soviet army officer and government publicist in the early days of the Transdniestrian regime, was elected to the “Supreme Soviet” in December 2000 from a Tiraspol district as the leader of the opposition Party of Peoples’ Power. Radchenko and Buchatskii also regularly publish critical commentary on the situation in Transdnistria in Chisinau newspapers.

For a long time authorities in Tiraspol tolerated Radchenko’s opposition activities. However, with the marked deterioration of relations between Chisinau and Tiraspol during 2004, Transdniestrian security forces clearly began to move against Radchenko.

After a failed gathering of left and right bank human rights NGOs in Tiraspol in early July, unknown persons scrawled crude obscenities and poured acid on the entrances to Radchenko’s and Buchatskii’s residences. By late summer, Transdnistrian authorities collected some 200 signatures from voters in Radchenko’s district calling for his recall as a “Supreme Soviet” Deputy. Radchenko challenged both the validity of the action and the signatures in Transdnistrian courts, but lost on all counts. The recall election was scheduled for 19 December, with five polling places in his Tiraspol district. For Radchenko to be removed, opponents needed to obtain one more than the 1,325 votes he received in 2000. The necessary quorum of 25 per cent of eligible voters was not reached. Less than 10 per cent of voters in his electoral district participated, and, as a result, the recall failed.

On 16 December activists from two officially sponsored Transdnistrian “NGOs” – the League of Transdnistrian Youth and “Tiraspolchanka”, a patriotic organization of women pensioners – picketed Radchenko’s newspaper office in Tiraspol. The demonstrators burned Moldovan flags and portraits of Radchenko and Voronin. When Radchenko arrived at his office, demonstrators pelted him with water, plastic bottles, and debris. Radchenko suffered slight bruises. A lengthy, laudatory account of the events, with several pictures, appeared immediately on the *Olvia Press* website.

At the same time, activists distributed and posted derogatory leaflets in the building in which Radchenko resides. “Attention – Danger”, the leaflet read, “In apartment 129 in our building lives a maniac!” The flyer accused Radchenko of writing obscenities on the walls himself, and warned residents to protect their children. “Think how to isolate this monster in human form,” the leaflet concludes. “Say NO to the maniac. Say YES to a peaceful and happy life.”

Recommendations

- 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 dialogue with the OSCE which is very much needed for easing the constrained environment in which the independent media work. This dialogue should continue.
- The “State” in Transdnistria has overwhelming control over the majority of the media, either through open ownership, or through indirect control. 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 views that exist in Transdnistria.
- A local company, Sheriff, which owns *TSV*, has monopolized 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.

<<http://osce.org/item/14036.html>>

Visit to Italy: The Gasparri Law Observations and Recommendations 7 June 2005

The OSCE Representative on Freedom of the Media, Miklós Haraszti, accompanied by Advisers Alexander Ivanko and Roland Bless, visited Rome, Italy, from 30 March to 1 April 2004. This was the Representative's first visit to this participating State. The trip was made at the invitation of, and was organized by, the Ministry of Foreign Affairs of 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 Law¹, Italy's first comprehensive regulation of all broadcast media, and of the Frattini Law², 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.

The Representative appreciates the co-operative approach of the Italian authorities and their willingness to discuss all issues raised by him openly.

Miklós Haraszti met with government officials, parliamentarians, scholars, and media lawyers. Among those he had talks with were, in order of the meetings:

- Minister of Communications Maurizio Gasparri and his Deputy Giancarlo Innocenzi;
- Members of the Italian Delegation to the OSCE Parliamentary Assembly, Senator Luigi Compagna and Member of the Chamber of Deputies, Mr. Fabio Ciani;
- President of the Justice Commission of the Senate, Senator Antonino Caruso;
- Professor Mauro Masi, Secretary-General of the Presidency of the Council of Ministers (Prime Minister's Office);
- Senior officials from the Foreign Ministry.

1 The "Gasparri Law" is Law 3 May 2004, no.112: "Regulations and principles governing the set-up of the broadcasting system and the RAI-Radiotelevisione italiana S.p.a., authorizing the government to issue a consolidated broadcasting act" <<http://www.comunicazioni.it/en/index.php?IdNews=18>>

2 The "Frattini Law" is Law 20 July 2004, no. 215 "Norme in materia di risoluzione dei conflitti di interessi", or "Regulations for the Resolution of Conflicts of Interest".

At the request of the Representative, the MFA of Italy kindly hosted a one-day expert workshop on the effects of the Gasparri Broadcasting Law. The workshop was attended by,

at the invitation of the MFA of Italy:

- Mrs. Laura Aria, Director of the Supervision and Control Department of AGCOM - Communications Guarantee Authority;
- Mrs. Francesca Quadri, Chief of the legislative office of the Communications Ministry, Rome;
- Mr. Vincenzo Zeno-Zencovich, Professor of Comparative private law – IIIrd University of Rome;

at the invitation of the Representative:

- Avvocato Caterina Malavenda, expert on Information and Communications Law, Milan;
- Mr. Giulio Enea Vigevani, Professor of Information and Communications Law, University of Milano-Bicocca Law Faculty, Milan;
- Mr. David Ward, Director, Centre for Media Policy and Development, London.

The Reason for the Visit: The “Italian Television Anomaly”

Italy has a very diverse and lively media scene with most prevalent views present. Issues of public concern are regularly debated both in the print and the broadcast media. Television has developed over time to become the main source of information for the Italian public, with fourteen nationwide surface-frequency channels³ and more than five hundred local and regional channels. There are thousands of radio stations in the country. Newspaper readership on the other hand, at six million daily, has remained roughly the same for the past fifty years. The ownership diversification of Italy’s newspapers is considered to ensure their pluralism and independence, although their advertisement revenues, because of their relatively low circulation, are less secure.

This country is also one of the first European Union Member States which has initiated legislation to decriminalize libel and defamation.

³ Three for RAI (RAI 1, RAI 2, RAI 3), three for Mediaset (Canale 5, Rete4, Italia 1), two owned by Telecom Italia (La 7, MTV), two owned by Holland Coordinator (Tele+ 1, Tele+ 2), Rete Mia and Rete A, in addition to Rete Capri and Home Shopping Europe.

Freedom of expression and press freedom overall 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.

Prior to the Gasparri and the Frattini Laws, the “Italian anomaly” consisted of three major deficiencies:

- A duopoly domination in the nationwide television market, and a quasi-monopoly in its private sector.
- A conflict of incompatible interests, because the current Prime Minister is also an owner of the country’s dominating television and advertisement enterprises.
- An unconstitutional legislative vacuum, as no laws existed capable of averting unhealthy media concentrations or incompatible interests of public officials.

Very High Concentration in the Television Media

In the last two decades, no third force has been able to constrain the so-called *duopoly*, a dual domination of the nationwide television channel market by one of the private owners, *Mediaset*, and the public *Radiotelevisione Italiana – RAI*. The duopoly was accompanied by a practically monopolistic situation in the commercial television sector and the advertisement market, both dominated by *Mediaset*.

As regulated by international frequency treaties, Italy can have eleven nationwide surface-frequency analogue-distribution channels. Actually, there are fourteen (see footnote 3).

- Within the market of these fourteen channels, the public-service broadcaster *RAI* and the privately owned *Mediaset* muster a duopoly in audience share with around 45 per cent each (both own three channels). This 90 per cent share is split amongst the six channels, but in actual fact only between these two companies. The remaining 10 per cent of the audience share is distributed between the remaining eight national TV outlets.
- The Italian duopoly is one of the highest concentrations of nationwide television networks in Western Europe.⁴

⁴ “... Italy has the most concentrated television market, with *RAI* and *Mediaset* dominating the market, in terms of audience and revenue shares. ...The least degree of concentration in the television sector is in the UK where three main players – the *BBC*, *ITV* and *Channel 4* – have a combined market share of 69.9 per cent of the audience [...]” David Ward, *A Mapping Study of Media Concentration and Ownership in Ten European Countries* (Netherlands Media Authority, 2004).

- The allocation of the combined revenues also demonstrates the duopoly. *RAI* received 38 per cent and *Mediaset* received 32.3 per cent of the total television revenue, amounting to 6,954.4 million euros in 2004.
- In the privately owned commercial segment of the TV market, that is without the *RAI* system, the revenue situation amounts to a virtual monopoly of *Mediaset*. In 2004 *Mediaset* received 58.3 per cent of all advertisement revenues (*RAI* received 28.1 per cent). None of the other commercial nationwide networks received more than 2 per cent, and the hundreds of local/regional TV stations combined harvested just below 9 per cent.
- The advertisement market also shows a strong concentration. AGCOM, the Italian media authority, in March 2005 established that *Mediaset's* advertising vehicle *Publitalia '80* controlled 62.4 per cent of the television advertising revenues.

After the completion of the Representative's visit, on 14 April 2005 it was reported that *Fininvest Holding*, with a public offer of shares, lowered its stake in *Mediaset* from 51 per cent to 34 per cent, maintaining *Fininvest's* status as the leading shareholder but not in an absolute majority position.

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

Incompatible Interests of the Prime Minister

During the previous and present tenures of Mr. Silvio Berlusconi as Prime Minister of Italy, the country's high media concentration was complemented with an unresolved conflict of interests. His family is the owner of *Fininvest Holding*, which owns a large part of *Mediaset*, which in turn fully owns the *Publitalia* advertisement enterprise.

In a democracy, it is incompatible to be both in command of news media and to hold a public post.

The predicament is not comparable to the usual conflict of entrepreneurial and public posts, with its dispute concerned mostly with opportunities to influence business competition. Rather, this is a conflict between political and business interests in combination with shaping public opinion.

Media ownership by public officials has grave constitutional implications, as it:

- Offers unaccountable opportunities to engineer media coverage;
- Damages fairness and transparency of the political competition;
- Diminishes pluralism of information and freedom of choice;
- Impairs the government's accountability and legitimacy.

Italy has an ongoing record of control over and interference with public-service television by political parties and governments. As the Prime Minister is also the country's main media entrepreneur, 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.

The Legislative Vacuum and the "Photocopy" Media Laws

All these shortcomings – political control of public television, high level of concentration in TV broadcast media, and incompatible media ownerships – developed during a legislative backlog in the 25 years prior to the Gasparri and Frattini Laws.

The Constitutional Court was never able to impose on the legislator a comprehensive overhaul of the media system from a pluralism point of view.

The Parliament, regardless of the political colour of the majority, never acted in a timely fashion, and if it did act then it was with a view to preserving the status quo, that is, the duopoly.

The subsequent media rules passed by Parliament were dubbed "photocopy" laws. The term was used because these laws merely acknowledged, and thereby legalized the wild-grown system already in existence, instead of improving the situation.

- In 1975, in law 103/1975, *RAI* was overhauled. Pluralism was seen as satisfied with the so-called "lottizzazione". That system in effect carved up the nationwide channels between the three main political parties of the time.
- In 1976, decision 202 of the Constitutional Court allowed private local networks, but not nationwide channels, to compete with the nationwide operator *RAI*.
- During the next decade, Mr. Berlusconi's *Fininvest* (as of 1994 *Mediaset*) effectively consolidated nationwide channels by purchasing local television channels, and unifying their programmes and their advertisements.

- In 1985, Parliament passed an emergency decree (10/1985). This saved the *Mediaset* television stations from being switched off by the judiciary for being de facto unauthorized nationwide channels.
- In the 1990 “Mammi Law” (223/1990), another “photocopy” legislation, Parliament decided to legalize nationwide commercial television channels. However, it allowed for an equal number as the public *RAI* channels. This amounted to three channels and Parliament thereby in fact shielded the three *Mediaset* channels from competition. The law thus cemented the “duopoly”.
- In 1994, the Constitutional Court (420/1994) obliged Parliament to end the duopoly by enacting a 20 per cent upper limit for television market concentration. That request of the Court is still in vigour.
- In 1997, Parliament acted for the first time on the 20 per cent limit request. In the Maccanico Law, (249/1997) some restraints on the duopoly were introduced. It envisaged the transferring to satellite of one channel of *Mediaset* (*Rete4*) and the transformation of one channel of *RAI* (*RAI-3*) into an advertisement-free station. Neither has since been implemented.
- In 2002, the Constitutional Court (284/02) finally imposed a detailed timetable for Parliament to comply with pluralism principles and, in particular, with the 20 per cent upper limit rule.
- In response, in 2003 to 2004, the second Berlusconi administration enacted the Gasparri Law. However, it started its work with another legislative step reminiscent of the “photocopy” period. Referring to the imminent general reform initiated by the Gasparri Law, the Government in late 2003 enacted a temporary waiver from the restrictions on *Mediaset* and *RAI*, spelled out in the Maccanico Law. The temporary waiver has since been replaced by the new structure of the Gasparri Law; thus *Rete4* and *RAI-3* operate “legally” again.

As with regard to the conflict of interest issue, no incompatibility law had existed prior to the Frattini Law of 2004. This legal gap is also the failure of several governments. For example, between the two governing periods of *Mediaset* owner Mr. Berlusconi, the government of his opposition did not act on the issue either.

What was Expected of the Gasparri and Frattini Laws

The Gasparri Broadcasting Law was proposed by the Government of Italy as a solution to the high concentration in the television market. After initially being rejected by Italian President, Azeglio Ciampi, for not sufficiently respecting pluralism, the bill was amended and became law in May 2004.

The Frattini Law was submitted by the Government to resolve, among other issues, the media owner/Prime Minister incompatibility. It was passed in July 2004 to deal with all conflicts between public duty and private interests of public officials.

It was expected of the Gasparri Law that it would provide a working solution to these general and specific tasks:

- Providing guarantees for actual and future pluralism of the media;
- Ending the duopoly in the nationwide television market;
- De-monopolizing the commercial television and the advertisement markets;
- Complying with the Constitutional Court's demand for a 20 per cent ceiling in national television holding for any enterprise;
- De-politicizing *RAI* (making it effectively independent from political parties and governments).

The Gasparri Law was also expected to ease the burden of the *Mediaset*/Prime Minister personal union, by its parallel de-monopolization of *Mediaset* and de-politicization of *RAI*.

What was expected of the Frattini Law:

- Outlawing all incompatible “two-hat” situations, and thereby resolving the problem of the *Mediaset*/Prime Minister personal union as well.

New Concepts Introduced in the Gasparri Law

Minister Gasparri, when talking with the Representative, described the Law carrying his name as “a very modern one because of its digital approach”. He called it “an avant-garde law that is looked upon by other countries.” Concerning tasks of the Law related to protecting pluralism, he expressed his conviction that “the switch from terrestrial to digital will allow for a proliferation of stations and will lead to pluralism higher than in any other country.”

Some of the Law's concepts are indeed novel or even the first of their kind, not only in Italy but in the whole of Europe.

These are:

- Bringing the broadcast industry into a digital environment and enhancing the convergence between broadcasting and telecommunications.
- Obliging all broadcasters to switch over to Digital Terrestrial Transmission, thereby multiplying the number of available programmes.
- Based on an abundance of digital channels, television will be freed from State licensing. Simple registration should be sufficient to start broadcasting activities. A specific act will be issued to assign frequencies.
- Telecommunication regulations will be applied to broadcasting.
- The broadcasting markets, at least for administrative purposes, will be united with all other content markets of the communication sphere; the new, much larger market is called “integrated communication system”, or SIC (*sistema integrato delle comunicazioni*).
- Broadcasting is redefined into one of the many “services” within the “integrated communication system”.
- Previously closed and protected markets of different media types are opened up for intra-media competition on new markets.
- Cross-ownership limitations between different media types are abolished, with the exception of bans on newspaper acquisition by broadcasters, and on investment into broadcasting by telecom companies.
- Market regulation in the new “integrated communication system” will follow the EU concept of “freedom of services”, instead of the EU principle of separate regulations for the “relevant media markets”.
- Anti-monopoly regulation will follow the general antitrust law of the EU, applying a market share control, rather than the specific protection measures requested by the EU in defence of “external media pluralism” in the “relevant markets”.
- Without specifying criteria or calculus, the law forbids dominant positions that would be dangerous for pluralism of media, and AGCOM, the communica-

tions authority, will have power to intervene – afterwards – when it deems respect of pluralism to be at peril.

- In the long run, the Law orders to privatize the public broadcasting company *RAI* in order to make it fully compatible with the market, and to make it independent from political forces, while it keeps *RAI* contracted to perform special public service obligations.
- In the immediate future, Parliament and Government will continue to designate board members of *RAI*, gradually diminishing their voting power as the proportion of state-held shares diminishes.

Many aspects of the Gasparri Law are unquestionably leading towards a multiplication of the broadcasting channels. They create opportunities for diversification and synergies between the channels.

In a worldwide breakthrough, based on the anticipated digitalization, 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, neither universal digitalization nor equal competition rules can by themselves guarantee cultural diversity and political pluralism in the media, especially if the already existing media concentration is practically maintained or even enhanced by the Law.

The Gasparri Law is not Likely to Remedy the “Italian Anomaly”

In the view of the Representative, despite its modernizing effect on the media markets, the Gasparri Law cannot, in the foreseeable future, correct the television anomaly, nor bring about a de-monopolized television environment in Italy.

Instead, it is likely to function as another “photocopy” legislation *vis-à-vis* the three main worries: the duopoly, the high concentration in commercial television, and the political domination of *RAI*. The Law is reproducing, hiding, and shielding, rather than eliminating these features.

The Gasparri Law is not primarily aimed at addressing the concentration issue. The Law’s creators admit their intention to tackle concentration indirectly and only in the distant future. De-monopolization is supposed to be achieved as a by-product after the transition period when today’s television markets will have developed into new, unknown ones.

In an ideal world, many of the Law's comprehensive market reforms could enhance media diversity; but they are not sufficient to dissolve the ready-made *RAI-Mediaset* duopoly, or the advertisement revenue domination by *Publitalia*.

One major reason for the Law's stopping short from de-monopolization is its key assumption that, beyond ordinary market and technology regulations, there is no need for special care for pluralism in the media. Another reason is the lack of political will in the legislature to address the pluralism issue.

Italy's comprehensive digital-era media law needs a careful legislative review to address the "photocopy" effects, that is, the missing or misguided provisions which, in end effect, maintain the present dominations.

- The well-known concentration in today's television market should be dealt with separately from the market share provisions of the integrated digital media of the future, even at the price of dealing with them in the "old-fashioned" pre-convergence, segregated manner.
- The transition from monopolistic to pluralist television should precede the transition to the Gasparri convergence market.

Transition from Analogue to Digital Broadcasting

The Gasparri Law's rules of transition from analogue to digital, despite their innovative force, also help preserve the old media concentration in the new legal framework, and might even enhance them.

The Gasparri Law reconfirms 2006 as the deadline for full transfer to Digital Terrestrial Transmission (DTT), originally set by Law 66/2001 of the previous Government.

Based on classic analogue terrestrial frequencies, Italy is authorized to have 11 nationwide programmes. DTT allows for splitting of one traditional frequency into five digital ones; thus channel frequency will no longer be a scarce commodity.

Advocates of the Gasparri Law expect a surge of broadcasters in the wake of a universal, equally automatic switch from analogue to digital that would, as a result, end the duopoly. Professor V. Zeno-Zencovich, one of the main experts backing the reform put it this way: "Instead of splitting the two big players we are splitting their audiences."

Ostensibly, the 14 "old" terrestrial national channels are already equal players with the newcomers in an allegedly open digital market.

In fact:

- Most experts, government ones included, concede that 2006 is too unrealistic a deadline for such a massive technological shift. Officially, up to the

Representative's visit, 10 per cent of all households have obtained the set-top unit necessary for digital decoding. Unofficial estimations all pitch lower. In fact, "switch-over" could take place over a time of up to four or five years. This is suggested by all international experience in digitalization.

- The Gasparri Law allows the "Analogue Fourteen" (including the "Duopoly Six", which command more than 90 per cent of the audience and the revenues) to keep their traditional frequencies until full audience switch-over to digital. At the same time they are allowed to use their acquired economic might to expand into all of the new markets of the digital scene.
- Additionally, a lack of incentive for newcomers is discouraging new investment in the fully saturated Italian market. The quasi-total dual domination of the audience by *RAI* and *Mediaset* is highly inhospitable to new players. Digitalization will not, *per se*, encourage more competition. However, the Law stops there. The transition rules do not offer any incentive for investment from outside the duopoly.
- A review of the Law as soon as possible should check the digital transition provisions for their capacity to maintain or diminish the existing media concentration.
- The amendments should make active use of the opportunities inherent in the digital changeover in order to increase pluralism.
- Instruments could be applied to improve competition, to motivate the old players to get rid of excess concentration, and to encourage new players to invest.

The "Integrated System of Communications" (SIC) and its Antitrust Provisions

The newly defined convergence media market, called SIC, may stimulate market integration, but is also likely to legally embrace the duopoly of *Mediaset* and *RAI* in the coming digital television era. The antitrust and market share clauses of the SIC cannot meaningfully lower the existing concentration levels in the Italian television market.

According to the Law, SIC means "a sector of the economy including: daily newspapers and periodicals; electronic and directory publishing, including the Internet; radio and television; cinema; external advertising; product and service announcements; sponsorship." This should address the fact that traditional seg-

mentation of the media is being superseded by overlapping market sectors due to technological innovation.

- Market size of the SIC is not known, nor could any Italian authority give any figures in this regard. An estimate by the economics newspaper *Il sole 24 ore* puts the size at approximately four to five times the size of the present TV market.

In fact, SIC is a mixture of different types of services which makes it difficult to protect pluralism within the “relevant” media markets. The key concept of “relevant market” is missing from the law, to the detriment of the protection of diversity.

The Law also regards the Constitutional Court’s 20 per cent limit, put in place in 1994, as obsolete. It was meant to be the ownership and revenue ceiling for the analogue television channels. That rule would have disallowed *RAI* or *Mediaset* to own more than two nationwide channels.

Instead, several other types of market ceilings are stipulated in the Law, but none of them is capable of reducing the acquired high level of concentration in the television market.

- As recently as 2 March 2005, the AGCOM, Italy’s media authority, came to the conclusion that the broadcasting market is still characterized by the duopoly *RAI/Mediaset*, with three companies, *RAI*, *Mediaset* and *Mediaset’s* advertising vehicle *Publitalia ‘80* found to hold dominant positions that violate the principle of pluralism.
- It is obvious that the Italian audience, for the foreseeable future, will continue to rely on television as their main source of information on public affairs, and, regardless whether analogue or digital, will watch the channels of the “duopoly”.
- The “digital mathematics” of the Gasparri Law continues to allow the “duopoly” to maintain and increase their audience shares, without violating the new market share limits defined for the much larger SIC.

A review of the law should cease attempts to bypass, by mere regrouping and recalculating of the markets, the task of effectively de-monopolizing the television scene.

- Antitrust aspects of the Law should go further than the market shares of SIC, and protect external pluralism in television, that is, they should care for a sufficient number of truly different news channels.

- The Law should include definitions of the separate relevant markets inside the SIC; for the protection of pluralism it is especially relevant to define a news broadcast market.

The Privatization of RAI – Its Board Remains Political

The privatization rules set by the Gasparri Law might for a long time only preserve the present patterns of government and party interference in *RAI*'s steering board, despite the Law's intention to make *RAI* more independent through privatization.

The Gasparri Law confirmed *RAI* as a publicly owned shareholder company. The Law envisages a gradual privatization of *RAI*. Even after full privatization, *RAI* would be obliged by contract to continue airing a certain amount of public-service information.

The voting power of the new, private shareholders will gradually grow, while the proportion of State-held shares will diminish. However, in order to prevent a hostile takeover of *RAI* by the broadcasting industry, or any other force, individual investors may only buy one per cent of the shares, and may not join into shareholders' agreements.

- It is not clear why any investor would buy one per cent of the shares if they are not allowed to influence the activities and profits of the company. The one per cent rule seems to effectively block the privatization of *RAI*.

In any case, privatization of *RAI* is envisaged as a very long process. In the immediate future, *RAI* will remain politically managed as Parliament and Government will continue to designate *RAI* board members.

Out of the nine members of the *RAI* Board of Directors, six board members will be appointed by the governing coalition (four by Parliament and two by the Government) and three by the opposition parties. However, the Chairperson can only be elected with a two thirds quorum of the respective Parliamentary Commission, requesting both political blocs to co-operate on the board's composition.

At least in the starting years of the new *RAI*, the board majority will consist of government appointees. The composition will only change when terms of board members expire. (Parliament has just elected seven new members of the board; obviously four were put forward by the majority and three by the opposition).

Thus the privatization of *RAI* boils down to an increased number of board members, which is welcome, but the opportunity to lower political influence has been missed.

- At a review of the Law, the Italian legislature is encouraged to fully de-politicize the management structures.

- The transformation of *RAI* into a shareholder company also means that *RAI*, despite being a public-service television, has to maintain a prominent place for its commercial programmes. Some experts suggested that a better solution might be the splitting up of *RAI* into clearly defined public and commercial entities, possibly privatizing only one or two of the current three *RAI* channels.

