

FREEDOM OF THE MEDIA IN THE OSCE REGION (PART II)

HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE ONE HUNDRED TENTH CONGRESS FIRST SESSION

DECEMBER 13, 2007

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**FREEDOM OF THE MEDIA IN THE OSCE REGION
(PART II)**

DECEMBER 13, 2007

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FREEDOM OF THE MEDIA IN THE OSCE REGION (PART II)

December 13, 2007

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The hearing was held at 10 a.m. in room B-318 of the Rayburn House Office Building, Washington, DC, Hon. Alcee L. Hastings, Chairman, Commission on Security and Cooperation in Europe, presiding.

Commissioners present: Hon. Alcee L. Hastings, Chairman, Commission on Security and Cooperation in Europe; Hon. Mike McIntyre, Commissioner, Commission on Security and Cooperation in Europe; and Hon. Robert B. Anderholt, Commissioner, Commission on Security and Cooperation in Europe.

Witness present: Miklos Haraszti, Representative on Freedom of the Media for the Organization for Security and Cooperation in Europe (OSCE).

HON. ALCEE L. HASTINGS, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. HASTINGS. Well, it's 10 o'clock by the clock, so I'm going to gavel this hearing into session.

And I'm going to abbreviate my remarks because I find that I'm going to need to be on the floor of the House of Representatives.

It's a pleasure, though and I would be terribly remiss if I didn't welcome our distinguished and impressive panel, including a good friend of mine who is with us, and that's Mr. Haraszti, Miklos Haraszti.

We had a hearing earlier, that he was unable to attend, and I am just delighted that he is able to be with us today and appreciate that you've traveled a long distance for the purpose of testifying before the Commission.

Mr. Haraszti's background has been placed on our table outside, and I invite any and all of our audience to please pick up a copy.

The circumstances we come here to discuss—I am deeply troubled by the progressive deterioration of freedom of the media in a number of countries.

And far be it from me to go into details. I think I would cover much of what the witness will say. But it is so important, in my view, that every democracy, even well-established democracies, do have room for improvement. And I believe the United States is one of those places.

That's why I support the shield law. And several of my colleagues—398 of them, as a matter of fact—participated in voting for such a law. And we find that companion bill has been filed in the Senate Judiciary Committee, and I hope we'll soon see this legislation passed into law.

Mr. Haraszti, I think you have your work cut out for you. If I were to select countries ranging from Azerbaijan, to Russia, to Turkmenistan, to Uzbekistan, and—Kazakhstan, who just been chosen to serve as Chair-in-Office—all of them having great needs.

And I think you know that I'm en route, as the lead election observer for the Parliamentary Assembly, to the Georgia elections and our concerns there.

I'd also like to welcome Mr. Roland Bless and Christian Moeller. And thank you. It's a long ways across that Atlantic Ocean, and we are deeply appreciative.

So with that, I'll include my full statement in the record, and I'll invite you, Mr. Haraszti, now to make your opening remarks.

And when one or both or others of my colleagues come and you see me take my leave, do not take offense as I merely am going to discharge responsibilities on the floor of the House of Representatives.

Please, sir. You have the floor.

MIKLOS HARASZTI, REPRESENTATIVE ON FREEDOM OF THE MEDIA FOR THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)

Mr. HARASZTI. Thank you, my dear colleague, Commissioner Hastings, Chairman Hastings, if I may call you a colleague, as we have been engaged with OSCE for a very long time, and for the same noble cause.

Mr. Chairman, ladies and gentlemen, I would like to thank you for the opportunity to speak before the U.S. Helsinki Commission. The invitation is indicative of the importance you attach to media freedom issues in the OSCE region.

I would like to be on record with a personal remark dictated by my own background. I would like to thank the Helsinki Commission for their work leading up to the democratization wave in Central Europe around 1989.

The persecuted pioneers of freedom of speech, the makers of the free press that had no choice but to operate clandestinely in Poland, in Hungary, in Czechoslovakia and in the Soviet Union, could always count on the vigilant support of the Helsinki Commission.

As I have since become a mandated operative of the same Helsinki process, caring about free speech, I'm still—the Samizdat activist in me is still—inspired by the work done by your Commission, a work that began to bear fruit even before OSCE was created.

Ladies and gentlemen, I would like to list very briefly the gravest dangers looming for media freedom in the OSCE area—not all of them; only some of them. And I would like to speak later on about OSCE's clout.

As danger No. 1, I would name violence against journalists. There's only one thing more intimidating for free speech than harassment, physical attacks and even murder of media workers, and

this is when governments tolerate harassment, attacks, and murders.

I would like to pay tribute to the wonderful journalists, the best of their early democratic generation—the Huseynovs, the Politkovskayas, the Dinks—who have been fallen victim to a war on journalism in peacetime.

Of course, I am not claiming that governments like those of Azerbaijan, Russia, Turkey, for instance, were actually involved in the killings.

But I do submit that governmental sins in the handling of the free and independent media are encapsulated in the problem of violence against journalists as the actual root causes in violence's genesis and evolution.

Some of these sins are impunity for assault against journalists, the criminal handling of journalism, the criminalization of journalism's mistakes, and the discrimination against the fragile independent press.

All major victims of violence against journalists happened to work in the independent press. And this list is not exhaustive at all.

A second grave danger is that in many participating States governmental influence over broadcasting, favoritism toward the still-existing state-owned press, and administrative discrimination against the non-governmental media considerably restrict pluralism.

Lack of pluralism is the second gravest problem in many of the new democracies.

Third, as I mentioned already, criminalization of mistakes committed by journalists—defamation, libel, and insult. I believe that criminalization of journalists' mistakes is nothing but criminalization of journalism itself.

In 21st century democracies, these offenses should be handled in the civil-law domain for the sake of an uninhibited discussion of public issues.

And of course, equally oppressive is the still-ongoing habit of lending elevated protection to high-ups in terms of verbal offenses, kind of "lese majeste" type of rules still existing in the OSCE area.

Then something that is nearer home here in the United States, several governments do punish journalists for unearthing governmental data—citing security concerns, for example.

In many new democracies, journalists are still punished for breach of secrecy, which should be a crime that can only be committed by the officials who were entitled to hold those secrets, to care about the classified data.

But in many western democracies, actually, journalists are still forced to reveal their confidential sources of information, and law-enforcement agencies and courts enforce their giving up the sources.

I believe that both approaches endanger investigative journalism, which is one of the foundations of the role of the press in a democratic society.

Finally, let me mention that the otherwise legitimate expectation that the media should be culturally sensitive has resulted in increased attempts to label offending or critical views as criminally

punishable extremism or hate speech, an excess of speech regulation that is spreading across borders in many participating States.

There is the danger of reining in the Internet. It is the most important source of varied, diverse information and, indeed, the only remaining source of diverse information in many participating States, and it is under attack both legislatively and operationally, endangering not only the present but also the future of free media.

Mr. HASTINGS. If I could interrupt you just a minute, maybe we can just take a 5-minute recess, and I am called to the floor right away.

I'm fond of saying—and the young staff people that work with me get tired of me saying it—it's hard to apologize for working, you know, but there are so many things I want to ask.

And I would most respectfully ask that you cover those issues dealing with the recent Russian elections, and going into more specifics if you can regarding countries like Spain and the Czech Republic that ban symbols of hate.

And of course, what is the status of Turkey's amending its law—I believe it's Article 301—in their parliament regarding "Turkishness?"

And then, of course, since I'm going to Georgia, I really would appreciate it, and staff and others will pick up on it, your assessment of where they are in the run-up to their January 5th election.

And if you would let me take my leave, I'll come back as soon as I can, but I'm going to go over here and discharge other responsibilities.

So we'll stand in recess for 5 minutes. I expect one of my colleagues will be here—

Mr. HARASZTI. Thank you.

Mr. HASTINGS [continuing]. And resume.

Mr. HARASZTI. No need to apologize for doing good work.

[Recess.]

Mr. MCINTYRE. I'll reconvene, and I'm Congressman Mike McIntyre, a member of the Helsinki Commission, and I just passed Chairman Hastings in the hall, literally. We were trying to time it and did almost perfectly, within a matter of seconds.

I'm coming from an Armed Services hearing, and he has to make his way to the floor.

We would like to continue with this Commission hearing so as not to delay, and I know the opening statement was in progress. We apologize for the inconvenience, but you may continue, sir.

Mr. HARASZTI. I just listed the major dangers that loom, based on my practice, over media freedom in the OSCE area.

I ended up by citing the danger of legislative and operational control over the Internet, which endangers not only the present but also the future of media freedom.

