



**SEMINAR FOR CHAIRPERSONS AND MEMBERS OF
PARLIAMENTARY HUMAN RIGHTS BODIES ON FREEDOM
OF EXPRESSION, PARLIAMENT AND THE PROMOTION OF
TOLERANT SOCIETIES**

Organized jointly by the Inter-Parliamentary Union and Article 19

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SUMMARY AND RECOMMENDATIONS PRESENTED BY THE RAPPORTEUR OF THE SEMINAR

**Mr. Emile Guirieoulou, President of the Committee on General and Institutional Affairs,
Member of the National Assembly of Côte d'Ivoire**

We have met here at the invitation of the Inter-Parliamentary Union (IPU) and Article 19 to speak about a right which lies at the very basis of our work as parliamentarians and that of our parliaments, freedom of expression. It is a right which is not easy to put into practice, and one which is not respected in many countries. In the past three days, with the help of experts, we explored the scope and limits of this fundamental right, the principles and standards that have been drawn up on this subject over the years by international and regional courts and human rights bodies and by national courts, and lastly the protective measures that are required if we are to exercise our freedom of expression without fear.

Freedom of expression is the cornerstone of democracy, for democracy is vitally dependent upon the expression of ideas and opinions. The very word "parliament" derives from the French parler, "to speak".

This right is enshrined in the Universal Declaration of Human Rights and the international instruments that most States have ratified, in particular the International Covenant on Civil and Political Rights, and also in our countries' Constitutions. However, it is a constant challenge for our countries to ensure respect for it. It is through the laws that we adopt that we can meet this challenge and provide the greatest possible protection of this right. As legislators, we have a special responsibility in this field.

The freedom of expression enjoyed by parliamentarians depends to a great extent on the freedom of expression enjoyed in society in general and the possibility for all persons to express themselves freely. In many countries it is the legal framework that has been established to defend this fundamental right that also protects our freedom of expression when we speak outside of the parliament. We do not work in a vacuum; others play a decisive role, and so a significant part of our discussions were devoted to the role of the media and press freedoms. It is those freedoms that allow citizens to express themselves, to be informed and to prompt and take part in the public discussion without which there can be no democracy. It is also for us the most important means of communicating with our constituents.

Our relations with the media are not always without problems, but it is clear that we depend on one another. Mutual respect is therefore of the essence.

Diversity of the media is indispensable for democracy, and is an essential aspect of freedom of expression. One of our conclusions is that it is not only a question of the number of types of media or the number of television stations and newspapers that counts, but also the diversity of

opinions that can thus be expressed. In many of our countries, this has been ensured by opening up the media to the private sector. The existence of private and public media is a condition sine qua non for diversity of opinion and of information. On this point, many participants pointed to the danger that certain types of media may be concentrated in the hands of the few. Such a concentration often goes hand in hand with a lack of diversity and quality in the presentation of information. The establishment by the State of an independent body to oversee the issuance of broadcasting licences was cited as a means of addressing this problem. For example, in the United Kingdom, the Office of Communications (Ofcom), when issuing new broadcasting licences, must determine whether the media in question will add to the existing level of diversity. In this field, parliaments have a role to play; through the law, they can establish such institutions and ensure their independence. In several countries, the law provides for a direct role of parliaments in the nomination procedure for the members of audiovisual supervisory bodies.

Our African colleagues referred to the predominant role of radio in the broadcasting of information in many countries, especially in rural areas. Here too, it is essential that diversity should be ensured.

Over and above their legal obligations, the media, but also parliamentarians, have a moral and ethical duty to protect freedom of expression and maintain a climate of mutual respect.

Freedom of expression is not an absolute right; people cannot say just anything they want. However, the restrictions on that right that are allowed under international standards are limited, and must be interpreted *sensu stricto*. International law provides clear standards on this. It is in this context that we discussed the topic of defamation. Many of us are tempted to respond to critics by suing for defamation. The experts who took part in the seminar reminded us that as public figures, we must show greater tolerance to criticism and show restraint. A public response to criticism is most appropriate, rather than resorting to the justice system. Furthermore, the experts and many of our colleagues emphasized the adverse effects that defamation suits can have on freedom of expression in general, especially if, as is the case in a large number of countries, there are provisions for prison terms. That notwithstanding, there has been a trend towards the decriminalization of defamation. However, it was noted that decriminalization did not resolve the problems posed by private law, in particular the imposition of prohibitive damages. Parliaments should adopt laws to ensure that the penalties provided in respect of defamation are reasonable and that the principle of proportionality is respected.