The Frattini Law

The conflict between Prime Minister Berlusconi's public office and his media holdings was settled from a legal point of view by the Frattini Law. 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.

In July 2004, the Italian Parliament adopted the Regulations for the Resolution of Conflicts of Interest, known as the Frattini Law. No similar legislation has been adopted under previous governments. Under this law, those holding government office cannot "occupy posts, hold office or perform managerial tasks or any other duties in profit-making companies or other business undertakings."

Section 7 of this law specifically deals with the responsibilities of the Broadcast Authority in respect to conflicts of interest and allows it to take punitive action against media that treat any government official preferentially.

Under the current circumstances, this law prevents the Prime Minister from managing his numerous businesses. However, he is free to decide who should do that for him. It is legal, for example, to ask family members to substitute during the tenure of the office holder.

Proactive care for pluralism and freedom of the media is a standard duty of all democratic governments. A more reassuring solution for the public would be a stricter regulation, such as a "blind trust" with a custodian. With a "blind trust" solution, office holders would have no influence over their assets during the custody, while they still would keep their property.

Summary and Recommendations

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, has deprived Italian audiences of an effective variety of sources of information, and has 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.

Recommendations Concerning the Gasparri Law

Some of the Gasparri Law's concepts are novel or even the first of their kind, not only in Italy but also 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 digitalization, 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 modernizing effect on the media market, the Gasparri Law cannot correct the television anomaly, nor bring about a de-monopolized 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, hide and shield, rather than to eliminate the duopoly, the high concentration in commercial television, and the domination of *RAI* by politics.

Italy's new comprehensive digital-era media law needs a careful legislative review in order to address the present dominations.

- The well-known concentration in today's television market should be dealt with separately from the market share provisions of converging digital media in the future.
- The transition from monopolistic to pluralist television should precede the transition to the Gasparri convergence market.

In particular:

- A review of the Law as soon as possible should check the digital transition provisions for their capacity to maintain or diminish the existing media concentration.
- The amendments should make active use of the opportunities inherent in the digital changeover in order to increase pluralism.
- Instruments could be applied to improve competition, to motivate the old players to get rid of excess concentrations, and to encourage new players to invest.

- A review of the Law should cease attempts to bypass, by mere regrouping and recalculating, the task of effectively de-monopolizing the television scene.
- Antitrust aspects of the Law should go further than the market shares of SIC, and protect external pluralism in television, that is, they should care for a sufficient number of truly different news channels.
- The Law should include definitions of the separate relevant markets inside the SIC; for the protection of pluralism it is especially relevant to define a news broadcast market.
- At a review of the Law, the Italian legislature is encouraged to fully de-politicize the management structures of *RAI*.

Recommendations Concerning the Frattini Law

The conflict between Prime Minister Berlusconi's public office and his media holdings was settled from a legal point of view by the Frattini Law.

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.

- Proactive care for pluralism and freedom of the media is a standard duty of all democratic governments. Conflicts of interest in the media might need more specific measures to strengthen public confidence in fairness and transparency of political competition and governmental accountability.
- A more reassuring solution for the public would be a stricter regulation, such as a "blind trust" with a custodian. With a "blind trust" solution, office holders would have no influence over their assets during the custody, while they would still keep their property.

<<http://osce.org/item/15459.html>>

Coverage of the Events and Governmental Handling of the Press During the Andijan Crisis in Uzbekistan

Observations and Recommendations

15 June 2005

The OSCE Representative on Freedom of the Media has previously issued two reports on the press coverage of events related to crisis situations, and the government's handling of the press during and after such events. Those reports concerned the Kosovo events of March 2004, and the terrorist attack in Beslan, Russian Federation, in September 2004. This is the Representative's third report on the same subject.

This report was prepared based on information provided by several international news media outlets, Internet websites, the Centre for Journalism in Extreme Situations of the Russian Union of Journalists and on an official answer by the Uzbek Delegation to the OSCE to a letter from the Representative dated 18 May.

Background

The tragic events of 13 May were triggered by the trial of 23 local businessmen in Andijan, who were subsequently given prison sentences.

The information provided by the Government clashes in several respects with the few press reports available. What seems to be certain is that several hundred people, some of them armed, stormed a local jail, and released the 23 businessmen and, according to some estimates, close to 2,000 other prisoners. They also occupied official buildings. Several sources report that almost 10,000 people gathered in the city squares (some sources estimated the crowd as being much bigger). The response of the government security services was to restore order by force.

Lack of Public Accord on the Nature of the Events and the Number of Casualties

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

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 a lack of mutually agreed verification

procedures. Information discrepancies are the result of an information blockade; of an incoherent government communications policy; and of a lack of co-operation between the authorities and the press.

The coverage of the terrorist attacks in New York, Madrid, Moscow, and Beslan showed that it was possible for the government and the press to come to an agreement about the number of casualties and their identities only after a while. That did not happen without a conflict of viewpoints either, but ultimately could only happen as a result of restoring freedom of movement for the press, a working government infrastructure for responsive communication with society, and a government policy that is specifically geared to co-operating with the media.

Good co-operation between the government and the press is an important contribution to peaceful solution of crises, and it is part of society's right to information. Working with the press in times of crisis is a learning process, and training could help to ensure it. The Office of the Representative on Freedom of the Media can help organize such training courses.

Information Blockade and Harassment of Journalists

On 13 May, local Internet providers blocked access to the majority of Russian websites, including the leading news sources www.lenta.ru and www.gazeta.ru.

The leading local website www.fergana.ru also had problems and at some point had to change providers. Nevertheless, during these events, it was the main most reliable source of information on what was happening in Andijan.

In an official letter to the Representative the Government said that the reason for lack of access was because of heavy Internet traffic.

According to AFP, a warning posted on the door of an Internet cafe in the Uzbek capital, Tashkent, read: "Logging onto pornographic websites is prohibited and punished by a fine of 5,000 soms" (4.4 dollars, 3.6 euros). And, further down: "Logging onto political websites, such as www.fergana.ru is strictly prohibited and punished by a fine of 10,000 soms."

Broadcasting of Russian TV programmes in addition to *CNN*, *BBC*, and *Deutsche Welle* was cancelled on cable TV, and replaced by music videos and Uzbek programmes. In its official answer to the Representative the Government informed that the blocking of these programmes was the decision of the private cable owners whose work was not regulated by the State.

Russian TV channels *REN-TV* and *NTV* had several problems. On 14 May, Uzbek police detained a crew from *NTV* at the outskirts of Andijan, confiscated their papers, and told them to leave the city. Police officers escorted the crew back to Tashkent and returned their identity documents five hours later, *NTV* reported.

President Islam Karimov criticized *REN-TV* and *NTV* for “spreading insinuations about the events in Andijan.” At a press conference on 17 May he also questioned what country would allow journalists to cover “military activities”. *REN-TV* was not allowed to cover the briefing.

On 14 May, reporter Dmitry Yasminov and cameraman Viktor Muzalevsky, from *REN-TV*, were detained as they were trying to enter Andijan. They had travelled for several hours from the capital, Tashkent, and had reached the outskirts of the city when they were stopped by local officials who confiscated their documents and took them to a police station. The journalists were released after several hours but officials banned them from filming in Andijan. Later they were escorted back to Tashkent, according to media reports. According to *REN-TV*'s website, they were not given any reasons for their detention. Since then, they were forced to leave the country. The Government told the Representative that the reason *REN-TV* personnel had to leave the country was because of a lack of accreditation.

A popular local radio station *Didor* was closed down on 13 May.

On 13 May, Shamil Baygin, a *Reuters* correspondent, and Galina Bukharbayeva, a correspondent for the London-based Institute for War and Peace Reporting (IWPR), were detained by Andijan police and released on 14 May. The Government confirmed the detention for two hours because of the need to check their “identities”.

A journalist from the Russian newspaper *Komersant* was also forced to leave the city. On 15 May, according to the Centre for Journalism in Extreme Situations, the head of a local company SAIRO that owns the weekly *BVV*, ordered his editorial staff to stop publishing any information on the events in Andijan except for reports coming from official sources.

In an article in *Izvestia* published on 16 May two correspondents reported that local police were checking all cars entering Andijan, asking if the passengers were journalists. Those who acknowledged that were immediately turned back for “security reasons”.

A *Reuters* correspondent near Pakhtabad, a town north of Andijan, said the town was sealed off on 17 May. Local residents said they heard shooting there on Saturday, according to reports from the news agency. *Reuters* correspondent Dmitriy Soloviev was detained for several hours in Bogushamol.

On 18 May, a TV crew from Ukraine's *Fifth Channel* was detained. Prior to this detention, they had been searched six times and had had to change cars seven times.

Russian Newsweek correspondent Alexander Raskin reported that he was woken up in his hotel by security officers. He asked them what all of the shooting was about. “Oh, we are just finishing off all the ones that made a break from the prison [...]. You should get out of here to Fergana or Namangan, it's safer there. And in

five days come back, when we will be finished. Now we can't guarantee your safety [...]. Leave, we won't allow you to work anyway."

The Uzbek media basically had to report only the official views on the events in Andijan. According to www.fergana.ru, Deputy Prime Minister Rustam Azimov sent a letter to local media telling them that the coverage should be based "solely on statements made by our President during the 15 and 17 May press conferences."

The website itself became a target of an attack in the government newspaper *Pravda Vostoka*, which accused www.fergana.ru and its correspondents in Uzbekistan, Kudryashov and Volosevich, of "'being ready to sell their mother' to earn their 'thirty pieces of silver.'" "It is known that money does not smell even if it is covered with the blood of dozens of people whose death was also caused by such 'defenders of freedom of expression.'"

This website was one of the main sources of information for the public; on 13 May alone it received approximately 45,000 hits, six times its daily average. However, it had difficulty getting information. According to the website's correspondent Volosevich "people were afraid to talk to journalists. Security service officers threatened people with harassment and murder if they were to talk to us."

The same newspaper accused IWPR, which it referred to as the "Institute for Instigating War", of being a "provocateur". It suggested that the Institute's correspondent Bukharbayeva should try "living in Afghanistan under the Taliban to fully understand the 'beauty' of medieval Shariat." IWPR was accused of conducting an "information war against our State."

Pravda Vostoka suggested that the names of journalists "who earn their cheap authority on the blood and grief of people" and their photographs should be shown on television.

The editor of *Novosti Kazahdarja* refused to publish his correspondent's report of the events, citing that "during these days we should calm the people, not stir them up. Such stories only inflame the situation."

Local journalist Dzhamil Karimov was fired for reporting on the Andijan events.

On 21 May, cameraman Vladislav Chekoyan of Russian *TVTs* was assaulted by Uzbek border guards on the Uzbekistan-Kyrgyzstan border. Chekoyan was filming a demonstration by about 1,000 people on a bridge in Kara-Suu which separates the two countries. The guards also seized Chekoyan's camera and mobile phone.

In a street meeting in support of the President held on 2 June in the Dzizak region, the local governor accused Uzbek Internet journalists of being "America's lackeys": "All of them are enemies of the Motherland," he told the demonstrators.

On 4 June, Tulkin Karaev, a correspondent with IWPR and the Uzbek service of Iranian radio in Karshi, was arrested. He was taken into custody for ten days and was accused of "hooliganism".

The Government should ensure that the harassment of journalists is stopped. The information blockade should be lifted and all journalists should be allowed to exercise their right to freedom of movement as set by relevant OSCE commitments.

18 May Press Trip

On 18 May a press trip was organized by the authorities that allowed some 30 journalists and foreign diplomats to visit Andijan for 45 minutes. None of them were allowed to talk to residents or to visit School No. 15 which was used as a morgue after the 13 May events. Not all journalists were allowed to participate.

Accreditation

Several outlets and journalists complained of having visa accreditation problems. For example, as of 20 May the following numbers of journalists were waiting for visas for Uzbekistan:

- 17 from Italy;
- Several from the UK;
- 1 from Switzerland;
- 10 from Japan;
- 1 from France;
- 1 from Slovenia.

A group of Ukrainian journalists was stopped at the airport on 19 May. They were only allowed into the country after their Embassy intervened.

Eight *AP* journalists had asked for Embassy assistance in obtaining accreditation; four *New York Times* reporters and one from *Chicago Tribune* are also awaiting accreditation. Requests for accreditation have come from the *Wall Street Journal* and the *BBC*.

The Government in its response to the Representative's letter said that foreign journalists in Uzbekistan can only work after proper accreditation, calling this an "international practice".

All journalists awaiting accreditation should be granted it without delay. Accreditation should be used to facilitate access of journalists to officials and lack of it should not be used to deprive them from the possibility to work.

Legal Norms

According to several experts, the legal norms governing the work of journalists in Uzbekistan are considered acceptable if properly implemented. Since no special regime or curfew had ever been introduced in Andijan, the journalists should not have been prevented from doing their job.

Censorship is prohibited under Article 4 of the Uzbek Law on Defending the Professional Work of Journalists. Article 29 of the Constitution declares that every citizen has the “right to seek, receive and distribute information.” Legal experts believe that the blockade of websites and TV programmes was in direct violation of the Constitution. Confiscation of equipment was in violation of Article 5 of the Law on Defending the Professional Work of Journalists, the detention of journalists was in violation of Article 8 of the same Law.

The authorities at all levels should adhere to the laws protecting the rights of professional media workers.

Recommendations

- Good co-operation between government and the press is an important contribution to peaceful solution of crises, and it is part of society’s right to information. Working with the press in times of crisis is a learning process, and training could help to ensure it. The Office of the Representative on Freedom of the Media can help organize such training courses.
- The Government should ensure that the harassment of journalists is stopped. The information blockade should be lifted, and all journalists should be allowed to exercise their right to freedom of movement as prescribed by relevant OSCE commitments.
- All journalists awaiting accreditation should be granted it without delay. Accreditation should be used to facilitate access of journalists to officials and lack of it should not be used to deprive them from the possibility to work.
- The authorities at all levels should adhere to the laws protecting the rights of professional media workers.

<<http://osce.org/item/15195.html>>

Regular Report to the Permanent Council of 14 July 2005

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 organizations 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 to 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 worldwide 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 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 politicization, 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 licences 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 criticized 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 cannot 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 licence.
- *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 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 to 20 July in Baku.

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

Visit to Italy: The Gasparri Media Law¹

On 30 March to 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.

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 also in the whole of Europe. They are leading the way towards

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/pdftohtm/15459_en.pdf.html>

a multiplication of the broadcasting channels, and creating opportunities for diversification and synergies between the channels.

In a worldwide breakthrough, based on the anticipated digitalization, 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 modernizing effect on the media market, the Gasparri Law cannot correct the television anomaly, nor bring about a de-monopolized 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.

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

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/2005/03/15195_en.pdf

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.

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.

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>

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 co-operation 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 programme 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.

<<http://www.osce.org/item/15699.html>>

Review of the Draft Turkish Penal Code: Freedom of Media Concerns

I. Restrictions on Freedom of the Media and Freedom of Expression

Many provisions of the new Turkish Penal Code (TPC) stipulate that when an offence is committed through the print press or any mass media, then the penalty shall be automatically increased.

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 or threatening to freedom of expression.

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

The European Court of Human Rights in its famous judgments has given an unequivocal explanation of how Article 10 of the European Convention should be understood: Opinion, reporting, debate, and discussion of public issues should always be actively helped by the stipulations, and not even passively chilled by the Penal Code.

In the case *Thoma v. Luxembourg*, 1997, the European Court of Human Rights decided that:

In the sphere of general interest, restrictions on freedom of expression are to be strictly construed.

Freedom of expression constitutes one of the essential foundations of a democratic society and is applicable not only to “information” or “ideas” that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed.

The press plays a vital role of “public watchdog”, and journalistic freedom also covers possible recourse to exaggeration, or even provocation.

In many of the chapters of the draft Turkish Penal Code discussed below, there is an automatic punishment for media involvement, and all of them are missing the

needed extra protection for the public role of the media.

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 reasons under which criminal liability of journalists shall be reduced or lifted, are given in the Penal Code.

Because of the lack of such clear guidelines, the following paragraphs, when applied to the media, would work as an infringement on society's freedom to discuss public issues.

Offences against Individuals

- Article 84 on Suicide states:

A person who explicitly encourages another person to commit suicide shall be sentenced to imprisonment for a term of 3 to 8 years. Where death occurs, the perpetrator shall be sentenced to imprisonment for a term of 4 to 10 years. Where such offence is committed through the medium of press and media, the penalty shall be imprisonment for a term of 4 to 10 years.

As the text here does not require a particular person to be targeted, for a publication to be considered as “encouraging others to commit suicide”, there is a risk that even news, interviews or debates on the public-interest issue of suicide could be considered an infringement of Article 84.

Offences against Society

The below provisions are also applicable to the press.

For example, in view of Articles 215 and 216, even ethical discussions of euthanasia or abortion issues in the press could constitute a crime.

In these chapters, clear stipulations securing the right of journalists to freely spread information and discuss public-interest issues should be inserted. Automatic aggravation for media involvement should be repealed (see the underlined):

- In Article 215 a person who “praises a crime or a criminal” is given an imprisonment of up to 3 years;
- In Article 216 a person who “incites groups of the population to breed enmity or hatred towards one another by, for instance, denigrating religious values, shall be sentenced to imprisonment for a term of one to three years but if such offence is committed through media and press, the penalty to be imposed shall be increased by half”;
- According to Article 213 a person who “threatens to incite fear and panic

- among the population” could be given a prison sentence of 3 to 6 years;
- In Article 214 a person who “incites people to commit crimes” is given a prison sentence imprisonment of 9 months to 7.5 years;
- In Article 217, a person who commits the crime of “inciting people to disobey laws” is given an imprisonment of 9 months to 3 years, but if such an offence is committed through media and press, the penalty to be imposed shall be increased by half;
- In Article 220, a person who “makes propaganda – through the medium of press and media – about the goals of an organization which has been established in order to commit crimes” can be imprisoned for 3 to 9 years.

Offences against Public Ethics

The problem of ambiguity can also result in free press restrictions.

- Article 226 on Obscenity reads:

A person who broadcasts or publishes obscene images, printed or audio material or who acts as an intermediary for this purpose shall be sentenced to imprisonment for a term of six months to three years [...].

There is obviously a large subjective element in any decision as to whether a matter is obscene. A performance that is “art” to one person, could be “obscene” to another. The European Court of Human Rights recognizes decisions of this sort, but it would find it a violation of human rights if artistic activities result in criminal prosecution. It is important therefore that the law specifies a working definition of obscenity to guide artists, journalists, as well as judges.

Offences against the Judiciary

- Article 278 on Failure to report the offence reads:

- (1) A person who fails to inform the competent bodies about the crime being committed shall be imprisoned for a term of up to one year.
- (2) A person who does not report to the competent bodies a crime, which has been committed but the consequences of which can still be limited, shall be punished in accordance with the provisions in the paragraph above.

This article is automatically applicable to all journalists, including investigative ones whose job is to collect information on undetected public wrongdoings. While it is questionable whether it is right to oblige all citizens to take on policing duties, the chapter unquestionably denies from journalists any protection of confidential

sources of information. That right is increasingly seen by democratic legal standards as countervailing public interest.¹

Offences against National Defence

- With Article 318 on Discouraging people from performing military service, it in fact becomes punishable for journalists to report or debate on the military service:

Persons who give incentives or make suggestions or spread propaganda which will have the effect of discouraging people from performing military service shall be sentenced to imprisonment for a term of six months to two years.

If the act is committed through the medium of the press and media, the penalty shall be increased by half.

Offences against Fundamental National Interests (Article 305)

My Office has already corresponded with the Turkish government on Article 305, because we are worried that it, in fact, would function as a restriction on public speech.

The proposed draft text of Article 305 makes it incontestable that it should be fully cleared from any reference to speech in order to enable free discussion of the involved issues.

- Article 305 on Offences against fundamental national interests states that:
 - 1) A citizen who either directly or indirectly accepts from a foreign individual or organization pecuniary benefits for himself or for another person in return for engaging in activities against fundamental national interests or for that reason shall be sentenced to imprisonment for a term of three to ten years[...]. The same penalty shall be imposed on the person who provides the benefit or makes the promise.
 - (2) If the act is committed during wartime or benefit has been given or promised in order to spread propaganda through the medium of the press and media, the penalty shall be increased by half.
 - (3) Except in cases where the act is committed during wartime, the prosecution of the offence shall be subject to the authorization of the Minister of Justice.
 - (4) Within the meaning of the present article, fundamental national interests

¹ The Joint Declaration on Access to Information and Secrecy Legislation by the Freedom of Expression Rapporteurs of the UN, OSCE, and OAS, adopted on 6 December 2004, can be found at <http://www.osce.org/documents/rfm/2004/12/3945_en.pdf>

shall mean independence, territorial integrity, national security and the fundamental qualities defined in the Constitution of the Republic.

The underlined part of (2) makes Article 305 a *de facto* censorship provision, given that it can be used to punish any speech that is not in conformity with the views of the Government on the issues listed in (4). These issues (independence, territorial integrity, national security and the fundamental qualities defined in the Constitution) are normal topics of political debates in any free country.

Please note that journalists receive money for their work, and Article 305 does not even exclude an interpretation of journalistic salaries as pecuniary benefits for spreading propaganda.

- Also, in Paragraph 7 of the “Reasoning Document” (justification) to Article 305, there is a reference to both “propaganda on withdrawing Turkish soldiers from Cyprus or on accepting a solution in the island to the disadvantage of Turkey” and “making propaganda on the Armenian Genocide after the First World War contrary to historical facts”. Accordingly, penalties are to be increased if money, benefit or promise is accepted in return for making propaganda through the press and media.

Last March, my Office welcomed the deletion of the two above mentioned examples from a reprint of the Penal Code which was sent to Turkish judges. These changes can help clarify that Article 305 cannot be used to restrict speech.

But, for these welcome changes to become law, they should be adopted by Parliament. Therefore Parliament should officially delete both examples from the original text of the “Reasoning Document” deposited with official records.

II. Restrictions on Access and Disclosure of Information

In their Joint Declaration on Access to Information and Secrecy Legislation adopted on 6 December 2004, my Office, together with the partner Offices of the UN and the OAS², recalled that the right of individuals to access information held by public authorities is a fundamental human right. This right should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts). It should be based on the principle of maximum disclosure, which establishes the presumption that all information should be accessible, subject only to a narrow system of exceptions.

² See footnote 1.

Exceptions should apply only where there is a risk of substantial harm to the protected interest, and where the possible harm is greater than the overall public interest. The burden to show that the information falls within the scope of the system of exceptions should be on the public authority seeking to deny access.

The Turkish Penal Code recognizes three different categories under which access to information restrictions are imposed:

Offences against Privacy

- Article 132: in case of “violation of confidentiality of communications”, the Penal Code foresees a prison sentence of 6 months to 2 years, but where the content of the communication is published via press and media”, the punishment is to be increased by half;
- Article 133 on Wiretapping and recording of communications between persons;
- Article 134 on Violation of privacy:
Where it occurs as a result of recording of images or voice/sound, the minimum level of the penalty shall not be less than one year. A person who discloses the images or voices/sounds of others’ private lives shall be imposed a penalty of imprisonment for a term of one to three years. Where the offence is committed through the press or media, the penalty shall be increased by half.

The main concern is, again, the lack of a public interest defence available to journalists. Publication of such “restricted” information may well be justifiable in the public interest.

Offences against Justice

- According to Article 285 on Violation of communications, in case of publishing or broadcasting images of persons during the investigation or the prosecution phase in a way identifies them as criminals, a prison sentence of 6 months to 2 years shall be given.

In such a case, it will become problematic to publish the picture of a person against whom an investigation has been launched, even in a case that is known and

is closely followed by the public. This means that reporting of judicial cases will be hindered.

- Similarly, Article 288 reads:

A person who explicitly makes a verbal or written declaration for the purpose of influencing the public prosecutor, judge, the court, expert witness or witnesses until the final judgment is given about an investigation or prosecution will be imprisoned for a term from six months to three years. If this offence is committed through press or media, the penalty to be imposed shall be increased by one half.

Offences against State Secrets

The following chapters suffer from the general lack of public-interest waivers in the draft Penal Code. Such waivers would be especially appropriate here, since both the classified materials, and the very laws defining the rules of classification could be legitimate subjects of public debate.

But these chapters also have a special restrictive feature: that of punishing citizens and among them journalists for obtaining and spreading information that was classified by the authorities.

In democracies, it is the public authorities and their staff who bear sole responsibility for protecting the confidentiality of legitimately secret information. Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information.

Criminal law provisions that don't restrict liability for the dissemination of State secrets to official handlers of those secrets should be repealed or amended.

- Article 329 on Disclosure of information relating to the security and political interests of the State reads:
 - (1) A person who discloses information whose nature requires it to be kept secret for reasons relating to the security, or internal or external political interests of the State shall be sentenced to imprisonment for a term of five to ten years.
- Article 336 on Disclosure of prohibited information states:
 - (1) A person who discloses information whose disclosure has been prohibited by the competent authorities through laws or regulatory procedures and whose

nature requires it to be kept secret shall be sentenced to imprisonment for a term of three to five years.

