



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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Annual Human Dimension Implementation Meeting
Speaking Points

Mr. Chairman, Ladies and Gentlemen,

The last time I visited this meeting, in 2003, I spoke on behalf of Hungary. In March this year, with the support of the participating States, I have replaced Mr. Freimut Duve. This Office owes a lot to this devoted and passionate fighter for freedom of the media. When trying to reshape our work, I can build in many respects on his.

Since March we did follow many of the paths my predecessor pioneered, and added some new ones.

We protested and protected whenever journalists or their working conditions were at risk.

We urged investigations into issues of murders and disappearances of journalists, like the Gongadze case in Ukraine, or the more recent Khlebnikov case in Russia.

We raised issues of access to information as well as to the free flow of information. For example, these issues were of particular concern quite recently with the problems that occurred after the tragic events in Beslan, in Russia, or the case of the so-called “book embargoes” in the US.

We voiced concern given the fact that, in large parts of the OSCE region, radio and television pluralism still do not exist and therefore true freedom of the press is practically confined to the print press and a still ‘baby’ internet sector.

But in this report, I would like to focus on two general dangers that over the last period of time have become ‘fashionable’ trends in suppressing the independent part of the media. Both ‘methods’ use seemingly legal means. They are even presented as a ‘sticking’ to the rule of law. One trend is to use **libel**, defamation and insult laws, and the other -- let’s call it ‘**administrative discrimination**’ - - has used registration and other administrative regulations to hinder independent and non-governmental media.

1. Libel

I am continuing the work on libel: for several years now this Office has been actively lobbying for its decriminalisation.

Positive developments

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, albeit in the books only), 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 still 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.

Cases raised

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 have been following several criminal libel cases. I was pleased to hear that on 24 June 2004, the Nizami District Court dropped the charges against Irada Huseynova, a journalist with *Bakinski Bulvar*. 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.

Legal reform urged

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 has been suggested by one Ambassador, to 'de-incarcerate' it.

These ancient libel laws are inadequate, even detrimental, to a 21st Century 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.

Some of the countries we approach about criminal libel refer to the older democracies of Europe. For example, the Justice Minister of Hungary pointed out that Germany, Austria, and Switzerland, countries the legal systems of which have traditionally served as a reference points for Hungary, also have criminal libel provisions. In these cases, we can hardly expect success by pointing to the fact that 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.

The EU should take the lead

The case of Hungary and Poland is also important because these new members of the European Union serve as further reference points for other new democracies. If, instead of reforming their legislation towards conditions favourable for freedom of the media, they stick to old patterns, what can we expect in countries where 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?

As early as on 25 April 1999, a judgment by the European Court of Human Rights in the case of *Oberschlick v. Austria* adopted this guideline:

“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.”

I see it imperative that the European Union, as an important group of countries within the OSCE region, take the long overdue reform initiative and jointly decide that all member-states of EU should abolish criminal libel, defamation and insult provisions, and opt for civil-law based solutions instead.

I see that breakthrough as a pre-requisite for a significant progress in journalists' working conditions in the whole of the OSCE area.

Invitation

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.

Here in Warsaw, this afternoon we will have a side-event that will present our initial findings concerning libel in all our participating States and I cordially invite you to take part in it.

2. Administrative Discrimination

There is a vivid fear among the journalists of the OSCE region from a wave of 'legalistic' discrimination against the independent press.

The essence of the 'new method', as some called it, was a "strict" adherence by the authorities to "legality", in a way that in reality leads to a basic violation not only of press freedom but also of equality under the law, that is, legality itself. Harsh, devastating measures are taken against these quite small media ventures, conducive to their closing, suspending, or crippling – but such measures are taken only against independents, never against state-owned or pro-governmental media.

Let me use only two very recent examples.

In our 6th Central Asian Media Conference an Appeal raised the cases of the “missing titles” in Tajikistan. The participants urged the Tajik authorities to ensure a positive outcome of the dispute over ‘temporarily silent’ independent publishing houses and newspapers. The journalists from the other Central Asian countries had many similar complaints.

It is a major shock for any democracy when six independent titles disappear from the market, supposedly for either not precisely disclosing the number of their printed copies or for other administrative errors.

In Belarus, over the past two months nine newspapers have been closed down for different administrative reasons. This is, in and of itself, a shock and to my knowledge never since the establishment of the OSCE has a similar development on this scale ever happened.

These two examples are only samples of a wide array of cases. There can not be true freedom of the media without stopping the new fashion of administrative, ‘legalistic’ discrimination.

The participating States ought to enforce true legality. That means equal handling of the two sectors: the taxpayers-paid governmental media and the civil self-sustaining media.

We understand that in the new democracies there is still a sizeable governmental media, even in the print press, a notion you don't find in old civil societies. But even if we see the existence of the state-owned media as a transient fact of life, the States should make sure that the weak independent sector is not discriminated against.