

The Euro-Mediterranean Partnership And Freedom of Expression (1995-2000)

**ARTICLE 19
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INTRODUCTION

In 1995, the European Union undertook an initiative with twelve Mediterranean countries. The Euro-Mediterranean partnership, via the Barcelona Declaration, established a common framework to ensure, “a comprehensive partnership among the participants...(in order to) strengthen political dialogue on a regular basis, (and to develop) economic and financial co-operation and greater emphasis on the social, cultural and human dimension”

As part of the Declaration, the participants undertake to “respect human rights and fundamental freedoms and guarantee the effective, legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscience and religion”.

In the five years following the Barcelona Declaration, much progress has been made on implementing the economic aspects of the agreements. The human rights elements of the Declaration, however, remain under-developed. Key impediments are the lack of mechanisms to monitor implementation or progress by any of the partners on the rights issues described, lack of provisions for enforcement of the terms of the Barcelona Declaration in the area of human rights, and general lack of any action by partners on either side when abuses are reported by third parties.

In this survey, ARTICLE 19 has assembled a number of elements which, when taken together, can be considered to give an indication of the state of freedom of expression in a given country. These include an analysis of the broadcast media, the plurality of the press, media law, the role of censorship, defamation legislation, status of non-governmental organisations and access to official information. As this report demonstrates, many of the countries that are part of the Euro-Mediterranean partnership need to make progress in key areas in order to truly uphold the obligations they have to human rights under the Barcelona Declaration and other international agreements.

THE BROADCAST MEDIA AND NEW TECHNOLOGIES

It is possible to identify an overwhelming trend of governmental control of the broadcast media throughout the region. In Syria, there is a complete state monopoly of Syrian-based radio and television. Although there is an extensive choice made available by free-to-air satellite channels and widespread satellite dish ownership, there is only one channel available that is not run by an Arab state. In Tunisia, there are three ERTT (*Establissement de la radiodiffusion television tunisienne*) channels. ERTT receives government funding and is run by an appointee of the President. Its content is entirely pro-government. Similarly, the Egyptian government retains monopoly control over broadcasting through the ERTU (*Egyptian Radio and Television Union*), and ensures that the content of the programmes aired serves the interests of the ruling party. In Lebanon, the number of radio stations has been reduced from 52 to 4 and TV stations from 100 to 11, in a worrying drive to diminish the diversity of opinion in the public arena.

In Turkey, however, there is some evidence of the relaxation of the government monopoly on broadcasting. Since 1994, a plethora of radio and television stations have begun operating. National stations tend to be

financed by two main media groups but there are many independent local stations representing a diversity of opinion. Kurdish language broadcasts remain prohibited despite promises of reform in order to meet standards set by the European Union. Satellite dishes are widely owned and there are over 120 local channels and 12 national channels in Turkey's satellite TV market.

The growing accessibility of new technologies to the public is increasing the means available to individuals to obtain information outside the official channels. For example, Morocco, Syria, Egypt and Israel have all hosted a rapid expansion of the internet market with pay-per-use access becoming a popular method of communication. In Jordan, the only obstacle to internet access is the relatively high cost – there are six ISPs which must all get their lines from a state telecommunications company and are subject to high pricing policies.

PLURALITY OF THE PRESS

Accessibility and plurality of the press is crucial to the promotion of healthy democratic debate. Only the Lebanon, however, displays concrete signs of an actively plural press. Whilst there are only Arabic daily newspapers in the Lebanon, foreign language publications including *Time*, *Newsweek* and *L'Orient le Jour* are both available and very popular.

In April 1997, ARTICLE 19 reported that thirty-five national and 800 local newspapers existed in Turkey, although two groups that relied on state funding monopolised the print media. With the 1991 lifting of Law 2932 which prohibited languages other than Turkish, the possibility has arisen of legal Kurdish language publications. Kurdish publications do, however, face regular suppression and confiscation. In Algeria, six out of thirty national dailies are state owned whilst in Egypt, three government-owned dailies dominate the market, although nine political parties produce weekly publications. In Jordan, all weeklies are privately owned but dailies are not. There is no pluralistic independent press in Syria or Tunisia.

PRESS LAWS

Whilst press laws are benign in many countries, several governments have recently amended legislation to increase state control over the media. The definitions of offences for which the press can be prosecuted are often nebulous in the press laws of the region. The broad application of these terms and concepts enables the respective governments to determine the scope of freedom of expression and to prosecute members of the press at their discretion.

In Jordan, a 1997 modification of the 1993 Press and Publications Law allowed the government to close several critical media outlets. The 1995 Press and Publications Law in the Palestinian Authority regulates domestic and imported publications and gives the Palestinian Authority very wide powers to regulate the media as well as institutions which disseminate information. The PPL prohibits the publication of a whole range of information that may harm "national unity", religion, morality, or reduce confidence in the currency. Similarly, a 1995 revision of the Egyptian press law tightened governmental control over the press and increased penalties for defamation, although fines for libel were reduced. The 1990 Media Law in Algeria bans visual or written matter that contravenes Islamic principles, national values or that may incite fanaticism.