Actually, only Article 336 is dealing with official State secrets. Article 329 is having the additional problem of arbitrariness. While Article 336 makes ordinary citizens liable for the dissemination of State secrets – which is inadmissible in a free society – Article 329 makes them liable for disseminating any kind of information that the authorities see as concerning “internal or external political interests of the State”.

III. Restrictions on Free Discussion of Public Affairs Via Defamation and Insult Provisions

Defamation remains a criminal offence in Turkey. It is punished by imprisonment and fines. Criminal defamation laws have been widely recognized as inhibiting free discussion and free flow of information in a 21st-century democracy.

International experts and human rights advocates believe that the criminal handling of defamation cases can be fully replaced by adequate civil-law provisions. Civil law offers sufficient protection to the reputation of individuals, while its “chilling effect” on free expression in society is immeasurably lower as the State’s punitive authority is not involved.

My Office has long been calling on all OSCE participating States to follow the clear guidance of the European Court of Human Rights and reform their libel legislation³. The Court has always found imprisonment a disproportionate punishment for protecting honour and dignity.

As all criminal defamation laws can inhibit freedom of the media, we encourage the Turkish legislators to decriminalize defamation and libel; to transfer the handling of those offences to civil law courts; and, as an immediate measure, to support a moratorium on imprisonment for these offences.

In addition, the below provisions of the defamation chapters specifically inhibit the freedom of political debate in society and in the media. Media involvement is even stipulated as an aggravating circumstance.

According to the Turkish Criminal Code, there are two major kinds of defamation: offences against dignity, and offences against symbols of state sovereignty and reputation of its organs.

³ *The RFOM Matrix on Libel and Insult Laws: Where we stand and what we would like to achieve* can be found at http://www.osce.org/documents/rfm/2005/03/4380_en.pdf

Offences against Dignity

- Article 125 on Defamation states that:
 - (1) A person who makes an allegation of an act or concrete fact about another person's honour, reputation, dignity or prestige shall be sentenced to imprisonment for a term of three months to two years or a judicial fine will be imposed. In order to punish the insults in the absence of the victim the act should have been witnessed by at least three persons.
 - (2) If the act is committed by means of a voiced, written or visual message addressing the victim, the perpetrator shall be sentenced to the penalties set out above.
 - (3) If the offence of defamation is committed:
 - a) Against a public official or a person performing a public service and the allegation is connected with his public status or the public service he provides;
 - b) Due to expression, changing, efforts for expansion of one's religious, political, social, philosophical beliefs, thoughts and opinions, one's compliance with the rules and prohibitions of his religion;
 - c) Through mentioning the holy values of the religion the person is a member of, the minimum length of the penalty cannot be less than one year.
 - (4) Where the defamation is committed explicitly, the penalty shall be increased by one sixth; if it is committed through the press and media, then the penalty shall be increased by one third.

Apart from criminalizing defamation, this Article (3) establishes increased protection for public officials, punishing with imprisonment for at least one year if defamation is committed "against a public official or a person performing a public service and the allegation is connected with his public status or the public service he provides".

The evolving international standard is that public officials should enjoy less, and in no case more, protection from libel and insult than ordinary citizens. Government officials should be open to harsher than usual public scrutiny exercised by the press.

In the case of *Oberschlick v. Austria*, 1991, the European Court of Human Rights stated:

The limits of acceptable criticism are wider with regard to a politician acting in his public capacity than in relation to a private individual.

The former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism.

A politician is certainly entitled to have his reputation protected, even when he is not acting in his private capacity, but the requirements of that protection have to be weighed against the interests of open discussion of political issues.

- Article 130 on Defamation of the memory of a dead person:

Obviously, the great majority of cases when the press scrutinizes the memory of dead people occur vis-à-vis public figures of the past. These comments require the same public-interest protection than any other kind of speech has.

The chapter, even in the case that defamation remains a criminal offence, needs to be outfitted with a public-interest waiver, and an automatic aggravation of the crime for media involvement should be avoided.

- Article 130 states:

A person who commits under the testimony of at least three persons, the offence of defamation of the memory of a dead person shall be imprisoned for a term of three months to two years or a judicial fine will be imposed. If the offence of defamation is committed explicitly it shall be increased by one sixth.

It remains unclear what “explicitly” means.

Offences against Symbols of State Sovereignty and Reputation of its Organs

- Article 299 on Insulting the President of the Republic states:

(1) A person who defames the President of the Republic shall be imprisoned for a term of one to four years.

(2) The penalty to be imposed shall be increased by one sixth if the offence is committed publicly; and by one third if it is committed by way of press and media.

This chapter is specifically dedicated to elevated protection of state officials, which is inadmissible as it chills criticism and free discussion of important public issues. This article should be deleted from the Criminal Code since its only function is to ban criticism; it does not even refer to any inaccuracy or violation of privacy.

- Article 301 on Insulting being a Turk, the Republic, the organs and institutions of the State reads:
 - (1) A person who explicitly insults being a Turk, the Republic or Turkish Grand National Assembly, shall be imposed a penalty of imprisonment for a term of six months to three years.
 - (2) A person who explicitly insults the Government of the Republic of Turkey, the judicial bodies of the State, the military or security organisation shall be imposed a penalty of imprisonment for a term of six months to two years.
 - (3) Where insulting being a Turk is committed by a Turkish citizen in a foreign country, the penalty to be imposed shall be increased by one third.
 - (4) Expression of opinions with the purpose of criticism does not require penalties.

At least (4) has a public-interest waiver, but the chapter still uses the vague wording of “explicitly”. Therefore, Article 301 is open to various interpretations, and can be used to chill public debate despite (4).

Most international standards, including those of the European Court of Human Rights, see criminal insult provisions vis-à-vis the State authorities as an infringement of freedom of expression.

- Article 300 on Insulting the symbols of State sovereignty
 - (1) A person who denigrates through tearing, burning or by similar means, and publicly, the Turkish flag shall be sentenced to imprisonment for a term of one to three years. This provision is applicable to any kind of signs bearing the white crescent and star on red basis as stipulated in the Constitution that are used as the indicators of the sovereignty of the State of the Republic of Turkey.
 - (2) A person explicitly insulting the National Anthem shall be imposed a penalty of imprisonment for a term of six months to two years.
 - (3) If the crime defined in the present paragraph is committed by a Turkish citizen in a foreign country, the penalty shall be increased by one third.

In free societies, visual presentations of state symbols are often used to express critical views, especially by artists. Even if the Turkish legislators intend to protect the feelings that the Turkish citizens attach to the listed symbols, in order to protect freedom of expression and of the media, a clear waiver should be inserted for public-interest debate, opinion, and reporting, as well as for academic or artistic presentations. Such a waiver is especially needed since the provision contains the vague notion of “similar means” and “explicitly insulting”.

Assessment Visit to Azerbaijan Observations and Recommendations 14 July 2005

The OSCE Representative on Freedom of the Media Miklós Haraszti, accompanied by Adviser Alexander Ivanko, and Research Officer Ana Karlsreiter, visited Baku, Azerbaijan, from 11 to 15 April 2005. The trip was made at the invitation of the Government of Azerbaijan and was organized by the Ministry for Foreign Affairs and by the OSCE Office in Baku. The purpose of the trip was to assess the current state of media freedom in the country and to provide the authorities with recommendations on further compliance with OSCE commitments. The Representative appreciates the co-operative approach of Azerbaijani authorities during his trip. The report was prepared with the assistance of the OSCE Office in Baku, whose staff provided substantial research on the media situation.

The Representative was received by the President of the Republic of Azerbaijan, Ilham Aliyev.

He also engaged in talks with:

- Foreign Minister Elmar Mammadyarov;
- Minister of Justice Fikrat Mammadov;
- Minister of Internal Affairs Ramil Usubov;
- Prosecutor-General Zakir Garalov;
- Head of the Social-Political Department of the Presidential Administration Ali Hasanov;
- Deputy Minister of National Security Fuad Iskandarov;
- Members of Parliament including the Speaker, Murtruz Aleskerov;
- Several other senior government officials;
- Journalists, editors and managers from different media outlets, both print and electronic;
- Representatives of national and international non-governmental organizations;
- Foreign diplomats.

The OSCE Representative took part in a one-day round table on frequency licensing, organized by the OSCE Office in Baku.

General Overview

Although the assessment visit of the Representative had been agreed and prepared long before the visit, the recent murder of the prominent editor and journalist Elmar Huseynov unavoidably became one of the focal points of the Representative's stay. This case attracted worldwide attention and 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 the perpetrators. Nevertheless, in actual fact very limited information was released to the public about the investigation, the suspects, or their alleged motives.

Criminal handling of defamations, as well as huge fines for civil damages, is still legal in Azerbaijan, and these two factors have contributed to a climate of self-censorship in journalism. However, after the Huseynov murder in March this year, a practical moratorium of 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 to 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 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 politicization, 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 licences 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 channels has widely been criticized as not being independent.

The Representative's pilot assistance training project on government-media relations, originally proposed by Foreign Minister Mammadyarov, will take place from the 18 to 20 July in Baku.

The Murder of Editor Elmar Huseynov

Elmar Huseynov, the most prominent independent journalist in the country, and editor of the only investigative public-affairs magazine, *Monitor*, was gunned down in front of his apartment on 2 March 2005 in Baku.

His murder sparked worldwide outrage as Huseynov was one of the most harassed journalists in the country, and had been prosecuted on several occasions. Owing to criminal defamation laws so typical for so many countries in the OSCE region, he had to serve six months in prison in 2001/2 after a libel suit brought by Baku's mayor. In November 2004, a court ordered his property to be confiscated to make him pay the equivalent of a USD 20,000 fine connected with a 2003 libel lawsuit.

The Representative and his Office staff mourned Huseynov's death as they had known him personally, and had been impressed by his lively and professional performance as a panellist at their Office's first South Caucasus Media Conference held in Tbilisi in October 2004.

The Resolve of the Authorities to Roll Up the Case

All official interlocutors of the Representative stressed that the authorities were doing their best to find the perpetrators of this crime. "We will do our best to disclose who did this; if we do not, it will have a negative impact on our country," President Aliyev told the Representative. The President underlined that he was personally overseeing the investigation.

The Foreign Minister put it even more bluntly: "To find those behind this murder is important for the survival of the State. This assassination was purely political, with a chief aim to create instability."

The same resolve – and the same confidence about the motives behind the crime – was evident in the discussions of the Representative with the Minister of Justice, the Minister of Internal Affairs, the Prosecutor-General, and, in a closed-door meeting, with the Deputy Minister of State Security.

The determination to roll up the case was also underlined by the decision to invite international crime experts, among them Turkish police, to support the investigation.

Lack of Public Information about the Investigation

From the very beginning, the investigation was not accompanied with any modicum of transparency. The public were offered a great variety of allegations in the media, but no facts from the authorities.

This was the case especially after the first month, when the “murder case” was re-classified into a “terrorist act”, and the investigation was taken over by the Ministry of State Security. At that moment, the already scant flow of information had entirely stopped, and not even false allegations emerging in the press have since been refuted by the authorities.

Prior to the Ministry of State Security taking over, the Prosecutor-General had designated a press officer to deal only with this case. However, as of early April, this practice was discontinued. The Representative suggested to several senior officials that because of major public interest, regular information on the Huseynov murder should be provided to the media. The authorities insisted that their secretive policy serves best the interest of a successful completion of the investigation.

As of the time of writing, the information policy has not been changed even as the authorities have finally announced the case “to be solved”.

The Results of the Investigation So Far

On 29 June 2005 the Prosecutor-General Zakir Garalov announced that the authorities had identified Huseynov’s assassins. Teymuraz Aliyev and Tahir Khubanov were named as the “killers”, both citizens of Georgia. Garalov said that Azerbaijan asked the Georgian authorities and Interpol for their assistance in the search. According to the Prosecutor-General, only once these two persons had been arrested, could the identity of those who masterminded the murder be established. Neither possible motives nor supporting facts were provided with this statement.

Rushana Huseynova, Huseynov’s wife, is not satisfied with the final results of the investigation: “How could the Prosecutor-General say that they have solved this crime if they haven’t yet found the assassins not to mention the persons who ordered the assassination?”

Sahbaz Xuduoglu from the Elmar Huseynov foundation has even accused the National Security Ministry of still withholding information about the investigation and has threatened to take the Ministry to court. Some media outlets agreed to support Mr. Xuduoglu and his endeavour.

Unrefuted “Domestic Versions” of the Crime

Clarification is particularly needed as several other possible leads have emerged since the murder, both in public allegations in the press, and in the conversations of the Representative during his visit.

What everybody agrees upon, from the opposition to the authorities, is that this murder was committed not for some trivial reasons that could have involved Huseynov's private life, but because of his professional work, and that it was politically motivated. In that sense it is also a clear attack on freedom of the media in Azerbaijan.

Among the “domestic perpetrators” versions, the most concrete suggestion in the press was an alleged link to an arrested local kidnapping gang, led by a certain Hadji Mammadov who at the time of the murder was a senior Interior Ministry official. He and his gang were arrested three days after the murder of Huseynov, with the help of the Turkish police expert team.

The identification of the Mammadov gang as the murderers of Huseynov came as a result of a statement of a senior Turkish police officer Ramazan Er at a press conference in April in Ankara.

Dissatisfied with the lack of either information or rebuttal about this possible link, the Representative contacted Turkish diplomats working in Baku. Back in Vienna, the Office also sought clarification from Mr. Er's successor, Mr. Ismail Caliskan. He said that Mr. Er's statement had been misinterpreted and that the two crimes were not linked as far as the Turkish investigation results were concerned. In fact, Mr. Er only told the media that the Azerbaijani Government asked the Turkish police for assistance in two separate investigations: firstly the unrelated kidnappings and secondly the murder of Elmar Huseynov.

However, even if no “domestic” motives proved to be valid, neither have the alleged “foreign-related” political destabilization motives, widely emphasized by almost all official interlocutors, been supported by facts so far.

Until the real motives of the perpetrators of the murder of Elmar Huseynov are identified and proven in court, the public cannot consider the case as closed, and confidence in the investigation stands in jeopardy. Until then, the Government should provide the public with as much information as possible on the investigation, in order to minimize the chilling effect on journalism caused by the murder.

A Practical Moratorium on Libel Cases since the Huseynov Murder

Criminal handling of defamations is still legal in Azerbaijan, but since March this year, no new cases of criminal or civil libel suits have been reported as filed by officials against journalists or media outlets.

The explanation for this welcome development was given by President Ilham Aliyev in his meeting with the Representative. The President stressed that he had

never sued and never would sue newspapers for defamation and that he had urged members of his Government to do the same.

He issued that appeal for the first time in his speech to Azerbaijan's Security Council on 3 March. He strongly condemned the murder of magazine editor Elmar Huseynov (committed on the previous day). At the same time, he called on senior government officials not to file lawsuits against the media. (It is widely known that Elmar Huseynov used to be a frequent victim of libel accusations by officials.)

Since then, the President reiterated his call on numerous occasions. In May, in a televised meeting with executives of a media company, he even warned that he would dismiss from office any members of his Government who sued journalists for libel.

The importance of this move could be illustrated by past examples. Prior to this practical moratorium, public officials often took newspapers to both criminal and civil courts. The criminal defamation and insult conviction rate was relatively low, but the civil cases resulted in financial damages which were able to bankrupt the press ventures.

While several Parliament members understand the chilling effect of libel provisions on free discussion of public issues, others seem to be less ready for a legislative change. In conversations with Milli Mejlis (Parliament) deputies, the Representative was told that the need for criminal defamation is justified by libellous articles in the newspapers. "This is a preventive measure," said one deputy.

A practical moratorium on libel and defamation procedures is enforced solely by the authority of President Aliyev. While his initiative is a highly welcome development, the moratorium needs to be based on broad public consensus among the country's politicians, and converted into law. As a next step, a criminal form of libel and defamation should be abolished, and civil damages should be capped by a rational ceiling.

Violence against Journalists

The clashes between police and demonstrators during the post-election events of 15 to 16 October 2003 and the murder of Elmar Huseynov drew the attention of the international and Azerbaijani public to the problem of violence against journalists. After the demonstrations in October 2003, 70 journalists complained to the Press Council of being mistreated by the authorities. These numbers were corroborated by state officials. Press Council President Afalutun Amashov told the Representative, that of the 70 journalists, 44 complained about being beaten by the police. A joint investigation by the Ministry of Interior and the Press Council did not yield any perpetrators. No police officers were disciplined internally.

Nevertheless, the Minister of Interior in his conversation with the Representative agreed that the relationship between his Ministry and the press could be improved. “We have to be tolerant towards criticism,” the Minister told the Representative. In this spirit, a joint commission was established with the Press Council that through irregular meetings has tried to deal with police-press matters.

In addition, the Ministry and the Press Council agreed on issuing special vests to journalists covering demonstrations so that in future the police would avoid targeting them, especially if such demonstrations turn violent. (It is not clear who or which agency, State or non-State, would decide on who is a *bona fide* journalist.) These vests have been provided to the newspapers, with additional ones given to the Press Council.

The case of Farid Teymurkhanli, a correspondent for the Russian language daily *Zerkalo* became a test case in this regard. On 21 May 2005 in Baku, Teymurkhanli, although wearing the official vest with the word “Press” clearly visible, was beaten up by a security officer while covering a demonstration. However, for the first time the officer responsible for the incident was dishonourably discharged from the police force, and prohibited from ever serving the public again.

The circumstances of the case of Alim Kazimli remain unsolved. This reporter and photographer who worked with Yeni Musavat was allegedly beaten up by police officers when applying for identification documents at the Narimanov District Police Department in Baku on 28 December 2004. Following an intervention in January 2005 by the Representative, Foreign Minister Mammadyarov stated that no beating of Mr. Kazimli had been confirmed by the investigation.

Alim Kazimli was hospitalized for a couple of days after the incident, and he died on 19 June 2005 from a cerebral haemorrhage. According to some sources, his death could have been caused by whatever ensued on 28 December 2004.

All cases of violence should be thoroughly investigated. Any police officers implicated in harassing or beating journalists should be disciplined. Especially in view of the upcoming parliamentary elections, measures should be taken to ensure the safety and security of reporters, especially those covering public gatherings.

The State of Broadcasting

Both government-controlled and privately owned broadcasters exist in Azerbaijan. About 88 per cent of the population of the capital and 93 per cent of the population outside of the capital consider TV to be the main source of information.

Today there are five nationwide TV and radio companies operating in Azerbaijan. They are both producers and broadcasters of programmes for more than 80 per cent

of the territory of the country. State *AzTV* has two channels (one of them currently being transformed into a public service broadcaster – see chapter below). The other channels are the legally private and independent companies *ANS*, *ATV*, *Lider* and *Space*. All the private channels except *ATV* transmit via satellite.

Currently there are 12 regional TV and radio companies operating in Azerbaijan: two in Ganja, Guba and Nakhchivan and one respectively in Sumqait, Lenkoran, Mingachaur, Zakatala, Tovuz and Khachmaz. The broadcasting time of these channels is limited and they have few of their own programmes. These TV channels mainly focus on entertainment and on movies.

There are several foreign TV and radio companies broadcasting on the territory of Azerbaijan in accordance with intergovernmental agreements. These are mainly Turkish (*TRT1*, *STV*, *KANAL D*) and Russian (*ORT*, *RTR*), as well as several radio stations: *BBC*, *Radio France International*, *Voice of America*, *Europa+* and *Freedom* which was not able to get an FM frequency for a long period of time.



Lack of Licensing for Private Broadcasters

President Aliyev characterized private TV channels as “more or less neutral, although some are more pro-government and some are more pro-opposition.” Other interlocutors described them as “more or less government-friendly” although some of them were also described as being “more business than politically oriented”.

All existing private broadcasting companies received their licences quite directly

from the Government before the Law on TV and radio broadcasting was adopted in 2002. This provision was prepared in consultation with the Council of Europe. It should install an impartial mechanism for the allocation of frequencies, in order to replace the existing set of licences issued by the authorities during a legal vacuum. Unfortunately, despite this law being in vigour, no new TV licences have been issued since 2002.

To address this problem, the OSCE Office in Baku organized a one-day round table on frequency licensing in which the Representative took part. It became clear that there were many unanswered questions related to this matter.

At the round table, even Ali Hasanov, the Head of the Social-Political Department of the Presidential Administration which is dealing with mass communications, acknowledged the many contradictions in the existing legal framework. He agreed it was these legal deficiencies that were responsible for the delay in the licensing procedures.

It seemed clear from many statements made at the round table that the lack of any new licences was not simply a technical problem. On the technical side, the American NGO IREX was producing a frequency map that should be finalized sometime in August. Nevertheless, some experts noted that there were already open frequencies available as a result of the closure of some broadcasters, but these ones were not being utilized.

The real problem is that on 11 October 2002, three days after the Law on TV and radio broadcasting came into force, another legal provision was issued by the President: Regulations on the National Council on TV and Radio. It is the task of the council to issue the licences. On the other hand, no budget relevant to this task has been provided for them.

The council consists of nine members appointed by the President for six years. The lack of any concrete criteria for appointing members of the council as well as the participation of the President in this process seriously undermines the independence of the council.

Several other players are involved in the provision of licences, including the Justice and Economic Development Ministries, the Telecommunications Ministry, the Frequency Committee of the Cabinet of Ministers (includes Defense, Health and National Security representatives). This multi-headed approach makes it almost impossible for any broadcaster to try to receive a licence.

Given this multi-headed structure, potential political motivations (mentioned often at the round table) could always be explained in vague technical terms. As one media expert put it: "This is not a legal problem but a political one, there is lack of will to provide for independent TV."

According to Hasanov's presentation at the round table, earlier this year the Cabinet of Ministers was ordered by the President to remove in one month all the legal

and institutional obstacles standing in the way of licensing, but it failed to do so.

At their separate meeting, Ali Hasanov told the Representative that he did not expect any new licences to be issued before the November 2005 elections. No explanation was given for this unusual inefficiency in Azerbaijan's Presidential democracy.

The adequate legal and institutional framework for licensing for new, independent private broadcasters should be established as soon as possible. The country's National TV and Radio Council should be made more independent, and its functions should be made much clearer. It should be allocated a special budget. A frequency map should be provided 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 licence.

Disputed Transformation of State-Owned Channel 2 into Public ITV

In 2005, a public service broadcaster, known as *ITV*, was established based on *Channel 2* of state-owned *AzTV*. (See the sub-chapter below regarding the fate of *Channel 1*.)

In meetings with the Representative, all senior officials praised this important step, with President Aliyev describing it as a "positive development".

However, the appointment of the new Director General of *ITV* has disappointed many of those who demand a transformation of state TV into public. Ismail Omarov was elected to the post of station director by the *ITV* board on 16 April with six votes out of a possible nine. He is a controversial figure because, as a journalist on government-run television, he frequently accused the Azerbaijani opposition of high treason.

Some 30 representatives of political parties, NGOs, and the media attended the founding meeting in Baku on 20 April of a movement named *Ellik Televiziya* (Public Television), the aim of which is to lobby for the creation of a truly independent public broadcaster.

According to Jahangir Mammedli, Chairman of the Broadcasting Council of the Public TV and Radio Company of Azerbaijan, the Public TV will become operational in August this year. On the other hand, Mammedli pointed out that the three million USD provided by the Government for the public channel is not sufficient. In order to become fully operational, the new PBS would need at least 30 million USD.

Channel 1 Remains State TV

It is controversial that only *Channel 2* of state TV has been transformed, which is also the financially weaker channel of *AzTV*. Following a Presidential Decree from March 2005, *Channel 1*, state TV's more prosperous and technologically better equipped arm will remain state-owned.

This is so despite the fact that it will become a joint stock company, and 49 per cent of its shares will be privatized (based on the same decree but not on any media law).

This way, the unusual situation has occurred where a country has both a “state” and a “public” channel. According to Ali Hasanov from the Presidential Administration, *Channel 1* of AzTV will focus more on promoting Azerbaijani culture and traditions while efforts will be made to keep *Channel 2* open to different viewpoints prevalent in society.

For ITV to truly become independent, the Government should ensure new elections of the Director General, and provide for substantial support to this new television station. Channel 1 should also be transformed into public TV. It is of paramount importance for an impartial coverage of the upcoming election campaign that ITV – former Channel 2 – starts broadcasting as soon as possible.

The Print Press

Although the television scene of the country can be seen to be leaning towards the Government, the print media scene is diverse and the opposition is well represented. This does not make the print press a true balancing force, however, since it is weak financially and reaches a much smaller audience.

According to data from 2004, more than 600 newspapers and 100 magazines were registered in Azerbaijan. However, more than half of them are either suspended or never started publishing. Opposition oriented newspapers have a larger circulation, their daily circulation plunged from a record 35,000 to 45,000 copies before the 2003 presidential elections to 10,000 to 12,000 copies in 2004 to 2005. The circulation of governmental newspapers is around 7,000 to 8,000 copies.