And finally, as a seemingly less important point, let me mention the proliferation of arbitrary speech bans, in connection, but not only in that respect, with historical events. I believe the proliferation of this type of speech bans about history debate weakens international standards on free debate and actually create new tensions between nationalities and countries.

Let me tell you a little bit about the way we work and about OSCE itself. I have seen—during the recent years—a serious drawback for media freedoms in several countries.

It is happening roughly since the so-called color revolutions. I believe it is not an exaggeration to speak about a veritable counter-revolution against independent media in several participating States.

This backlash against liberalization takes a particularly harsh form in the case of independent papers, individual journalists who dare to speak out, while the suppression of diversities is less overt but not less devastating in the case of the broadcast news media, the source of information on public affairs for most people.

In the case of broadcasting, the preclusion of pluralism is already taking place at the legal and at the institutional levels—for example, by not allowing for the transformation of the state media into public-service independent media, by not licensing out frequencies or, if licensing is happening, then, by guiding the licensing process so that licenses land with family members, cronies, or business people sufficiently intimidated to go with the tide.

Now, of course, in our work we acknowledge the necessity for a longer period of maturation. Freedom of media is a very delicate business. It has its own sociological foundation.

And we, of course, acknowledge the cruel fact that many governments and societies in the OSCE area have emerged from communicational dictatorships of the one-party systems.

It may take generations and several peaceful changes of government at the will of the electorate until self-restraint vis-a-vis the press becomes culture.

And it takes an equally long period perhaps until the media themselves learn to appreciate the enormous power of professionalism in terms of gaining support from society.

However, notwithstanding the belief in the educational power and force of time, the way forward inside the OSCE area is clearly charted in the commitments. The participating States have taken on those commitments and agreed upon them.

And the OSCE's media freedom institution, while it does not insist on overnight completion of generations' work, we certainly reserve the right to protest when participating state abandon or violate their own commitments.

Let me make a statement about the future of the OSCE. There was much discussion about that recently—because of Kazakhstan's chairmanship which finally will take shape in 2010—about the importance of the commitments.

I would like to subscribe to the enormous importance of the commitments. OSCE remains the wonderful club of the democracies of the northern hemisphere only if its work will continue to revolve around the commitments that the participating States have taken.

And equally crucial is the independence, autonomy, and strong leadership in terms of compliance with commitments, in the three institutions of the “human dimension.”

If the autonomy and the principal work of these three institutions mandated to point out cases of noncompliance with the commitments remain strong and safeguarded, then I believe all chairmanships by any OSCE nation can only be positive.

But that is a very strong precondition, I believe, which should be safeguarded in a very strong way by the participating States and by your own country.

Let me skip a lot of the statement which I prepared about the way we work, and let me come finally to some problems inside individual countries.

I would like to start this with the country that invited me to speak now, and then let the rest of it come out through actual questions.

Ladies and gentlemen, it mustn't be surprise to you that I do find shortcomings with media freedom also in your country.

Actually, since 2000, the almost unimaginable has happened: several journalists in the United States were incarcerated, on the surface for contempt of court, but, in fact, for refusing to disclose the confidential sources of their reporting.

I have called several times on the Congress to pass a Federal shield law similar to some that already exist in the OSCE area and which actually exist in the overwhelming majority of the individual States of the United States of America themselves.

It is precisely because of this deficiency on the Federal level that I greeted the introduction into Congress of the Free Flow of Information Act by the House which was successful, finally, this year.

And I greet the fact that a similar bill is introduced by the Judiciary Committee of the Senate. I also greet the fact that these initiatives are happening on a bipartisan basis.

I believe that this act would be an important building block of the framework that protects freedom of the media. And I encourage adoption of this piece of legislation as soon as possible.

I also have some recommendations to it, as the basic way of operation when we assess media-freedom problems is always coming up with recommendations at the same time.

In the case this act would undergo an amendment process, I believe that the original text could even be improved by two points.

I believe that criminal proceedings in which journalists can be forced to disclose their sources as a matter of exception—these cases must be clearly limited to really severe crimes.

And second, the categories of journalists who enjoy the right to protect their sources should be broadened, I believe. We see more and more citizen journalism as user-generated media content becomes a driving business force.

And as traditional boundaries fall, citizen journalists should also deserve the First Amendment protection because functionally they are journalists: they supply society with public-interest content, with public-interest information.

In my work, we see several bad fashions of restriction of journalism spreading over the border lines. These restrictions don't happen inside one nation only.

Of course, the most dangerous one is the habit of killing of journalists, contracted killing especially. I happen to believe that threatening journalists with violence, even with killing, may even happen on a seemingly noble basis, for seemingly religious purposes.

We saw that journalists in the OSCE area have been threatened by so-called fatwas which actually prompted them to hide, and I

don't see vigorous enough protection against that great international danger.

A similarly international wave of oppression is the administrative mishandling of journalists, especially like registration and re-registration schemes, in the case of some new democracies.

Those administrative schemes are designed to make the lives of independent editors unbearable, and with great success.

Another example is the so-called extremism legislation, loose collections of arbitrary speech bans that punish coverage of sensitive topics under the pretext of fighting terrorism and hate speech. That is also a feature in some new democracies.

And that's why I mentioned the protection of sources issue. That, too, is a habit that spreads over the border lines.

And that is almost a kind of luxury thing to have, because obviously, the deficiencies of protection of sources of journalism is something that makes sense only in countries where journalism is kicking, journalism is alive, and investigative journalism is a factor in public life.

Nevertheless, the prosecutorial habit of pursuing journalists in the first place, when it comes to plugging of leaks, instead of going after the real perpetrators, the persons who have released the secrets that were under their guardianship, is a fashion in old, established democracies, to the proliferation of which, unfortunately, U.S. prosecutors and courts have substantially contributed.

I'm sure that in your questions you would be interested in other individual trends in individual participating States, and I look forward to the discussion.

Mr. MCINTYRE. Thank you. Thank you very much for your testimony.

Let me ask you about that—you mentioned the shield laws and your support for the adoption of a shield law in the United States at the Federal level, which is being done in many States individually already.

Are there many OSCE countries that currently have shield laws? And if so, how many?

Mr. HARASZTI. Well, we published a survey about access to information to governmental data, and there we surveyed the protection of sources regulation in many countries.

And we found that protection of sources is mentioned in the overwhelming majority of the legislation of participating States, but actually quite a few only protect journalists from enforcement by the judiciary of their sources.

Mr. MCINTYRE. All right.

Mr. HARASZTI. One exemplary comprehensive shield law is, for example, that of Belgium that was passed in 2006 which we greeted very warmly.

And equally efficient protection of sources is provided in laws that are attached to other legislation in many countries, either to media laws or to the punitive provisions—to the criminal code.

Nevertheless, it is happening in most Western European countries. There are very efficient forms of it in Austria and in Belgium.

If you look at our Web site, we actually asked very much the passing of the same type of law from France yesterday, because one

of those prosecutorial acts against journalists, that of *Le Monde*, happened a week ago.

Using this occasion, we asked France to deliver on the promise made by President Sarkozy in the electoral campaign leading up to his presidency when he said he would be active in making legislation pass on a comprehensive shield law.

Mr. MCINTYRE. OK. But I want to be clear for the record. So the countries in the OSCE that have the type of shield law that you think would be helpful in the United States—how many countries have that?

Two? Just Belgium and France, and others mention it? Or are you—because you drew a distinction between those that are judicially enforced and others that just—you said the overwhelming number mention it.

But how many actually have a law like you would see—

Mr. HARASZTI. I would not be able to come up with the exact number right now, but I will have to consult our own survey, which we published. It's on our Web site.

Mr. MCINTYRE. OK.

Mr. HARASZTI. But the point is that—

Mr. MCINTYRE. If you could find that, that would help.

Mr. HARASZTI. Yes.

Mr. MCINTYRE. And it doesn't mean that we have to wait on X number of countries for the United States to do something.

It would just be helpful to know, especially if we discuss this here in the Congress of the United States—to know how many countries—if we have a chart that we can explain to our colleagues, or discuss in a committee hearing, or bring up on the floor of the Congress, the House or the Senate, the discussion of how many countries have the type of law that you're talking about.

Mr. HARASZTI. Sir, I exactly know that either in statutory or on a precedent basis 50 States of the United States have it. So you don't have to go to Europe for finding forms of shield law to study.

Mr. MCINTYRE. Right.

Mr. HARASZTI. Inside the United States you have 50 of them.

Mr. MCINTYRE. Right. Yes. I was obviously referring to the perspective from us as Helsinki Commissioners. But if you can still provide that information, that would be helpful.

