



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

10 March 2005

Visit to Belarus
Observations and Recommendations

The OSCE Representative on Freedom of the Media Miklos Haraszti, accompanied by Adviser Alexander Ivanko, and Research Officer Ana Karlsreiter, visited Minsk, Belarus, from 9 to 11 February 2005. The trip was made at the invitation of the Government of Belarus. It was organised by the Ministry for Foreign Affairs and by the OSCE Office in Minsk. The purpose of the trip was to get acquainted with the current state of media freedom in the country and to provide the authorities with recommendations.

Miklos Haraszti met with government officials, parliamentarians, journalists, and representatives of non-governmental organisations. Among those he had talks with were, in order of the meetings:

- Telephone conversation with Foreign Minister Sergei Martynov;
- Senior Foreign Ministry officials;
- Minister of Communications and Informatisation (*'informatizatsiya'*) Vladimir Goncharenko;
- Chairman of the Standing Committee on Human Rights, National Relations and Mass Media Yury Kulakovsky;
- Minister of Information Vladimir Russakevich;
- Meetings with journalists, editors and managers from different media outlets, both from the state and non-state sector.

These meetings provided the Representative with an excellent opportunity to collect first-hand information on the situation of the Belarus media.

Given the welcome fact of the visit and the high-level meetings in cooperative spirit, the OSCE Media Representative hopes that it marked the beginning of a dialogue between the Government of the Republic of Belarus and his Office.

General state of media freedom in Belarus

Overall, the media situation has deteriorated in Belarus over the past couple of years. The number of independent media outlets has been declining; the number of administrative warnings and suspensions has been growing. The state media, speaking

with one voice, overwhelmingly dominate the market. In the broadcast sector, all national TV channels are state-owned or controlled. In the print sector, the few independent media outlets are struggling to survive. Libel and insult laws and even prison sentences are effectively contributing to a lack of a free debate in the media.

Senior Foreign Ministry official Valery Romashko acknowledged that there were problems in the media field. He stressed, however, that these problems were not different from those that characterized most post-Soviet and post-Socialist countries.

The OSCE Representative has offered his good offices to assist the Government in both immediate and long-term improvements in the media field. Apart from legal reforms, the Government is in the position to cease from one day to another several restrictive practices that are authorized but not prescribed under current regulations.

Belarus Media Law

The current Media Law allows the Government to be highly intrusive in the media field. The Ministry of Information has broad powers to sanction and it has been using these powers exceedingly in the past two years. The Ministry of Information should immediately cease the practice of issuing warnings and suspending newspapers.

The current Media Law with its numerous restrictive provisions allows for several ways to put pressure on the media. It also forces them to exercise self-censorship.

According to *Article 1*, the Ministry of Information is given extensive powers over the media. *Article 16* allows the Ministry to issue warnings, suspend media outlets for one to three months or even to permanently close down a media outlet for violating other articles. Besides warnings for different administrative and technical irregularities, warnings related to content can also be issued under *Article 5* (“*Abuse of freedom of information*”). For example, this article allows the media outlet to be warned for “defaming the honour and dignity of the President”; this offence can also lead to suspensions and closure. In addition to this media law provision, the same offence exists in the Criminal Code.

In the last two years, these powers have been exceedingly used by the Ministry. According to official figures provided kindly by the Ministry of Information:

The number of new newspapers registered showed a sharp decrease in 2004:

2000	132
2001	199
2002	200
2003	230
2004	51

The number of newspapers warned by the Ministry showed a sharp increase in 2004:

2000	60
2001	27
2002	19
2003	52
2004	81 (with 160 warnings)

The number of newspaper suspensions showed a sharp increase in 2004:

2000	0
2001	0
2002	0
2003	9
2004	25

In a meeting with the Representative, Minister Russakevich insisted that his Ministry's warnings could be appealed in a court of law. However, in 2003 courts dismissed all eight appeals filed by newspapers against the Ministry of Information decisions. No information was available for 2004. The court statistics of 2003 prove that the only remedy against administrative intrusion in the media is to bring to a stop the exercise of this particular power, and erase it from the media law altogether.

The Representative observed, from accounts by both independent and official sources, that the Ministerial warning/suspending power was overwhelmingly used against non-state and independent newspapers (*Belorusskaya Delovaya Gazeta, Zhoda, Narodnaya Volya, Vecherni Stolin, Novaya Gazeta Smorgoni, etc.*)

The Office of the Representative was not able to track down one warning for content issued to a government media outlet.