About 15 per cent of all print media belongs to the Government and about 35 per cent to political parties. The rest of the press is relatively independent although, because of economic vulnerability and financial dependence, the independence of the absolute majority of them is of a conditional nature.

Generally, all media are affiliated with one or another interest group, be it political or economic. Except for *Monitor* magazine, published by the late Huseynov, most other publications are criticized for a lack of professionalism.

A Press Council, dealing with ethical and professional issues, was established two years ago. The Representative met with its Chairman Aflatun Amashov who said that 190 publications are already members of the council. But he also stressed that although the council has been operational for two years, the quality of the print press has not improved.

One of the issues that the Press Council was able to deal with was a local Baku ban on the distribution of independent newspapers in the city's metro. After the Council Chairman intervened with the President, this issue was immediately resolved.

One of the reasons why so many print media are not truly independent sources of information for the public is their lack of sufficient financial means, in combination with a low circulation. Impartiality can only become a business interest if a substantial advertising market develops. To facilitate this, the Government should start the privatization of its newspapers, along the lines of broadcast licensing. Print journalists need training and technical support which could be provided by international organizations and donors.

Access to Information

Currently, a new draft Law on Access to Information (known as the Law on Obtaining Information) has passed the first reading in Parliament during the April to June session.

The current text has made commendable progress in improving the official draft law. It now incorporates most of the recommendations made by the Council of Europe and the Office of the Representative. Some of the key freedom of information principles include:

- a principle of government openness;
- a guarantee for an independent review mechanism of state secrets (a provision for an Information Ombudsman);
- a duty to publish data of public interest;
- a protection for "whistleblowers", that is, for officials who inform the press on public interest issues.

A second draft is being prepared and a second reading should take place later in 2005. The Representative was invited to take part in these hearings.

The new draft law on information access should be available to the public; the legislative process should be transparent and involve key stakeholders such as the media, NGOs and independent experts; the law should be adopted before the parliamentary elections in November.

Training for Government Press Officers and Journalists

Following a suggestion by Foreign Minister Elmar Mammadyarov, the Office of the Representative developed a workshop on government-media relations. This project was welcomed by all of the officials who the Representative met, and will take place from 18 to 20 July in Baku.

The participants will be both press and public information officers of state authorities, and journalists. It will provide know-how on the following topics:

- overview of relevant international practices;
- techniques on how to effectively manage a press office;
- democratic governmental communication strategies;
- professional ways and the legal basis of interaction with journalists;
- professional journalistic principles of interaction with officials;
- overview of the relevant legal provisions on access to information and “the public’s right to know”.

Media Coverage of the Visit

The Representative welcomed the widespread coverage of his visit in both government and non-government media. He was interviewed on several occasions by leading television stations and most of his meetings were covered separately. This was the best media covered visit by the Representative since he took Office in March 2004.

Recommendations

- Until the real motives of the perpetrators of the murder of Elmar Huseynov are identified and proven in court, the public cannot consider the case as closed, and confidence in the investigation stands in jeopardy.
- Until then, the Government should provide the public with as much information as possible on the investigation, in order to minimize the chilling effect on journalism caused by the murder.
- A practical moratorium on libel and defamation procedures is enforced solely by the authority of President Aliyev. While his initiative is a highly welcome development, the moratorium needs to be based on broad public consensus among the country’s politicians, and converted into law. As a next step, a

criminal form of libel and defamation should be abolished, and civil damages should be capped by a rational ceiling.

- All cases of violence should be thoroughly investigated. Any police officers implicated in harassing or beating journalists should be disciplined. Especially in view of the upcoming parliamentary elections, measures should be taken to ensure the safety and security of reporters, especially those covering public gatherings.
- The adequate legal and institutional framework for licensing for new, independent private broadcasters should be established as soon as possible. The country's National TV and Radio Council should be made more independent, and its functions should be made much clearer. It should be allocated a special budget. A frequency map should be provided 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 licence.
- For *ITV* to truly become independent, the Government should ensure new elections of the Director General, and provide for substantial support to this new television station. *Channel 1* should also be transformed into public TV. It is of paramount importance for an impartial coverage of the upcoming election campaign that *ITV* – former *Channel 2* – starts broadcasting as soon as possible.
- One of the reasons why so many print media are not truly independent sources of information for the public is their lack of sufficient financial means, in combination with a low circulation. Impartiality can only become a business interest if a substantial advertising market develops. To facilitate this, the Government should start the privatization of its newspapers, along the lines of broadcast licensing. Print journalists need training and technical support which could be provided by international organizations and donors.
- The new draft law on information access should be available to the public; the legislative process should be transparent and involve key stakeholders such as the media, NGOs and independent experts; the law should be adopted before the parliamentary elections in November.

<<http://osce.org/item/15783.html>>

Speech by Miklós Haraszti at the Opening Session of the Human Dimension Implementation Meeting in Warsaw on 19 September 2005

This implementation meeting is taking place in the 30th year of the Helsinki process. There have been quite a number of official and civil anniversary commemorations. I have participated in some of them, and noted the tributes paid to the merits of the beginnings of the unique process which in the early nineties led to the formation of OSCE.

Obviously, the intergovernmental commemorations, in a stately manner, focused on the wisdom of the signing governments; the bravery of starting the process at all, and of having a human rights basket in the original agreements.

Then, a month ago, here in Warsaw and in Gdansk, we came together with a lot of old friends from Poland, former Czechoslovakia and the former Soviet Union – thank God, many of us were still in a huggable shape. The Solidarity movement was identified by many speakers as the first victory of the principles of the third basket of Helsinki.

Unavoidably, there was a self-congratulatory tone even in these civil commemorations. Indeed, personal bravery and civil courage were needed and will always be needed to start to demand from the governments to live up to their international commitments.

But little attention was paid to the fact that OSCE is not simply a direct continuation of the Helsinki process, but it is also a necessary improvement of it. And I consider the Warsaw Human Dimension Implementation Meeting to be the best embodiment of those improvements that the OSCE brought to the process.

In fact, my generation was not only pleased by the Helsinki process but also felt that several basic dimensions were painfully missing from its famous baskets. Helsinki did not acknowledge the necessity of having free and fair elections in a pluralistic political environment. Helsinki did not acknowledge the principle that only a free press can guarantee the access of all players to all citizens, and the access of all citizens to all information about their government. Not only the rights of the majorities were missing from the original Helsinki agreements; neither were the rights of the minorities acknowledged.

In line with these deficiencies, the Helsinki agreement did not empower civil society to play an equal part in the fulfilment and control of the commitments along with governments. In short, Helsinki did not yet acknowledge democracy. The by now 55 participating States have done so in the early 90s, by incorporating the above principles in the foundations of OSCE.

OSCE created three independent, autonomous institutions to safeguard these new commitments. With the creation of these institutions, the participating States acknowledged that the security of the northern hemisphere can be maintained only by maintaining democracy.

That is why I consider the Warsaw Meetings of OSCE's Human Dimension the guarantor of security and peace. This is why we expect the ongoing reform of OSCE to strengthen, rather than weaken the institutions of the third basket.

I expect the discussions among participating States, the OSCE Institutions, and the NGOs to prove that the 10th HDIM will only be a new beginning.

<<http://www.osce.org/item/16368.html>>

The State of Media Freedom in the former Yugoslav Republic of Macedonia Observations and Recommendations, 9 December 2005

The OSCE Representative on Freedom of the Media, Miklós Haraszti, visited Skopje, former Yugoslav Republic of Macedonia, on 26 to 27 October 2005. This was the Representative's first visit to the country. The trip was made in consultation with the Government and was organized by the OSCE Spillover Mission to Skopje in close co-operation with the Ministry of Foreign Affairs. The purpose of the trip was to assess the current state of media freedom in the country, especially in the context of a new broadcast law that was being discussed in Parliament at the time of the visit. A series of workshops on Internet and e-society organized by the local NGO Metamorphosis and the OSCE Mission was attended by the Representative as well as by his Senior Adviser Roland Bless. Additional research for the report was provided by Project Officers Christian Moeller and Arnaud Amouroux. The report was prepared with the assistance of the OSCE Spillover Mission to Skopje.

Miklós Haraszti met with government officials, parliamentarians, journalists, and representatives of non-governmental organizations. Among those he had talks with were:

- Xhemali Mehazi, Minister of Transport and Communications;
- Member of Parliament Tome Trombev, President of the Commission of Transport, Communications and Ecology;
- Zagorka Tnokovska, Ministry of Justice, Head of the Sector for State Administrative Electoral Systems and Administrative Jurisdiction;
- Malinka Jordanova, Chief of Cabinet to the Deputy-Prime Minister.

Other interlocutors for compiling this report included (in alphabetical order):

- Gazmend Ajdini, Representative of the International Research and Exchange Board (IREX), Skopje;
- Klime Babunski, Vesna Gogova, Pro/Media, Skopje;
- Roberto Belicanec, Executive Director Media Development Center, Representative of the Media Task Force of the Stability Pact for South Eastern Europe;
- Violeta Gligoroska, Program Coordinator, Foundation Open Society Institute;
- Viktor Grozdanov, Association of Private Electronic Media (APEMM);
- Konstantin Jovanovski, Press and Information Officer, EU – Delegation of the European Commission;
- Robert Popovski, Secretary General of the Association of Journalists;

- Gordana Stosik, General Director of *MRTV* (state broadcaster to be transformed into public service broadcaster);
- Zaneta Trajkoska (Managing Director), Bilijana Petovska (Program Coordinator), Institute for Media (MIM), Skopje.

General Overview

The general media situation is commendable notwithstanding several shortcomings that the Government hopefully is in the process of dealing with.

Overall, there is a high degree of media pluralism in the country, both in terms of quantity of media outlets and of different views that are represented. The experts consulted put the amount of media outlets at between 150 and 180 (the exact number is not available), believed by some analysts to be excessive for a country with a market of just over two million consumers.

The high amount of media outlets is also one of the reasons for the fragility inherent in the media system as a whole. As their economic sustainability is shaky, many of the media outlets are vulnerable and exposed to commercial and political pressure. A market consolidation would also assist the independence of the media.

Politicians of all ranks are regularly criticized in the media; independent TV and radio stations are outspoken in their comments concerning the authorities. The sometimes heated rhetoric of the crisis of 2001 has by now been toned down. This development was linked to the code of ethics that the media established as a part of self-regulation.

The legal framework for a free media is generally in line with OSCE commitments, the still missing pieces are in the works. The Government is given credit for respecting the laws. This, however, does not exclude occasional pressure applied on individual journalists, or commercial constraints hindering journalists from freely exercising their profession.

The fact that the Ministry of Communications and Transport introduced and the Parliament approved a new broadcast law is a welcome development and is bringing the country further in line with European standards.

Shortcomings related to the media situation include an unclarified conflict of interests, as prominent political leaders are alleged to own major stakes in nationwide broadcast media.

The lack of a law on access to information deprives journalism of the legal security needed to perform its public function.

Regarding criminal laws affecting freedom of expression, only recently two journalists were sentenced to prison terms for libel. Such sentences contradict the

case law of the European Court of Human Rights.

Recommendations on how to strengthen freedom of the media in the country can be found at the end of this report.

Public Broadcasting

The new broadcast law introduces public service broadcasting – implementation of the law is crucial.

The new broadcast law covers public service broadcasting (both radio and television), the standards and the licensing procedure for commercial broadcasters, and will also establish the institution of a Broadcast Council as the independent regulator for the entire broadcast sector.

This type of overall legislation is commendable as it encompasses the democratization of the whole broadcasting system.

The draft law was reviewed by the Council of Europe. Many of its recommendations have been taken on board by the Government. Therefore, for the first time since independence, the legal basis for a genuine public service broadcaster along the lines of other European nations is in place. The law was enacted by Parliament on 9 November 2005.

Some of the features outlined in the law are: a mechanism for the collection of the licence fees, the possibility to sanction copyright violations, and the possibility for the Broadcast Council to fine media outlets found in violation. These powers, according to most interlocutors, give the system the necessary strength.

However, some NGO representatives remained sceptical regarding the new law, mainly on two grounds. First, the taxpayers' share of the public broadcaster's revenue, the fee, will be collected, after a transitory period, by the public broadcaster itself. As this fee by all means amounts to an additional tax, payable also by those who do not watch the public service broadcaster, difficulties in obtaining it are predictable, as is the case in most transitional economies. Until recently, revenue collection was linked to the electricity bills and the collection ratio used to be below 50 per cent. It is unrealistic to assume that *MRT* will be more successful.

The second outlined problem, as some experts argued, is the track record of the Government in implementing other media-related legislation, such as the copyright law, the telecommunications law, or the stipulations regarding licensing and frequency allocation in the previous broadcast law.

Therefore, it is crucial for the Government not to miss this window of opportunity for making the new broadcast law work, by ensuring its vigorous implementation from the very beginning. This would also include an extra

effort in the collection of the fees needed for the functioning of the public service broadcaster, or considering an amendment to the new law in order to automate the financing.

Commercial Broadcasting

While *MRTV* has by now the legal basis to live up to its commitments as a public service broadcaster, the commercial broadcasting sector, however, needs a major overhaul.

There are approximately 125 electronic broadcasters, including 69 private radio stations, 3 of them nationwide, and 50 TV channels, 5 of them nationwide.

The new law will have dire consequences for some of the 29 local public broadcasters, as their survival will not be guaranteed by the law and alternate solutions will have to be found. The excess number of broadcast outlets in the country might justify this development. It might even offer an opportunity for some stations to continue as privately run local radios.

Licences and frequencies for commercial outlets were not always obtained in a systematic manner based on the rule of law. Some of the older frequencies were reused, ad-hoc allocated, or simply occupied.

It is imperative for the Broadcast Council, as established by the new broadcast law, to clear up the legal situation concerning frequency allocation. This can be done by (re)-issuing the licences in a transparent manner through public tenders based on a proper frequency allocation plan.

TV Sitel and TV Kanal 5

A conflict of interests in the broadcast media has to be resolved.

Although the ownerships of these two Skopje-based TV stations have never been revealed, it is widely believed that the two TV stations are owned by leaders of two political parties.

Neither hiding the ownership nor owning a TV station as leader of a political party is compatible with democratic media standards. The ownership structure should be made transparent. If political leaders are the owners, it is imperative that they declare it. By internationally accepted standards of transparency, public officials are under obligation to state such assets.

The new broadcast law clearly addresses the issue of conflict of interest and transparency of ownership. However, the authorities will need the political will to enforce these regulations.

The most promising way to resolve a conflict of interest in the domain of media ownership is that of a blind trust, that is, leaving control over the assets to an independent administrator during the time in public office.

**Copyright Violations Fuel Proliferation of Broadcast Sector
On its way to further European integration the Government should enforce copyright regulations.**

The systematic violation of copyright rules and the non-payment of respective fees seem to be among the main reasons for the proliferation of commercial broadcasters.

Media outlets must be trained as to what constitutes a breach of copyright, and the difference between materials in the public and the commercial domain. For example, there is a common perception that anything accessed from the Internet can be freely used without concern for proprietary rights.

The Government should establish the needed capacities to enforce the copyright laws and to support the newly established Broadcast Council in implementing its own part in that respect.

The Print Press

The print press sector is not monopolized at the present time. However, for the sake of preserving media freedom there is a need for specific print media-related antitrust legislation.

There are over one hundred publications regularly printed. On the positive side, there is no registration process for print media; however, for statistical and antimonopolistic purposes there is a need for a consolidated and updated overview of existing print media outlets.

In a welcome development the Government stopped financing print outlets by 2004. However, the limited advertising market puts into question the financial background of much of the print press. In some cases it is not clear whom or what are the financiers of print press outlets. There is a need for an ownership transparency regime as is the case with the broadcasting sector.

The most prominent foreign investment in the media sector was the takeover of three independent daily newspapers by the German publishing house WAZ in 2003. WAZ thereby obtained a sizable share of the market of nationwide distributed quality papers, which has fuelled concerns of endangering pluralism in the media.

The presence of a major international company in a comparatively small market has, nevertheless, not led to a noticeable change in the editorially diverse orientation of these newspapers. It has resulted, as it should, in a significant influx of new marketing, technological, and distribution approaches.

The ongoing market consolidation process will inevitably lead to a danger of monopolistic ownership patterns which might restrict media pluralism.

The Government should, under its obligation to proactively safeguard freedom of the media, start legislating in the domain of media-related anti-trust law, including provisions to limit cross-ownerships. The European Union's guidelines on protective measures for "external pluralism" in the media should be taken into account.

Access to Information

The public's right to know is not yet fully guaranteed. Legislation on access to information fell dormant several times. It should be revived.

Another missing element to complete media related legislation is access to information. It is vital to create an environment within the Government and the Civil Service that allows the media to perform their function, that is, to obtain information.

The time is ripe for the country to pass such a law, especially as the 1991 Constitution contains a clause guaranteeing the right to access to information. After a civil society initiative in 2003, the Government in early 2005 introduced a draft Access to Information Law. The latter was drafted with the assistance of the Council of Europe and the London-based NGO Article 19. After being reviewed in Parliamentary Committee it was returned to the Government and has been stalled since.

One of the cited reasons for not proceeding with the draft law in Parliament was the lack of funds for the classification review boards dealing with citizens' appeals in disputed cases of material declared confidential. As one local expert put it, "the lack of access to information has been reduced to a fiscal problem".

Without having passed the Access to Information Law, the Government in 2004 passed a law on rules for classification, reversing the natural order. In the latter, access to information is dealt with in a sub-chapter. Ideally, the future law on access to information should prevail over the law on classified information. The overriding principle should be that access to information for the public is constitutionally and legally guaranteed, except in some cases clearly defined in the rules of classification.

The overdue law on access to information should be passed as soon as possible. The Representative and the OSCE Mission in Skopje are ready to assist the Government in this endeavour.

Defamation and Libel

Defamation remains a criminal offence, as was demonstrated in November 2005 by two court rulings sentencing two journalists to prison terms.

One journalist, Zoran Bozinovski, was found guilty of criminal libel and was sentenced to one three-month prison term and two six-month suspended prison terms for pieces he published in the magazine *Bulevar*. Ira Protuger from *Channel 5 TV* was sentenced to three months suspended imprisonment on libel charges. The current provisions in force stipulate that libel and defamation can carry a sentence of up to three years in prison.

The two cases referred to were the first prison sentences handed down in several years. These rulings show once again that courts will apply such laws as long as these offences remain criminalized, even in countries that have not applied such legal provisions for years or decades.

The Government should introduce the necessary legislative changes to decriminalize defamation and libel and transfer them into the civil domain of the law. The relevant case law of the European Court of Human Rights should be taken into account. The Representative and the OSCE Mission in Skopje stand ready to assist the Government in this endeavour.

Internet and e-Society, e-Education and e-Government

Prices for Internet usage remain too high for media consumers. Competition in the telecom sector is the best prerequisite for lower prices.

The country is engaged in various ways in the initiatives of the EU to better exploit the potential of information and communications technologies (*Lisbon Agenda, Electronic South East Europe* within the Stability Pact framework, etc.). The Internet is unregulated, which is welcome from a freedom of expression point of view.

However, the findings of this Office during a series of Internet workshops demonstrated that the number of Internet users – estimated at between 10 to 15 per cent of the population – has not yet reached a level that allows to fully exploit the potential of the Internet for media purposes, as well as e-education, e-learning,

or e-government. The reason is the comparatively high prices for subscribing to the Internet, which currently are between 30 and 35 euros a month, a substantial amount for the local level of income.

Although the telecom sector has been liberalized, the benefits have not yet materialized.

The Government should complement its laudable efforts regarding e-education or e-society by increasing competition in the telecom sector through the full implementation of the Law on Electronic Communications passed earlier this year.

Recommendations

The media show a high degree of pluralism, both in terms of quantity of media outlets and of different views represented. The legal framework for a free media is in place, missing pieces are in the works. The Government is given credit for respecting the framework, which does not exclude occasional pressure being applied on individual journalists or commercial constraints hindering journalists from freely exercising their profession.

- It is crucial for the Government not to miss this window of opportunity for making the new broadcast law work, by ensuring its vigorous implementation from the very beginning. This would also include an extra effort in the collection of the fees needed for the functioning of the public service broadcaster, or considering an amendment to the new law in order to automate the financing.
- It is imperative for the Broadcast Council, as established by the new broadcast law, to clear up the legal situation concerning frequency allocation. This can be done by (re)-issuing the licences in a transparent manner through public tenders based on a proper frequency allocation plan.
- The most promising way to resolve a conflict of interest in the domain of media ownership is that of a blind trust, that is, leaving control over the assets to an independent administrator during the time in office.
- The Government should establish the needed capacities to enforce the copyright laws and to support the newly established Broadcast Council in implementing its own part in that respect.

- The Government should, under its obligation to proactively safeguard freedom of the media, start legislating in the domain of print media-related antitrust law, including cross-ownership limitations. The European Union's guidelines on protective measures for "external pluralism" in the media should be taken into account.
- The overdue law on access to information should be passed as soon as possible. The Representative and the OSCE Mission in Skopje are ready to assist the Government in this endeavour.
- The Government should introduce the necessary legislative changes to decriminalize defamation and libel and transfer it into the civil domain of the law. The relevant case law of the European Court of Human Rights should be taken into account. The Representative and the OSCE Mission in Skopje stand ready to assist the Government in this endeavour.
- The Government should complement its laudable efforts regarding e-education or e-society by increasing competition in the telecom sector through the full implementation of the law on electronic communications passed earlier this year.

<<http://osce.org/item/17446.html>>

Regular Report to the Permanent Council of 15 December 2005

This is my third and last regular report in 2005.

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

I discussed the current situation in **Azerbaijan** with Deputy Foreign Minister Mr. Mahmud Mammad-Quliyev during his visit to Vienna on 2 December 2005. We discussed the performance of the newly launched Public Service Broadcaster and the adoption by the Parliament of a Law on the Right to Obtain Information. I greeted these positive developments and stressed the need for greater openness of the Public Broadcaster as well as for scrupulous implementation of the letter and spirit of the Law. I shared my concern on the investigation of the murder of Elmar Huseynov, which still has not been finalized. I also raised with senior Azeri officials the problem of the attacks on journalists during the post-election demonstration, even as they wore the agreed special vests. I expect the joint commission of the Ministry of Interior and the Union of Journalists to deal with this issue.

In **Belarus**, I raised with the authorities the serious deterioration of the situation of the independent print press. In the past months state-controlled printing houses, distribution networks and subscription services have, using various reasoning, cancelled their contracts with most independent newspapers. This means, that the already fragile non-governmental media is practically being squeezed out from the market. I have also raised the recently adopted amendments of the Criminal Code, adding, for example, a new provision on “Discrediting of Belarus” to Article 369 on “Insult of a Representative of the Authorities”. Another amendment, to Article 361 on anti-State appeals, punishes any further mentioning of such appeals in the media. These provisions, instead of liberalizing libel and insult provisions, penalize with severe imprisonment the “dissemination of knowingly false information” on political, economic, and social issues. The amendments also punish providing such information to international bodies. This development, apart from being at odds with OSCE commitments, will have a chilling effect on free discussion of public issues in Belarus, even on websites. The Foreign Ministry informed that these amendments can be reviewed after three years, however I urge the President of Belarus to veto this new legislation right away.

I sent a letter to the Minister of Foreign Affairs of **Croatia**, Kolinda Grabar-Kitarovic, on 14 November expressing concern about the fourth criminal conviction for defamation in Croatia within the last 12 months. Journalist and writer Predrag Matvejevic was sentenced to a five-month suspended prison sentence. Following this

intervention, the Minister of Justice Vesna Skare-Ozbolt proposed amendments to the Criminal Code, which we have personally discussed in Vienna during her visit. The proposed amendments will decriminalize defamation committed by journalists through the media. I warmly greet these plans.

In **Georgia**, I am monitoring the case of two co-founders of a private TV channel who were sentenced to three-month pre-trial custody before facing extortion charges.

I wrote to the then Interior Minister Otto Schily of **Germany** regarding the search conducted in the newsroom of the monthly *Cicero* as well as at the Berlin apartment of one of the staff.

In **Hungary**, I am monitoring the closed trial of Antonia Radi, a journalist accused of a “breach of state secrets” in one of her reports on a criminal case. This is the second case in democratic Hungary based on a pre-democracy provision that outlaws the use by the media of any sort of classified information.

In **Poland**, I raised the case of a journalist with a satirical weekly who had to hand over his computer hard disk to the authorities in connection with a judicial investigation.

I raised the case of journalist Nikolay Goshko who was in June sentenced to a prison term for libel in the **Russian Federation**. In a welcome development the Government informed that the authorities had released Goshko. Still, I would like to urge the authorities to fully decriminalize libel like it has been done by seven OSCE participating States, thus dealing in the future with these offences under civil law. For the time being, the Russian Federation could issue a moratorium on the use of these criminal provisions.

