



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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-CHECK AGAINST DELIVERY-

15 December 2005

Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

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 web sites. 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 decriminalise 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 Shilly 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 web sites 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 13-14 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 nongovernmental 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 has also become 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 17-18 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, United States of America.

Assessment Visit to the former Yugoslav Republic of Macedonia

I visited Skopje, the former Yugoslav Republic of Macedonia, on 26-27 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 cooperation 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

licenses 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 anti-trust 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.

The full report has been distributed to all delegations and will be available on our website (http://www.osce.org/documents/rfm/2005/12/17446_en.pdf).

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 democratisation and professionalisation.

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; decriminalisation of punitive laws that block the development of a fearless discussion of public issues, such as libel, defamation, unauthorised reporting on governmental information, etc. I am thankful to the outgoing Slovenian Chairmanship for its professionalism, and I look forward to a fruitful cooperation 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.