CENSORSHIP OF THE PRINT MEDIA

Prior censorship is a tool commonly utilised by governments across the region to control publications' content. The Jordanian Department of Press and Publications is responsible for the prior censorship of books and imported publications and also vets newspapers and magazines after publication. Whilst foreign publications are regularly imported into Jordan, under the 1998 Press and Publications Law they can be confiscated if in violation of restrictions on the subject matter, particularly criticism of the King and Queen. The Tunisian government insists that each newspaper office must deposit copies of newspapers prior to publication. Seminar papers are censored in a similar fashion. There is complete censorship of the press in Syria owing to absolute state control of news-gathering, printing and distribution of publications.

Censorship is often justified in relation to the preservation and protection of the state, as in the case of Turkey. Turkey's constitution states that "the press is free and shall not be censored", however, publication of articles can be prohibited if they are not in the Turkish language or if they threaten the external security or "indivisible integrity" of the state. The protection of the unitary nature of the state is often invoked to suppress Kurdish publications.

In many countries, laws require journalists to be registered by the state in order to practice their profession. In order to pre-empt confrontation with authorities, including the possibility of de-registration and other penalties, many journalists and newspapers practice self-censorship. The Moroccan government exerts pressure on journalists to exercise self-censorship in particular regard to three taboos; the constitutional status of the King, the King's role as religious leader of the nation; and the status of the Western Sahara. The Palestinian Authority's actions against the media have led to the general practice of self-censorship around material that is critical of the Palestinian leadership or that is of a sexual or religious nature. In Israel, the foreign and domestic media are compelled to exercise self-censorship on the basis of 'voluntary' Censorship Agreements, last revised in 1996. Running parallel to this code are Defence (Emergency) Regulations of 1945, which allow for summary closure of publications and restrictions on distribution. Self-censorship can also be induced in response to extra-legal harassment of journalists including physical attacks.

Censorship by means of economic pressures including preferential allocation or withdrawal of state advertising rights has been reported in a number of countries, including Algeria. Governmental control of publishing houses and advertising revenue in Egypt also means that opposition publications encounter financial difficulties.

DEFAMATION LAWS

Across the region, the imprecise drafting of defamation provisions and their inclusion in Penal Codes serves to allow criminalisation of statements of opinion, the expression of value judgements, and the publication of true information. Laws also penalise statements that may be incorrect but are issued in good faith. It is crucial in a democratic society to encourage the interchange of opinions and to ensure that robust institutions, and the public officials that populate them, are exposed to high levels of criticism and inquiry. As defamation is essentially a means for private individuals to protect their right to reputation, no legitimate state interest is engaged and its enforcement through the criminal justice system is unwarranted.

According to the Algerian Justice Ministry, 141 journalists have been charged with defamation since 1996 and 156 press cases have been brought to the courts, mainly at the instigation of private complaints. Legal harassment of this kind can be unrelenting. Since the creation of Arabic daily newspaper *al Rai* in 1998, the publishing manager has been prosecuted 70 times for libel.

In Egypt, under the Press Code, defamation is punishable by a maximum of three years in prison and substantial fines. Criticism of the government has led to bans on distribution and other restrictions, as in November 1997 when copies of *The Economist* and *Le Monde* were seized by government officials.

In the Lebanon, Tunisia and Turkey, special provision is made for the protection of the reputation of the Head of State and is accompanied by particularly severe penalties. In Tunisia, the defence of "truth" is only permitted in limited circumstances and criminal penalties for defamation and false speech have been explicitly extended to the internet.

Seditious libel remains part of the Israeli Criminal Code and in Syria, the acts of defamation and disparagement are criminalised by the Penal Code and the General Law on Printed Matter.

FREEDOM OF INFORMATION AND NATIONAL SECURITY

With freedom of expression, the right to access official information underpins all human rights and is crucial for the construction and development of democratic societies. It equips individuals to question those that govern them and to make informed political choices. Informing the public of its rights and promoting a culture of openness within government are essential if effective freedom of information legislation is to be implemented.

Access to information is severely restricted in several countries in the region, ostensibly to preserve national security. In Algeria, all information “relating to national security” may be withheld. Due to the excessively broad and elastic definition of ‘state security’ in the Syrian State of Emergency and Penal Code, there is *no* freedom of information. In Tunisia, national security provisions within the Criminal Code allow an extremely broad classification of national secrets with penalties for breaching the Code of up to ten years imprisonment. Secrecy concerning security and defence issues in Israel is maintained through a number of pieces of legislation including the 1977 Penal Code and sections of the Basic Law: the Knesset and the Government. Despite the restrictions imposed by military censorship, however, in 1999 the Israeli media were able to disclose the fact that MOSSAD agents had been caught red handed tapping phone-lines in Berne.

The Tunisian government fosters a culture of secrecy which compounds its legal constraints on freedom of information. The Criminal Code establishes obligations of “secrecy” for civil servants. The only source of information is the Presidential Palace.