In **Slovakia**, I raised the case of *Harald Stiffel vs. SME*. This newspaper was sentenced to an 80,000 euro fine in a civil case brought by a Supreme Court judge after *SME* ran articles about his role in the persecution of a priest in 1981. This is a typical case of lack of a reasonable ceiling for fines in civil defamation.

I wrote to the Government of **Tajikistan** concerning the fact that many of the independent print media in the country are still not being published more than a year after their contracts were cancelled by the printing houses. I asked the Government to ensure pluralism, also in the broadcasting sector, through the issuance of new licences.

In **Turkey**, I raised the indictment of writer Orhan Pamuk under Article 301 of the Penal Code. Orhan Pamuk could be facing up to three years in prison for his comments published earlier this year in a Swiss newspaper. I also raised the sentencing of the editor of the newspaper *Agos*, Hrant Dink, to a suspended six-month jail sentence, under the same article. In a welcome development, Turkey amended its Penal Code in June 2005. However, this has not yet led to fewer court cases brought against writers, publishers and journalists. Especially under Article 301 that

criminalizes “insult” of the Turkish State, a number of individuals are being sued for their opinions. Fatih Tas, owner of the *Aram Publishing House*, and Ragip Zarakolu, co-founder and owner of *Belge Publishing*, are both awaiting their trials scheduled for February 2006. They are among an estimated 50 people known to be currently under judicial process in Turkey for publishing or writing. The Turkish Government is advised to finally remove Article 301 from its Penal Code and all other provisions which still serve as the basis for criminal persecution of speech.

In the **USA**, on several occasions I have raised the case of Judith Miller of the *New York Times* who went to prison for refusing to testify before a grand jury about a confidential source. After receiving a waiver from her source she later testified and was freed. Nevertheless, I still think that there is a need to adopt a Federal Shield Law so that similar situations are not repeated in the future.

Legal Reviews

My Office has continued reviewing media legislation in our participating States.

- We reviewed the draft media law and the regulations on the allocation of domain space of **Kazakhstan**. To protect the freedom of the Internet, we advised the Government to repeal the provisions that make it a state function to issue domain names, and also the condition that .kz websites have to be located in Kazakhstan.
- In **Kyrgyzstan**, my Office reviewed all legislation that defines the media landscape, in order to assist the ongoing reform process. The laws reviewed included: the media law and the law on the professional activity of journalists, civil and criminal libel provisions, the law on the protection of state secrets, and the new draft law on the freedom and guarantees of access to information.
- In **Latvia**, we dealt with the draft broadcasting and public service broadcasting legislation.
- In **Moldova**, we reviewed the draft laws on information and on state and official secrets.

All reviews can be found on our web page.

Central Asian Media Conference in Almaty

On 13 to 14 October 2005, the annual Central Asian Media Conference was held in Almaty, Kazakhstan. The conference was organized under the auspices of my Office and the OSCE Centre in Almaty.

For the seventh time, 150 participants from all five Central Asian countries – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – gathered to discuss developments in the region in the media field. The participants included journalists and representatives of non-governmental media organizations, as well as officials, experts and foreign guests. As in previous years, the conference provided a unique opportunity for interaction, an exchange of views among the participants and a creation of new bonds between regional colleagues.

At the first session, participants focused on the developments in the region which have had an impact on freedom of the media. Last year's conference topics, *Libel and Freedom of Information*, were reviewed by international and local experts.

The situation in the region has not substantially improved since. It is crucial that necessary reforms in the penal laws and on freedom of information, as recommended in the Dushanbe Declaration of 2004, are started.

The two main topics this year were *Pluralism in the Media and the Internet*. While issues of pluralism and the Internet were specifically discussed, their interconnectivity also became very clear in the course of the discussion.

Specifically in Central Asia, the Internet has become within a few years in some countries the last resort of pluralism, and an alternative source of pluralistic information compared to television and print press. In order to let the Internet become the future for pluralistic media, international organizations like the OSCE should engage more than ever in protecting the freedom of the Internet.

The Almaty Declaration on Pluralism in the Media and the Internet was adopted by the participants. It is also available on our website.

Caucasus Media Conference in Tbilisi

On 17 to 18 November 2005, the annual South Caucasus Media Conference was held in Tbilisi, Georgia. The Conference was jointly organized by my Office in cooperation with the OSCE Mission to Georgia.

For the second time, 70 participants from all three South Caucasus countries – Armenia, Azerbaijan and Georgia – discussed recent media developments in the region. Participants included journalists, representatives of media organizations, state officials, experts and foreign guests. As a follow-up to the first South Caucasus Media Conference in 2004, the event provided a unique platform for the mutual exchange of views on important media topics relevant for all three countries.

The specific themes discussed this time in Tbilisi were the quality of public service broadcasting and the freedom of the Internet. A declaration on these subjects was adopted at the end of the conference.

Let me use this opportunity to thank all the donors that have supported the Central Asian and Caucasus conferences: Austria, Germany, Ireland, Liechtenstein, Netherlands, Norway, Turkey, and the United States of America.

Assessment Visit to the former Yugoslav Republic of Macedonia

I visited Skopje, the former Yugoslav Republic of Macedonia, on 26 to 27 October 2005. This was my first visit to the country. The trip was made in consultation with the Government and was organized by the OSCE Spillover Mission to Skopje in close co-operation with the Ministry of Foreign Affairs. The purpose of the trip was to assess the current state of media freedom in the country, especially in the context of a new public service broadcast law, which was before Parliament at the time of my visit.

The media show a high degree of pluralism, both in terms of quantity of media outlets and of different views represented. The legal framework for a free media is in place, missing pieces are in the works. The Government is given credit for respecting the framework. However, this does not exclude occasional pressure being applied on individual journalists or commercial constraints hindering journalists from freely exercising their profession. Here are my recommendations that I have issued in a Report on the media situation in the former Yugoslav Republic of Macedonia.

- It is crucial for the Government not to miss this window of opportunity to make the new broadcast law work, by ensuring its vigorous implementation from the very beginning. This would also include an extra effort in the collection of the fees needed for the functioning of the public service broadcaster, or considering an amendment to the new law in order to automate the financing.
- It is imperative for the Broadcast Council, as established by the new broadcast law, to clear up the legal situation concerning frequency allocation. This can be done by (re)-issuing the licences in a transparent manner through public tenders based on a proper frequency allocation plan.
- The most promising way to resolve a conflict of interest in the domain of media ownership is that of a blind trust, that is, leaving control over the assets to an independent administrator during the time in office.

- The Government should establish the needed capacities to enforce the copyright laws and to support the newly established Broadcast Council in implementing its own part in that respect.
- The Government should, under its obligation to proactively safeguard freedom of the media, start legislating in the domain of print media-related antitrust law, including cross ownership limitations. The European Union's guidelines on protective measures for "external pluralism" in the media should be taken into account.
- The overdue law on access to information should be passed as soon as possible. The Representative and the OSCE Mission in Skopje are ready to assist the Government in this endeavour.
- The Government should introduce the necessary legislative changes to decriminalize defamation and libel and transfer it into the civil domain of the law. The relevant case law of the European Court of Human Rights should be taken into account. The Representative and the OSCE Mission in Skopje stand ready to assist the Government.
- The Government should complement its laudable efforts regarding e-education or e-society by increasing competition in the telecoms sector through the full implementation of the law on electronic communications passed earlier this year.

Assisting Participating States through Training

This year, I started a long term assistance project dealing with government-media relations and access to information.

I held two training courses for government press officers and media professionals, in **Azerbaijan** and **Kyrgyzstan**. The topics included: journalists' rights to access to information, the proper functioning of press offices, professionalism on both sides of the government-media relations, etc. I will continue this programme. We plan to have similar training exercises next year in **Kazakhstan**, again in **Kyrgyzstan**, this time for regional journalists, in **Tajikistan**, and in several regions in **Ukraine**. I have offered this assistance to the Governments of **Uzbekistan** and **Turkmenistan**; I am expecting them to grant their agreement soon.

Next year I would also like to explore possibilities for new training projects in the field of media democratization and professionalization.

In **Georgia**, together with the OSCE Mission, we organized a training course for media law professionals.

Plans for the Future

Next year I plan to continue the country assessment visits. Among the long term projects, my priorities remain the same: freedom of expression and the Internet; decriminalization of punitive laws that block the development of a fearless discussion of public issues, such as libel, defamation, unauthorized reporting on governmental information, etc. I am thankful to the outgoing Slovenian Chairmanship for its professionalism, and I look forward to a fruitful co-operation with the upcoming Belgian Chairmanship-in-Office on media issues. I am also in the process of hiring two senior advisers, one contracted replacing Alexander Ivanko, who will be leaving us after seven years with the OSCE, and one seconded. I will inform you about the chosen candidates.

<<http://www.osce.org/item/17537.html>>

Declarations and Projects

Joint Statement by

the Special Rapporteur of the Commission of Human Rights on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur for freedom of expression of the Organization of American States, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe, and the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights.

On the occasion of the World Press Freedom Day, the Special Rapporteur of the Commission of Human Rights on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo, the Special Rapporteur for freedom of expression of the Organization of American States, Mr. Eduardo Bertoni, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe, Mr. Miklós Haraszti, and the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights, Mr. Andrew Chigovera, wish to pay tribute to the courage and professionalism of the numerous journalists and other media professionals either killed or wounded on account of their professional activities. In addition to the dangers of conflict areas and war zones, journalists frequently face murder attempts, intimidations and harassment because of their inquiries on political, social and economic issues. Unfortunately, in most cases these crimes are not adequately punished; an end to impunity for the perpetrators of such acts would reinforce the role that the Rule of Law must play in all societies.

While the role of private enterprises is crucial to the development of the media, the growing phenomenon of media concentration might prevent the public from receiving a plurality of views and affect the independence of press professionals. Likewise, the adoption and the implementation of legislation against defamation and libel in the sphere of criminal law might boost pressure on journalists and media professionals so as to hamper their capacity of sound judgment and restrict their freedom of expression.

The signatories of this statement underline the importance of all forms of the media, including the print media, radio, television and the Internet, in the exercise of the right to freedom of opinion and expression, which is a fundamental and inalienable right that contributes to the consolidation of democracy and to the development of a civil society based on mutual respect, dialogue and tolerance.

Imparting information, spreading knowledge and creating awareness are basic components of this right. Any obstacle to the free circulation of ideas and opinions hinders freedom of expression and its beneficial consequences. In this context, the work of the Press and media professionals represents an exceptional tool for the promotion of freedom of expression throughout the world.

On this World Press Freedom Day, the four Rapporteurs call upon Governments around the world to foster conditions that are favorable to the full exercise of the right to freedom of expression.

International Mechanisms for Promoting Freedom of Expression

JOINT DECLARATION

by

the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

Having discussed these issues in London and virtually with the assistance of *ARTICLE 19, Global Campaign for Free Expression*;

Recalling and reaffirming their Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003 and 6 December 2004;

Recognising the huge and growing importance of the Internet as a vehicle for facilitating in practice the free flow of information and ideas that lies at the heart of the right to freedom of expression;

Stressing the need for strict application of international guarantees of freedom of expression to the Internet;

Aware of the ongoing debate about Internet governance and the concerns that have been raised about government interference in the Internet;

Condemning attempts by some governments to use the need to combat terrorism as a justification for adopting laws that unduly restrict freedom of expression;

Concerned that the standard of restricting expression which amounts to incitement, hitherto well-established in the areas of public order and national security, is being eroded in favour of vague and potentially very overbroad terms;

Noting the need for specialised mechanisms to promote freedom of expression in every region of the world and welcoming the appointment, by the African Commission on Human and Peoples' Rights, of a Special Rapporteur on Freedom of Expression;

Adopt, on 21 December 2005, the following Declaration:

On the Internet

- No one should be required to register with or obtain permission from any public body to operate an Internet service provider, website, blog or other online information dissemination system, including Internet broadcasting. This does not apply to registration with a domain name authority for purely technical reasons or rules of general application which apply without distinction to any kind of commercial operation.
- The Internet, at both the global and national levels, should be overseen only by bodies which are protected against government, political and commercial interference, just as freedom from such interference is already universally acknowledged in the area of the print and broadcast media. National regulation of Internet domain names should never be used as a means to control content.
- The right to freedom of expression imposes an obligation on all States to devote adequate resources to promote universal access to the Internet, including via public access points. The international community should make it a priority within assistance programmes to assist poorer States in fulfilling this obligation.
- Filtering systems which are not end-user controlled – whether imposed by a government or commercial service provider – are a form of prior-censorship and cannot be justified. The distribution of filtering system products designed for end-users should be allowed only where these products provide clear information to end-users about how they work and their potential pitfalls in terms of over-inclusive filtering.
- No one should be liable for content on the Internet of which they are not the author, unless they have either adopted that content as their own or refused to obey a court order to remove that content. Jurisdiction in legal cases relating to Internet content should be restricted to States in which the author is established or to which the content is specifically directed; jurisdiction should not be established simply because the content has been downloaded in a certain State.

- Restrictions on Internet content, whether they apply to the dissemination or to the receipt of information, should only be imposed in strict conformity with the guarantee of freedom of expression, taking into account the special nature of the Internet.
- Corporations which provide Internet searching, chat, publishing or other services should make an effort to ensure that they respect the rights of their clients to use the Internet without interference. While this may pose difficulties in relation to operations in certain countries, these corporations are encouraged to work together, with the support of other stakeholders, to resist official attempts to control or restrict use of the Internet, contrary to the principles set out herein.

On Anti-Terrorism Measures

- The right to freedom of expression is universally recognised as a cherished human right and to respond to terrorism by restricting this right could facilitate certain terrorist objectives, in particular the dismantling of human rights.
- While it may be legitimate to ban incitement to terrorism or acts of terrorism, States should not employ vague terms such as ‘glorifying’ or ‘promoting’ terrorism when restricting expression. Incitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring.

Ambeyi Ligabo

UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszti

OSCE Representative on Freedom of the Media

Eduardo Bertoni

OAS Special Rapporteur on Freedom of Expression

<<http://osce.org/item/18636.html>>

Guaranteeing Media Freedom on the Internet

Third Amsterdam Internet Conference

Amsterdam, 17–18 June 2005

Joint Declaration of the OSCE Representative on Freedom of The Media & Reporters sans Frontières

on

Guaranteeing Media Freedom On The Internet

1. Any law about the flow of information online must be anchored in the right to freedom of expression as defined in Article 19 of the Universal Declaration of Human Rights.
2. In a democratic and open society it is up to the citizens to decide what they wish to access and view on the Internet. Filtering or rating of online content by governments is unacceptable. Filters should only be installed by Internet users themselves. Any policy of filtering, be it at a national or local level, conflicts with the principle of free flow of information.
3. Any requirement to register websites with governmental authorities is not acceptable. Unlike licensing scarce resources such as broadcasting frequencies, an abundant infrastructure like the Internet does not justify official assignment of licences. On the contrary, mandatory registration of online publications might stifle the free exchange of ideas, opinions, and information on the Internet.
4. A technical service provider must not be held responsible for the mere conduit or hosting of content unless the hosting provider refuses to obey a court ruling. A decision on whether a website is legal or illegal can only be taken by a judge, not by a service provider. Such proceedings should guarantee transparency, accountability and the right to appeal.
5. All Internet content should be subject to the legislation of the country of its origin (“upload rule”) and not to the legislation of the country where it is downloaded.

6. The Internet combines various types of media, and new publishing tools such as blogging are developing. Internet writers and online journalists should be legally protected under the basic principle of the right to freedom of expression and the complementary rights of privacy and protection of sources.

<http://www.osce.org/item/15239.html>

Pluralism in the Media and the Internet

Seventh Central Asian Media Conference

Almaty, 13–14 October 2005

On 13 to 14 October 2005, the annual Central Asian Media Conference was held in Almaty, Kazakhstan. The Conference was organized under the auspices of the OSCE Representative on Freedom of the Media, Miklós Haraszti, and the OSCE Centre in Almaty.

For the seventh time, 150 participants from all five Central Asian countries – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – gathered to discuss developments in the region in the media field. The participants included journalists and representatives of non-governmental media organizations, as well as officials, experts and foreign guests. As in previous years, the conference provided a unique opportunity for interaction, an exchange of views among the participants and a creation of new bonds between regional colleagues.

At the first session, participants focused on the developments in the region which have had an impact on freedom of the media. Last year's conference topics, *Libel and Freedom of Information*, were reviewed by international and local experts. The situation in the region has not substantially improved since that time. It is crucial that necessary reforms in libel and freedom of information, as recommended in the Dushanbe Declaration of 2004, be started.

The two main topics this year were *Pluralism in the Media* and *the Internet*. While issues of pluralism and the Internet were specifically discussed, their inter-connectivity also became very clear in the course of the discussion.

Specifically in Central Asia, the Internet has in the last couple of years become in some countries the last resort of pluralism and an alternative source of pluralistic information compared to television and print press. In all Central Asian countries it is becoming the future of pluralistic media. International organizations like the OSCE should engage more than ever in protecting freedom of the Internet.

The Representative on Freedom of the Media has in the last years developed a whole set of publications, recommendations and “recipes” for best practices and good governance of the Internet which hopefully will serve as guidelines for all OSCE participating States.

Almaty Declaration on Pluralism in the Media and the Internet

The debates at the Almaty Media Conference stressed the following conclusions:

- Governments should ease state secret and other laws that unnecessarily restrict access to information. States should adopt and implement comprehensive freedom of information laws which maximize media and public access to government-held information.
- Further efforts should be made to decriminalize offences concerning libel and defamation. The concepts of distinguishing between criticism of private and public figures should be introduced throughout punitive legislation in order to allow for vivid debate on public interest issues.
- The fines imposed by the courts on media enterprises should not drive them into bankruptcy.

Internet:

- Regulation of the Internet should be limited to instances where it is absolutely unavoidable.
- Internet media should enjoy the same protection by press freedom provisions as classical media.
- All acts on regulations of the Internet should be taken after necessary consultations with the Internet community.
- There should be no state regulation or registering of websites or Internet domains besides purely technical matters.
- Websites should not be obliged to be physically hosted in the country even if targeting home audiences.
- Bodies administering the country's domain name system (DNS) should be independent from the State.
- The development of the technical infrastructure of the Internet should be fostered.

- In order to improve both public and media access to information and facilitate electronic government, public bodies should publish helpful information about their structures and activities on websites.

Pluralism in the Media:

- Providing conditions for pluralism is a state obligation; caring about the content with which the actual outlets and channels fill the information space is not a state task.
- Strategies need to be devised to help development of pluralism in all media fields from television through print media to Internet.
- Efforts should be taken to develop professional skills of journalists including training programmes utilizing local experts.
- Built-in, internal pluralism should be provided in state broadcasting even before official transformation into a government/independent public broadcasting institution. This means, in the first place, ensured access to state TV for all candidates running for national office during election campaigns.
- External pluralism should be promoted by both law and practice of non-political licensing for privately-owned television and radio stations.
- Starting a newspaper should become a notification process where it is still a registration process.
- Governments should acknowledge denationalization of printed media as one of their main tasks.
- Privatization of state assets within a reasonable period of time should become a legal obligation for today's publishers.
- Initial tax exemptions should be provided for newspapers to help them survive the transition from state to private property.
- In the meanwhile, independent bodies should supervise equal access to financial resources, printing possibilities, distribution networks, advertisement revenues, etc. for both state-owned and privately owned print press.

- Foreign or mixed ownership of all communication outlets should be allowed under anti-monopoly rules.

Almaty, 14 October 2005

<<http://osce.org/item/16767.html>>

Public Service Broadcasting and the Internet Second South Caucasus Media Conference Tbilisi, 17–18 November 2005

On 17 to 18 November 2005 the annual South Caucasus Media Conference was held in Tbilisi, Georgia. The conference was jointly organized by the Office of the OSCE Representative on Freedom of the Media in co-operation with the OSCE Mission to Georgia.

For the second time, 70 participants from all three South Caucasus countries – Armenia, Azerbaijan and Georgia – discussed recent developments concerning the media within the region. Participants included journalists, representatives of media organizations, state officials, experts and foreign guests. As a follow-up to the first South Caucasus Media Conference in 2004, the event provided a unique platform for the mutual exchange of views on important media topics relevant for all three countries.

The specific themes discussed in Tbilisi 2005, were the quality of *Public Service Broadcasting and the freedom of the Internet*. A declaration on these subjects was adopted at the end of this conference. The participants also noted that the subjects dealt with at last year's conference, i.e. *Libel and Freedom of Information*, still remain topical and the recommendations adopted in October 2004 are still valid.

Tbilisi Declaration on Public Service Broadcasting and the Internet

Public Service Broadcasting

The governments in South Caucasus should:

- Reaffirm their commitment to maintain a strong and vibrant independent public service broadcasting;
- Refrain from interference with the editorial independence and institutional autonomy of public service broadcasters;
- Define and implement an appropriate legal, institutional and financial framework for the functioning of public service broadcasting.

The further development of public service broadcasting should be based on the following principles:

Independence of Regulatory Bodies

- The independence of regulatory bodies and public service broadcasters should be guaranteed by law and respected in practice.
- Appointment of members to boards and regulatory bodies should reflect a broad spectrum of stakeholders and should be based on high professional criteria.
- Elections of regulatory bodies, if they are envisaged, should be transparent.
- The process of appointing members should be set out clearly in the law. Members should serve in their individual capacity and exercise their functions at all times and in the public interest.

Financing

- Public service broadcasters should be adequately funded, taking into account their remit, by a means that protects them from arbitrary interference in their budgets.
- Where government subsidies are provided, they should be granted on a secure, long-term basis, without infringing on the independence of public service broadcasters.
- The financial security and economic independence of public service broadcasters are necessary for their proper operation and credibility in society. It is the duty of national parliaments and governments to ensure stable and adequate financing. It is also their duty to promote the development of a political and civic culture that guarantees the proper environment for public service broadcasting as an emanation of civil society.
- In consideration of the subsidy provided by the government to produce socially important programming, the broadcaster should refrain from making programming decisions on a purely commercial basis.
- Placement of advertisement should not be used as an instrument of pressure.

Editorial Independence of Public Service Broadcasting Organizations

- The principle of editorial independence, whereby programming decisions are made by broadcasters on the basis of professional criteria and the public's right to know, should be guaranteed by law and respected in practice. It should be up to the editorial board of the broadcasters, not the government, regulatory bodies nor commercial entities, to make decisions about what to broadcast.

Pluralism

- Public service broadcasters should endeavour to reflect cultural, religious and language diversities of their communities.
- Their programmes should serve all groups of society, including those neglected by commercial broadcasters, such as ethnic minorities and others.

Internet

- Regulation of the Internet media should be limited only to those few instances which are absolutely unavoidable considering international norms.
- Internet media should enjoy the same protection by press freedom provisions as traditional media.
- All acts on regulations of the Internet should be taken after necessary consultations with the Internet community.
- There should be no state regulation or registering of websites or Internet domains besides purely technical matters.
- Websites should not be obliged to be physically hosted in the country even if targeting home audiences.
- Bodies administering the national domain name system (DNS) should be independent from the State.
- Internet access infrastructure should be fostered and not hindered.
- In order to improve both public and media access to information and facilitate

electronic government, public bodies should publish information about their structures and activities on websites.

The following was also concluded from the debates at the Tbilisi Conference on Media:

- Governments should ease state secret and other laws that unnecessarily restrict access to information. States should fully implement freedom of information laws that maximize media and public access to government-held information.
- Further efforts should be made to decriminalize offences concerning libel and defamation. A clear distinction between criticism of private and public figures should be made throughout punitive legislation to allow for a vivid debate on public interest issues.
- The fines imposed by the courts on media enterprises should not drive them into bankruptcy.

The participants of the conference appealed to the Azerbaijani authorities to accelerate the investigation of the murder of Elmar Huseynov.

Tbilisi, 18 November 2005

<<http://osce.org/item/17039.html>>

Legal Assistance in 2005

In 2005, the Office of the Representative on Freedom of the Media continued to provide legal assistance to the OSCE field presences and participating States for the fifth year. This is done as a part of the activities under the mandate to assist the participating States to fulfil their OSCE commitments in the sphere of freedom of media and freedom of expression.

This year, the Office commissioned a total of nine legal reviews on twelve specific laws and regulations from independent international media experts. Five of the reviews were done on draft legislation and seven on current legislation in force in the OSCE region. All reviews include recommendations on how to bring the legislation in line with OSCE commitments and other international standards.

Most reviews focus on one or more particular laws or draft laws, but some analyses have also been done on themes, mainly on libel. These tackle all legislation in force which touch upon the theme to give an overview of the situation in the country.

Five OSCE participating States benefited from this assistance in 2005: Latvia, Kazakhstan, Kyrgyzstan, Moldova, and Ukraine. Five laws, the largest number, were reviewed for Kyrgyzstan and prepared as a part of the work plan agreed upon in spring 2005 between the new Kyrgyz Government and the OSCE.

