



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

ENGLISH only

Regular Report to the Permanent Council

Mr. Chairman, Ladies and Gentlemen,

This is my first regular report in 2006. The structure of my report will be slightly amended in light of the recent events, the storm around the so-called “Danish cartoons”, and the need to reflect on what can be done in this situation.

I already issued a public statement on the subject two weeks ago, mainly with the aim of an early warning against hasty governmental infringement on the press, while suggesting mutual respect for traditions. On this occasion, I would like to explore the issues in more depth.

The “cartoon” controversy: The need for respect in freedom

As you are all aware, what started as an intra-cultural tongue-in-cheek provocation by a Danish newspaper on the subject of the Prophet Mohammed, has now become an inter-cultural clash on a horrifying scale. This clash has already claimed lives, and mobilised mass demonstrations and even some governments against perceived collective Danish, or European, desire to humiliate the whole of Islam.

An editorial judgement

We can now establish with some certainty the context of the original publication of the 12 cartoons. In the spirit of spreading



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inter-cultural understanding inside Denmark, an illustrated children's book on the life of the Prophet Mohammed was to be published. However, the publisher couldn't find willing illustrators for the book. The editors of *Jyllands-Posten* were told that the reason was not a voluntary observance of the Islamic ban on depicting the Prophet, but physical fear. They saw this fear as a consequence of earlier intimidation by extremist Islamists in the wake of secular artistic representations of Islamic subjects, like the Salman Rushdie Fatwa, or the Theo Van Gogh murder. They concluded that fear is jeopardising an important component of democratic culture which is disregard for taboos, just at the moment when it matters.

This is how *Jyllands-Posten* made the decision to ask for cartoons on the subject of the Prophet Mohammed, unquestionably knowing that it is scandalous for faithful Muslims. Nevertheless, this decision was made without any intent to express or incite religious hatred. If the cartoons were intended at all as a statement, then the statement was not about Islam, but about *Jyllands-Posten's* own readiness to uphold the critical tradition.

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Actually, some of the cartoons were obviously meant to express the authors' critique vis-à-vis extremist misuse of the teachings of Islam. But that critique was made in a form that for most believers made it indistinguishable from a critique on Islam itself. This was so because the editors – in a misjudgement about how this critique would be read – employed no other means to illustrate their attitude towards free speech than the Islamic ban on depicting the Prophet Mohammed. They decided not to respect the sentiments of their Muslim readers, because setting aside cultural politeness was the very technique they chose for making a harsh endorsement of freedom.

Misinterpretations of an editorial judgement

Yet it was exactly the abandonment of cultural politeness that turned out to be decisive in the course of events.

The editors “dared” to be disrespectful to Muslims not only because by publishing the cartoons they thought they did not talk *about* Muslims, but also because they thought they did not talk *to* Muslims. That was – we can state this now with hindsight – another misjudgement, one of the current level of globalisation.

Their goal was misunderstood by good-willing Muslims around the world, and it was deliberately misinterpreted by ill-willed jihadist propagandists.

First, the cartoons were misinterpreted as a statement *on Islam as a whole*.

Second, they were misinterpreted as a statement *of hatred* towards Islam as a whole.

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Third, they were misinterpreted as a statement of hatred towards Islam *by Denmark, its nation and its government.*

These misinterpretations gathered strength, and were extended to encompass the whole of the 'West' when a number of papers in Europe republished the cartoons in an act of solidarity with the Voltairian gesture of *Jyllands-Posten*. The republishing papers, by the very act, went out of their way to emphasise that the reprinting was not meant in any sense as anti-Muslim. However, these assurances remained unrecognised, as did a similar statement from *Jyllands-Posten*, apologising for any hurt sentiments.

Unforgiving violence

By now, what started as an issue of editorial judgement has become, in many parts of the world, a question of life and death. A wave of unforgiving mass violence, for the moment at least, succeeded in making a Huntingtonian point about the clash of civilisations. Images of burnt-down embassies of European nations suggest a profound cultural change in the world, a seemingly irreversible crystallisation of two civilizations, and an almost cold-war like divide between them.