According to Professor Mikhail Pastykhov who leads the *Belarusian Association of Journalists (BAJ) Law Centre*, no new political independent newspapers have been registered in the past two years.

Amendments to the Media Law

The Media Law should be liberalized. In this situation, the OSCE Representative has offered concrete forms of assistance to the Government in improving media-related legislation.

During his visit to Minsk the Representative was informed that amendments to the existing media law were currently being prepared, and that they should be submitted to the National Assembly in March. The Chairman of the Standing Committee for Human

Rights, National Relations and Media, Yury Kulakovskiy said that these amendments would "liberalize" the Law.

Nevertheless, the Representative did not observe an open public debate on the proposed amendments. Non-state journalists expressed concern that if the draft would be made public only when tabled in Parliament it might be too late to have a discussion. In addition, several interlocutors believed that these amendments would make the law even more restrictive and intrusive.

According to *Belapan* news agency, Information Minister Rusakevich, speaking at the Ministry's board meeting on 28 January, said that "efficient measures will be resolutely, uncompromisingly put in future in the way of any attempts to bypass the law or try our patience."

He stressed that the Ministry would ensure the legislative protection of Belarus' information space. "It is not unlikely that we will have to adopt new regulations and provisions in the sphere of the media in the near future," he added.

But during their meeting, Mr. Rusakevich did not reject the proposal made by the OSCE Representative to provide legal assistance on the amendments. The Representative offered to conduct a round-table, either in Minsk or in Vienna. According to this proposal, the participants would represent three parties from Belarus: experts from *BAJ*, experts from the *Belarusian Union of Journalists (BUJ)*, and the Ministry of Information. The Representative would provide international expertise.

The Representative would see this as a first step and an act of goodwill towards improving the legal framework for the media.

Libel and insult provisions, imprisonments

Belarus has harsh libel and insult legislation, which it regularly applies. It is the only country in the OSCE region where two people are serving prison sentences for insulting the dignity of the Head of State. The authorities should be encouraged to liberalize their libel legislation and repeal the insult laws.

Current legislation criminalises libel. It also offers elevated protection to officials, including the Head of State.

Over the last ten years liability for libel and insult has changed for the worse.

In 1999, the Criminal Code for the first time established liability for insulting a representative of the authorities (Article 369). In addition, the 1999 Code established, again for the first time, criminal liability for defaming the President. Both include the possibility of a prison sentence.

The Civil Code establishes liability for dissemination of information which is untrue and denigrating to the honour, dignity and business reputation of an individual.

All these provisions have been used on a number of occasions. They have resulted in curtailing freedom of speech.

Standing Committee Chairman Kulakovsky insisted that “the libel and insult provisions were based on similar legislation in several European countries. We didn’t invent these legal norms.” He also stressed that “because of our mentality we need restrictions including those that defend the honour of the President.”

The Representative found that the libel and defamation provisions in Belarus are being specifically used to induce a chilling effect on journalists.

The Representative will continue a dialog with the authorities in order to liberalize their legislation on libel and insult. He will also continue appealing to the authorities to free **Valery Levonevsky** and **Alexander Vasilyev**, who are serving a prison sentence for insulting the Head of State for distributing satirical verses.

Court Statistics (official):

Criminal: 56 people have been accused of criminal defamation. 50 have been convicted within the period of 1 January 2002 - 30 June 2004.

Civil: During the same period courts in Belarus heard 310 cases dealing with the protection of honour, dignity and business reputation of individuals.

State print media

The state media are heavily subsidized by the government. Instead, a project of privatization of the state-owned newspapers should be developed and executed. They do not provide space to voices that are not in conformity with the government. The state media should be encouraged to open itself to alternative voices. In addition, training courses in pluralistic coverage could be organized for journalists of both state and independent press.

State newspapers receive large subsidies in the form of privileges and direct financial support. Minister Russakevich acknowledged that in 2004 his Agency supported 32 newspapers (and one TV channel). In 2005, the state plans to subsidise this sector with 41 million USD.

The Representative was informed that a system of forced subscriptions to state newspapers is regularly implemented. State bodies and organizations, such as the Academy of Science, universities, schools, entrepreneurs, and commercial organizations

have received orders from local authorities to subscribe individually and collectively to state-owned newspapers.

The Media Representative visited the main state newspaper *Sovetskaya Belorussiya-Belarus Segodnya*. The Editor of *Sovetskaya Belorussiya-Belarus Segodnya* Pavel Yakubovich briefed the Representative in detail about his newspaper, the largest in the country (290,000 subscribers alone this year, while the actual number of copies distributed is near to half a million). In his view, it didn't really matter if a newspaper was controlled or not by the government, what mattered was its quality. "There is no such thing as independent media; everybody is dependent either on political circles or on money," he said. Yakubovich insisted that he did not receive any instructions from state officials and that he tried to cover all important events.

