



PLURALISM IN THE MEDIA
AND THE INTERNET

SEVENTH CENTRAL ASIA MEDIA CONFERENCE
ALMATY, 13-14 OCTOBER 2005

Vienna 2006



THE REPRESENTATIVE ON FREEDOM OF THE MEDIA

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AND THE INTERNET**

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Miklos Haraszti

FOREWORD

Pluralism of the media is the overarching value on which all media freedoms are dependent. Without pluralism we cannot have any of the positive attributes of a democratic press. If we have pluralism - i.e. a multitude of press outlets in the hands of multiple owners with the result of numerous sources of information - then we don't have to worry too much about the quality of each of them individually. We could be confident that natural development would bring about high-quality papers and high-quality broadcasters, which would act as a counter-balance to the professionally weaker ones.

Democratic governments are not expected to provide funding for new outlets, but they should provide the conditions for a pluralistic press. They should muster the necessary political will to extract their own holdings from the media, and install the necessary legal environment for pluralism. In all other respects it is self-restraint that a free press needs from governments.

Just as it happened in the case of the telegraph, the radio and the television, governments will have to acknowledge that whatever good intentions and reasons they might find for introducing regulation vis-à-vis the Internet, that enthusiasm is compatible neither with the nature of global media, nor with media freedom. Further, it is not even beneficial for the governments themselves, if they mean to influence their electorate only via channels that are compatible with democracy.

Internet pluralism is at the heart of debate everywhere in the world today. However, disputes assume a special importance in the Central Asian democracies where the Internet has become one of the main sources of pluralistic political information. While the Internet still requires basic technological and financial investment to reach more homes, close attention to the pluralism of the various media types that the Internet hosts is already essential.

We dedicated our 7th Central Asian Media Conference to the two ideas: Pluralism of the Media and Freedom of the Internet. I am encouraged at the level of interest that has been generated among the journalistic community of this region towards these issues, and about the quality of the contributions.

I hope our readers will agree.

SEVENTH CENTRAL ASIAN MEDIA CONFERENCE
ALMATY

PLURALISM IN THE MEDIA AND THE INTERNET

On 13-14 October 2005, the annual Central Asian Media Conference was held in Almaty, Kazakhstan. The Conference was organized under the auspices of the OSCE Representative on Freedom of the Media, **Miklos Haraszti**, and the OSCE Centre in Almaty.

For the seventh time, 150 participants from all five Central Asian countries – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – gathered to discuss developments in the region in the media field. The participants included journalists and representatives of non-governmental media organizations, as well as officials, experts and foreign guests. As in previous years, the conference provided a unique opportunity for interaction, an exchange of views among the participants and a creation of new bonds between regional colleagues.

At the first session, participants focused on the developments in the region which have had an impact on freedom of the media. Last year's conference topics, **Libel** and **Freedom of Information**, were reviewed by international and local experts. The situation in the region has not substantially improved since that time. It is crucial that necessary reforms in libel and freedom of information, as recommended in the Dushanbe Declaration of 2004, be started.

The two main topics this year were **Pluralism in the Media** and the **Internet**.

While issues of pluralism and the Internet were specifically discussed, their interconnectivity has also become very clear in the course of the discussion.

Specifically in Central Asia, the Internet has in the last couple of years become in some countries the last resort of pluralism and an alternative source of pluralistic information compared to television and print press. In all Central Asian countries it is becoming the future of pluralistic media. International organizations like the OSCE should engage more than ever in protecting freedom of the Internet.

The Representative on Freedom of the Media has in the last years developed a whole set of publications, recommendations and „recipes“ for best practices and good governance of the Internet which hopefully will serve as guidelines for all OSCE participating States.