Let me ask you about another issue. Kazakhstan, of course, is where the OSCE Parliamentary Assembly summer meeting is scheduled to be held in 2008.

And the question will be do you feel like that with them being in a position to host us and receiving the approval to serve as OSCE Chair-in-Office in the year 2010—do you feel like they have the type of status that you would like to see in the countries when you talk about freedom of the media?

Mr. HARASZTI. As I already said in my initial statement, I believe that even if it's a fact of life that freedom of the media in Kazakhstan needs to be improved substantially, the very fact that that work has to be done should not necessarily affect the efficiency of OSCE in the case that deficiency is not spreading over the work of the institutions that care about media freedom.

But answering your question, yes, substantial improvement is needed in Kazakhstan.

Mr. MCINTYRE. Can you tell us some concrete steps that—you think—step one, step two, step three—that would help improve the freedom in Kazakhstan for media?

Mr. HARASZTI. When Minister of Information Ertisbaev visited Vienna and made a speech in the Permanent Council asking OSCE to accept his country's chairmanship bid, he pledged several reforms.

And at that time, I greeted his pledges and I specified in a statement, which is on our Web site, the four most important things that have to be done in Kazakhstan in order to comply with at least the basic commitments in the domain of free speech.

Decriminalization of the handling of journalist mistakes is absolutely necessary, as Kazakhstan is a country that persecutes journalists based on the criminal code, not only for libel, defamation, and the like, but also, for example, for the insult of the president.

Kazakhstan—this is the second very important point—still has to abolish insult provisions that protect officials in an elevated manner as a crime above ordinary crimes.

It has to ease up substantially the administrative framework of handling of the media, and in numerous statements we specified the details of how it has to be done.

It is about registration and re-registration of the print media. It is about the way licensing is done. And there are many, many details that we are ready to provide when it comes to the actual work of reform.

And an absolutely basic thing, actually typical not only for Kazakhstan, quite typical for many CIS countries: the country has to enhance pluralism of the press, especially in broadcasting.

Broadcasting in Kazakhstan is firmly in governmental hands. Even if privatization of the waves did happen, even if it on the surface does have privately owned broadcast media, but the editorial content of that media is not diverse. It is overwhelmingly either pro-governmental or non-political.

Very simply, we heard of attempts—actually, in a statement from the above-mentioned Minister of Information—of designs at curbing the Internet media. We offered Kazakhstan expert opinion on how to do this in order to keep the Internet free, and we hope that the new proposed legislation about the Internet will not be restrictive.

Let me finally mention that about 3 weeks ago we sent an expert to Astana, who sat down with the Minister of Information's, and the Minister of Interior's experts—to specify what kind of reform would be needed in the criminal code to decriminalize the handling of journalistic offenses.

They seemed to agree about at least of deprivatization, if you understand what I mean: it is not decriminalization, but removing the danger of prison sentences from over the heads of journalists.

And they proposed the new draft for about—very quickly, but it has not materialized yet. We are still waiting for the new draft, and we are happy to review it again.

Mr. MCINTYRE. All right. Let me ask you—I'm changing gears. We all were quite interested in the Russian elections recently—in fact, we had a hearing before this Commission within the last few days.

You have written that the—and asked that the new state Duma in Russia ensure the right of the media to provide balance and objective information.

Let me ask you, from an analysis standpoint, do you think that the problem in Russia is that the media does not have the right to provide balanced and objective coverage, or that the management of the media itself is just not inclined to provide such coverage?

Mr. HARASZTI. Well, the situation is quite different regarding broadcasting and the print press. Broadcasting is even more firmly in governmental hands than in Kazakhstan.

Broadcasting is also plagued in the Russian Federation by the extremely low number of nationwide channels. That gigantic country has three or four nationwide channels only, based on classic surface frequencies.

The territory, the vastness of territory, would have allowed for much more, but right now we are already approaching the digital era which is coming with an increase of terrestrial channels.

And I believe that the licensing which finally should begin, should be at the same time eased up considerably, given the ease of setting up of new channels in the digital era, and given the fact that that proliferation of channels is a guarantee for pluralism itself.

On the other hand, there is no public service broadcasting in government, independent public service broadcasting, in the Russian Federation, which is quite essential for new democracies, I believe. There are two state-owned channels.

And answering your question, the management in those channels itself cares about content. It's a line of command because they are simply state-owned channels.

So the question is not whether they are stopped from providing varied, diverse information or whether it's their own choice, because they are inside the governmental line of command.

There are one or two channels that can be called privately owned, but content there is quite restricted.

When it comes to the print press, it is alive and kicking and business-based in the Russian Federation. But ownership changes might have resulted in a self-censorial effect over the time, which prompt editors there to be cautious when it comes to critical stuff.

This is the effect to which I ascribe the fact that content in the print press is much less varied, much less diverse, than it could be based on the sheer ownership structure, which is still quite diverse and still quite pluralistic.

There is a trend in the Russian Federation that seemingly, legally speaking, privately owned, but, in fact, government-owned media firms are buying up media.

The most famous of this type of purchase of media is done by Gazprom-Media. Legally speaking, in Russia it is a private firm when it comes to purchase, but, in fact, it is government-owned through its parent company, which is Gazprom itself.

I read with interest the news that Mr. Medvedev was named 2 days ago as one of the candidates for the Presidency. He's the head of Gazprom and so of Gazprom-Media at the same time.

So he could be a very influential person in diversifying Gazprom-Media, maybe privatizing the outlets again, and thereby contributing to a veritable pluralism in the Russian media scene.

Mr. MCINTYRE. Thank you very much.

We've been joined by Commissioner Robert Aderholt.

And, Mr. Aderholt, I don't know if you'd like to make any opening statement or comment. You're welcome to.

Mr. ADERHOLT. Go ahead. I'll have probably some questions here in a minute.

Mr. MCINTYRE. OK.

Mr. ADERHOLT. But go ahead.

Mr. MCINTYRE. Let me mention, thank you for your earlier statement. Without objection, your full statement will be made a part of the record.

And I appreciate your going through some of the questions that I've had. I want to ask you about Belarus. And we'll make this short, since the bells are ringing.

If you can just tell us what you would consider the current media environment in Belarus, we've had a hearing recently on Belarus as well and have been very concerned about expressions of freedom.

I, in particular on Belarus, had the opportunity to introduce a religious freedom amendment when we had our OSCE PA annual meeting in Ukraine this past summer.

With regard to media freedom, do you assess the environment in Belarus to be very harsh, to be improving, or to be worsening?

Mr. HARASZTI. I have to stress that there is contact between my office and the Government of Belarus which is a fact that I greet. There is some cooperation.

I was able to go to Belarus early in the second year of my holding of this office, and I produced a comprehensive report about the state of media freedom in Belarus which, answering your actual question, unfortunately is still valid in many aspect.

The findings of that report and the don't-dos and the dos are very much still the same regarding Belarus. Let me give you a very brief list of problems.

The current media law allows the government to be highly intrusive in the media field. It empowers the Minister of Information with a warning power, the repetition of which twice is already legally sufficient to close down any media outlet in the country.

Second, there is no independent nationwide TV channel in Belarus.

Third, Belarus has harsh libel and insult legislation which it actually regularly applies.

The state media, even in the print press field, is still existent in Belarus, something that advanced democracies simply don't have. And as I mentioned, we don't demand participating States to do generations' work overnight.

These are countries which inherited a hundred-per cent media ownership from Communism and it's understandable if they still have state-owned print press.

But what we demand is that, conforming to the spirit of commitments, there is no administrative discrimination against the fragile independent press.

Now, in Belarus, this is actually very much the case. The state media is heavily subsidized by the government. But even the slightest formalistic mistake at the registration or re-registration of the independent press is punished with a warning, the second of which can result in actually stopping the media outlet to go.

Distribution, like subscription service, printing services, are fully centralized, and deficiency in complying with the regulations in one field of this infrastructure of the print press results in consequences in other fields.

So the environment is still heavily restricted.

Mr. MCINTYRE. Let me ask you to pause just a moment. Because we're getting ready to have to go to votes, I do want to yield now to Mr. Aderholt, or we may run out of time.

If you'd like to ask a question for the record—

Mr. ADERHOLT. Sure. Yes. Thank you.

Thanks for being here this morning. And one of the issues that's been on a lot of people's minds has been Azerbaijan.

And according to the Committee to Protect Journalists, Azerbaijan remains the leading jailer of journalists in Europe and Central Asia and has the fifth-highest number of reporters behind bars worldwide.

The Committee to Protect Journalists also cites that the country is one of the world's top backsliders on press freedom. Just what's your thoughts as far as the background on this? And why do you think Azerbaijan has so many journalists that are in jail?