The day the Representative left Belarus this newspaper published a transcript of a round-table on freedom of expression, where all participants stressed the importance of responsibility and even criticized the Russian media for being "very irresponsible." (Previously, during the meeting with the Representative, the editor did not mention that such a round-table discussion, dealing with the same questions as their conversation, had just taken place and would be published the next day.)

No journalists from the state media were present at the Representative's press conference although they were informed beforehand.

Independent print media

The independent media are under constant pressure through judicial, extra-judicial and economic means. According to BAJ, the number of such outlets has drastically fallen over the past year, from 50 to 18. A multitude of "filters" are pushing the independent media out of the market. The authorities should cease administrative and economic discrimination. OSCE should further support through different means the independent media.

The Representative had several meetings with independent journalists and editors from the print media. This media do not receive any taxpayers' money. They are not in any way dependent on the state. They also report independently on political and social developments in the country.

The journalists painted a very bleak picture of their own state of affairs. The numbers corroborate this picture.

There is only one independent daily in the country, *Narodnaya Volya*. Its circulation is just under 30,000. The rest are weeklies or even more irregular publications. The overall weekly circulation of all independent media taken together is only a fraction of the daily circulation of *Sovetskaya Belorussiya-Belarus Segodnya* alone.

According to *BAJ*, as a result of the operation of several “filters,” the numbers of independent media outlets fell from 50 to 18 over the past year.

Here are some “**filters**” that have been identified by several independent editors:

- **Registration and re-registration of newspapers.** The mere existence of such a system is in violation of internationally accepted standards, because it provides for arbitrary decision instead of an automatic right to life. On numerous occasions independent newspapers were refused registration. Mandatory re-registration also allows weeding out critical independent media at any point in time.
- **A media outlet has to have a business address to be registered.** However, premises are often denied to independent media.
- **Difficulties with holding on to rented premises.** Just recently, two media outlets, the leading independent news agency *Belapan*, and the office of *RFE-RL*, were told to vacate their premises.
- **Virtual monopoly on subscription/retail distribution of print media.** Belarus state-owned companies *Belpochta* (postal services) and *Belsoyuzpechat'* (retail and subscription distribution) and its regional branches in several cases refused to continue distribution/subscription of independent print media, and unilaterally cancelled subscription, delivery and retail contracts. In addition, private distribution companies need a special licence issued by the Ministry of Communication and Informatization (*'informatizatsiya'*). Such a license was refused to several private newspaper distributors.

Belorusskaya Delovaya Gazeta was refused distribution after a three months suspension by the Ministry of Information, claiming the paper did not fulfil the circulation required by the contract. That shortcoming, however, was caused by the suspension.

- **Virtual printing monopoly.** The independent media have difficulty getting their newspapers printed. Since 11 February 2004 all Belarusian publishers and printing facilities were required to apply to the Ministry of Information for new licences regardless of when their current licences had expired and in some case re-registration was refused. Recently, six newspapers (*Vremja, Tovarisht, Mestnaya Gazeta, Belorusskaya Delovaya Gazeta, Den', Solidarnost*) started to print in Smolensk, Russia, since they could not find a publishing house in Belarus that was willing to print them. On one occasion, an editor was asked to replace a collage in his newspaper by the director of the publishing house and he had to agree so as to be able to continue to be printed.
- **Tax inspections.**
- **Pressure on advertisers to withdraw their contracts.**

- **Limited access to information** which makes it impossible for the independent media to perform their duties in a professional manner.

The rights of independent journalists remain fragile in Belarus. A climate has been established which fosters widespread self-censorship among the media. Even the independent media, to avoid further pressure, have to exercise a certain level of restraint in their coverage of political events in Belarus. This was acknowledged by several editors.

In this situation the independent media can survive only with the support of international organizations and NGOs.

In democracies, the media should belong to the civil society, not to the state. In new democracies, where in the past all press was owned by the state, this can not happen from one day to another, but economic and administrative discrimination against the independent periodicals should stop.

Electronic media

The most important source of information for the people of Belarus remains television. There is no independent nationwide TV Channel in Belarus; the two national TV channels, the two other TV Channels with large coverage, and the new satellite channel, Belarus TV, are either owned or controlled by the state. The Government should be urged to privatize one of the national channels, and allow the transformation of the other into an independent public broadcaster.