In addition, a legal expert provided drafting assistance to the authorities on the ground in Kosovo, and a series of training courses for judges and other legal professionals on applying the media law were organized in Georgia.

The reviews include:

- Comments on the Moldovan Draft Law on State and Official Secrets
- Comments on the Moldovan Draft Law on Information
- Analysis of the Draft Law of the Republic of Kazakhstan on the Mass Media (as revised on 18 April 2005)
- Memorandum on a Proposal for a Draft Law on Public Service Broadcasting Organizations and a Draft Law on Radio and Television in Latvia
- Note on Kazakhstan's Regulations for the Allocation of Domain Space
- Comments on the Law on Protection of State Secrets of the Kyrgyz Republic
- Memorandum on the Kyrgyz Mass Media Law and the Law on Journalists' Activities
- Memorandum on Laws of the Republic of Kyrgyzstan relating to the Protection of Reputation

- Memorandum on Comments on the Kyrgyz Republic Draft Law on the Freedom and Guarantees of Access to Information

All legal reviews can be found on the web page of the Representative:

<<http://www.osce.org/fom/documents.html>>

Campaign against Criminal Libel Laws and Disproportionate Civil Damages

Background

Criminalization of speech offences, in particular of libel, defamation, and insult, poses a threat to journalists and the media as it creates a “chilling effect” – a fear of prosecution for speech. That leads to intimidated public discourse, less free social debate, diminished transparency of government, and, generally speaking, more self-censorship. Verbal offences against integrity and dignity should be handled by the civil courts. At the very least imprisonment should be abolished as a punishment. In addition, moratoria should be introduced on criminal prosecutions for defamation, libel, and insult, while legislation should be modernized.

The European Court of Human Rights in Strasbourg whose decisions are legally binding for Council of Europe Member States, has always ruled against imprisonment as a disproportionate punishment for libel and insult.

At present, seven OSCE participating States have removed from their penal codes all forms of criminal libel and insult provisions¹. They are Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Moldova, Ukraine, and the United States.

Some participating States have at least removed imprisonment as a possible punishment for defamation. These include Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Romania, and Serbia and Montenegro (excluding Kosovo). These participating States are in the vanguard of pro-press freedom reform in the OSCE region and set for it a “best practice” example.

Performance and Results

The project’s first phase was the compilation of the *Matrix* on libel and insult laws. The *Matrix* is a first of its kind comprehensive database on criminal and civil legal provisions and relevant court practices in the OSCE area. It serves the purpose of raising awareness of the “chilling effect” that such laws exert on freedom of expression.

It provides a reference for participating States who wish to liberalize their defamation legislation, and it is widely used by media NGOs, academics and governments.²

1 Certain narrowly defined defamation provisions are present in some States’ criminal codes. In the United States, there are no federal criminal defamation laws; however, 17 states and two territories have retained local criminal defamation provisions.

2 The Matrix can be found on the OSCE/RFOM’s website at <<http://www.osce.org/item/4361.html>>

Action was taken by the Representative in more than 20 cases of media freedom violation related to disproportionate penalties handed down to journalists for libel and insult. The Representative intervened with authorities of ten OSCE participating States by means of 11 press releases and 12 letters.

Partly due to the concerted efforts of the RFOM's Office, several OSCE participating States moved forward in reforming their obsolete criminal libel provisions.

In the Republic of Serbia, insult and defamation provisions of the Criminal Code were modified. Imprisonment has now been abolished as a possible punishment for these offences. The amended Criminal Code came into force on 1 January 2006. The reform of the defamation legislation in the Republic of Serbia had been continuously supported by the OSCE Representative on Freedom of the Media. The Representative participated in a round-table debate on this matter, which was organized by the OSCE Mission in Serbia and Montenegro on 24 January 2005.

The OSCE Spillover Monitor Mission to Skopje, the Office of the OSCE Representative on Freedom of the Media and the Macedonian Media Institute held an international conference *Decriminalization of Defamation: Sharing Best Practices* on 9 and 10 February 2006 in Skopje. As a result, the Government elaborated and approved, and on 10 May 2006 Parliament adopted, amendments to the Criminal Code that deleted imprisonment as a punishment for libel and insult.

In Albania, amendments were produced in spring 2005 that would almost completely decriminalize defamation, and improve handling of libel and insult cases under civil law. At the time of writing, these amendments are awaiting approval by the Albanian Parliament.

In Croatia, the OSCE Representative responded to four cases of criminal conviction of journalists for defamation in 2004 and 2005. He communicated several times with the then Minister of Justice, Vesna Skare Ozbolt, and met with her personally to discuss a possibility for decriminalization of defamation. Eventually, the Government proposed concrete changes that deleted imprisonment as a sanction for defamation. The changes were adopted by Parliament on 9 June 2006.

Conclusions

The gradually changing attitude of governments of the OSCE participating States towards criminal defamation laws and the increased understanding of the need for reform are the main achievements of the campaign.

The project has also contributed to intensifying the debate between professional associations, civil society and the authorities about the need for decriminalization of

defamation, as well as about the destructive effect of heavy fines and disproportionate amounts of compensation awarded in private law suits.

Although the project has formally been finished, mechanisms to prosecute the media for defamation will continue to be a prime concern for the Representative. The effect of implementing this project is long term and its impact will be felt in the foreseeable future.

Press Releases

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- 189 • Special rapporteurs on freedom of expression issue joint statement on Press Freedom Day – 2 May 2005
- 189 • OSCE media watchdog presents Internet “cookbook” in Russian – 10 May 2005
- 190 • OSCE media freedom representative proposes changes to new Turkish Penal Code – 11 May 2005
- 190 • OSCE media freedom representative concerned over new regulation on newspaper titles in Belarus – 3 June 2005
- 191 • OSCE media watchdog says new Italian legislation insufficient to curb media concentration – 7 June 2005
- 192 • OSCE Representative on Freedom of the Media to hold Internet Conference in Amsterdam – 13 June 2005
- 193 • OSCE media watchdog issues report on work of media during Andijan crisis in Uzbekistan – 15 June 2005
- 193 • Media freedom on the Internet in Central Asian countries threatened, says OSCE Representative – 20 June 2005
- 194 • OSCE media watchdog concerned about prison sentence for journalist in Russia – 23 June 2005

- 195 • OSCE media watchdog worried by protection of sources case in the US – 29 June 2005
- 196 • OSCE media representative praises Turkey for changing penal code, but remains concerned – 7 July 2005
- 197 • OSCE media freedom office trains government press secretaries and journalists in Baku – 18 July 2005
- 197 • OSCE Office commemorates National Press Day in Azerbaijan – 22 July 2005
- 198 • OSCE media freedom representative concerned over new criminal libel case involving President of Belarus – 22 August 2005
- 199 • OSCE media watchdog concerned over situation in Tajikistan – 5 September 2005
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- 200 • OSCE media freedom watchdog calls for amendments to the media law in Kazakhstan – 28 September 2005
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- 202 • OSCE media freedom representative asks Hague Tribunal to release Croatian journalist – 11 October 2005
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- 208 • Joint statement by three special rapporteurs on freedom of expression – 28 December 2005

OSCE media freedom representative asks Poland to remove prison sentences from libel law

VIENNA, 25 January 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, expressed his concern about recent cases in Poland in which journalists have been sentenced to prison terms for criminal libel.

In a letter to the Polish Minister of Justice Andrzej Kalwas, he said that the current provisions may constitute legal precedents curtailing freedom of the media in Poland in the future.

“The trend in most of the democratic world is to offer less protection to public figures than to private individuals,” Miklós Haraszti wrote. “However, the recently applied Polish speech laws do not even offer equal protection to private individuals and public figures. The latter enjoy an elevated level of protection from criticism. These laws should be repealed.”

The case of Jerzy Urban, editor of the magazine *Nie*, is an example of how Polish speech laws work. On January 14, a Warsaw prosecutor requested that Mr. Urban be sentenced to a 10-month suspended prison term and fined the equivalent of 5,000 euros for insulting a foreign head of state in an “offensive” editorial. A court in Warsaw is due to give its verdict.

This case follows the sentencing of two Polish journalists to prison terms in May and July last year for slandering a public official. These were the first cases of applying criminal libel in democratic Poland.

Haraszti acknowledged the full independence of the courts deliberating in those cases. However, he expressed his disappointment with the lack of action in trying to change the inadequate libel and insult provisions of the Polish law.

In most EU countries such laws have not been used for many years, even if they remain on the statute book. In this regard, Haraszti recalled that the European Court of Human Rights has on many occasions stated that elevated protection for public officials and applied prison sentences for journalistic opinions were contrary to Article 10 of the European Convention on Human Rights.

“Our joint recommendation with the freedom of expression Rapporteurs of the United Nations and the Organization of American States, issued in November 2002, states: ‘Where libel is still a criminal offence, courts should refrain from imposing prison sentences, including suspended ones,’” wrote the OSCE media freedom representative.

Haraszti urged Polish authorities to put in force a moratorium on the use of the restrictive laws and to introduce laws to decriminalize libel and defamation.

http://www.osce.org/fom/item_1_8874.html

OSCE media representative to visit Belarus

VIENNA, 7 February 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, will visit Belarus from 9 to 11 February at the invitation of the Ministry of Foreign Affairs.

The aim of the Representative's visit, in accordance with his mandate, is to collect first-hand information on the media situation in the country and to assist Belarus in developing a free and open media landscape in line with OSCE commitments.

Mr. Haraszti will meet Foreign Minister Sergei Martynov, Minister of Information Vladimir Russakevich, Minister of Communications Vladimir Goncharenko, and the Chairman of the Parliamentary Committee on Human Rights, Ethnic Relations and the Media, Yuri Kulakovski.

The OSCE Media Representative will also meet journalists and representatives of media non-governmental organizations

[<http://www.osce.org/fom/item_1_8898.html>](http://www.osce.org/fom/item_1_8898.html)

OSCE media freedom representative criticizes sentencing of Austrian author in Greece

VIENNA, 9 February 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, expressed concern over a six-month suspended prison sentence for blasphemy imposed by a Greek court on Austrian author Gerhard Haderer over his comic book *The Life of Jesus*.

The sentence was imposed by a court in Athens on 18 January 2005. The book has also been banned.

"This is the first time in more than twenty years that a book has been banned in Greece," Haraszti said in a letter to Greek Foreign Minister Petros Molyviatis. "*The Life of Jesus* has been published in several other EU member states, including Austria, Germany, France, the Czech Republic, Portugal and Hungary. The book caused public controversy but was never confiscated."

Haraszti added: "Criminalizing and punishing an author for the contents of any book, even if it proves offensive to many people, is certainly contrary to the principles contained in OSCE commitments on freedom of the press."

The OSCE Media Representative urged the Greek Government to remove provisions criminalizing certain forms of speech from the legal system.

[<http://www.osce.org/fom/item_1_8900.html>](http://www.osce.org/fom/item_1_8900.html)

OSCE media freedom representative concerned over legal grounds for trials of publisher and writer in Turkey

VIENNA, 2 March 2005 – The OSCE Representative on Freedom of the Media,

Miklós Haraszti, welcomed the acquittal of Fikret Baskaya in Ankara today and said he will monitor the postponed trial of Ragip Zarakolu.

Fikret Baskaya, a writer and academic, was charged under Article 302 of the Penal Code with “insulting the military and security forces of the State.” If convicted, he could have faced up to three years in prison.

Publisher Ragip Zarakolu’s trial was postponed to 12 May 2005 on procedural grounds. Ragip Zarakolu is charged under Article 216 of the Code for publishing a book about government policies on Kurdish issues which prosecutors say instigated hatred. If convicted, he could receive a prison sentence of up to two years.

In a letter to Justice Minister Cemil Cicek, Haraszti welcomed a reform of the Penal Code which will enter into force on 1 April, but added: “There are still some worrying provisions in your Penal Code which run against OSCE commitments on freedom of expression. This is of serious concern to my Office which has been campaigning in the OSCE region against criminal defamation laws and provisions that offer elevated protection to government and to officials.”

The Representative asked the Turkish Government to remove Articles 216 and 302 from the Penal Code. “Article 216 contradicts the internationally recognized basic principle that speech cannot be prosecuted when there is no incitement to violence,” he said.

Haraszti also urged the Turkish authorities to eliminate in a legally binding way all references in official documents suggesting that calls for the withdrawal of Turkish troops from Cyprus or claims that Armenians were exposed to genocide could be treated as crimes.

This is referred to in an explanatory document which accompanies Article 305 of the Penal Code, “Offences against national interests”. Previously these two examples were omitted from a version of the Penal Code which was sent to judges. “Removing these examples officially can help exclude the impression that Article 305 allows the punishment of speech,” Haraszti said.

<http://www.osce.org/fom/item_1_8947.html>

OSCE media freedom representative shocked by murder of journalist in Azerbaijan

VIENNA, 3 March 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, said today he was appalled by the murder of journalist Elmar Huseynov and has asked the Azerbaijani authorities for a swift investigation into the case.

“I am shocked by the murder of Huseynov whom I knew personally,” said Mr. Haraszti. “I met him last October at our First South Caucasus Media Conference where he contributed to a discussion on access to information with valuable ideas on legal solutions.” “The murder of this outspoken independent journalist is a

serious loss for the Azerbaijani media. My thoughts are with his family and colleagues,” he added.

Elmar Huseynov, the founder and editor of the independent weekly news magazine *Monitor*, was shot and killed outside his apartment on 2 March.

The magazine had been under constant pressure from authorities for the critical nature of some of the articles. It has had difficulties with printing and distribution and also has been faced with several defamation law suits.

The OSCE Representative on Freedom of the Media will be closely following the investigation and will be in contact with the Azerbaijani authorities on this matter.

“The OSCE community expects the investigation to find out whether the murder is linked in any way with Mr. Huseynov’s work, as his colleagues suspect, or with other recently reported cases of harassment of journalists in Azerbaijan,” said Miklós Haraszti.

http://www.osce.org/fom/item_1_8950.html

OSCE Representative on Media Freedom presents report on media situation in Belarus

VIENNA, 8 March 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, will hold a press conference in Vienna on Friday to present his report on the media situation in Belarus.

Mr. Haraszti visited the Belarusian capital, Minsk, from 9 to 11 February 2005, meeting government officials, parliamentarians, journalists and representatives of non-governmental organizations.

The report describes the current state of media freedom in Belarus and provides the authorities with practical recommendations.

http://www.osce.org/fom/item_1_8965.html

Belarus media situation worsened, says OSCE media freedom representative

VIENNA, 11 March 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, said today that the overall media situation in Belarus had deteriorated over the past few years.

Presenting a report on the media situation in Belarus to reporters in Vienna, he said that the number of independent media outlets had been declining and the number of administrative warnings and suspensions had been growing.

However, Mr. Haraszti expressed his hope that the visit he paid to the Belarusian capital, Minsk, from 9 to 11 February, where he had high-level meetings, marked

the beginning of co-operation to reform the media scene.

“In the broadcast sector, all national TV channels are state-owned or controlled,” Haraszti reported. “In the print sector, the few independent outlets are struggling to survive.”

“Belarus is the only OSCE participating State where people are serving actual prison sentences for violating the dignity of the President.”

The report contains a summary of practical recommendations to the Belarusian authorities on how to improve the media situation in the country.

The full text of the report, which Haraszti presented to the OSCE Permanent Council yesterday, can be found at the website of the Representative on Freedom of the Media.

http://www.osce.org/fom/item_1_8975.html

OSCE media freedom representative praises new Belgian law on protection of journalistic sources, calls for US lawmakers to pass similar legislation

VIENNA, 22 March 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, today welcomed a new Belgian law which gives journalists additional safeguard by protecting their sources.

“For journalists to collect information in full confidence of their sources is a basic precondition for the freedom of the media, and transparencies in public life,” said Miklós Haraszti. “I am glad that Belgium has joined those OSCE participating States which have honoured this principle by passing a separate ‘shield’ law”.

The law, adopted on 17 March, will allow media professionals in Belgium not to reveal confidential sources in courts, except in some rare and clearly defined cases.

Miklós Haraszti pointed out that the European Court of Human Rights in Strasbourg has in several rulings stressed that protection of journalistic sources is one of the cornerstones of press freedom.

The OSCE Representative on Freedom of the Media also called upon US lawmakers to speed up efforts to pass a similar “shield law” at the federal level in the United States.

The proposed Free Speech Protection Act was introduced in the Senate in early 2005. Similar rules exist already in many US States, but not at the federal level.

Because of the lack of a federal “shield law”, nine American journalists may face prison sentences for refusing to name their sources “in contempt” of court rulings, including *New York Times* journalist Judith Miller and Matthew Cooper of *Time Magazine*.

“The United States is well known for its investigative journalism,” Haraszti said. “Therefore I call upon lawmakers in the US to pass legislation to protect the very foundation for investigative journalism, namely the protection of sources.”

http://www.osce.org/fom/item_1_9003.html

OSCE media representative visits Azerbaijan

VIENNA, 11 April 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, is visiting Azerbaijan from 11 to 15 April at the invitation of the Ministry of Foreign Affairs.

During the visit, he will collect first-hand information about the media situation in the country to assist Azerbaijan in further promoting free and pluralistic media in pursuance of its OSCE commitments. He will also enquire about the progress of the investigation into the murder of Elmar Huseynov, the editor of the independent *Monitor* magazine.

The OSCE Representative will meet President Ilham Aliyev, as well as key Government ministers, the Chairs of the Constitutional and Supreme Courts, members of Milli Mejlis (National Assembly), members of the Press Council and the Broadcasting Council of the Public TV.

Mr. Haraszti will also meet journalists and representatives of media NGOs. He will take part in a round-table discussion on licensing of TV and radio broadcasters in Azerbaijan.

http://www.osce.org/fom/item_1_13772.html

OSCE round table discusses TV and radio licensing in Azerbaijan

BAKU, 12 April 2005 – The need to further develop the regulatory framework in TV and radio licensing, the authority of regulating bodies, and a guarantee of equal treatment of operators were discussed today at a round table organized by the OSCE Office in Baku.

Miklós Haraszti, the OSCE Representative on Freedom of the Media, who is in Azerbaijan on an assessment visit, said private broadcasters were in need of clear-cut and non-discriminatory rules for the division of frequencies and for obtaining licences.

“The existing regulations for providing frequency and licences need to be clarified and then properly implemented,” he said. “The granting of broadcast licences to private broadcasters should be done in a non-political and transparent manner in order to ensure true pluralism in society.”

Ali Hasanov, Head of the Presidential Administration, said the Azerbaijani Government pays great attention to this issue: “We acknowledge the existence of certain gaps and difficulties in this area. And we hope that this event will help to identify the key obstacles and the best ways to meet the needs of the private broadcasters.”

The event was designed to provide an opportunity for an in-depth discussion and exchange of opinions between experts and all actors involved in the process of granting licences and frequencies for Azerbaijani TV and radio broadcasting companies.

It was the first in a series of activities designed by the OSCE Office in Baku with the aim of addressing the most pressing issues in the media field in Azerbaijan.

Over 60 experts, representatives from national institutions of Azerbaijan, including the presidential administration, government ministries, non-governmental organizations, as well as international experts attended the event.

http://www.osce.org/fom/item_1_13825.html

OSCE media representative says new French libel case shows EU countries should abolish criminal defamation

VIENNA, 21 April 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, today voiced his concern over a case launched in France by the Barclay brothers, the owners of the Daily Telegraph, against The Times of London.

“This is another indication that criminal libel laws should be taken off the statute books, as my Office has been urging,” Haraszti said. “Libel and defamation should be dealt with only in the civil-law courts. Otherwise even the most advanced democracies are not insured against threats to press freedom.”

On 19 April, *The Times* editor Robert Thomson and journalist Dan Sabbagh received a summons from Scotland Yard to appear in a Paris criminal court on 23 June. The Barclay brothers are suing *The Times* under a French press law dating back to 1881. The law was amended in 2004 but defamation was not decriminalized.

Most EU Member States, influenced by decisions of the European Court of Human Rights, have refrained from using criminal libel laws for decades. “EU Member States should take a lead in reforming these legal provisions and set a good example for the rest of the OSCE region,” Haraszti said.

The Representative said that libel and insult laws remain a major challenge for freedom of expression in the OSCE area. “They exert a chilling effect on all media professionals. These laws are one of the main obstacles to media freedom in the 21st century,” said Miklós Haraszti.

http://www.osce.org/fom/item_1_14005.html

Special rapporteurs on freedom of expression issue joint statement on Press Freedom Day

VIENNA, 2 May 2005 – On the occasion of the World Press Freedom Day, marked 3 May, the international community's four special rapporteurs on freedom of expression issued a joint statement, paying tribute to the courage and professionalism of the numerous journalists and other media professionals either killed or wounded on account of their professional activities.

They also addressed such issues as decriminalization of libel, the importance of access to information and the role of all forms of media in society.

The Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, Mr. Miklós Haraszti, the Special Rapporteur of the United Nations Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo, and the Special Rapporteur for Freedom of Expression of the Organization of American States, Mr. Eduardo Bertoni were for the first time joined by the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights, Mr. Andrew Chigovera.

The text of the joint statement in English and in Russian is attached.

[<http://www.osce.org/fom/item_1_14097.html>](http://www.osce.org/fom/item_1_14097.html)

OSCE media watchdog presents Internet “cookbook” in Russian

VIENNA, 10 May 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti today presented the Russian-language version of the *Media Freedom Internet Cookbook*.

The book, published in English last year, contains the major findings of the Second Internet Conference which was organized by the Media Representative in August 2004 in Amsterdam.

The *Media Freedom Internet Cookbook* examines concerns regarding the over-regulation of the Internet and offers “recipes” on how to fight so-called bad content while preserving the freedom of the Net. This information is now available not only to English-language speakers but to a much broader spectrum of citizens in the OSCE region.

“The Internet is not in itself a guarantor of freedom of opinion and expression. It is primarily a technology, a network enabling communications,” Miklós Haraszti said. “Media freedoms can get lost in the hands of uninformed or uncaring national internet legislators.”

The 270-page publication can be ordered from the Office of the Media Representative or can be downloaded at: [<http://www.osce.org/fom/item_11_13570.html>](http://www.osce.org/fom/item_11_13570.html). On 17 to 18 June 2005 the OSCE Media Representative will host the

3rd Internet Conference with a focus on the Southern Caucasus and Central Asia. The conference will take place in the City Hall of Amsterdam. For more information go to: <http://www.osce.org/fom/item_6_9759.html>
<http://www.osce.org/fom/item_1_14192.html>

OSCE media freedom representative proposes changes to new Turkish Penal Code

VIENNA, 11 May 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, praised the Turkish authorities for postponing the adoption of the new Penal Code and expressed hope that 23 worrying provisions in the draft would ultimately be amended.

“This move by the Turkish authorities is both principled and practical,” Haraszti wrote in a letter to Turkish Justice Minister Cemil Cicek. “I hope that all potential restrictions on the freedom of the press will be fully removed at the end of the revision process.”

The Justice Commission of the Turkish Parliament is expected to reconsider the draft before 1 June.

Haraszti also sent a detailed review of the chapters of the Draft Code which his Office believes could hinder free discussion of public issues and pose a threat to the freedom of the press.

He outlined 23 provisions in three main areas: freedom of the media and freedom of expression; access to and disclosure of information; and the threat to free discussion of public affairs from defamation and insult provisions.

“Your legislature now has the opportunity to contribute to the creation of a Penal Code that is not only in conformity with international media freedom commitments, but also serves as a model for modern democracies,” Haraszti added.

<http://www.osce.org/fom/item_1_14211.html>

OSCE media freedom representative concerned over new regulation on newspaper titles in Belarus

VIENNA, 3 June 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, has voiced his concern over a new presidential decree in Belarus, which bans the use of the words “national” and “Belarusian” by NGOs and media in their official titles and names.

In a letter to Belarusian Foreign Minister Sergei Martynov, Haraszti said that under the 31 May 2005 decree by President Aleksandr Lukashenko, many newspapers will be forced to urgently re-register.

A number of independent newspapers, including *Belorusskaya Delovaya*

Gazeta, Belorussky Rynok, Belorusskaya Gazeta, Natsionalnaya Ekonomicheskaya Gazeta, will be affected by this decree. But it does not apply to the State media.

“As a result of these changes, independent newspapers will have to re-register within three months, a procedure which by itself has in the past led to temporary or permanent suspensions, loss of distribution rights and other administrative restrictions,” Haraszti wrote. “Additionally, they will be forced to change their logo, layout and other data. This could provide for new ‘technical mistakes’, and therefore might lead to new hindrances.”

The OSCE Representative on Freedom of the Media previously urged Belarusian officials to abolish mandatory registration and re-registration of the print media, in his March 2005 Report on the state of media freedom in Belarus.

“Newspapers use their names to express themselves, and therefore their titles should be protected just like any other means of freedom of speech,” Haraszti said. “Whatever the justification given by the authorities for this move might be, it is in fact exercising censorship towards traditional self-definitions by private media outlets.”