In order to be effective, legislation must remain consistent and in keeping with the goal of ensuring the free flow of information. Whilst the Egyptian 1996 Press Authority Law guarantees the rights of journalists to gain access to and publish information held by public authorities, further legislation has been introduced which undermines this precedent. For example, the Law on the Armed Forces prohibits reporting on the military and the Document Publication Law requires prior authorisation to publish previously unpublished official documents.

CONCLUDING REMARKS

The lack of commitment to freedom of expression exhibited in the countries analysed remains of grave concern to ARTICLE 19. Blanket restrictions on reporting and access to security-related information remain in force in Algeria. The increasingly restrictive censorship and media regulations enforced in Tunisia since 1987 have placed a stranglehold on freedom of expression and also freedom of association, assembly and movement. In order to crack down on Islamist organisations and ensure the survival of the government, the Egyptian authorities have constrained freedom of expression and entrenched the official monopoly of the media. The freedom of non-governmental organisations (NGOs) has recently been challenged by new legislation in Egypt and association Law 153 has been used to limit the activities of NGOs by restricting their access to foreign funding. Human rights defenders and NGO activists have been targeted by Egyptian authorities, especially the EOHR (*Egyptian Organisation for Human Rights*). Independent organisations have been closed and their directors imprisoned. The Turkish government has initiated some tentative improvements to its freedom of expression record – for example, the release of many imprisoned journalists – but a restrictive legal framework remains in place. In the Palestinian Authority, measures allegedly introduced to support the peace process have since been utilised to suppress dissenting voices. When it is politically expedient to do so, TV and radio stations, publications and opposition and religious groups are silenced, often by extra-legal measures. The Israeli Security Forces have attacked Palestinian journalists with relative impunity.

There are, however, some signs of improvement in a handful of countries. For example, the widespread availability of new technologies, the tradition of free press and the developing tourism industry point to a favourable future for freedom of expression in Lebanon, although the course of the Middle East Peace Process inevitably affects the situation. The Israeli press is free to be extremely critical, often to the point of

sensationalism, on matters such as governmental corruption. There has been a general improvement in the human rights situation in Morocco since the early 1990s with the release of 400 prisoners of conscience and the 1990 creation of the *Conseil consultatif des droits de l'homme* and *The Ministry for Human Rights*, although in 2000 some foreign journalists have experienced problems in operating in the country. The Algerian government has issued assurances to foreign press organisations that it is committed to press freedom, although this has been contradicted by statements broadcast on Algerian radio that “journalists should be partisan and serve the state interest”. The growing strength of civil society organisations in some countries has also ensured a greater resistance to restrictive governmental policies and aggressive conduct: women’s organisations, human rights NGOs and workers unions are robust and active in Algeria, Morocco, Turkey and Lebanon.

ARTICLE 19 MAKES THE FOLLOWING RECOMMENDATIONS:

- The partners of the Euro-Mediterranean initiative should entrench their commitment to human rights by implementing, at the earliest opportunity, mechanisms for monitoring and enforcing their obligations under the Barcelona Declaration
- Across the region, state monopolies on broadcast media should be relaxed, independent licensing regimes established and governments should ensure that any publicly-funded media uphold a genuine public service remit rather than reflecting governmental interests.
- Legislation allowing state control over media content should be repealed, as should regulations requiring the licensing of journalists in order that they may practice their profession within the law.
- Regulation of obscene materials, inasmuch as it can be justified, should be dealt with by post-publication sanctions with appropriate due process guarantees.
- Defamation laws should be amended to reflect the following:
 - Custodial sentences attached to crimes of defamation should be abolished and defamation should be decriminalised and reduced to a civil tort.
 - Special penalties for defaming or insulting the Head of State and other public officials should be revoked.
 - Truth should be a complete defence in defamation proceedings.
 - The burden of proof should be on the plaintiff to prove the falsity of a statement and not on the defendant to substantiate his or her innocence.
 - Clear guidelines should be issued to assess damages to ensure that awards are proportional to the harm caused, and that any alternative remedies, including an apology, are fully taken into account.
- Freedom of information legislation, in line with best law and practice, should be guided by the principle of maximum disclosure where information is disseminated in all but very limited circumstances. Restrictive legislation should be revoked and a transparent bureaucratic culture encouraged. Blanket restrictions on reporting and access to security related information should be repealed and mechanisms introduced to facilitate the appeal of decisions to withhold information.
- Whilst national security is a concern common to all governments, a substantial harm test should be included in any legal restrictions on the availability of information on these grounds. This would ensure that arguments founded upon the prioritisation of national security can only be invoked to refuse information if substantial harm is likely to result from its disclosure. A public interest test would also ensure that if the public interest in receiving the information is greater than the threat to national security, the relevant information would be disclosed.
- Freedom of information legislation should be introduced based on the principle of maximum disclosure. This should be backed by a positive obligation on officials to provide information and an independent appeals procedure for applicants to follow if their information requests are denied.
- Peaceful non-governmental organisations should be allowed to operate freely, without the need to obtain official permission.

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