



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

-CHECK AGAINST DELIVERY-

16 September 2004

Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

This is my second quarterly report since I took office in March.

I would like to start by focusing on current successes and setbacks of some of our long-term strategies.

Libel

I am continuing the work started by my predecessor on libel: for several years now this Office has been actively lobbying for its decriminalisation. Already, as of today, five OSCE participating States have abolished libel as a criminal offence, and turned to its civil-law based handling: USA (although 17 states within this country still retain their criminal libel provisions), Moldova, Ukraine, Bosnia and Herzegovina and Georgia.

Also, on 1 July, President Robert Kocharian signed amendments to the Criminal Code partially decriminalizing libel in Armenia. In a letter to Foreign Minister Vardan Askanyan, I welcomed this as a step in the right direction. At the same time, libel remains a criminal offence and the existing provisions still offer more protection for public officials than ordinary citizens.

On 15 October 2004, the Parliament in Slovakia will have a debate on a new Criminal Code. To my knowledge, under the current proposal submitted by the Ministry of Justice, articles 331 and 384 would retain criminal penalties for defamation or slander that exist in the current penal code as articles 154, 156 and 206. In a letter to Deputy Prime Minister and Minister for Justice Daniel Lipsic, I urged him to reconsider his original proposal.

Both Armenia and Slovakia should not miss this opportunity for reform and should join those countries that have decriminalized libel and have set a good example to be followed by other OSCE participating States.

Unfortunately, in June the Kyrgyz Parliament rejected for the third time in seven years an initiative by President Akayev to decriminalize libel.

Here are some recent libel cases that I have raised.

In Hungary, an appeals court in early July suspended a 10-month prison sentence against editor Andras Bencsik for two years. An eight-month suspended prison sentence against journalist Laszlo

Attila Bertok was upheld. The case was brought by MP Imre Mecs after *Demokrata*, the weekly that Bencsik edits, alleged that testimony by Imre Mecs had played a role in the sentencing of four people to death after the 1956 revolution.

In Poland, the Warsaw Supreme Court upheld a three-month prison sentence against Andrzej Marek, Editor-in-chief of the weekly *Wiesci Polickie* (Police News), for libelling a local official.

In another case in May 2004, Beata Korzeniewska, a journalist for the daily *Gazeta Pomorska*, received a suspended one-month prison sentence for libelling a judge from the city of Torun.

In Azerbaijan, we were following the criminal libel case against Irada Huseynova, a journalist with *Bakinski Bulvar*. I was pleased to hear that on 24 June 2004, the Nizami District Court dropped the charges against her and closed the case. However, the case of Huseynova remains an exception to the rule and libel lawsuits against journalists are unfortunately still a regular occurrence in Azerbaijan. We were just informed that the editor-in-chief of *Baki-Khabar*, Mr. Aydin Quliyev, was sentenced to one year suspended imprisonment for re-printing an article from another newspaper. This case is particularly alarming since the same journalist was physically assaulted in July as is mentioned later in this report. We also heard that Elmar Huseynov, the editor of the weekly *Monitor* is facing a trial in a libel suit filed by a Member of the Parliament from the ruling party.

Not only incarceration for libel can cause damage to the general state of media freedom. On 16 July 2004, in a suit brought by the Presidential Administration for libel, an Almaty district court in Kazakhstan ordered the weekly newspaper *Assandi-Times* to publish a retraction as well as to pay 50 million tenge in moral damages.

That sentence practically annihilated the newspaper, an important independent voice in the country. Nothing could be a clearer proof that criminal libel in all its forms is having a general chilling effect on press freedom.

In some of these cases, I do not question the independence of the judiciary and its adherence to the law of the country. However, even if libel is a criminal offence, I urge the countries, as a first step, to 'de-prisonise' it, or as Armenian Ambassador Jivan Tabibian has once suggested, to 'de-incarcerate' it.

These ancient libel laws are inadequate, even detrimental, to a modern democracy where freedom of the press and uninhibited discussion of public issues could be diminished by the effect of a criminal libel sentence used against journalists for their work.

It is often the case that a journalist is sued for libel by a public official who is criticised, maybe even unjustly, in his or her official capacity. Let me give you two quotes here:

*"A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions -- and to do so on pain of libel judgments virtually unlimited in amount -- leads to a comparable "self-censorship." Allowance of the defence of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defence as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars. [...] Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so." This is from the opinion of the US Supreme Court in the case *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).*

Another quote is from a judgement by the European Court of Human Rights in the case of Oberschlick v. Austria that was adopted on 25 April 1991:

“The limits of acceptable criticism are accordingly 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.”