Mr. MCINTYRE. You've got about 3 minutes.

Mr. HARASZTI. Oh, thank you for that timeframe. That is very helpful.

It is an enigma to me as well, given the fact that the president of Azerbaijan, Mr. Ilham Aliyev, beginning with 2004, has asked his officials not to sue journalists, and that political moratorium over application of criminal form of libel, criminalization of journalists' mistakes, was in vigor for a whole year.

So Azerbaijan actually knows that criminalization of journalists' mistakes and putting journalists into jail is wrong, since the president himself asked the officials of the country not to sue journalists.

But that only political moratorium practically stopped beginning in 2006, and since then the country has embarked on a massive repressive wave against journalists, landing them in prison for libel, for defamation and for many other reasons.

Lately it has started to imprison critically minded journalists for seemingly non-journalistic reasons, citing other types of crimes.

But the people affected by those measures are quite typically the critically minded journalists, so we sadly have to suppose that it is the same wave continuing.

And I believe that the way out would be to make the president's earlier political call for a moratorium on application of the criminal code against journalists, to make it a legally binding moratorium.

And in the meantime the legislation could start a reform that would decriminalize libel, defamation and, generally speaking, put the handling of so-called journalistic mistakes into the civil-law domain.

That would be the legislative reform which we recommend to Azerbaijan, and we dearly hope it would embark on that reform.

Mr. MCINTYRE. Thank you. Thank you very much.

Regrettably, we'll have to conclude this hearing because of the votes. There are a series of votes pending right now in the House that may take a while, so we will have to conclude the hearing.

We would ask that if you have questions that we could submit them to you, and I know others here may have some questions that they would like to submit.

Would you be willing to answer questions that are submitted to you for the record?

Mr. HARASZTI. Of course.

Mr. MCINTYRE. All right. Thank you very much. Thank you for your willingness to come and testify.

Thanks to our audience for being here today.

The hearing stands adjourned.

[Whereupon, at 10:54 a.m., the hearing was adjourned.]

APPENDICES

PREPARED STATEMENT OF HON. ALCEE L. HASTINGS, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Earlier this year, on August 2, the Helsinki Commission held a hearing on “freedom of the media in the OSCE region.” At that time, we heard from a distinguished and impressive panel of non-governmental representatives including both journalists and representatives of organizations that monitor media freedom. At that time, we had also invited Miklos Haraszti, the OSCE Representative on Freedom of the Media, to participate in that hearing.

Although he was unable to join us at that time, he is here with us today and we very much appreciate that he has traveled a long distance for the purpose of testifying before this Commission and sharing his insights with us and drawing on his work not only at the OSCE, but on his personal experience as writer and editor.

Mr. Haraszti’s biography has been made available on the table outside this hearing room and I am not going to read it aloud now. However, I would like to note that he is a man of tremendous personal integrity and the OSCE is fortunate to have someone with his capabilities serving the institution.

This is especially so because his mandate relates to one of the most fundamental human rights—the right to freedom of the media—and a right that is considered a corner stone for every democracy.

And the fact is, there is an enormous amount for us to discuss today, and I’d like to just touch on a few of the issues that have been of particular concern to the Commission.

First, I am greatly concerned about the instances of violence and even murder perpetrated against journalists in connection with their professional responsibilities. The assassination of Anna Politkovskaya is perhaps the best-known—but not the only—case of this kind.

Second, I am deeply troubled by the progressive deterioration of freedom of the media in Azerbaijan. At present, nine journalists are in jail there—more than in any other OSCE country—and there has been a series of physical attacks and fines on journalists. Over 20 journalists from Azerbaijan have openly sought political asylum abroad to protest the worsening conditions in the country. The recent arrest and conviction of Mr. Ilgar Nasibov, a correspondent for RFE/RL’s Azeri service, is not only a breach of Azerbaijan’s commitment to freedom of the press, but undermines confidence in the judicial system of this OSCE participating State.

With respect to imprisoned journalists, it has been drawn to my attention that the Committee to Protect Journalists—one of the organizations that testified at our August hearing—has just issued a list of journalists imprisoned around the world. My staff has made an excerpt of that document, listing those who are held by OSCE participating States, and without objection this will be included in the record.

Third, I am deeply interested in the challenge that OSCE countries face as they seek to combat anti-Semitism, racism and other forms of intolerance—while at the same time protecting freedom of the media and freedom of speech. In fact, in November, I chaired a briefing on combating hate crimes and discrimination, and this issue was discussed there as well.

In many ways, the controversy and violence which erupted in 2005 after the publication in a Danish newspaper of cartoons portraying the prophet Mohammed forced this debate to center stage. And I have to say that I was interested to see the large number of free speech advocates that suddenly seemed to emerge in Europe in the face of so many calls to censor these cartoons. The eruption of a second “cartoon controversy” earlier this year in Sweden following the publication of another depiction of Mohammed there suggests that we may be grappling with these issues for some time to come.

In this regard, I want to express my concern for those instances where hate speech or anti-extremism laws are used to punish disfavored or merely controversial speech. I believe it is especially incumbent on those of us who are truly concerned with manifestations of intolerance to speak out when we see “hate speech” laws abused for political purposes.

Finally, I want to commend you for your support for a federal shield law in the United States. When it comes to freedom of speech and freedom of the media, I believe the United States has a record of which we can truly be proud. But every democracy—even a well-established democracy—has room for improvement and I believe the United States would benefit from having a shield law. For this reason, I joined 398 of my colleagues in the House in voting for such a bill. A companion bill has been voted out of the Senate Judiciary Committee and I hope we will see this legislation signed into law.

Mr. Haraszti, I think you have your work cut out for you, and we have a lot to discuss this morning. It is a great privilege to have you with us and I look forward to hearing from you.

PREPARED STATEMENT OF HON. BENJAMIN L. CARDIN, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Chairman Hastings, thank you for holding this hearing on one of the most basic and essential rights recognized by the international community and protected by the First Amendment of our own Constitution.

Let me begin by joining you in expressing deep concern about the arrest of Radio Free Europe/ Radio Liberty correspondent Ilgar Nasibov who, just a few days ago, was railroaded through kangaroo court proceedings and given a one-year suspended sentenced for criminal defamation. Azerbaijan has one of the most troubling records on freedom of the media in the OSCE region, with a trend line that seems to get worse over time. When we had our last media hearing in August, there were seven journalists in jail in Azerbaijan; today, there are nine.

Members of the Helsinki Commission have long called for all OSCE participating States to repeal criminal defamation and insult laws. The cases in Azerbaijan illustrate why those laws are so inimical to freedom of expression. I urge the leaders of Azerbaijan to repeal their criminal defamation and insult laws and release their imprisoned journalists.

I also want to join you in welcoming Miklos Haraszti here. You can write a great mandate for a high-level representative, but if you don't appoint the right person to the job, you won't get results. Mr. Haraszti is the right man for the right job and we are very glad to have you with us in Washington today.

Earlier this week, I chaired a Helsinki Commission field hearing on torture, held at the University of Maryland-College Park campus. After the hearing, Congressman Hastings and I had lunch with a group of students from the University and we talked about the problem of torture and other human rights issues. In the course of that discussion, several students remarked on the critical role the media plays in shaping public opinion on these matters. I was heartened by the observations of these young students in their intuitive appreciation for the importance and role of a free and independent media.

We live in interesting and challenging times marked by rapid globalization and have learned that developments in seemingly distant countries can have very real consequences right here at home. The Internet and other new technologies have created enormous opportunities for people to get information from an extraordinary array of sources. Clearly, maintaining access to the Internet free from government interference is important for freedom of the press, and I'm glad to see this is one of many issues that the Representative on Freedom of the Media is monitoring.

Welcome, Mr. Haraszti.

PREPARED STATEMENT OF MIKLOS HARASZTI, REPRESENTATIVE ON FREEDOM OF THE MEDIA, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

Mr. Chairman, Ladies and Gentlemen,

I would like to thank you for this opportunity to speak before the United States Helsinki Commission. This invitation is indicative of the importance you attach to media freedom issues in the OSCE region.

On a personal note, and as dictated by my background, I also would like to thank the Helsinki Commission for their work leading up to the democratization wave in Central Europe around 1989. The persecuted pioneers of freedom of speech, the makers of the free press that had no choice but to operate clandestinely in Poland, Czechoslovakia and Hungary, as well as in the Soviet Union, could always count on your vigilant support. I have since become a mandated operative of the still ongoing Helsinki process representing an OSCE institution devoted to free speech, but it is as a former Samizdat activist that I continue to be very much inspired by the work done by your Commission, work that began to bear fruit even before OSCE was created.