The dignified joint statement by the Prime Ministers of Spain and Turkey, calling for calm and respect, speaks volumes about this potential rupture by reintroducing - for the first time since the Cold War - the concept of "peaceful co-existence".

One of the immediate dangers created by misinterpretation and violence is that, at the moment, it is almost impossible to debate the issues freely. Our deliberations are taking place in an atmosphere of intimidation.

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Therefore, we have to be particularly careful in making our conclusions and recommendations.

Immediate tasks and long-term considerations

In the short-term, while offering dialogue and cooperation, the context of fear should be rigorously opposed. Violence, especially State-endorsed violence, must be rejected. The actual aim of our short-term efforts must be the re-creation of a climate for a long-term constructive debate and cultural exchange.

The short-term methods may include the creation of channels to enable dialogue; clarification of misunderstandings; the bringing together of Western media (even the “cartoon-publishing” ones), with Muslim media; an assurance to the Muslim world of the respect of the papers and their home countries; and making it understood that the “cartoon” editorial decisions were entirely civil-society ones, neither asked for, nor endorsed, by governments.

It is perhaps necessary for governments to distance themselves from the publishers of the cartoons. But when doing so, concessions should not be made to demands – which are, unfortunately, central to many current protests and governmental demarches in the Muslim world – that government leaders should take responsibility for the actions of the free press, or should even curb “their” media.

The debate should not pit freedom of speech against more respect and more care. Enhanced awareness of Muslim culture, and better responsiveness to global imperatives in the editorial work, should come as an addendum to free speech, not as a restriction to it.

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It should be made very clear that, universally, only a completely free press can be a responsible press. That commitment has a strategic importance for both the democratic world and the Muslim cultures, as well as for their rapprochement.

In order to find a solution, more than just respect towards Muslim traditions is essential. Dialogue should be shaped so that it also fosters respect in Muslim societies for the democratic traditions of other countries. It is not disrespectful to assume that separation of the state from the press, and from civil society (and perhaps even from religion) can become more accepted in Muslim cultures as well. It is not realistic to demand respect from editors of the free media for a lack of respect for editorial independence demonstrated by some Muslim governments today.

Promoting responsibility in freedom

My office, while protecting the independence and pluralism and – importantly in the present situation – safety of the press, has always promoted media responsibility and quality, which are the main components of true tolerance.

We believe that the necessary growth in respect for other cultures does not require the passing of new legislation to regulate media activity.

We have to have trust in the educational effect of what has happened. It is safe to predict that editors by themselves in the future will think more globally when acting locally.

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But we also encourage Press Councils, those seasoned self-regulatory ethics bodies of the quality media, to collect and summarize the wisdom of the press corps.

In European type media landscapes, it is public broadcasters, funded by the tax-payer, which are specifically tasked to promote mutual respect between cultures and to foster the heritage of both majorities and minorities. We will further encourage transformation of state broadcasters into independent centres for responsible public journalism, in those places in the OSCE region where transformation is still pending.

We support the twinning efforts inside the OSCE region, offered by the Belgian Chairmanship. We could assist by organising editorial trainings, given by established public broadcasters to the newly transformed ones. The topic of enhanced cultural dialogue is apt for such twinning.

As we did in the case of Kosovo, we continue to monitor serious violations of intercultural responsibilities by the media, and assist with the formation mechanisms to promote self-regulatory ethics. This year, we hope to explore new forms of training to support the institutionalisation of press councils throughout the OSCE region.

We are confident that the OSCE's skills in conflict prevention and resolution, and in fostering dialogue, will prove invaluable once again in the wake of the sad events of the past weeks.

My office is ready to contribute to these activities. Just as it happened throughout the Helsinki process, dialogue with Muslim societies will also assist nations to develop mutual respect, both for values of culture and for values of free debate.

Cases

During the time since my report in December, my office has continued to monitor events and to raise issues in the OSCE region.

Azerbaijan

I am pleased that I can open this section of the report with positive news from Azerbaijan. I welcome President Ilham Aliyev's decision on 8 February to cancel the debts of all newspapers owed to the State Publishing House *Azerbaijan*. The debt, totalling 350 000 euros, will now be paid from the State budget. This gesture of goodwill will apply to, inter alia, the country's leading opposition publications.