These two examples show that there is wide understanding of the need to provide journalists with a certain privilege when discussing issues of public importance. As with the protection of sources, journalists should also not be open to criminal prosecution or frivolous lawsuits even when the information that they disseminate might be false or derogatory. Weighed against the potential “chilling” effect, this privilege, if often questioned, should not be allowed to erode.

Some of the countries we approach about criminal libel refer to the older democracies of Europe. In these cases, we point to the fact that most of these countries do not use these ancient laws against journalists. Why don't we go a step further, for the benefit of the whole OSCE region? Where criminal libel laws have not been utilised for decades, I see no reason why they should not be taken off the books. I urge all countries to do so.

In general, I foresee for my Office several possible lobbying strategies regarding libel:

- Encourage parliamentarians to table proposals to repeal criminal libel legislation;
- Encourage government officials through public information campaigns to refrain from using existing criminal laws to sue the media and journalists;
- Encourage judicial bodies, where criminal libel does exist, to install a moratorium on issuing prison terms, even suspended ones, until the necessary reform;

My Office is currently in the process of developing a database matrix on libel legislation in the OSCE region. This matrix will also be accompanied by a legal analysis that will explain our findings, and help define the best ways to resolve the problem. I hope to present the matrix early next year. My Office is also currently reviewing libel legislation in Albania and Azerbaijan for its compliance with international standards, and we are planning a round table on this topic in Baku in October.

Russian Federation

Last week, I raised three cases with the Russian Government: the cases of Andrei Babitsky and Anna Politkovskaya and the detained film crew from Georgian TV channel *Rustavi 2*. I look forward to receiving additional information.

Also, I have commissioned a report on how the media covered the tragic events in Beslan. The report is attached (it provides additional information on the cases mentioned above).

The coverage of the events has proven that media freedom had taken hold in Russia. However, several worrying developments in the relationship between the government and the media drew the attention of local and international experts and human rights activists.

Cases of detention and harassment of journalists occurred, seriously impeding their work.

Even more importantly, the government did not provide in a timely manner truthful information on the handling of the crisis:

- How many people were taken hostage;
- What was the number of hostage takers;
- Who were they;
- What were their demands.

As a result, journalists were physically attacked in Beslan for allegedly misinforming the public.

A triple credibility gap arose between the government and the media, between the media and the citizens, and between the government and the people. This is a serious drawback for a democracy.

The main sources of information for the Russian people are the three nationwide broadcasters. Unfortunately, they did not provide accurate and up-to-date information. In the end, the print media and Internet news sites stepped in, filling the information void as much as they could.

Belarus

Let me start by saying that as recently as the last two weeks several newspapers in Belarus were closed. This fact is unprecedented in the OSCE family of democracies, and is only one among the many signs of the menaces for press freedoms in Belarus.

In my previous Quarterly Report of 8 June 2004, I announced to the Permanent Council that I was looking into options on how to proceed with regard to the situation of freedom of the media in the Republic of Belarus. I decided to visit Belarus and make an independent and objective assessment of the situation. The purpose of my visit would have been to raise points of concern, and, by engaging in constructive dialogue, assess the government's attitude to the independent media and freedom of expression. I also hoped that, as a result of my visit, I could make practical and future-oriented recommendations in order to assist the country in adhering to its OSCE commitments.

Unfortunately, I was not able to visit Belarus, due to the circumstances explained in my statement to you last week.

I thank Ambassador Gaisenak and the authorities in Minsk for the apology last Thursday and for the invitation that finally arrived last Friday. I hope that I will visit Belarus in the future at a time appropriate for both, my Office and the authorities, and that I will then be able to report to you from inside Belarus.

Here I can only summarise the information we receive from many well-known and respected media observers. The media situation has systematically deteriorated in Belarus. Currently, the following worrisome trends are observed:

- Coercive administrative measures taken against journalists, including deportation for alleged biased reporting of political events;
- Suspension and closure of independent media outlets;
- Denial of access to state-owned printing facilities for independent newspapers;
- Selective application of other economic means of control and limitation;
- Restrictive and arbitrary application of the Media Law against independent newspapers that are critical of the government;
- Adoption of new legislation that increases the administrative licensing requirements for distribution of independent information;
- Application of libel and insult laws to silence critical voices in the non-state media, backed up by articles in the Criminal and Administrative Codes;
- High level of state control over the electronic media; only the state-owned broadcasting company holds licences for nation-wide channels;
- The four state-controlled nation-wide TV channels are used for propaganda against the opposition, which, on the other hand, is denied the right to reply;
- Significant restrictions on access to independent information outside the capital.

In an attachment to my report you will find a detailed list of reported cases of violation of media freedom commitments. That list only contains the facts from the beginning of this year, but even so it is too long to be read aloud in any detail.