Ladies and Gentlemen,

First, allow me to provide you with a list of some of the gravest dangers looming for media freedom in the OSCE area.

- As danger number one, I would name violence against journalists. There is only one thing more intimidating for free speech than harassment, physical attacks and murder of media workers; this is when governments tolerate harassment, attacks and murders. I would like to pay tribute to the wonderful journalists, the best of their generation, the Huseynovs, Politkovskayas, Dinks, who have been falling victim to a war on journalism in peacetime. I do not claim that governments, those of Azerbaijan, Russia or Turkey for instance, were involved in these killings. But I do submit that governmental sins against the free media are encapsulated in the problem of violence against journalists as the root causes in its genesis and evolution. Some of these sins are: impunity for assaults against journalists, criminal handling of journalism, and discrimination against the independent press. But this list is by no means exhaustive.

- In several participating States media pluralism is considerably, and in some cases increasingly, restricted by undue governmental influence over broadcasting; by favouritism towards the still existing state-owned press and by administrative discrimination against the non-governmental media.

- Many participating States still criminalize professional mistakes committed by journalists, such as defamation, libel, or insult. Criminalization of journalists' errors is nothing but criminalization of journalism itself. In 21st century democracies, these offences should be handled in the civil law domain for the sake of an uninhibited discussion of public issues. Criminalization of libel and insult is the most common ground for imprisonment of journalists in the OSCE area. Equally oppressive is the ongoing habit of lending elevated protection from verbal criticism to heads of state and public officials.

- Several governments punish journalists for unearthing governmental data, citing security concerns. In many new democracies, journalists are punished for ‘breach of secrecy’, while in many Western democracies journalists are forced to reveal their sources to law enforcement agencies. Both approaches endanger investigative journalism—one of the media’s most precious services to society.

- In a world of dissolving boundaries, the otherwise legitimate expectation that the media should be culturally sensitive has resulted in increased attempts to label offending or critical views as criminally punishable ‘extremism’ or ‘hate speech’.

- While the Internet is becoming the most important source for diverse information (indeed the only remaining source in several countries), it is under attack both legislatively and operationally, endangering not only the present but also the future of media freedom.

- A proliferation of arbitrary speech bans in connection with historical events weakens international standards on free debate, and creates new tensions between nationalities and countries.

During my four years in office, I have witnessed quite a serious drawback for media freedoms in several countries. Roughly since the so-called coloured revolutions, a veritable ‘counter-revolution’ is enfolding against the independent media.

This backlash against liberalization takes a particularly harsh form when outspoken print outlets, web platforms, or individual journalists decide to cover sensitive issues or criticize the lack of progress attained in democratic development. Its instruments are bureaucratic harassment, administrative discrimination, overt criminalization and occasionally even violence. The new wave of repression sends intimidating messages to those who attempt to stray off the path of guided coverage.

Suppression of diversity is less overt but not less devastating in the case of the broadcast news media—the source of information on public affairs for most people. In the case of broadcasting, the preclusion of pluralism is already taking place at the legal and institutional levels: for example, by not allowing for the transformation into public-service media, independent from government; by not licensing out frequencies; or by guiding the licensing process so that the licenses land with family members, cronies, or business people sufficiently intimidated to go with the tide.

I acknowledge, of course, the necessity for a longer period of maturation in the delicate business of free speech. After all, many governments and societies in the OSCE area have emerged from dictatorships, and notably from the communicational dictatorships of the one-party states centred on ideology. It may take generations and several peaceful changes of government at the will of the electorate until self-restraint vis-à-vis the press becomes part and parcel of a nation’s political culture. An equally long period is needed until the media learns to appreciate the enormous power of professionalism in gaining societal support for press freedom.

However, notwithstanding the belief in the educational force of time, the way forward in the OSCE region is clearly charted in the commitments that the participating States have agreed upon. The OSCE media freedom institution does not insist on overnight com-

pletion of generations' work. But we certainly reserve the right to protest when participating States abandon or violate their own commitments.

To give an example, it is clear that in a democracy there is no place for any government-owned news media, certainly not in the print press. And yet there are many such state-owned outlets in the new democracies, which is understandable given that hardly more than a decade ago their governments inherited a media sector that was 100 percent state-owned. We cannot insist on their immediate privatization. But we certainly expect the governments to support privatization, at least step by step, and to assist the start-up of media businesses both by virtue of sensible laws and an encouraging governmental behaviour. And we do 'take arms against a sea of troubles' faced by the independent press 'by the law's delay, the insolence of office', i.e. by the unfortunately growing rather than diminishing inventory of bad laws and arbitrary abuse.

Below is a list of problematic trends by country, 2006–2007 (see Annex for a complete list of interventions 2004–2007 by country). Only countries where the RFOM intervened at least three times during the last two years are included:

- Azerbaijan (6)—Imprisonment of journalists for criminal defamation
- Belarus (4)—Administrative harassment
- Bulgaria (3)—violence against journalists
- France (3)—protection of sources, hate speech
- Kazakhstan (5)—closure of independent media outlets, restrictive media legislation
- Moldova (3)—independence of public service broadcasting
- Russian Federation (13)—Violence against journalists, administrative harassment
- Serbia/Montenegro (4)—violence against journalists
- Turkey (3)—criminal laws against hate speech, in particular Article 301 of the Penal Code
- Turkmenistan (3)—detained journalists, death in prison of journalist
- United States of America (3)—access to information, protection of sources
- Uzbekistan (4)—Systematic censorship, lack of independent media, esp. post-Andijan, no access to information

Let me add to the above listing the terrifying fact that one out five interventions had to be issued in cases of physical violence against journalists.

My office responded to these challenges not only with interventions, but also by embarking on relevant project activities.

We continued reaching out to journalists and to media NGOs. Our annual Central Asia and South Caucasus Media Conferences—important venues of assembly and debate for the journalists in both regions—are in their 9th and 4th years, respectively. Let me express our gratitude for the continued U.S. financial contributions for these important events.

In order to assist governments to comply with their commitments, we served them with legal reviews. The reviews are compiled by cutting-edge media reform experts.

We undertook assessment visits, which were followed up with comprehensive reports on the media freedom situation in the countries visited. Among these were Ukraine, Moldova (including a special feature on Transnistria), Italy, Bosnia and Herzegovina, Kosovo, Armenia, Belarus and the FYR Macedonia. We hope to continue this indispensable form of co-operation with governments whose invitation we still expect to arrive.

We produced special reports on quite a few typical danger areas, especially on administrative handling of the media, including: registration of the print press, handling of media during demonstrations and accreditation of journalists. Our office is about to prepare new special reports, notably on the governmental response to violence against journalists and on the proliferating extremism laws throughout the OSCE area.

We compiled reports focused on extraordinary events of media performance and handling of media in times of crisis. Such reports included the events of the Kosovo riots March 2004, the Beslan hostage taking tragedy in Russia 2004 and the events in the town of Andijan in Uzbekistan 2005.

My Office also did topical surveys, compiling existing legislation as well as administrative and court practice amongst the 56 participating States on libel and defamation, access to information, and self-regulation.

We always complement our reports with recommendations, offering down-to-earth, practical steps which are clearly relating to the relevant OSCE commitments and are not influenced by the politics of the day in those countries.

In addition, we continue to offer joint training programs for governmental spokespersons and media professionals in order to improve their interaction and to provide them with an understanding of modern, democratic standards of access to information.

My office also engaged in helping journalists to unite in their efforts to raise professional standards. We don't do this because we believe that journalistic quality is a pre-requisite for freedom of journalism. Quite to the contrary, we continue to point out that responsible journalism is only possible in conjunction with full freedom. But we also believe that professionalism strengthens the social standing of journalism. Such co-operation amongst journalists in the field of ethics is also a great training ground for their co-operation in demanding their legitimate rights from governments.

We continue to produce a variety of publications on media policy and advocacy. This year's production included 'Freedom and Responsibility', 'The Business of Media' and 'Governing the Internet'. A practical guide for journalists on media self-regulation is forthcoming.

Ladies and Gentlemen,

It will come as no surprise to you that I find shortcomings with media freedom also in your country. After the unimaginable happened, and several journalists in the United States were imprisoned (for 'contempt of court'; in fact for refusing to disclose the confidential sources of their reporting), I have called several times on the Congress to pass a federal shield law, similar to one which exists in Belgium, to name but one good example.

It is precisely because of this deficiency on the federal level that I greeted the introduction into Congress of the Free Flow of Information Act by the House, and of a similar bill by the Judiciary Committee of the Senate on a bipartisan basis.

This Act would be an important building block in the legal framework that protects freedom of the media, and I encourage you to adopt this piece of legislation as soon as possible.