All surface nationwide Belarusian electronic media, *BT1* (First National TV Channel), *ONT* (Nationwide TV), and *Radio BR1* (First Channel of Belarusian National Radio) are controlled by the Presidential Administration and the Ministry of Information. So are the three other TV channels with a large foot-print – the satellite channel *Belarus TV*, *TV Lad*, and *STV* (the latter is available in Minsk, in the regional capitals and some other areas).

No local broadcasting outlets are functioning in Belarus which would match the triple criteria of independence, that is, organizational, financial, and editorial autonomy. Although plenty of privately owned radio stations exist, they are all in entertainment, with no coverage of the political disputes in the country.

The Russian Federation TV Channels *NTV* and *RTR* are available in Belarus, but generally do not provide significant coverage of Belarusian political developments, and there has been an overall decrease in the audience share of Russian TV broadcasts in Belarus.

The state channels cover political developments in a homogenized way. The Ministry of Information develops themes that the media are encouraged to pursue. For example, it is offering a tender for the production of TV programmes dedicated to the following subjects:

- “Healthy Way of Living”;
- “The Spiritual Revival of Belarus”;
- “The Gifted Children of Belarus”;
- “The 60-th Anniversary of the Liberation of Belarus from the German-Fascist Invaders.”

The Representative visited the second national TV channel *ONT* which is 51 percent owned by the Ministry of Information.

The management at *ONT* insisted that they are a commercial station that did not receive any state funding. When asked if they were covering political developments and disputes in the country, they described themselves as a “broadcaster working in a stable country, and thus we report only on what is of interest to the majority of the population and not what concerns a small minority.”

The same was the fate, that is, lack of any coverage on *ONT* or on any of the TV channels of the country, of a several thousand-strong demonstration by local entrepreneurs on 10 February against the new VAT rules. It lasted many hours in front of the Parliament building during the visit of the Representative with Committee Chairman Kulakovsky.

(*Sovetskaya Belorussiya-Belarus Segodnya* did not cover the demonstration in its next day edition as a news event, but at least mentioned it in an opinion piece that praised the new tax regulations.)

ONT did show in 2004 the internationally controversial documentary, *The Road to Nowhere*, which was a scathing attack against the opposition. *ONT* management was not able to provide the Representative with the names of the producers of this programme which they obtained from “somewhere outside.”

Internet

The Government should be encouraged to refrain from Internet filtering and blocking activities. The dialogue on drafting Internet legislation in line with international standards initiated by the relevant Parliamentary Committee should be continued.

Belarus has one central Internet Service Provider, *Beltelecom*, controlled by the Ministry of Communications.

Although the Ministry of Communications is developing Internet access throughout the country, several problems have been mentioned to the Representative. For example, one needs to present an ID to use the Internet in a café.

According to *Digital Media News for Europe*, Beltelecom recently blocked access to both Belarusian and Russian sites. The Representative was told by the Minister of Communication, Mr. Goncharenko, that he is not aware of these cases. He assured the Representative that no filtering mechanisms are planned at the state provider.

Complying with the request by the Chairman of the Standing Committee for Human rights, National Relations and Media, Mr. Yuri Kulakovsky, the Representative offered his support to the Committee in its efforts to draft Internet legislation in line with international standards. The dialogue on this important matter is to be continued.

Recommendations

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- *Given the welcome fact of the visit and the high-level meetings in cooperative spirit, the OSCE Media Representative hopes that it marked the beginning of a dialogue between the Government of the Republic of Belarus and his Office.*
- *The OSCE Representative has offered his good offices to assist the Government in both immediate and long-term improvements in the media field. Apart from legal reforms, the Government is in the position to cease from one day to another several restrictive practices that are authorized but not prescribed under current regulations.*
- *The current Media Law allows the Government to be highly intrusive in the media field. The Ministry of Information has broad powers to sanction and it has been using these powers exceedingly in the past two years. The Ministry of Information should immediately cease the practice of issuing warnings and suspending newspapers.*
- *The Media Law should be liberalized. In this situation, the OSCE Representative has offered concrete forms of assistance to the Government in improving media-related legislation.*

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- *The most important source of information for the people of Belarus remains television. There is no independent nationwide TV Channel in Belarus; the two national TV channels, the two other TV Channels with large coverage, and the new satellite channel, Belarus TV, are either owned or controlled by the state. The Government should be urged to privatize one of the national channels, and allow the transformation of the other into an independent public broadcaster.*
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