Kosovo

As a follow-up to our report on *The Role of the Media in the March 2004 Events in Kosovo*, I am dispatching to Kosovo a Special Representative for a limited duration who, in close co-operation with OMIK and the Temporary Media Commissioner, will focus on observing and encouraging the implementation of our recommendations presented here in April 2004. The funding for the Special Representative, Mr. Dardan Gashi, has been generously provided by the **United Kingdom** and by **OMIK**.

The Special Representative will also follow a series of freedom of expression issues that have not been addressed adequately so far. In close co-operation with the donor community, the Representative will try to develop a more focused dispersion of funds for the local media.

Internet

The **2004 Amsterdam Internet Conference** took place on 27- 28 August. To meet the needs of OSCE participating States, the conference agenda was developed at an earlier Seminar in Vienna. During this Seminar, it became clear that the OSCE is taking the lead on Internet issues where a discussion on constitutional and social values is needed, and that our conference could further strengthen the OSCE's unique position in the field of human rights.

In Paris during the OSCE Meeting on the relationship between racist, xenophobic and anti-Semitic propaganda on the Internet and hate crimes, as well as in Brussels, my Office organized two side-events on guaranteeing media freedom on the Internet.

The two-day conference in Amsterdam brought together over 80 international experts and 25 speakers from the OSCE, the Council of Europe, UNESCO, academia, media and a number of non-

governmental organizations from Europe, the Caucasus, Central Asia and North America. Topics included legislation and jurisdiction for digital networks; hate speech on the Internet; education and the development of Internet literacy; access to information and networks as well as the problems of self-regulation, blocking and filtering. The participants' presentations can also be found on the conference website.

Results from the conference discussions and the recommendations delivered by the participants will be incorporated in a "Media Freedom Internet Cookbook" to be published later this year by the Media Representative. In the tradition of other "Internet Cookbooks" - such as those on software and programming - this publication will serve as a collection of best practices on a broad range of Internet issues and aims to provide valuable guidelines for OSCE participating States.

During the conference, the participants stressed that regulation must be limited to fields where it is absolutely inevitable. Actions taken towards the regulation of the Internet, even with the best of intentions, can cause potentially disastrous collateral damages for the freedom of the various types of media that the Internet hosts.

Additional cases dealt with by my Office:

I have publicly protested the killing of Paul Khlebnikov in **Russia**; the abduction and subsequent murder of **Italian** journalist Enzo Baldoni in Iraq; and the kidnapping of the two **French** journalists, also in Iraq.

In **Italy**, I raised the issue of the 16 August police raid on the offices of the Milan weekly *Gente* and the Rome home of journalist Gennaro De Stefano. The police, as I understand it, were acting on the orders of the Genoa prosecutor and were looking for documents relevant to an enquiry into street clashes during the July 2001 G-8 summit in Genoa. Material was seized from the offices of *Gente*, which was planning to publish the results of its investigation into this matter. The weekly's editor, Umberto Brindani, and reporter De Stefano were told during the searches that their names were on a list of people being investigated for alleged illegal possession of documents. I have asked the Italian authorities for clarifications and I am thankful for their answer I received yesterday which I am currently studying.

In **Azerbaijan**, in my letter to Foreign Minister Elmar Mammadyarov of 28 July 2004 I expressed my concern regarding reported acts of violence against two journalists, Mr. Aydin Quliyev, the Editor-in-Chief of *Baki-Khabar*, and Mr. Eynulla Fatullayev, a journalist with the magazine *Monitor*. I have just received an answer from Mr. M.Mammad-Guliyev, the Deputy Minister of Foreign Affairs, for which I am very thankful. According to the details included in this letter, the Quliyev case was dismissed. The investigation in the other case is ongoing.

I am also following the protests in **Moldova** by the journalists from the national broadcaster Teleradio Moldova (*TRM*) that started this summer. The protesters are demanding major changes at *TRM*. Demonstrations started on 27 July, when the journalists went on strike to protest unfair procedures of selection of staff at the new public broadcaster following the adoption of a law last year. Since 22 August, five persons have been on a hunger strike protesting continued political control over *TRM*.

I am also concerned with the arrest of cameraman Dinu Mija on 6 September by police in Tighina in the self-proclaimed Transdnistrian republic and his sentencing to 15 days in prison. I welcome his release on 13 September.

I am planning to visit Moldova in the second half of October to take a closer look at the media situation in this OSCE participating State.

I am also closely following the situation with the deteriorating media situation in **Tajikistan**. I will raise my concerns with the authorities during my trip to Dushanbe for the 6th Central Asian Media Conference next week.

And, finally, I would like to welcome Mr. Roland Bless and Mr. Alexander Boldyrev who will join my Office as Senior Advisers in the very near future.