However, should the drafts undergo amendments, I hope two important principles will be considered:

1. Criminal proceedings in which journalists can be forced to disclose their sources as a matter of exception must be clearly limited to severe crimes.

2. The category of journalists who enjoy the right to protect their sources should be broad. We see more and more citizen-journalists at work as user-generated media content becomes a driving business force. As the traditional boundaries fall, citizen-journalists should also deserve the First Amendment protection, as they also supply society with public-interest information.

In my line of work, it is difficult to over-estimate the importance of adopting a U.S. federal shield law. As a staunch ally of free journalism, the United States cannot afford to be finger-pointed by governments who are not so keen on it. But beyond the image of a country defined by the First Amendment, the prosecutorial practice of the Justice Department during the tenures of the two last Attorney Generals has served as a negative inspiration to prosecutors in other countries.

In our work, we had to witness several ‘bad fashions’ spread from country to country; international trends, if you wish, in the mishandling of journalism. One such trend is the contracted killing of journalists, to which I would add the seemingly religious but, from a moral standpoint, equally detestable fatwas which offer rewards for killing journalists. A similar international wave of repression is the repressive registration and re-registration practice which makes the lives of independent editors unbearable in several countries. Another example is the so-called extremism legislation—a loose collection of arbitrary speech bans that punish coverage of sensitive topics under the pretext of fighting terrorism or hate speech. Unfortunately, the list would be incomplete without the harmful prosecutorial habit of pursuing journalists in order to plug the leaking of governmental data. And this is a ‘fashion’ to the proliferation of which, unfortunately, U.S. prosecutors and courts have substantially contributed.

I am sure in your questions you would be interested in individual trends in participating States. I look forward to the discussion.

MATERIAL SUBMITTED FOR THE RECORD BY HON. ALCEE L. HASTINGS, CHAIRMAN, COMMISSION ON SECURITY AND CO-OPERATION IN EUROPE

Excerpt from the Committee to Protect Journalists' Special Report on Journalists in Prison (as of December 1, 2007)

JOURNALISTS HELD BY OSCE PARTICIPATING STATES

ARMENIA: 1

ARMAN BABADZHANIAN, *Zhamanak Yerevan*

IMPRISONED: JUNE 26, 2006

The Yerevan prosecutor general summoned Babadzhanian, editor-in-chief of *Zhamanak Yerevan*, purportedly for questioning as a witness in a criminal case. Instead, authorities charged him with forging documents to evade military service in 2002 and took him into custody, according to international press reports.

At his trial, Babadzhanian pleaded guilty to draft evasion but said the charge was in retaliation for the paper's critical reporting. Days before his arrest, *Zhamanak Yerevan* published an article questioning the independence of the prosecutor general's office, according to the London-based Institute for War and Peace Reporting.

On September 8, 2006, a district court in Yerevan sentenced Babadzhanian to four years in prison on charges of forgery and draft evasion, according to the Armenian service of Radio Free Europe/Radio Liberty. An appeals court later reduced the penalty by six months.

On July 19, an independent Armenian committee that oversees requests for early release of convicts rejected Babadzhanian's appeal, according to the local press reports.

AZERBAIJAN: 9

SAKIT ZAKHIDOV, *Azadlyg*

IMPRISONED: JUNE 23, 2006

On October 4, 2006, a court in Baku convicted Zakhidov on a drug-possession charge and sentenced him to three years in prison. He was placed in the Bailovsk Prison in Baku.

Police arrested Zakhidov, a prominent reporter and satirist for the Baku-based opposition daily *Azadlyg*, and charged him with possession of heroin with intent to sell. Zakhidov denied the charge and said a police officer placed the drugs, about a third of an ounce, in his pocket during his arrest, according to local and international news reports.

His arrest came three days after Executive Secretary Ali Akhmedov of the ruling Yeni Azerbaijan party publicly urged authorities to silence Zakhidov. At a June 20, 2006, panel on media freedom, Akhmedov said: "No government official or member of parliament has avoided his slanders. Someone should put an end to it," the news Web site EurasiaNet reported.

SAMIR SADAGATOGLU, *Senet*

RAFIQ TAGI, *Senet*

IMPRISONED: NOVEMBER 15, 2006

Editor-in-Chief Sadagatoglu and reporter Tagi of the independent newspaper *Senet* were convicted of inciting religious hatred. Sadagatoglu was sentenced to four years in prison; Tagi to three. The convictions were linked to a November 2006 article headlined "Europe and Us." Tagi, the author, suggested that Islamic values were blocking development in the oil-rich Caspian Sea nation, according to international media reports. The article referred to Islam as a cause of infighting.

Tagi and Sadagotoglu received death threats from Islamic hardliners in Azerbaijan and neighboring Iran. Grand Ayatollah Mohammed Fazel Lankarani, one of Iran's most senior clerics, issued a fatwa in November 2006 and attended the journalists' trial in April 2007. A group of 40 activists openly threatened Tagi and Sadagatoglu, and harassed journalists covering the trial, the Moscow-based media watchdog Center for Journalism in Extreme Situations reported. An appeals court upheld the verdicts in July.

FARAMAZ NOVRUZOGLU, *Nota Bene*

IMPRISONED: JANUARY 30, 2007

Reporter Faramaz Novruzoglu of the weekly independent newspaper *Nota Bene* was sentenced to two years in prison for criminal defamation, according to local press reports. Novruzoglu was tried without a lawyer in proceedings that took place earlier than announced, Ilham Tumas, founder of *Nota Bene*, told the news Web site Mediaforum.

Interior Minister Ramil Usubov filed suit after *Nota Bene* published a series of articles critical of him and other senior government officials in December 2006, according to the independent Turan news agency. The articles focused on friction and corruption in the Interior Ministry.

Local journalists and human rights activists told CPJ that the lawsuits were an attempt to stifle critical coverage of the Interior Ministry in the aftermath of a former ministry official's trial on murder and kidnapping charges.

Novruzoglu has also been identified in press reports as Faramaz Allahverdiyev. On April 13, 2007, an appeals court decision upheld the conviction.

The journalist's wife, Tahira Allahverdiyeva, told the Baku-based Institute for Reporters' Freedom and Safety that Novruzoglu's health had deteriorated in prison and that he suffered from a chronic intestinal ailment.

EYNULLA FATULLAYEV, *Realny Azerbaijan and Gündalik Azarbaycan*

IMPRISONED: APRIL 20, 2007

Authorities targeted Fatullayev, editor of the independent Russian-language weekly *Realny Azerbaijan* and the Azeri-language daily *Gündalik Azarbaycan*, in a series of politically motivated criminal prosecutions. The persecution began shortly after Fatullayev published an in-depth report alleging an official cover-up in the 2005 slaying of fellow Azerbaijani editor Elmar Huseynov.

In April, a Yasamal District Court judge found Fatullayev guilty of libeling and insulting Azerbaijanis in an Internet posting that the journalist said was falsely attributed to him. The posting, published on several Web sites, said Azerbaijanis bore some responsibility for the 1992 killings of residents of the restive Nagorno-Karabakh region, according to local press reports. Fatullayev, ordered to serve 30 months, was jailed immediately after the proceedings, according to the independent news agency Turan.

With Fatullayev jailed, authorities evicted *Realny Azerbaijan and Gündalik Azarbaycan* from their Baku offices, citing purported fire safety and building code violations. Both later stopped publishing.

More charges against Fatullayev followed. A judge in the Azerbaijani Court of Serious Crimes found Fatullayev guilty of terrorism, incitement to ethnic hatred, and tax evasion on October 30. The journalist was sentenced to eight years and six months in prison, to be served consecutive to the 30-month term.

The terrorist and incitement charges stemmed from a *Realny Azerbaijan* commentary headlined "The Aliyevs Go to War," which sharply criticized President Ilham Aliyev's foreign policy regarding Iran. The tax evasion charge alleged that Fatullayev had concealed income from the two publications.

Realny Azerbaijan was successor to the opposition weekly *Monitor*, which closed after the March 2005 assassination of Huseynov. Like its predecessor, *Realny Azerbaijan* was known for its critical reporting.

ROVSHAN KEBIRLI, *Muhalifet*

YASHAR AGAZADEH, *Muhalifet*

IMPRISONED: MAY 16, 2007

A Yasamal District Court judge found Editor-in-Chief Kebirli and reporter Agazadeh of the Baku-based opposition daily guilty of defaming President Ilham Aliyev's uncle, Jalal Aliyev, and sentenced each to 30 months in prison, according to local and international press reports. Jalal Aliyev is also a member of Azerbaijan's parliament.