Croatia

I welcome the steps that the Croatian government has taken to reform the country's criminal libel provisions. In her letter to me dated 11 January 2006, Foreign Minister Ms. Kolinda Grabar-Kitarovic mentioned the preparation of further amendments to the Criminal Code. These, she said, "would allow for quite constructive and positive steps in a libel law reform". I wish the Government of Croatia success in this important endeavour and welcome the willingness for further cooperation with my office.

Hungary

On 9 January I sent a letter to the Hungarian Foreign Minister welcoming a recent proposal by the Prime Minister's Office to amend the existing Hungarian law on classified information. I

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summarised my recommendations regarding the necessary changes and urged a similar amendment to the Criminal Code.

These amendments have become even more urgent because of two ongoing prosecutions in Hungary. In 2004, for the first time since democratization, the Budapest Prosecutor indicted a journalist for “breach of a state secret” which carries a sentence of up to five years in prison. In 2005 legal action also started against another journalist accused of the same crime. Further worrisome is the fact that the officials in charge of protecting the leaked information were not brought to trial in either of these cases.

Unfortunately, at the end of January the Hungarian Parliament postponed these much needed amendments so that work on the amendments could start only after the elections scheduled for April this year. The trials can continue uninhibited until then.

The former Yugoslav Republic of Macedonia

A few days ago, together with the Spillover Monitor Mission to Skopje, our office held an international conference in Skopje in support of decriminalisation of libel and defamation in the former Yugoslav Republic of Macedonia.

Indeed, during this conference, Ms. Meri Mladenovska-Georgievska, Minister of Justice, publicly pledged to propose to parliament to remove prison sentences from legal provisions that sanction libel and deformation. She also declared the government’s preparedness to undertake further reforms towards the complete decriminalisation of violations of honour and dignity, and to place the handling of these offences into the civilian domain.

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I warmly greet this news. My office stands ready to further assist with these very welcome reforms which would help the Macedonian press to function free of old fears.

Poland

In my letter of 18 January to President Lech Kaczynski I expressed my concern about the case of Andrzej Marek, editor-in-chief of the newspaper *Wiesci Polickie*, who on 17 January began to serve a three-month jail term in Szczecin for libelling a local official. This is the first instance in democratic Poland of sending a journalist to jail on libel charges. I asked the President to pardon Marek so that the case would not become a legal precedent for the future.

I welcome the recent decision of Poland's Constitutional Court to suspend the implementation of Marek's prison sentence and set him free while deliberating on the constitutionality of the case, and of the underlying legislation.

Russian Federation

In my letter of 7 February to the Minister of Justice I raised the case of Stanislav Dmitrievsky, editor-in-chief of '*Pravozaschita*' (Human Rights Defence), the news bulletin of the Nizhny-Novgorod Society for Human Rights. On 3 February 2006, the editor was sentenced to two years imprisonment by the Sovetski District Court in Nizhny Novgorod for re-printing two documents from the internet. These were open letters, one by Aslan Maskhadov, the late Chechen separatist leader, to the European Parliament, and the other by Akhmed Zakaev, Maskhadov's London envoy, to the Russian people. The sentence was passed according to article 282.2 of the Criminal Code, which prohibits incitement of hatred or enmity towards nationalities. The sentence was suspended for four years.

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In my letter, I noted that the convict was not condoning acts of terrorism by re-printing public documents, but instead was serving the Russian public's right to receive in-depth information about issues of public interest. I proposed the initiation of a legislative correction, in order that the provision about incitement to hatred is only invoked against those who actually aim to do this, and is not used to restrict the normal functioning of the press. If Dmitrievsky appeals to a higher instance, my office will continue to monitor the case.

Switzerland

I intervened with the Defence Minister and the Justice Minister after the Swiss Federal and Military Attorneys started probing into the case of *SonntagsBlick*.

The weekly had published classified details of the interception of a fax by Swiss military intelligence. The intercepted fax message from the Egyptian Foreign Ministry to its Embassy in London was sent via satellite link on 15 November 2005. It was a summary of world press reports on the issue of alleged clandestine CIA prisons in Europe.