As parliamentarians, we, as anyone, have a right to privacy. At the same time, given our important role in political life, we must accept that the public has the right to examine our actions and that, consequently, the scope of privacy protection is more restricted for us. It is the public interest that defines the limits of our privacy.

In order to form an opinion and make decisions in full knowledge of the facts, one must have access to information. Our parliamentary work is dependent on the access that we have to information from various sources, be they governmental or non-governmental. The right to have access to public information must be the rule, and any refusal by the State to provide information must be duly justified. We must legislate in this sense. But this rule must also apply to parliament itself; we have the duty to be transparent. Our parliaments have done a great deal to open up to constituents. In an increasing number of parliaments, debates are carried live on radio or television.

The independence of the judiciary is one of the pillars of democracy. The judiciary, as the ultimate arbiter of conflicts, must have uncontested authority and the public's trust. Many countries have imposed restrictions on freedom of expression to ensure and protect the authority and impartiality of the judiciary. In recent years, there has been a general tendency to interpret such restrictions more stringently. Indeed, the judiciary is a public institution, and as such is open to public criticism. Some of us have noted that such criticism, when it is fair and justified, in fact defends the independence of the judiciary and respect for the law. Ensuring this independence and respect is precisely the duty of a parliament, and it may sometimes be imperative for a parliamentarian to criticize a judicial procedure if it is clearly inequitable.

In order to carry out our functions, we must be able to freely express ourselves without fear of reprisal from any quarter. That is a condition sine qua non for ensuring the independence of the parliament itself and the separation of powers. Parliamentary immunity serves this objective. It protects the parliament, rather than the parliamentarians. In no way is it the purpose of parliamentary immunity to grant parliamentarians impunity for criminal acts. We discussed the various systems of parliamentary immunity that have been established in our parliaments. Beyond their differences, they all provide for the absolute protection of statements delivered at the plenary or in committee, and also of the votes cast. This absolute protection also covers individuals who testify before parliamentary committees and commissions. It is necessary to afford the same protection to fair and accurate records of the parliamentary debates; without such protection, the live broadcast of parliamentary debates would be impossible. However, we also noted that freedom of expression, which every parliamentarian must enjoy, can be seriously limited by party discipline, which may involve sanctions, even including the loss of the parliamentary mandate. Party discipline may have the effect of preventing parliamentarians from speaking on behalf of their constituents. Similarly, the existence in some countries of "taboo subjects" which the parliament is not permitted to take up is detrimental to democracy.

In the same context, parliaments rarely have a role to play in the drawing up of international instruments, and their ability to effectively assume their role as guardians of human rights is therefore compromised. The ratification for which they are competent in many countries rarely permits them to hold a genuine debate on the contents of the instruments in question. Parliaments must have the opportunity one way or another to see through the drafting of treaties so as to ensure better follow-up of their provisions thereafter.

The second part of our discussion addressed issues related to hate speech. Measures to fight racist speech, which too often are limited to the adoption of laws repressing freedom of expression, must be part of a broader strategy to attack the hatred which underpins this speech and which is a denial of equality among human beings. By fighting racist speech, we pursue the basic aim of ensuring respect for equality. It is difficult and complex to define incitement to hatred, and such factors as the historical and sociological context of the countries concerned must be taken into consideration. As parliamentarians, we must play a much more active role, and show the way. Some of our parliaments are confronted with racist speech in the institution itself. We must take steps against such trends, for example through parliamentary codes of conduct, or by eliminating financing for political parties that cater to such speech.

All countries are confronted with the problems of hatred and discrimination and have the duty to implement a comprehensive strategy to promote equality and respect for others and for their differences. We heard several examples of measures taken against intolerance. For example, it is possible to establish independent institutions to promote equality and draw up national plans for that purpose. Clearly, the media must be included in any such strategy if there is to be any hope

of achieving a result. We heard examples of ways in which parliament, in particular human rights committees, can take the initiative to move toward constructive dialogue with the media and society at large.

We recommend to all parliaments to set up human rights committees with a mandate to make parliamentarians aware of human rights issues. Lastly, we must make sure that our States ratify international and regional human rights instruments and bring their legislation into line with such instruments.

We invite the IPU to publish a parliamentary guide on freedom of expression and to continue to hold parliamentary seminars on human rights.

Geneva, 27 May 2005