Jalal Aliyev filed a libel complaint against the journalists after a February article in *Muhalifet* criticized his business activities and those of his family, according to local and international press reports. The story, which relied partly on a Turkish news report, said the Aliyevs' import-export business profited from the family's political connections.

Kebirli and Agazadeh were being held in the Bailov Prison in Baku, the news Web site Day reported.

NAZIM GULIYEV, *Ideal*

IMPRISONED: NOVEMBER 6, 2007

Guliyev, editor-in-chief of the pro-government daily *Ideal*, was sentenced to two and a half years in prison on criminal defamation and insult charges.

Ramiz Zeynalov, head of the Interior Ministry Traffic Police Department, filed a complaint against Guliyev after *Ideal* published two articles describing alleged corruption in the department in May and August, according to local press reports. Guliyev did not have a defense lawyer during the trial, according to Emin Huseynov, director of the Baku-based Institute for Reporters' Freedom and Safety.

GENIMET ZAKHIDOV, *Azadlyg*

IMPRISONED: NOVEMBER 10, 2007

A Yasamal District Court judge placed Zakhidov, editor of the opposition daily, in pretrial detention in Baku, a day after the journalist's arrest. Police arrested Zakhidov after nine hours of interrogation and charged him with "hooliganism" and inflicting "minor bodily harm." The arrest stemmed from a confrontation in which the journalist appeared to have been set up by authorities.

On November 7, Zakhidov said, a young man and woman assailed him on a street in Baku. Zakhidov told reporters that the woman started screaming as if he had insulted her; a moment later, the man tried to attack him. With the help of passersby, Zakhidov said, he was able to fend them off. But the man and woman later filed complaints with police, and Zakhidov was summoned for questioning three days later.

Zakhidov was targeted in two other instances of official harassment. In September, Minister of Economic Development Geidar Babayev filed a defamation lawsuit over an *Azadlyg* article alleging misuse of ministry funds. In October, a state traffic police official filed a similar complaint over an article describing alleged corruption. Zakhidov's brother, prominent reporter and satirist Sakit Zakhidov, was also serving a prison term on a bogus charge of drug possession.

IRAQ (1 IN U.S. CUSTODY)

BILAL HUSSEIN, THE ASSOCIATED PRESS

IMPRISONED: APRIL 12, 2006

Hussein, an Iraqi photographer for The Associated Press, was taken into custody by U.S. forces in Ramadi, capital of Iraq's Anbar province, for "imperative reasons of security" on April 12, 2006, and held without charge or the disclosure of evidence of a crime. The U.S. military alleged that Hussein had ties to insurgents. "He has close relationships with persons known to be responsible for kidnappings, smuggling, improvised explosive attacks, and other

attacks on coalition forces,” according to a May 7, 2006, e-mail from Maj. Gen. John Gardner to AP International Editor John Daniszewski.

The military claimed Hussein’s photographs showed he had prior knowledge of insurgent attacks, allowing him to arrive at scenes of violence before they occurred. Kathleen Carroll, executive editor of the AP, said the news organization reviewed 900 images taken by Hussein and found no evidence that he arrived before attacks took place.

According to the AP, the most specific allegation cited by U.S. officials—that Hussein was involved in the Iraqi insurgent kidnapping of two Arab journalists in Ramadi—was discredited after the AP investigated the claim. The two abducted journalists had not implicated Hussein in the kidnapping; they had instead praised him for his assistance when they were released. The military’s only evidence supporting its claim appeared to be images of the released journalists that were found in Hussein’s camera, the AP said. Hussein’s attorney, Paul Gardephe, said the military later acknowledged that it did not possess evidence supporting the allegation, the AP reported.

In December 2007, the U.S. military referred the case to the Iraqi justice system for possible prosecution. The military cited alleged links between Hussein and Iraqi insurgents but continued to disclose no evidence to support the accusation.

Hussein shared a 2005 Pulitzer Prize with other AP photographers for their work in Iraq.

RUSSIA: 3

BORIS STOMAKHIN, *Radikalnaya Politika*

IMPRISONED: MARCH 22, 2006

Stomakhin, editor of the monthly newspaper *Radikalnaya Politika* (Radical Politics), was jailed on March 22, 2006, on charges of inciting ethnic hatred and making public appeals for extremist activity. The Butyrsky District Court in Moscow sentenced him to five years in prison in November 2006. He and his family said authorities were punishing him for his harsh criticism of Kremlin policy in Chechnya.

In his ruling, Judge Lyubov Ishmuratova said Stomakhin’s articles “approved Chechen terrorists’ criminal actions aimed at annihilation of Russian people as an ethnicity.” The ruling quoted Stomakhin as writing: “Let tens of new Chechen snipers take their positions in the mountain ridges and the city ruins and let hundreds, thousands of aggressors fall under righteous bullets!

No mercy! Death to the Russian occupiers! . . . The Chechens have the full moral right to bomb everything they want in Russia.”

Stomakhin, who had pleaded not guilty, said he was “tried for his views and not for any real crime. . . . In the articles, I expressed my opinion, with which people were free to agree or disagree,” the news agency RIA-Novosti reported. He said an opinion was not a “call to action.”

Police arrested Stomakhin in March 2006, a day after he fell from the window of his fourth-floor Moscow apartment while trying

to elude police, according to local press reports. Stomakhin suffered leg and back injuries.

In May 2007 the Moscow City Court reviewed Stomakhin's appeal for early release but left the verdict unchanged, the independent news agency Kavkazky Uzel reported. On June 25, 2007, Stomakhin was transferred from a Moscow prison to a prison in the city of Nizhny Novgorod. Officials did not tell Stomakhin, his family, or defense counsel what prompted the transfer or how long it would last, local press reports said. Stomakhin uses a cane to walk because of injuries suffered in the 2006 fall, his lawyer, Karen Nersisian, told CPJ.

ANATOLY SARDAYEV, *Mordoviya Segodnya*

IMPRISONED: JUNE 29, 2007

On June 29, 2007, the Lenin District Court in Saransk found Sardayev, editor of the independent weekly *Mordoviya Segodnya*, guilty of embezzling money and misusing funds as head of the Mordoviya postal service in 2004. He was sentenced to five and a half years in prison and fined 105,000 rubles (US\$4,100). Sardayev was taken into custody immediately after the court hearing.

Sardayev's colleagues believe he was targeted because of *Mordoviya Segodnya's* continuing criticism of local governor Nikolai Merkushkin. The Moscow-based Center for Journalism in Extreme Situations (CJES) detailed conflict between Sardayev and Merkushkin dating to 2004.

Sardayev, a member of the Mordoviya parliament at the time, irritated local authorities that year by making repeated inquiries into the legal basis for tax breaks given to Mordoviya energy companies. The same year, the Lenin District Prosecutor's Office in Saransk opened a criminal case against Sardayev on what they said was his abuse of authority, forgery, appropriation, and squandering of funds. About six months later, Saransk prosecutors imprisoned Sardayev for a week for allegedly failing to appear in court. The detention came just as Sardayev was working on a *Mordoviya Segodnya* edition that detailed a list of businesses owned by Merkushkin and his family, according to local press reports.

In the 2007 case, Mordoviya postal employees testified that Sardayev had used postal service money to build a public tennis court and to restore an old post office building in Saransk, CJES correspondent Igor Telin reported.

NIKOLAI ANDRUSHCHENKO, *Novy Peterburg*

IMPRISONED: NOVEMBER 23, 2007

Police in St. Petersburg arrested Andrushchenko, co-founder and editor of the weekly *Novy Peterburg*, on suspicion of defamation. The next day, a local court placed him in pretrial detention on charges of defamation and obstruction of justice. The combined charges carried up to six years in prison.

Authorities claimed the charges stemmed from Andrushchenko's 2006 coverage of a murder investigation in St. Petersburg. However, colleagues said they believe Andrushchenko's imprisonment

was the result of *Novy Peterburg's* critical coverage of local authorities and its pro-opposition articles.

Local authorities had repeatedly harassed the 64-year-old Andrushchenko, the paper's co-founder, Alevtina Ageyeva, told CPJ. Andrushchenko was beaten by unknown assailants on his way home on November 9. Copies of the November 15 edition of *Novy Peterburg*, which carried an article about a dissenters' march and a critical story about St. Petersburg's police chief, were bought out wholesale; the company in charge of distributing the paper refused to supply newsstands with more. A week later, the newspaper's printing house refused to print the next edition, which carried a front-page article by opposition leader Garry Kasparov.