Almaty Declaration on Pluralism in the Media and the Internet

The debates at the Almaty Conference on Media stressed the following conclusions:

- Governments should ease state secret and other laws that unnecessarily restrict access to information. States should adopt and implement comprehensive freedom of information laws which maximize media and public access to government-held information.
- Further efforts should be made at decriminalization of offences concerning libel and defamation. The concepts of distinguishing between criticism of private and public figures should be introduced throughout punitive legislation in order to allow for vivid debate on public-interest issues.
- The fines imposed by the Courts on media enterprises should not drive them into bankruptcy.

Internet:

- Regulation of the Internet should be limited to instances where it is absolutely unavoidable.
- Internet media should enjoy the same protection by press freedom provisions as classical media.
- All acts on regulations of the Internet should be taken after necessary consultations with the Internet community.
- There should be no state regulation or registering of websites or Internet domains besides purely technical matters.
- Websites should not be obliged to be physically hosted in the country even if targeting home audiences.
- Bodies administering the country's domain name system (DNS) should be independent from the state.
- The development of the technical infrastructure of the Internet should be fostered.
- In order to improve both public and media access to information and facilitate electronic government, public bodies should publish helpful information about their structures and activities on web sites.

Pluralism in the Media:

- Providing conditions for pluralism is a state obligation; caring about the content with which the actual outlets and channels fill the information space is not a state task.
- Strategies need to be devised to help development of pluralism in all media fields from television through print media to Internet.
- Efforts should be taken to develop professional skills of journalists including training programs utilising local experts.
- Built-in, internal pluralism should be provided in state broadcasting even before official transformation into a government/independent public broadcasting institution. This means, in the first place, ensured access to state TV for all candidates running for national office during election campaigns.
- External pluralism should be promoted by both law and practice of non-political licensing for privately-owned television and radio stations.
- Starting a newspaper should become a notification process where it is still a registration process.
- Governments should acknowledge denationalization of printed media as one of their main tasks.
- Privatization of state assets within a reasonable period of time should become a legal obligation for their today's publishers.
- Initial tax exemptions should be provided for newspapers to help them survive the transition from state to private property.
- In the meanwhile, independent bodies should supervise equal access to financial resources, printing possibilities, distribution networks, advertisement revenues, etc. for both state-owned and privately-owned print press.
- Foreign or mixed ownership of all communication outlets should be allowed under anti-monopoly rules.

Almaty, 14 October 2005

WELCOMING REMARKS BY IVAR VIKKI

Dear participants,

On behalf of the OSCE Centre, let me welcome you to an important media event, and thank the OSCE Representative on Freedom of the Media for this annual initiative for Central Asia. This year's conference is dedicated to discussing two vital questions: pluralism in the media and the Internet, and the relationship between them. I assume there is no need to mention in this representative forum the important role played by information and the media in any society, and especially in developing democracies. These basic principles are embedded in a number of the OSCE's fundamental instruments and comprise an important part of our everyday work and concerns.

We are talking here not merely of pluralism in the area of politics, which is a necessary condition for democracy and stability in society, but also of the pluralism in the media and freedom of expression which promote the development of democracy. This pluralism is indispensable for the public's control over the actions of government organs; the fight against corruption, intolerance, and extremism; and the development of an informed and responsible civil society.

As was noted in the Dushanbe Declaration on the results of last year's conference, "...certain Central Asian states have taken definite steps towards ensuring freedom of information, but the main problems remain unresolved". Among the remaining challenges, we can note the need to draft media legislation in compliance with OSCE standards, decriminalize defamation, and improve access to information. In making efforts to resolve these issues, the Centre has for its part devoted considerable attention in recent years to the professional development of journalism in Kazakhstan, and to improving the information environment on the whole. We are working to broaden the opportunities for the professional growth of the young journalists who make up the country's future informational landscape, and are also working to improve media legislation.

Using this opportunity, I would like to thank the officials of Kazakhstan, and the representatives of the international community and mass media, both for their continuing co-operation in the areas mentioned above and for their taking part in the work of today's conference. I wish you all an interesting and productive discussion!