The full text of the report, which Haraszti presented to the OSCE Permanent Council on 10 March 2005, can be found on the website of the Representative on Freedom of the Media.

http://www.osce.org/fom/item_1_14909.html

OSCE media watchdog says new Italian legislation insufficient to curb media concentration

VIENNA, 7 June 2005 – OSCE Representative on Freedom of the Media Miklós Haraszti said on Tuesday that new Italian media legislation introduced in 2004 had not significantly altered the unusually high concentration of ownership in the country’s television industry.

“A year after the adoption of the Gasparri Law, I have not found any significant change in the unusually high concentration in the Italian TV market,” he said, presenting a new report on pluralism in Italian television. “The publicly owned *RAI* and the privately owned *Mediaset* continue to control over 90 per cent of all television revenues and audiences.”

“The *RAI-Mediaset* duopoly has deprived the Italian audiences of an effective variety of sources of information and has thereby weakened the guarantees of pluralism. It has become politically aggravated by the fact that Prime Minister Berlusconi’s family holding *Fininvest* is a major shareholder in *Mediaset*,” Haraszti added.

The report was presented one year after the adoption of the Gasparri Law, Italy’s first comprehensive regulation of all broadcast media, and the Frattini Law on the conflicts between public duty and private interests of officials.

The Gasparri Law was intended to increase competition in the TV market by fully switching Italy from analogue to digital terrestrial transmission (DTT).

The report said the law would undoubtedly encourage the creation of many new broadcasting channels.

Thanks to digitalization, private broadcasting had ceased to be a concession by the State in Italy and was becoming more of an ordinary entrepreneurial business, just like newspaper publishing.

“That is a major step for the broadcast media on their way to true independence,” Haraszti said. “However, despite its pioneering features and its modernizing effect on the media market, the Gasparri Law will not be able to remedy the ‘Italian anomaly’ and de-monopolize television any time soon.”

Instead of dealing directly with the present-day high concentrations, the law aims to achieve de-monopolization indirectly, as a by-product of technological development in the distant future, when today’s television markets will have developed in ways which no-one can predict today.

“The new law is likely to reproduce rather than eliminate the high concentration in television and the domination of *RAI* by politics,” it said.

The report said Italy’s comprehensive digital-era media legislation needed to be reviewed to correct provisions which maintain the present domination of television by two groups.

The issue of Prime Minister Silvio Berlusconi’s public office and his media holdings may have been settled in legal terms by the Frattini Law, but it remained a source of concern from the point of view of the quality of democracy as the chosen legal formula did not fully distance the Prime Minister from his media holdings.

“OSCE commitments oblige governments to proactively safeguard media pluralism,” said the Representative on Freedom of the Media. “Conflicts of interest in the media need specific measures to strengthen public confidence in the fairness and transparency of political competition and government accountability.”

http://www.osce.org/fom/item_1_14949.html

OSCE Representative on Freedom of the Media to hold Internet Conference in Amsterdam

VIENNA, 13 June 2005 – Media freedom and human rights issues on the Internet will be the focus of a conference organized by the OSCE Representative on Freedom of the Media, Miklós Haraszti, in Amsterdam from 17 to 18 June.

The event, entitled *Guaranteeing Media Freedom on the Internet*, will take place in the City Hall of Amsterdam. This year’s conference will discuss the situation in the Southern Caucasus and Central Asian regions.

In addition, government and NGO experts from other regions, including Belarus and Russia, will address the conference along with other leading international experts on information and communication technologies.

A joint declaration of the OSCE Media Representative and Reporters Without Borders is envisaged.

This is the third Amsterdam Internet Conference hosted by the OSCE Media Representative. Following the 2004 conference, the *Media Freedom Internet Cookbook* was published.

[<http://www.osce.org/fom/item_1_15141.html>](http://www.osce.org/fom/item_1_15141.html)

OSCE media watchdog issues report on work of media during Andijan crisis in Uzbekistan

VIENNA, 15 June 2005 – The coverage of the events and the Government's handling of the press during the Andijan crisis in Uzbekistan last May are the subject of a report issued today by Miklós Haraszti, the OSCE Representative on Freedom of the Media.

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

"The gap between the Government and press reports on the events, and the differing casualty figures, are telling signs of an information blockade; of a lack of mutually-agreed verification procedures; and of a lack of co-operation between the authorities and the press," wrote Haraszti.

"Working with the press in times of crisis is a learning process," Haraszti said, "but it is also an important contribution to the peaceful solution of crises, as it is part of society's right to information."

[<http://www.osce.org/fom/item_1_15186.html>](http://www.osce.org/fom/item_1_15186.html)

Media freedom on the Internet in Central Asian countries threatened, says OSCE Representative

AMSTERDAM, 20 June 2005 – Governmental over-regulation and content censorship are common in Central Asian countries and pose a serious danger to new media in the emerging Internet scene, the OSCE Representative on Freedom of the Media Miklós Haraszti said on Monday.

Speaking after the Third Amsterdam Internet Conference, organized by his Office from 17 to 18 June, he said:

"Online information is the most important source of pluralistic information in the countries of Central Asia. Any over-regulation, filtering or censorship by

governments is unacceptable. Citizens should have the right to decide what they wish to access and view on the Internet.”

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.

The OSCE Representative on Freedom of the Media and the Paris-based NGO *Reporters sans frontières* issued a joint declaration on guaranteeing media freedom on the Internet.

It lists six main principles for protecting online media freedom and stresses that in a democratic and open society citizens should decide what they wish to access and view on the Internet. Any filtering or rating of online content by governments is unacceptable and websites should not be required to register with governmental authorities, the declaration states.

Freedom of the Internet will be the focus of a media conference in the South Caucasus and in Central Asia later this autumn.

“I hope that together with journalists from those regions we will be able to come up with a helpful set of standards regarding the fragile freedom of the Internet media,” said Haraszti.

For more information on the conference please visit:

<<http://www.osce.org/item/9759.html>>

The joint declaration is available here:

<https://www.osce.org/documents/rfm/2005/06/15239_en.pdf> – in English

<https://www.osce.org/documents/rfm/2005/06/15239_fr.pdf> – in French

<http://www.osce.org/fom/item_1_15242.html>

OSCE media watchdog concerned about prison sentence for journalist in Russia

VIENNA, 23 June 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, today expressed his concern regarding the combined five year prison sentence handed down to a Russian journalist by a Smolensk court.

Nikolay Goshko, deputy editor-in-chief of *Odintsovskaya Nedelya*, was found guilty of libelling three Smolensk officials in 2000. As a result of this conviction, his previous suspended prison term for an unrelated offence nine years ago came into force.

“It would be alarming to see both the severity of the sentence, and the possibility to combine speech offences with crimes totally unrelated to journalism, become a

precedent for the future, and thus amplify the chilling effect on journalism,” Mr. Haraszti wrote in a letter to the Russian Minister of Justice.

“Criminal libel laws have been rarely used in democratic Russia,” said Haraszti. “However, this sentence proves that if a country’s laws criminalize speech offences, there will always be a court that will apply those provisions”.

Mr. Haraszti invited the Russian authorities to join international efforts in decriminalizing defamation and handle the offences of libel and insult only in civil courts.

The Representative suggested that an interim remedy – before full decriminalization was achieved – could be a moratorium. He also said that he would closely follow Mr. Goshko’s appeal to a higher court and expressed his hope that his prison sentence for libel would be reviewed.

http://www.osce.org/fom/item_1_15333.html

OSCE media watchdog worried by protection of sources case in the US

VIENNA, 29 June 2005 – Miklós Haraszti, the OSCE Representative on Freedom of the Media, has expressed concern over the cases of reporters Judith Miller of *The New York Times* and Matthew Cooper of *Time Magazine* who have been sentenced to imprisonment for contempt of court for refusing to testify about conversations with confidential sources.

On 27 June the US Supreme Court declined to hear the cases.

The OSCE Representative sent a letter yesterday to US Attorney General Alberto Gonzales, asking him to consider dropping the subpoena against Miller and Cooper.

“My concern is with the role of the prosecution in bringing these two cases to trial. While no so-called shield law, allowing journalists to protect their sources, exists at the federal level, the majority of states have them and the US Congress is considering action on this matter,” said Haraszti.

The OSCE Representative referred to a joint declaration by the UN, OSCE and the Organization of American States which says that the sole responsibility for protecting the confidentiality of legitimately secret information lies with the public authorities and their staff whose official job is to hold that information.

“A journalist’s right to freely access information and deal with sources in confidence is paramount for free reporting and discussion of public issues,” Haraszti said.

http://www.osce.org/fom/item_1_15434.html

OSCE media representative praises Turkey for changing penal code, but remains concerned

VIENNA, 7 July 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, today praised the Turkish authorities for introducing important changes to the new Penal Code, following a legal review his Office produced last May listing 23 provisions that needed to be revoked.

However, “despite some improvements, the amendments do not sufficiently eliminate threats to freedom of expression and to a free press,” Mr. Haraszti said.

The revised Turkish Penal Code was finally approved by parliament on Wednesday, 29 June. It now has to be published in the Official Gazette in order to enter into force.

Out of the 23 changes the OSCE Representative suggested in May, 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.

Relating to Article 305 on “offences against fundamental national interests”, the Representative noted with satisfaction that two examples in the explanatory “Reasoning Document” – making it a crime to demand the withdrawal of Turkish troops from Cyprus or to claim that Armenians were exposed to genocide – have been removed.

On a negative note, however, Mr. Haraszti observed three major areas where media freedom remains endangered:

- 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 Representative expressed his hope that modernization of the Turkish Penal Code would continue in the spirit of improving the freedom of public scrutiny, while the provisions promoting self-censorship would all be removed.

The original legal review can be found at <http://www.osce.org/documents/rfm/2005/03/14223_en.pdf>

<http://www.osce.org/fom/item_1_15572.html>

OSCE media freedom office trains government press secretaries and journalists in Baku

BAKU, 18 July 2005 – Miklós Haraszti, the OSCE Representative on Freedom of the Media, and Mahmud Mammad-Quliyev, Deputy Foreign Minister of Azerbaijan, today opened a three-day training seminar in Baku for 27 governmental press secretaries and local journalists.

The aim is to strengthen the professional skills and co-operation techniques of state authorities and the media so that, together, they can guarantee the access of information to the Azerbaijani society.

“Effective interaction between journalists and the government is crucial to the functioning of a modern democratic society,” Mr. Haraszti said at the opening of the event. “It improves governance and decision-making, and ensures government’s transparency, which builds public trust.”

The programme includes lectures and discussions on legal and ethical principles of communication, an overview of international law and its practice, and role-playing.

A first of its kind, the seminar was originally proposed by Azerbaijani Foreign Minister Elmar Mammadyarov. The Office of the OSCE Representative, which developed the idea into an extensive training programme, plans to hold similar schemes in other OSCE participating States.

<http://www.osce.org/fom/item_1_15720.html>

OSCE Office commemorates National Press Day in Azerbaijan

BAKU, 22 July 2005 – Congratulating the Azerbaijani media on the occasion of the 130th anniversary of National Press Day, the OSCE Office in Baku today underlined the importance of a free media environment for the democratic future of Azerbaijan.

“Issues related to the freedom of the media are a priority in the activities of the OSCE Office in Baku,” said Robin Seaward, the Deputy Head of the OSCE Office in Baku, in his address to representatives of Azerbaijani media. “This event is a reminder of the vital importance of free and independent media to Azerbaijani democracy.”

Miklós Haraszti, the OSCE Representative on Freedom of the Media, attending the event, congratulated all those who have participated in the progress made in Azerbaijan in strengthening freedom of expression. He presented a report on media freedom in the country, prepared by his Office following an assessment visit which took place from 11 to 15 April this year.

Commenting on the findings of the report, he said: “We see certain positive

developments, but press freedom is fragile and can be lost if we are not vigilant and firm in our resolve to protect it.”

“Much has to be accomplished,” Haraszti added. “The adoption of the law on freedom of information, the transformation of *State Channel 1* into a public TV channel and the establishment of an adequate legal and institutional framework for licensing new private broadcasters are among the needs, but more is required.”

The report describes the current state of media freedom in Azerbaijan and provides the authorities with practical recommendations to improve the situation.

22 July is commemorated as National Press Day in Azerbaijan, as the first national publication, the *Akinchi* (The Plowman) newspaper, came out on this day in 1875 under the editorship of the great Azerbaijani public figure Hasan Bey Zarda.

http://www.osce.org/fom/item_1_15790.html

OSCE media freedom representative concerned over new criminal libel case involving President of Belarus

VIENNA, 22 August 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, has voiced his concern over a new criminal investigation involving alleged libel of the President of Belarus in animated Internet cartoons.

The cartoons depicting President Alexander Lukashenko and top government officials in a satirical way were posted on the website of the Belarusian Third Way youth association.

On 17 August the Minsk Prosecutor’s Office started an investigation under Article 367 of the Belarusian Criminal Code Libelling the President, which carries prison sentences of up to five years.

The state security service (KGB) raided the apartments in Minsk and Grodno of members of the association who posted the cartoons and confiscated 12 computers. Website administrator Andrei Obuzov and project co-ordinator Pavel Morozov were interrogated as witnesses on 16 August.

“Satires are common and popular methods of expression in all media in democratic societies,” Miklós Haraszti said. “Treating cartoons as acts of criminal libel or insult is completely against the concept of free political debate. Moreover, for the sake of uninhibited scrutiny of governments, senior officials must tolerate harsher forms of criticism than average citizens. This was stated in numerous judgments of the European Court of Human Rights.”

Haraszti noted that Belarus is the only OSCE participating State which imprisons people under special provisions on defamation to protect the President. Only last year two people were convicted on similar grounds, one of whom is still in custody.

“The news about this libel case is especially worrying in the light of this month’s

reports of harassment of journalists related to the elections of new leadership of the Union of the Poles of Belarus,” the OSCE Representative added.

http://www.osce.org/fom/item_1_16084.html

OSCE media watchdog concerned over situation in Tajikistan

VIENNA, 5 September 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, has said he is concerned about the fate of independent media in Tajikistan because the majority of the independent papers are not published.

In a letter addressed to the country’s Foreign Minister Talbak Nazarov, Haraszti urged the Government to ensure that independent media were allowed to operate freely, and that pluralism in broadcasting was guaranteed through the issuance of new licences.

He referred to the newspapers *Ruzi Nav*, *Nerui Suhan*, *Odamu Olan*, and *Adolat*, as well as the printing houses *Jyonhon* and *Kayho*.

“I have to ask you to urgently reverse the situation,” said Haraszti, recalling that over the past year he raised this matter several times with the Tajik authorities.

Speaking about the lack of new broadcasting licences in Tajikistan, the OSCE Representative said that these licences have not been issued, “despite the numerous requests, despite the obvious need for more plurality, and despite the fact that the aim of the new licensing regime is to enhance plurality.”

The letter also raises the question of the imprisonment of local journalist Jumaboy Tolibov.

http://www.osce.org/fom/item_1_16152.html

Office of OSCE media freedom representative trains journalists and press officers in Kyrgyzstan

SARYOY, KYRGYZSTAN, 8 September 2005 – Strengthening relations between state authorities and the media and increasing the access of civil society to official information was the aim of a training course organized by the Office of the OSCE Representative on Freedom of the Media in Saryoy, Kyrgyzstan on 7 and 8 September.

Nineteen government press officers, as well as local journalists, took part in the course which included lectures on legal and ethical principles of communications, and an overview of international and Kyrgyz media laws and practice.

“Interaction between journalists and government is key in a modern democratic society,” said Miklós Haraszti, the OSCE Representative on Freedom of the Media. “It helps improve the transparency of the government, and results in increased public trust in both the government and the press.”

Prior to the training course, Haraszti visited Bishkek, where he met with senior government officials, including Foreign Minister Roza Otunbaeva, and several parliamentarians.

The course was part of an extensive training programme which will cover other OSCE participating States.

<http://www.osce.org/fom/item_1_16195.html>

OSCE media freedom representative to host event in Warsaw tomorrow

WARSAW, 20 September 2005 – *State Secrets and Freedom of Journalism: From the US to the CIS* is the theme of an event to be hosted by Miklós Haraszti, the OSCE Representative on Freedom of the Media, tomorrow in Warsaw.

Featuring a panel of international experts, the event will run on the sidelines of Europe's largest human rights and democracy conference, which opened on Monday in Warsaw.

The recent jailing in the United States of *New York Times* reporter Judith Miller, as well as the repercussions of publishing State secrets in the Commonwealth of Independent States are among the subjects to be discussed.

Serge Schmemmann, Op-Ed Editor of the *International Herald Tribune*, Dr. Mikhail Fedotov, Head of Russia's Union of Journalists and Information Minister under President Yeltsin, and Toby Mendel, Legal Director of Article 19 will be on the panel.

<http://www.osce.org/fom/item_1_16298.html>

OSCE media freedom watchdog calls for amendments to the media law in Kazakhstan

VIENNA, 28 September 2005 – Miklós Haraszti, the OSCE Representative on Freedom of the Media, has sent a legal review of the draft media law of Kazakhstan to the Congress of Journalists of this Central Asian Republic.

The OSCE Representative has offered recommendations on how to improve the draft and expressed hope that his views will be taken into account by the Congress and by the country's Parliament which will discuss the draft in coming days.

"The new law can help improve media freedom in Kazakhstan and provide for better protection of journalists rights," Haraszti said.

He stressed the importance of a society being able to participate in the discussion on new laws saying: "Our goal is to have an all-inclusive and transparent debate that will help liberalize the Kazakhstani media and ensure its pluralism."

The Representative has been involved in the media legislation review process in Kazakhstan for several years, and has provided comments on previous drafts that

are available on his Office's website <www.osce.org/fom>.

He plans to visit Kazakhstan in October for meetings with senior government officials. He will also open the 7th Central Asian Media Conference, which will bring together journalists from across the region.

<http://www.osce.org/fom/item_1_16423.html>

OSCE media watchdog protests closure of independent Belarus daily *Narodnaya Volya*

VIENNA, 30 September 2005 – Miklós Haraszti, the OSCE Representative on Freedom of the Media, sent a request to senior Belarus officials urging them not to close down the daily *Narodnaya Volya*.

The only independent daily in Belarus, which represents 65 per cent of the non-governmental print media circulation in the country, is to go out of business on Monday, 3 October. The two state distributors and the publishing house have all at the same time decided to cancel their contracts, citing different reasons.

"I view this development as unprecedented in the OSCE region," wrote Haraszti in letters to Belarus Foreign Minister Sergei Martynov and Information Minister Vladimir Russakevich. "If this happens, Belarus will lose two-thirds of its independent press, its only independent daily."

"I strongly believe that the closure of *Narodnaya Volya* would be a major setback in the development of the free press in Belarus and a great loss for Belarusian society. I have asked the authorities to do everything in their power to stop this from happening," he added.

On 28 September *Narodnaya Volya* received notifications from the state monopolies in newspaper distribution Belsoyzechat and Mingorsoyzechat, as well as from the publishing house *Krasnaya Zvezda*, all informing it that they unilaterally cancelled contracts with the newspaper. Reasons cited: unsubstantiated claims of violations of the laws; lack of public demand for the newspaper; outstanding payment of 1,000 euros.

The closure of *Narodnaya Volya* comes when the paper has already paid more than 70 per cent of an enormously high fine of 100,000,000 Belarusian roubles (around 38,000 euros), levied in a libel suit filed by a local politician, based on the defamation provision of the civil code.

<http://www.osce.org/fom/item_1_16452.html>

OSCE to hold media conference in Central Asia

ALMATY, 5 October 2005 – Pluralism in the media and on the Internet and the situation in the region will be the focus of the 7th Central Asian Media Conference which will take place in Almaty, Kazakhstan, on 13 and 14 October.

The event, organized by the Office of the OSCE Representative on Freedom of the Media and the OSCE Centre in Almaty, is expected to bring together international media experts and journalists from Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

Miklós Haraszi, the OSCE Representative on Freedom of the Media, will speak at the opening.

http://www.osce.org/fom/item_1_16492.html

OSCE media freedom representative asks Hague Tribunal to release Croatian journalist

VIENNA, 11 October 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszi, has asked the International Criminal Tribunal for the former Yugoslavia (ICTY) to release Croatian journalist Josip Jovic.

Jovic, the former editor-in-chief of *Slobodna Dalmacija* was arrested on 6 October by Croatian police, acting on a 28 September arrest warrant issued by the Tribunal, after he failed to appear in court.

In a letter addressed to Tribunal President, Theodor Meron, Haraszi raised the cases of Jovic and four other Croatian journalists who have been recently indicted for contempt of court, consisting of publishing a classified testimony and revealing the name of a protected witness during the *Prosecutor v. Tihomir Blaskic* case. The protected witness is a high-ranking Croatian politician.

Under Rule 77 of the Tribunal's rules of procedure and evidence, the five journalists can be sentenced up to seven years in prison and fined up to 100,000 euros.

Haraszi also asked the Tribunal to change its rules dealing with contempt of court so that internationally acknowledged principles of press freedom are upheld.

"I have full respect for the institution of the protected witness," wrote the OSCE Representative. "However, I believe that the ICTY should operate in accordance with the principles of freedom of the press and, as a result, apply the same safeguards in its procedures that are usually expected in national jurisdictions. In particular, I believe the ICTY should respect the public's right to know, and its interest in an uninhibited debate about past crimes and present leaders."

The OSCE Representative said that according to the case law of the European Court of Human Rights and the judicial practices of many democracies, imprisonment of a journalist for dissemination of classified information is always dispropor-

tionate punishment, and its chilling effect hinders unconstrained debate of public issues.

“In any democracy the fact that a leading politician had testified in a court of law would be of considerable public interest, and therefore a natural subject for reporting. I hope that this simple truth is taken into account when adjudicating the journalists’ cases,” added Haraszti.

Haraszti asked the Tribunal President to amend Rule 77 of the Tribunal’s Rules of Procedure and Evidence that deals with contempt, so that it would only apply to those officials who have actually leaked confidential information.

http://www.osce.org/fom/item_1_16565.html

OSCE Representative on Freedom of the Media addresses media related legislation in Skopje

SKOPJE, 27 October 2005 – OSCE Representative on Freedom of the Media, Miklós Haraszti, met today with the Minister of Transport and Communications, Xhemali Mehazi, representatives of the Ministry of Justice and members of Parliament in Skopje. The visit of Mr. Haraszti coincides with a Parliamentary debate on a new law on broadcasting.

“I am pleased to see that the new broadcasting law is in its final stages and that overall it is in line with OSCE standards, especially in the areas of licensing and programme standards,” said Mr. Haraszti after his meeting with Minister Mehazi. “It remains most important that this law creates stable financing for the public service and for the regulatory authority, in order to ensure their political independence.”

In his meetings in Parliament and with the Ministry of Justice, Mr. Haraszti also raised the issue of the draft law on free access to information of public character.

“The right to access to information is ensured within this country’s Constitution; however, there is still no legislation to govern the practical implementation of this right and therefore journalists and citizens are yet unable to exercise it,” said Mr. Haraszti.

“Access to official information is not only a basic right for citizens, but also fundamental for the work of a professional and responsible press.”

Mr. Haraszti also made the keynote speech at a conference on media and the Internet, organized by the local organization Metamorphosis and supported by his Office and the OSCE Spillover Monitor Mission to Skopje. He said:

“The new broadcast law, once passed, and the country’s ‘National Strategy for Information Society’ opens up a range of possibilities for media to use the Internet and other new digital technology. The media now must be prepared to make use of these opportunities to reach new and more diverse audiences as well as improve their professional standards.”

http://www.osce.org/fom/item_1_16758.html

OSCE media freedom representative asks Kazakhstan to withdraw Internet regulation

VIENNA, 31 October 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, has asked the Government of Kazakhstan to withdraw a newly established regulation on the registration of domain names for websites.

“Implementing this provision would put the allocation of domain names on the World Wide Web in Kazakhstan entirely under government control, which contradicts freedom of expression and free flow principles,” Haraszti said.

“Since these provisions have not been used so far, and not even discussed in Parliament, it would make it easy for the Kazakh Government to pull back the regulation without any consequences, and thus comply with media freedom commitments.”

A legal review of the new “Regulations for the Allocation of Domain Space in the Kazakhstan Segment of the Internet”, commissioned by the Representative, found that governmental control over registration and the obligation for websites to be hosted only inside a country’s borders opened the way to central filtering, blocking, and fragmentation of this global medium.

On this basis, the Representative came up with the following recommendations:

1. Kazakhstan’s web space should be administered by a body that is independent of the Government.
2. Registration of a .kz domain should be a purely technical process and impose no substantive restrictions. Applicants should merely be required to submit their name, contact details and the limited technical data required to register the domain.
3. There should be no requirement that the servers for a .kz domain be located inside Kazakhstan, because on a worldwide structure like the Internet every publisher should be able to choose freely where he wants his content to be hosted.

