



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

-CHECK AGAINST DELIVERY-

Vienna, 25 February 2005

Statement at the Fourth Winter Meeting of the OSCE Parliamentary Assembly

Ladies and Gentlemen,

It is with pleasure that I address you – the legislators of the OSCE participating States – on the subject of reforming defamation provisions in the OSCE area.

I would like to ask for your support of my campaign against criminal libel and insult laws and disproportionate civil damages. I hope that you as members of your national parliaments will convey my aspirations to your colleagues at home. I would like our co-operation to result in more speech-friendly legal frameworks across the OSCE area.

I assume that many people in this hall do not like dealing with journalists. Journalists may misquote you, violate your privacy or just be irritating. However, most of you learned how to live with this, having realized that such is your faith as public servants.

Still, criminal defamation laws remain the major instrument of oppression which is constantly used against journalists and editors in the OSCE area. Most criminal charges brought against them are based on libel and insult laws. Defamation is the most common reason of putting media workers in prison.

Here are our standards:

Based on Article 19 of the Universal Declaration of Human Rights, Article 10 of the European Convention of Human Rights and the constitutional principle of freedom of expression - the cornerstone of all modern democracies - the European Court of Human Rights, the US Supreme Court, the UN Rapporteur on Freedom of Opinion and Expression, the OAS Special Rapporteur on Freedom of Expression, the OSCE Representative on Freedom of the Media, constitutional and supreme courts of many countries, and respected international media NGOs have repeatedly stated that criminal defamation laws are not acceptable in modern democracies. These laws directly threaten free speech and inhibit discussion of important public issues by practically penalizing political discourse.

The solution that all of them prefer and propose is to transfer the handling of libel and defamation from the criminal domain to the civil law domain.

The European Court of Human Rights **always** finds imprisonment a disproportionate punishment for libel and insult.

First of all, I have some good news for you. I am pleased to announce that most of the OSCE participating States have realized that their criminal libel and insult laws must be changed.

It takes much time and effort to change one's mind, but even more to change the law in the books. However, we can work on this together and I believe that we will succeed!

In 1997, when the post of the OSCE Representative on Freedom of the Media was established, there was only one country in the OSCE area which did not envisage criminal liability for defamation at the federal level: the United States of America.

Since then – within only five years – five more states have taken criminal libel off their books. They are Bosnia and Herzegovina, Cyprus, Georgia, Moldova and Ukraine. This vanguard of the OSCE participating States have liberated their journalists from fear of criminal prosecution for their words.

In those countries where criminal defamation laws are applied, the number of cases against journalists has been growing. My office found out that at least 30 thousand people in the OSCE area have been convicted for libel and insult under criminal charges within two and a half years. This amount includes both journalists and non-journalists.

My optimism is boosted by the results of the comprehensive study on defamation provisions and court practices in the OSCE area. It revealed a few remarkable trends that I would like to share with you.

First of all, around 70 per cent of the OSCE participating States have realised that the application of their obsolete defamation laws is against free speech. They have been, to different extents, involved in reform liberalizing their defamation legislation within the past ten years. However, understandably, initiating an abolition of these laws is a lengthy process.

Second, the liberalization is continuing, with current plans to amend criminal provisions in at least 14 OSCE participating States.

Third, only nine out of the 55 countries of the OSCE region admitted having applied the actual incarceration for defamation. This shows that actual court practices in most of the countries of the OSCE area follow the case law of the European Court of Human Rights. The Court has always ruled against imprisonment as a disproportionate punishment for libel and insult.

To promote full decriminalisation is a mighty task and here the role of stakeholders – members of parliament, local journalistic community, and media NGOs, – is hard to overestimate.

For many evolving democracies adopting liberal libel legislation is vital for enhancing their democratic status. Remarkably, it is them who have taken the lead in decriminalizing defamation.

I call on the members of the European Union to abolish all their criminal libel and insult laws. Even though they rarely, if ever, apply these laws, their mere existence allows new democracies to use this fact to justify having similar laws on their books and applying them. The possibility for them to point fingers at the established democracies should be eliminated.

Unfortunately, two new EU members - my home country Hungary and Poland - have recently applied criminal libel laws. I ask these countries to stop this practise.

For those countries who have the wish to decriminalise libel and insult, my Office is always there to assist: through dialogue with state officials, MPs, partner international organisations and journalists; intervening in individual criminal defamation cases; and reviewing current and draft legislation.

We have also prepared some useful tools to assist reform. The comprehensive study – the Matrix - of criminal and civil defamation provisions and court practices will be accessible on our web site from March 2005. The Matrix is a database which provides reference to experiences of handling defamation cases across the OSCE region and is a good aide for research and highlighting best practices.

I ask you to take an active approach in decriminalization of defamation in your countries and on inter-parliamentary level and I hope that your joint effort will yield positive results in the near future.

I wish all of us success in our important endeavour.

Thank you!

ADDENDUM

Excerpts from Final Declarations of the OSCE Parliamentary Assembly concerning defamation

[The OSCE PA] Recognizes that the maintenance of a free, open and democratic society requires the widest possible latitude for freedom of speech and expression, for the media and for society as a whole. Accordingly, laws which provide criminal penalties for the defamation of public figures, or which penalize the defamation of the State, State organs, or public officials as such, chill free speech and undermine democracy and should be repealed where they exist;

Warsaw Declaration of the OSCE Parliamentary Assembly, 1997

Noting that laws which provide criminal penalties for the defamation of public figures, or which penalise the defamation of the State, State organs, or public officials as such, are used to target journalists investigating corruption; reiterating the call from the Warsaw Declaration for participating States that have not already done so to repeal laws which provide criminal penalties for the defamation of public figures, or which penalise the defamation of the State, State organs or public officials as such;

Bucharest Declaration of the OSCE Parliamentary Assembly, 2000

[The OSCE PA] Calls for the elimination of all defamation and insult laws which aim specifically to shield public officials from criticism, believing that such laws severely inhibit free expression and open public debate, and contravene commitments to freedom of expression contained in OSCE and other international agreements;

Paris Declaration of the OSCE Parliamentary Assembly, 2001