I asked the Swiss Government to do everything in its power to limit action against the media in this case.

I also called for amendments to the punitive provisions on breach of confidentiality so that they do not hold media accountable for keeping official secrets. In order to bring Swiss legislation in line with the internationally recognized principle of the overriding public interest, the public's right to know should be included in the Swiss Civil and Military Penal Codes, which hitherto lack any such feature.

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Tajikistan

On January 11 the Tajik Committee for TV and Radio Broadcasting suspended *BBC* radio programming in FM frequencies because the company had not re-registered in time with the Tajik Ministry of Justice. The *BBC* complained it had not received adequate notification about changes to regulation that required them to re-register, and that the suspension was an unnecessarily harsh reaction to non-compliance with an administrative procedure. Seeking explanation and the resolution of the issue, I contacted the Tajik authorities. I was informed through the Head of the Delegation of Tajikistan to OSCE that there were no political motivations behind the suspension. Unfortunately, at the time of writing this report, *BBC* FM has still not resumed broadcasting in Tajikistan.

Turkey

I welcome the news of 22 January that the trial of the writer Orhan Pamuk will not proceed, in accordance with the wishes of the Minister of Justice. However, I remain concerned as approximately 15 people are currently on trial for their writings on similar charges of ‘insult against the authorities’ or ‘Turkishness’ under Article 301 of the Penal Code.

I call for an end to all trials of those accused for having exercised their right to freedom of expression. I also call on the Turkish authorities to abolish article 301, and to amend all similar provisions according to the public’s right to exchange critical ideas.

ICTY/Croatia

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With regard to their cases in the International Criminal Tribunal for the former Yugoslavia, I have continued to follow the trials of the five Croatian journalists who are charged with contempt of court. The journalists have published the name and the classified testimony of a high-ranking Croatian politician who was a protected witness in a war crime trial in 1997. If convicted, the journalists could be sentenced to up to seven years in prison.

In January, an appeals court of the Tribunal cancelled the protection of the witness in question. The witness was President of Croatia, Stipe Mesic. He had earlier asked the court to lift his anonymity.

On January 20, in the first journalist trial, Tribunal Judge Ian Bonomy stated that the accusations of contempt were “not an appropriate way to use the court’s resources”. He also established that at the time of publication of the name of President Mesic, it was clear that there were no more reasons for applying protective measures to the witness in question.

We hope that the upcoming judgement will establish that international tribunals, as do national laws, would acknowledge the pre-eminence of legitimately public-interest issues over the need for classification.

Joint Declaration by three media freedom rapporteurs

On 21 December 2005, together with the UN Special Rapporteur on Freedom of Opinion and Expression and the OAS Special Rapporteur on Freedom of Expression, I issued a *Joint Declaration on the International Mechanisms for Promoting Freedom of Expression*.

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The focus of this document is Freedom of the Internet and Anti-terrorism Measures. In the section on the Internet, the Declaration stresses that: all States should revoke requirements to register websites, except domain registration (which is a purely technical procedure); the Internet should only be overseen by independent bodies and that national regulation of domain names must not exercise control over content; States should promote universal access to the Internet; Content filters cannot be justified if they are not user-controlled. It also defines the clear limits of liability of content authors for their publications on the Internet.

On anti-terrorism measures, the declaration states that restricting free expression for the sake of combating terrorism could facilitate certain terrorist activities, in particular the dismantling of human rights. It says that "while it may be legitimate to ban incitement to 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 responsible for increasing the actual likelihood of a terrorist act occurring."

Projects supported by RFoM

I would like to take this opportunity to extend my gratitude to those Governments which have generously supported our activities with extra-budgetary contributions in the past. As always, we shall be seeking financial support for our 2006 activities and hope to count on the generosity of the participating States.

This year we will continue to implement a range of practical projects that my Office supports both conceptually and financially.

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A new element of our project work is our support to the Belgian endeavour in twinning, in order that OSCE-wide cooperation to further a free and responsible press is expanded.