The domain name system is a distributed database that – similar to a phone book – enables Internet users to find websites easily by just entering a domain name instead of a complicated IP number.

<http://www.osce.org/fom/item_1_16779.html>

OSCE media freedom representative reviews Kyrgyzstan’s media legislation

VIENNA, 7 November 2005 – The OSCE Representative on Freedom of the Media, Miklós Haraszti, has written to the Foreign Minister of Kyrgyzstan, welcoming positive signs in the legal situation of the media but outlining a number of areas of concern.

The letter comes after his Office conducted comprehensive reviews of all legislation in Kyrgyzstan that might influence the state of freedom of the media there.

The reviews he sent to the Kyrgyz Government focus on the media law and the law on the professional activity of journalists; civil and criminal libel; the law on the protection of state secrets; and the new draft law on the freedom and guarantees of access to information.

The reviews provide detailed comments on where the laws fall short of international media commitments and standards, and offer comprehensive suggestions on how to improve the situation.

In his letter to the Kyrgyz Foreign Minister, Alibek Djekshenkulov, Haraszti wrote: "While the reviews provide some very positive signs with regard to the legal situation concerning media, there are still a number of issues which are of concern and hinder the activity of journalists and the functioning of the media in your country.

"I hope the reviews will inspire legislators and prove useful in forthcoming parliamentary discussions – and that the result will present itself in improved media legislation complying with OSCE media freedom principles" he added.

The reviews are part of the OSCE Work Plan for Kyrgyzstan, which was agreed on with the Kyrgyz authorities.

http://www.osce.org/fom/item_1_16886.html

OSCE media freedom representative welcomes new Macedonian broadcast law

VIENNA, 11 November 2005 – Miklós Haraszti, the OSCE Representative on Freedom of the Media, lauded the new Law on Broadcast Activity, passed Wednesday at a parliamentary session in Skopje, to regulate the private broadcasting industry, as well as the functioning of the public service broadcaster, *MRTV*.

"The long-awaited Broadcast Law is an important step in completing the reformed media legislation," said Haraszti. "It is in line with OSCE media freedom standards and therefore an important step for the country on its way to Europe."

The new law, which is a result of close co-operation between the OSCE, the Government, the Stability Pact for South Eastern Europe, the Council of Europe and the European Commission, integrated most of the recommendations from the international community. It will ensure an effective Broadcast Council and establish a system for the independent functioning of the public broadcaster.

The OSCE Mission in Skopje, especially its Head of Mission, Ambassador Carlos Pais, and the Head of the Media Development Unit, Sally Broughton, provided support and expertise to the authorities during the development of the Law.

Miklós Haraszti took a personal interest in the process during his recent visit

to Skopje, which will be reflected in his upcoming report on the situation of media freedom in the country.

The Representative said that the new law was only the beginning of a longer-term effort for establishing a modern public service broadcasting institution. “By experience we know that the introductory phase is crucial. I hope the Government will continue to muster the necessary support to convincingly implement the law,” added Haraszti.

<http://www.osce.org/fom/item_1_16948.html>

OSCE conference for South Caucasus journalists focuses on public service broadcasting and the Internet

VIENNA, 21 November 2005 – The editorial independence of public service broadcasting and press freedom on the Internet were the focus of the Second South Caucasus Media Conference that ended on Friday in the Georgian capital, Tbilisi.

The event, organized by the OSCE Representative on Freedom of the Media and the OSCE Mission to Georgia, brought together over 60 media professionals from Armenia, Azerbaijan and Georgia.

A joint declaration, adopted by the participants, called for upholding the principle of editorial independence, which should be guaranteed by law. The document also said that Internet media should enjoy the same protection through press freedom provisions as traditional media and there should be no state regulation or registering of websites.

“The countries of South Caucasus have always been the focus of our Office,” said Alexander Boldyrev, Senior Adviser to the OSCE Representative on Freedom of the Media. “Although many problems and challenges are still to be tackled, there are a number of positive changes in the media field.”

A moment of silence was held in memory of Azerbaijani journalist Elmar Huseynov, who was murdered in March. Conference participants appealed to the Azerbaijani authorities to accelerate the investigation of the case.

<http://www.osce.org/fom/item_1_17038.html>

OSCE institutions stress vital role of civil society in promoting human rights

VIENNA/WARSAW/THE HAGUE, 9 December 2005 – Civil society and non-governmental organizations (NGO) have played an essential role in promoting OSCE values since its establishment 30 years ago. It is essential that the Organization continues to support their work in all 55 participating States, said the heads of three OSCE Institutions on the occasion of International Human Rights Day, commemorated tomorrow.

The three heads reminded that strong and independent civil society, free from interference of governments, is crucial for the promotion of human rights, democracy and the rule of law. This includes access to similar bodies within and outside their countries and with international organizations.

“Human rights defenders in many countries of the OSCE are facing an uphill battle. This goes against the principles of the Organization, which is to enhance security through promoting human rights and democracy. Without full respect for these core values, there can be no real security. We cannot over-emphasize the important role of human rights defenders in promoting these values,” said Ambassador Christian Strohal, Director of the Warsaw-based OSCE Office for Democratic Institutions and Human Rights.

Miklós Haraszti, the OSCE Representative on Freedom of the Media, said that the media can only be free if it becomes a fully civil endeavour, in the service and under the control of society, not of government. “This is also the only way for the press to become professional, responsible, and fair. This is why governments, by giving up ownership of the media, and by liberating it from intimidating and restrictive regulations, serve both the fulfilment of a basic human right, that of free expression, and their own well-understood political interests.”

Haraszti stressed that too many countries still sentence journalists under criminal provisions for inaccurate or harsh discussion of public issues, instead of letting officials and journalists sort out matters in civil courts, without having recourse to state power.

Rolf Ekeus, OSCE High Commissioner on National Minorities, added: “Assuring respect for human rights, including minority rights, is essential both as a principle and as the best way to prevent conflict. In my work, I see the invaluable role that civil society has in promoting respect for human rights. All States should therefore welcome and promote a vibrant civil society. In this context, I wish to underline the importance of freedom of association in creating a pluralist civil society. It is also an essential human right for persons belonging to national minorities and contributes to the prevention of inter-ethnic conflict.”

The three said that individuals must be able to exercise the right to association, including NGOs which seek the promotion and protection of human rights and fundamental freedoms, such as trade unions and human rights monitoring groups. They stressed that no restrictions could be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

http://www.osce.org/fom/item_1_17418.html

Joint statement by three special rapporteurs on freedom of expression

VIENNA, 28 December 2005 – The three special rapporteurs on freedom of expression, from the OSCE, the United Nations and the Organization of American States, issued a joint declaration on the Internet and freedom of expression and on the need to protect civil liberties during the fight against terrorism.

The statement was made by the OSCE Representative on Freedom of the Media, Miklós Haraszti, the Special Rapporteur of the United Nations Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, and the Special Rapporteur for freedom of expression of the Organization of American States, Eduardo Bertoni.

The text of the joint declaration is attached on the webpage.

<http://www.osce.org/fom/item_1_17603.html>

Visits and Interventions

Visits and Interventions

The Office of the Representative on Freedom of the Media visited or communicated with the governments of the following OSCE participating States:

Albania

Interventions

- 30 May 2005: Letter to the Minister of Justice of Albania, Fatmir Xhafaj, about the Draft Law on amendments to the Criminal Code of Albania and the Draft Law on amendments to the Civil Code of Albania. The Representative commented on the draft amendments and suggested further changes. The amendments would liberalize the country's defamation legislation.

Azerbaijan

Visits

- 11–15 April 2005: Assessment visit to Azerbaijan.
- 18–20 July 2005: Training seminar for journalists and press officers of government institutions of Azerbaijan *Interaction between Media and State Press Services in a Democratic Society*.

Interventions

- 7 January 2005: Letter to the Minister of Foreign Affairs, Elmar Mammadyarov, asking for additional information on the case of Alim Kazimov, reporter and photographer with the daily *Yeni Musavat*, who was allegedly beaten up by police officers at the Narimov district police precinct in Baku.
- 2 December 2005: The Representative raised the issue of the alleged attacks on journalists during the post-election demonstration with senior Azerbaijani officials.

Press Releases

- 3 March 2005: Press release about the murder of Elmar Huseynov, the founder and editor of the independent weekly news magazine *Monitor*.
- 11 April 2005: Press release about the visit to Azerbaijan
- 12 April 2005: Press release about the OSCE round-table discussion on TV and radio licensing in Azerbaijan
- 18 July 2005: Press Release about the training seminar for government press secretaries and journalists held in Baku.

Country Reports

14 July 2005: *Assessment Visit to Azerbaijan: Observations and Recommendations*

Belarus

Visits

- 9–10 February 2005 visit to Belarus.

Interventions

- 29 April 2005: Letter to the Minister of Foreign Affairs, Sergei Martynov, about the detention of two Russian journalists and the assault of a Belarusian journalist in Minsk. The reporters were covering a rally marking the 19th anniversary of the Chernobyl disaster.
- 2 June 2005: Letter to the Minister of Foreign Affairs, Sergei Martynov, about the Presidential Decree No. 247 of 31 May, which forbade non-governmental organizations and enterprises, including the media, to use the words “national” or “Belarusian” in their official titles and names.
- 29 September 2005: Letter to Chairman of the Supreme Court, Valentin Sukalo, and Minister of Information, Vladimir Russakevich, on administrative measures taken against the independent newspaper *Narodnaya Volya*.
- 15 December 2005: The Representative urged the President of Belarus to veto the following amendments of the Criminal Code: the new provision on “Discrediting of Belarus” to Article 369 on “Insult of a Representative of the Authorities” and the amendment to Article 361 on anti-state appeals, which punishes any further mentioning of such appeals in the media.

Press Releases

- 7 February: Press release announcing the visit to Belarus.
- 8 March: Press release announcing the publication of the report on the media situation in Belarus.
- 11 March: Press release about the worsening media situation in Belarus.
- 3 June 2005: Press release voicing concern over a new presidential decree in Belarus that bans the use of the words “national” and “Belarusian” by NGOs and media in their official titles and names.
- 30 September 2005: Press release, RFOM sent letter to senior Belarus officials urging them not to close down the daily *Narodnaya Volya*.
- 22 August 2005: Press release voicing concern over a new criminal investigation involving alleged libel of the President of Belarus in animated Internet cartoons.

Country Reports

- 10 March 2005: *Visit to Belarus: Observations and Recommendations*

Belgium

Press Releases

- 22 March 2005: Press release welcoming a new Belgian law which gave journalists an additional safeguard by protecting their sources.

Croatia

Interventions

- 8 April 2005: Letter to the Minister of Justice of the Republic of Croatia, Vesna Skare Ozbolt, about the decision of Split Country Court to uphold a two-month suspended prison sentence given to journalist Ljubica Letinic for libel.
- 6 June 2005: Letter to Minister of Justice, Vesna Skare Ozbolt, on sentencing of Mario Pavicic, editor-in-chief of *Šilo* magazine for libel. He received a six-month jail sentence.
- 14 November 2005: Letter to the Minister of Foreign Affairs of Croatia, Kolinda Grabar-Kitarovic, expressing concern about the fourth criminal conviction for defamation in Croatia within the past year. Journalist and writer Predrag Matvejevic was sentenced to a five-month suspended prison sentence.

France

Press Releases

- 21 April 2005: Press release voicing concern for libel case launched in France by the Barclay brothers, owners of the *Daily Telegraph*, against *The Times* of London and calling for EU countries to abolish criminal defamation laws.

Germany

Interventions

- 10 October 2005: Letter to Minister of Foreign Affairs, Otto Schily, raising the case of prosecutors searching the newsroom of *Cicero* in Potsdam as well as the Berlin apartment of one of their staff.

Georgia

Visits

- Second South Caucasus Media Conference *Public Service Broadcasting and the Internet*, Tbilisi, 17–18 November 2005.

Interventions

- 2 September 2005: Letter to the Minister of Foreign Affairs, Salome Zourabichvili, raising the case of the co-founder and director of the private television *Channel 202*, Shalva Ramishvili and its director Davit Kokhreidze, who were sentenced to three-month pre-trial custody before facing extortion charges.

Greece

Interventions

- 8 February 2005: Letter to the Minister of Foreign Affairs of Greece, Petros G. Molyviatis, about sentencing Austrian author Gerhard Haderer to a suspended six-month prison term for blasphemy. The reason for this was Haderer's comic

book *The Life of Jesus*.

Press Releases

- 9 February 2005: RFOM expresses concern over a six-month suspended prison sentence for blasphemy imposed by a Greek court on Austrian author Gerhard Haderer.

ICTY (International Criminal Tribunal for the former Yugoslavia)

Interventions

- 2 May 2005: Letter to President of ICTY, Theodor Meron, on indictment of three Croatian journalists for contempt of the Tribunal.
- 10 October 2005: Letter to President of ICTY, Theodor Meron, on indictment and arrest of Croatian editor-in-chief of *Slobodna Dalmacija*, Josip Jovic.

Press Releases

- 11 October 2005: Press release: RFOM asks ICTY to release Croatian journalist, Josip Jovic, arrested for contempt of court.

Italy

Visits

- 30 March–1 April 2005: Visit to Rome.

Press Releases

- 7 June 2005: Press release stating that the new Italian media legislation introduced in 2004 had not significantly altered the unusually high concentration of ownership in the country's television industry.

Country Reports

- 7 June 2005: *Visit to Italy: The Gasparri Law: Observations and Recommendations*

Kazakhstan

Visits

- Seventh Central Asian Media Conference *Pluralism in the Media and the Internet*, Almaty, 13–14 October 2005

Interventions

- 6 May 2005: Letter to the Minister of Foreign Affairs, Kasymzhomart Tokayev about the liquidation of the newspaper *Respublika. Delovoe obozrenie*, and about the detention of its editor-in-chief, Irina Petrushova, in Russia for two days on tax evasion charges, at the request of the Kazakhstani authorities.
- 6 June 2005: Letter to the Minister of Foreign Affairs of Kazakhstan, Kasymzhomart Tokayev about the partial seizure of print runs of *Soz* and *Set.kz* newspapers.

Press Releases

- 28 September 2005: Press release about the legal review of the draft media law of Kazakhstan to the Congress of Journalists of this Central Asian Republic. The

Representative offered recommendations on how to improve the draft as the new law can help improve media freedom in Kazakhstan and provide for better protection of journalists' rights.

- 31 October 2005: Press release asking Kazakhstan to withdraw newly established Internet regulation on the registration of domain names.

Kyrgyzstan

Visits

- 5–8 September 2005: Familiarization visit to Bishkek and participation in the training seminar for journalists and government press officers: *Interaction between the Press and Government Press Officers in a Democratic Society*, Sary Oy, Kyrgyzstan.

Press Releases

- 8 September 2005: Press release about the training seminar for journalists and press officers in Kyrgyzstan.
- 7 November 2005: Press release about the reviews of Kyrgyzstan's media legislation.

Former Yugoslav Republic of Macedonia

Press Releases

- 27 October 2005: Press release about RFOM's addressing media related legislation in Skopje.
- 11 November 2005: Press release welcoming the adoption of a new law on broadcast activity.

Country Reports

9 December 2005: *The State of Media Freedom in the former Yugoslav Republic of Macedonia: Observations and Recommendations*

Moldova

Visits

- 31 January–2 February 2005: The OSCE Representative's Senior Adviser, Alexander Ivanko, went on an assessment visit to the Transdniestrian Region of the Republic of Moldova.

Country Reports

10 March 2005: *Assessment Visit to the Transdniestrian Region of the Republic of Moldova: Observations and Recommendations*

Poland

Interventions

- 24 January 2005: Letter to the Minister of Justice, Andrzej Kalwas, asking the Government to introduce a moratorium on criminal libel provisions and decriminalize

defamation after journalist Jerzy Urban was charged with insulting the foreign Head of State.

- 3 October 2005: Letter to the Head of the Mission of Poland to the OSCE, Amb. Jacek Bylica, about the case of a journalist for *Nie*, Maciej Mikolajczyk, who had to hand over his computer hard disk to the authorities in connection with a juridical investigation.

Press Releases

- 25 January 2005: Press release asking Poland to remove prison sentences from the libel provisions.

Russian Federation

Interventions

- 9 March 2005: Letter to the Deputy Head of the Federal Agency for Press and Mass Communications Mr. Andrej Romantschenko on Internet filtering, inviting him to the 3rd Amsterdam Internet Conference on 17 to 18 June 2005.
- 2 May 2005: Letter to the Chair of the Supreme Court, Vyacheslav Lebedev, praising the Decision of the Supreme Court “On court practices related to cases of protecting honour and dignity of citizens, as well as business reputations of citizens and judicial bodies”, asking Russia to further promote reform to decriminalize defamation.
- 6 June 2005: Letter to the Minister of Foreign Affairs, Sergei Lavrov, about the detention of three Polish journalists in Ingushetia.
- 14 June 2005: Letter to the Minister of Foreign Affairs, Sergei Lavrov, asking for additional information about the case of several journalists who were allegedly assaulted and detained by police officers during a demonstration in Moscow on 31 May 2005.
- 22 June 2005: Letter to the Minister of Justice, Yuriy Chayka, about Nikolay Goshko, deputy editor-in-chief of *Odintsovskaya Nedelya*, who had been given a combined five-year prison sentence for defamation (Article 129-3 of the Russian Criminal Code) and for another offence committed earlier for which Mr. Goshko had received a suspended sentence in 1996.
- 27 June 2005: Letter to the Minister of Justice, Yuriy Chayka, about sentencing Eduard Abrosimov, ex-adviser to the former Governor of the Saratov region, to seven months in custody for his article that was not published but was found in Abrosimov’s computer.

Press Releases

- 23 June 2005: Press release expressing concern about a combined five-year prison sentence handed down to Russian journalist Nikolay Goshko, found guilty of libel.

Serbia and Montenegro

Interventions

- 8 February 2005: Letter to the Prime Minister of the Republic of Serbia, Vojislav Kostunica, encouraging the Government to change criminal libel provisions following the outcome of meetings with the Minister of Culture and the Minister of Justice of Serbia.
- 6 April 2005: Letter to the Chief State Prosecutor of the Republic of Montenegro, Vesna Medenica, about the criminal court case against journalist Dominic Hipkins and his aides Jovo Martinovic, Sinisa Nadazdin, Dragan Radevic and Nenad Zecevic on charges of violating the reputation of the Republic of Montenegro.

Slovak Republic

Interventions

- 14 November 2005: Letter to the Minister of Foreign Affairs, Eduard Kukan, and the Deputy Prime Minister and Minister of Justice, Daniel Lipsic, about the case of newspaper *SME* that was ordered to pay an 80,000-euro fine in a civil libel case brought by a Supreme Court judge after *SME* ran articles about his alleged role in the persecution of a priest in 1981.

Tajikistan

Interventions

- 7 February 2005: Letter to the Foreign Minister, Talbak Nazarov, about the confiscation of a print run of the *Nerui Sukhan* newspaper and closing down the printing house *Kayhon* for alleged administrative violations.
- 6 June 2005: Letter to the Foreign Minister, Talbak Nazarov, about the cases of journalist Jumaboy Tolibov, who was detained for hooliganism and obstructing an officer, and of editor Vahho Odinaev, who was convicted of libel.
- 2 September 2005: Letter to the Foreign Minister, Talbak Nazarov, about the fact that many of the independent print media in the country had not been published for one year.

Press Releases

- 5 September 2005: Press release expressing concern about the fate of the independent media in Tajikistan because the majority of the country's independent papers are not being published.

Turkey

Interventions

- 1 March 2005: Letter to the Minister of Justice of Turkey, Cemil Cicek, on two libel court hearings: Mr. Fikret Baskaya and Mr. Ragip Zarakolu.
- 12 September 2005: Letter to the Head of the Turkish Delegation to the OSCE,

Ambassador Yusuf Buluç, about the indictment of writer Orhan Pamuk under Article 301 of the Penal Code: “Insulting of Turkish identity, the Republic, the organs and institutions of the State”.

- 24 October 2005: Letter to the Minister of Justice of Turkey, Cemil Cicek, about the conviction of the editor of the newspaper *Agos*, Hrant Dink, to a suspended six-month jail sentence under Article 301 of the Penal Code.

Press Releases

- 2 March 2005: Press release welcoming the acquittal of Fikret Baskaya in Ankara. Baskaya, a writer and academic, was charged under Article 302 of the Penal Code with “insulting the military and security forces of the State.”
- 11 May 2005: Press release about RFOM’s proposed changes to the new Turkish Penal Code.
- 7 July 2005: Press release praising the authorities for introducing important changes to the new Penal Code and at the same time outlining three major areas where media freedom remains endangered.

Turkmenistan

Visits

- 18–19 October 2005: Visit to Ashgabat.

Ukraine

Interventions

- 31 May 2005: Letter to the Minister of Foreign Affairs, Borys Tarasyuk, praising the suspension of the decree issued on 27 April 2005 by the Ministry of Transport and Communication, governing mandatory registration of websites.

United States of America

Interventions

- 28 June 2005: Letter to the US Attorney General, Alberto Gonzales, about the case of Judith Miller of *The New York Times* and Matthew Cooper of *Time Magazine* who were facing imprisonment after they refused to testify about their confidential sources.

Press Releases

- 29 June: Press release expressing concern over the cases of reporters Judith Miller of *The New York Times* and Matthew Cooper of *Time Magazine* who have been sentenced to imprisonment for contempt of court for refusing to testify about conversations with confidential sources.

Uzbekistan

Interventions

- 6 January 2005: Letter to the Minister for Foreign Affairs, Sadyk Safayev, concerning the statement “On violation of the legislation of the Republic of Uzbekistan” which the Ministry of Justice sent to the international media NGO *Internews Network* based in Tashkent.
- 18 May 2005: Letter to the Minister for Foreign Affairs, Elyor Ganiev, concerning journalists being prevented from doing their job during the tragic events in Andijan.
- 15 July 2005: Letter to Minister of Foreign Affairs, Elyor Ganiev, on difficulties faced by *Internews* and *Radio Free Europe*.
- 14 September 2005: Letter to Minister of Foreign Affairs, Elyor Ganiev, on difficulties faced by *Internews*, *Radio Free Europe* and *IREX/Uzbekistan*.

Press Releases

- 15 June 2005: Press release announcing the publication of the report on the media’s work during the Andijan crisis in Uzbekistan.

Country Reports

15 June 2005: *Coverage of the Events and Governmental Handling of the Press during the Andijan Crisis in Uzbekistan: Observations and Recommendations*

Meetings and Conferences

The Office participated in the following OSCE and other international meetings and conferences:

OSCE meetings:

- Chairman-in-Office and Heads of Mission Meeting, Vienna, 13–14 January 2005
- Visit to Belgrade to participate in the round-table discussion on decriminalization of defamation in Serbia, 24–25 January 2005
- OSCE Conference on *Anti-Semitism and on Other Forms of Intolerance*, Cordoba, 8–9 June 2005
- 3rd Amsterdam Internet Conference on Guaranteeing Media Freedom on the Internet, City Hall of Amsterdam, 17–18 June 2005
- Seventh Central Asian Media Conference, Almaty, 13–14 October 2005
- OSCE Experts Workshop on *Combating the Use of the Internet for Terrorist Purposes*, Vienna, 13–14 October 2005
- Regional Heads of Mission Meeting, Ashgabad, 18–19 October 2005
- Second South Caucasus Media Conference, Tbilisi, 17–18 November 2005
- Regional Heads of Mission Meeting in Yerevan, 4–5 December 2005.
- OSCE/ODHIR - Council of Europe Joint pilot training for senior public officials on the protection of human rights in the fight against terrorism, Austrian Ministry of Interior, Vienna, 5–7 December 2005

Other meetings:

- UNESCO Conference *Freedom of Expression in Cyberspace*, Paris, 3–4 February 2005
- *Internet, Human Rights and Culture*, National UNESCO Commission of the Netherlands, Oegstgeest, 4–5 February 2005
- ARTICLE 19's conference on the Future of the Public Service Broadcasting, London, 25–26 June
- Media Diversity Institute Conference: *Media Management Conference for Decision Makers from the South Caucasus*, Vienna, 30–31 July 2005
- International Donors Policy Forum on Media Development, 13–14 October 2005, Foreign and Commonwealth Office London, UK
- 4th Frankfurt Days of Media Law, Viadrina University, Frankfurt/Oder, 20–21 October 2005

- UNESCO Conference on *Promoting Public Services in the Media: Human Rights, Tolerance, Multilingualism and the Fight against Discrimination*, Lisbon, 26–28 October 2005
- *SouthEastern Europe: Emerging Newspaper Business and Ethics*, Sofia, 27–28 October
- 10th Mainzer Mediendisput, Mainz, 10–11 November 2005
- Conference A Comparative Examination of Hate Speech Protection, Floersheimer Center for Constitutional Democracy / Benjamin N. Cardozo School of Law New York City, United States of America, 6 & 7 November 2005

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