



**OSCE HUMAN DIMENSION IMPLEMENTATION MEETING  
(Warsaw, 29 September-10 October 2008)**

**Working Session 2: Fundamental Freedoms I**

**Statement by Ambassador Yusuf BULUÇ  
Permanent Representative of Turkey to the OSCE**

Thank you Mr. Moderator,

The record of HDIM meetings as well as that of others will show that, as a candidate country negotiating its way to membership, Turkey's alignment with the EU statements is a rule rather than an exception. Last year during the working session on freedom of the media, the EU in its now customary joint statement expressed the "need to abolish or revise Article 301 of the Turkish Penal Code".

We have not only aligned ourselves with that statement but also have taken this recommendation seriously to heart and revised the relevant Article of the Penal Code substantially. The revised text introduced the provision of consent of the Minister of Justice as a precondition to initiating the process of investigation related to the alleged offences under Article 301. The text of the revised Article, as it currently stands, is in line with what is accepted as the norm prescribed in the legislation of most of the EU member states. It punishes those who publicly denigrate the Turkish nation, the State of the Turkish Republic and its institutions and organs with imprisonment from 6 months to 2 years.

In a statement delivered in the present session there is call for repealing the article all together. For reasons of comparative study, let us briefly turn to and examine a sample from the EU members which represent a cross section of how this matter is legislated.

In a large size EU member State, a corresponding Penal Code provision stipulates that "Whoever publicly, in a meeting or through the dissemination of writings ... insults or maliciously maligns (that Federal State in question) or one of its (constituent States) or its constitutional order; or disparages the colors, flag coat of arms or the anthem of (that Federal State in question) or one of its (constituent States) shall be punished with imprisonment for not more than three years or a fine..."

In a medium size EU member State, a corresponding Criminal Code article stipulates "from one to five years of imprisonment" for those who "offend the honor or the prestige of the President of the Republic"; "from six months to three years of imprisonment" for those who "publicly insults the Republic, one or both of the legislative assemblies, the government, the

Constitutional Court, the magistrate, the armed forces or the forces of liberation”; and finally, very much like the Turkish legislation, “from one to three years of imprisonment” for those “who publicly slanders the nation (of that State in question)”

In a small size EU member State, a corresponding article of the Penal Code stipulates “up to six months imprisonment or fine” for “anyone who publicly insults or defames public authorities and institutions”; “up to one year imprisonment or fine” for “anyone who publicly disparages the State (in question) or its national symbols”.

You can see in these examples that “size doesn’t really matter!”. The list could be much longer. The point we are making here is the following:

The consistency and helpfulness of an advice calling for a “complete abolition” of a piece of legislation which has been enacted as a result of a democratic process becomes questionable when some of those who make such a call do retain parallel provisions in their own legislation. You may wish to note that in none of the above cases there is the vitally significant filter of Ministerial sanction to proceed with investigation.

During the OSCE human dimension meetings such as this one, we engage in “peer review” of the implementation of our commitments on the basis of the assumption that the OSCE commitments apply equally to all participating States. In the absence of legally-binding sanctions against non-compliance, this dialogue would have an impact so long as the parties will remain open to self-reflection.

That said, we do acknowledge the necessity of pursuing a constant policy of reform. Turkey’s track record during the last decade or so regarding not just reforming its legislation but also aligning its implementation with the international standards is a testimony to the political will that is grounded in the support of the overwhelming majority of its population and in a drive to fulfil their aspirations. Safeguarding freedom of expression and of the media is no exception to this trend.

As evident from the above expose, it is the content of paragraph on Turkey that separates us from the EU statement. Its expression of praise for the leadership of Mr. Haraszti and his colleagues and offer for continued cooperation with his Institution is a statement to which we readily subscribe.

Thank you.