I would like to express my gratitude to the OSCE field presences that play a significant role during all stages of our projects – from the first steps of planning until their completion. Their contribution is invaluable in realising our activities locally.

The last months of 2005

In **Azerbaijan** we prepared and distributed a booklet consisting of a compilation of all CSCE-OSCE media commitments and information on journalists' right to obtain information, based on the recently adopted on Freedom of Information Law.

In **Georgia** we supported a training program for judges and lawyers on the issues of freedom of expression. Trainings were held in 25 cities throughout the country. We hope that we will be able to continue this project in 2006.

In the **former Yugoslav Republic of Macedonia** we supported a series of workshops to promote e-society in the country and raise awareness about freedom of expression on the Internet.

In **Moldova**, in the **Transdnestrian region**, we provided financial support to two independent media outlets, *Celovek i ego pravo* and *Novaia Gazeta*. As I proposed in my report to the Permanent Council on 10 March 2005, these media outlets have now received much-needed equipment.

In **Ukraine** we conducted several training programmes for journalists of local media and supported the drafting of

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amendments to articles of the Ukrainian legal framework that concern transparency of ownership of media outlets. We also supported the creation of a website for the national Association of Press and Publishers.

Plans for this year

“Hate Speech” Conference

The Central European University, as well as other international academic institutions will hold an International Conference and Consultation on the topic of “Hate Speech” on 31 March –1 April, 2006 in Budapest, Hungary. My office has offered to sponsor some of the expert panellists of the conference.

In addition, we will hold a special event, a “Panel of Diplomats” with OSCE Ambassadors. The Heads of Delegations of France, the Russian Federation, and the US, agreed to participate on the “Panel of Diplomats”, which is scheduled for Saturday 1 April in the morning. I would like to thank them once again for their readiness to participate, and shall use this opportunity to encourage all of you to come as well. Hungary’ Foreign Ministry also supports the event.

The conference should inspire scholarship which advocates convergence among seemingly opposed or different positions, or at least explains those differences. It should aid OSCE and others in understanding so it can develop policy consensus.

Our contribution is in line with our mandate to fight intolerance. Further, we are addressing the additional task set at the 2004 Sofia Ministerial Council, which is to fight the eventual misuse of speech regulation in order to silence legitimate dissent.

New Central Asia Conference

We are happy to announce this year the renewed concept of the successful series of regional Central Asian Media Conferences. A planned one-day conference will target the merits and problems of media privatisation, and the sustainability of privately owned media in the region. During the second day the participants will be offered capacity-building and training on management and business skills in running a financially sustainable media outlet. The participants will include state officials, legislators, leaders of state media, actual or would-be owners, publishers, editors, managers and media planners.

I welcome the readiness of the Kyrgyz government to host the conference in Bishkek and I look forward to good cooperation with the authorities and the OSCE Centre in Bishkek in the organisation of the event.

Other projects

In the realm of the **Internet** we will conduct three advanced training conferences for media representatives on the use of information technology in journalism in Kyrgyzstan and Tajikistan, in cooperation with the International Research and Exchange Board (IREX) and the Internet Access and Training Program (IATP). Altogether, 55 journalists will be given the opportunity to participate in a one-week training conference. The training conferences will be conducted in Dushanbe, Tajikistan,

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and in Bishkek and Jalal-abad, Kyrgyzstan, at the IATP access sites.

My office will continue its **assistance projects for governments and the media**, successfully piloted in 2005 in Azerbaijan and Kyrgyzstan. The goals of the training project are: to teach governmental press and public information officers techniques to effectively manage press office; to inform them of democratic strategies and the legal basis of interaction with journalists; and to provide an overview of the international experience in this area. The project also aims to improve **journalists' professional and ethical skills**.

This year, we have received invitations for follow-up courses in Azerbaijan and Kyrgyzstan. In addition, we are planning to assist other OSCE participating States in this area (Tajikistan, Kazakhstan and Georgia) and to expand the training to include additional topics, such as **self-regulation of the media**. A series of similar seminars for press-secretaries and journalists is planned in cooperation with the Office of OSCE Project Coordinator in Ukraine, in several Ukrainian cities later this year.