On November 23, St. Petersburg police officers raided the *Novy Petersburg* newsroom and copied computer files, saying that Andrushchenko was suspected of defaming officials. The same day, officers of the St. Petersburg's Directorate for Combating Organized Crime raided Andrushchenko's house and placed him under arrest, according to local press reports.

U.S. NAVAL BASE, GUANTANAMO BAY: 1

SAMI MUHYIDEEN AL-HAJ, AL-JAZEERA

IMPRISONED: DECEMBER 15, 2001

Al-Haj, a Sudanese national and assistant cameraman for Al-Jazeera, was detained by Pakistani forces after he and an Al-Jazeera reporter attempted to re-enter southern Afghanistan at the Chaman border crossing in Pakistan. About a month later, he was handed over to U.S. forces and eventually sent to the U.S. Naval Base at Guantánamo Bay, Cuba, in June 2002. According to declassified U.S. military documents, al-Haj was accused of being a financial courier for Chechen rebels and assisting al-Qaeda and extremist figures. But al-Haj has not been convicted or charged with a crime, and the military has not publicly disclosed any evidence against him.

Al-Haj's London-based lawyer, Clive Stafford Smith, maintained that his client's continued detention was political. He said U.S. interrogators have not focused on al-Haj's alleged activities but instead on obtaining intelligence on Al-Jazeera and its staff. U.S. military interrogators allegedly told al-Haj that he would be released if he agreed to inform U.S. intelligence authorities about the satellite news network's activities, Stafford Smith said. Al-Haj refused.

During an Administrative Review Board hearing in September 2007, U.S. military authorities cited the cameraman's Al-Jazeera training as evidence of terrorist involvement, according to Stafford Smith. The lawyer, who is barred from attending such proceedings, based his comments on a review of the hearing transcript. The military hearings determine whether a prisoner should continue to be held. CPJ outlined the al-Haj case in a 2006 special report titled "The Enemy?" The report urged the U.S. government to provide fair and transparent due process.

UZBEKISTAN: 5

MUHAMMAD BEKJANOV, *Erk*YUSUF RUZIMURADOV, *Erk*

IMPRISONED: MARCH 15, 1999

A court in the capital, Tashkent, sentenced Bekjanov, editor of the opposition newspaper *Erk*, to 14 years in prison and Ruzimuradov, an employee of the paper, to 15 years. They were convicted of publishing and distributing a banned newspaper that criticized President Islam Karimov, participating in a banned political protest, and attempting to overthrow the regime.

Both men were tortured during their pretrial detention in Tashkent City Prison, which left them with serious injuries, Tashkent-based human right activists told CPJ. On November 15, 1999, Bekjanov was transferred to “strict regime” Penal Colony 64/46 in the city of Navoi. Ruzimuradov was transferred to “strict regime” Penal Colony 64/33 in the village of Shakhali near the southern city of Karshi.

The wives and children of both men fled to the United States in 1999 after their arrests, Erk Party Secretary-General Aranazar Arifov told CPJ.

In 2003, reporters with the London-based Institute for War and Peace Reporting and The Associated Press interviewed Bekjanov in the Tashkent Prison Hospital while he was being treated for tuberculosis contracted in prison. In the interview, Bekjanov described torture and beatings that resulted in a broken leg and hearing loss in his right ear, IWPR reported.

In 2007, Bekjanov was jailed in the southwestern city of Kasan, according to the independent news Web site Uznews. His wife, Nina Bekjanova, who was allowed to visit him in October 2006, said he told her that he was still subjected to beatings and torture that, among other things, caused him to lose most of his teeth, Uznews reported.

Exiled journalists, human rights workers, and other CPJ sources said they did not know of Ruzimuradov’s whereabouts or his health.

GAYRAT MEHLIBOYEV, FREELANCE

IMPRISONED: JULY 24, 2002

Police arrested Mehliboyev at a bazaar in Tashkent for allegedly participating in a rally in support of the banned Islamist opposition party Hizb ut-Tahrir. Following the arrest, police searched his bed in a local hostel and claimed they found banned religious literature that prosecutors later characterized as extremist in nature, according to international press reports.

Prior to his February 2003 trial, Mehliboyev was held in pretrial detention for more than six months. As evidence for his alleged participation in a religious extremist group, prosecutors presented political commentary Mehliboyev had written for the April 11, 2001, edition of the state-run weekly newspaper Hurriyat. Arguing that religion was the true path to achieving social justice, the arti-

cle questioned whether Western democracy should be implemented in Uzbekistan. Prosecutors claimed the article contained ideas from Hizb ut-Tahrir.

At the proceedings, Mehliboyev openly stated several times he was beaten in custody but the court ignored his comments, a Tashkent-based representative of Human Rights Watch told CPJ. Mehliboyev's brother, Shavkat, said the defendant was forced to confess to having connections to Hizb ut-Tahrir.

On February 18, 2003, the Shaikhantaur District Court in Tashkent sentenced Mehliboyev to seven years in prison, convicting him of anticonstitutional activities, participating in extremist religious organizations, and inciting religious hatred, according to local and international press reports. The sentence was later reduced on appeal to six and a half years in prison.

ORTIKALI NAMAZOV, *Pop Tongi* and *Kishlok Khayoti*

IMPRISONED: AUGUST 11, 2004

Namangan regional authorities in eastern Uzbekistan charged Namazov, editor of the state newspaper *Pop Tongi* and correspondent for the state newspaper *Kishlok Khayoti*, with embezzlement after he wrote a series of articles about alleged abuses in local tax inspections and collective-farm management.

His trial began on August 4, 2004, and lasted two weeks. On August 11, 2004, before the verdict was reached, authorities took him into custody. Five days later, the Turakurgan District Criminal Court in Namangan region convicted Namazov and sentenced him to five and a half years in prison. Namazov complained the judge was biased and did not allow him to defend himself.

Prior to her own imprisonment in 2005, local human rights activist Mutabar Tadjibaeva monitored Namazov's trial. She told CPJ that local authorities harassed Namazov's family during the trial, cutting his home telephone line, and firing his daughter from her job as a school doctor. Namazov was serving his sentence at a prison in eastern Namangan.

DZHAMSHID KARIMOV, FREELANCE

IMPRISONED: SEPTEMBER 12, 2006

Karimov, nephew of President Islam Karimov, disappeared in his native city of Jizzakh only to be discovered in a psychiatric hospital in Samarkand, where he had been involuntarily placed by the Uzbek authorities. Government officials did not release any information about court proceedings that led to the committal, and they did not permit independent experts to examine Karimov, according to press reports.

Karimov had worked for the London-based Institute for War and Peace Reporting and later contributed to a number of independent newspapers and online publications, including the Almaty-based news Web site Liter. According to CPJ research, Karimov criticized both local and federal authorities in his coverage of Uzbek social and economic problems.

Prior to his arrest, local authorities closely monitored his activities. After his mother petitioned authorities to remove all listening

devices from her house, law enforcement agents set up surveillance equipment in a neighboring building in August 2006, the Moscow-based news Web site Ferghana reported. The same month, Karimov's passport was seized by authorities in Jizzakh after he applied for an exit visa to attend a journalism seminar in neighboring Kyrgyzstan.

MATERIAL SUBMITTED FOR THE RECORD BY MIKLOS HARASZTI, REPRESENTATIVE ON FREEDOM OF THE MEDIA, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

Annex: Interventions of the OSCE Representative on Freedom of the Media, 2004–2007

Participating States	Total	2004	2005	2006	2007
Slovenia	1				1
Albania	3	1	1	1	
Germany	2		1		1
USA	7	2	2	2	1
Armenia	3	1			2
Azerbaijan	11	2	3	3	3
Belarus	13	2	7	2	2
Belgium	3	2	1		
Bulgaria	4	1		1	2
Croatia	6	1	3		2
Spain	1				1
France	5	1	1	1	2
Georgia	3		2		1
Greece	3		2		1
Hungary	3	1		1	1
Italy	3	2	1		
Kazakhstan	9		4	3	2
Kyrgyzstan	1				1
the former Yugoslav Republic of Macedonia	1		1		
Lithuania	1			1	
Moldova	4	1		2	1
Uzbekistan	10	2	4	1	3
Netherlands	2	1		1	
Poland	6	1	3	1	1
Romania	2	1		1	
Russian Federation	24	4	7	7	6
Serbia (Serbia and Montenegro–2006)	8	2	2	3	1
Slovakia	2	1	1		
Switzerland	3		1		2
Tajikistan	8	2	4	1	1
Czech Republic	2	1			1
Turkmenistan	7	4		3	
Turkey	10		7		3
Ukraine	3		1	1	1
Canada	1			1	
Denmark	1			1	
TOTAL:	175	36	59	37	43
Total year interventions		36	62	37	43

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