OPENING SPEECH BY RAKHAT ALIYEV

Mr. Chairman,
Ladies and gentlemen,

Let me welcome all of you cordially on the soil of Kazakhstan to such a representative regional forum held under the auspices of the OSCE. This will already be the 7th conference the holding of which had been initiated by the Office of the OSCE Representative on Freedom of the Media as far back as 1999.

I would like to mention particularly the long-awaited first visit to Kazakhstan by honourable Mr. Miklos Haraszti, Head of the OSCE Office on Freedom of the Media.

Within the framework of obligations under the Helsinki Final Act and the 1999 Istanbul Declaration, all OSCE countries undertook to guarantee freedom of the press as a fundamental condition for the development of a democratic society and recognized the need of securing freedom of expression, which is a most important element of political dialogue. A well-informed civil society and an open government assisted by independent, professional and responsible journalists constitute important conditions for securing an effective and publicly supported response to the contemporary challenges to peace, stability and prosperity.

Free and unobstructed access to the media for each citizen is one of the features of an advanced civil society. Furnishing of alternative information by the governmental and private media facilitates the formation of informational openness of society. Besides, media coverage of the diverse interests and opinions promotes greater tolerance and readiness to compromise.

As I see it, media pluralism should be construed to include, on the one hand, a wide range of independent and autonomous media having access to a sufficient number of diverse sources of information and, on the other hand, reflection by these media of the diverse political, social, religious and cultural outlooks.

The media play an important role during crises and conflicts. In addition, I would like to note particularly the need of applying the principle of enhanced responsibility of journalists for the accuracy, reliability and impartiality of information whenever a conflict situation arises to avoid aggravating matters and existing contradictions.

Freedom of speech and freedom of the media are far from being the synonyms of permissiveness or irresponsibility. We must not connive at infringements of the Constitution on the part of the print or electronic media. Giving

floor to terrorists, stirring up inter-ethnic or inter-confessional strife, calling for a forcible change of the existing system of government shall not be tolerated by any responsible democratic society and must be suppressed in accordance with the law.

Mr. Chairman,

Over recent years, the OSCE has focussed on matters of media freedom in the Internet.

Today's information and communication technologies are not just tools for exchanging and disseminating information; rather, they are important instruments for exercising such human rights as freedom of expression, the right to seek and receive information, and the right to education and development.

The Internet itself does not guarantee freedom of opinions and their expression. In the first place, the Internet is communications technology, a network securing communication. Just as anywhere else, freedom of expression must be protected in the Internet by rules of law. Therefore, wilful control of or illegitimate restrictions on information transfer and dissemination must not be allowed.

Hence the need to protect the pluralism of sources of information and means of its dissemination, including the diversity of information retrieval systems.

The range of mass media available in the world today keeps growing wider. In Kazakhstan, we have the opportunity to choose the media that are of interest especially to us and exactly at the time when we need them. Moreover, enhanced competition in the media sector is an important component of the democratic process.

Mr. Chairman,

Our country is consistently implementing a programme of stage-by-stage democratization and political modernization of civil society. Ensuring one of the fundamental rights – the right to freedom of speech – certainly constitutes one of the most important objectives of the government.

At present, the intra-state procedures are under way in the country to ratify the International Covenants on Civil and Political Rights, as well as the Covenant on Economic, Social and Cultural Rights. Draft laws on ratifying these covenants without reservations have been approved by the Majilis and submitted to the Senate for consideration.

In Kazakhstan, freedom of speech has been ensured by the vigorous operation of governmental and private media and a ban on censorship. The media

sector represents the whole spectrum of opinions ranging from those of the government to extremely oppositional points of view. In our country, there have been no cases of blocking the world information traffic in the Internet.

There are 164 television and radio-broadcasting companies, 12 news agencies, 1,260 newspapers, and 529 journals and magazines in Kazakhstan. The print and electronic media have equal access to information and government agencies render them all kinds of assistance in this respect. Let me note that there are over 200 printing houses operating in Almaty alone, not to speak of Kazakhstan as a whole. This is evidence of competition in and diversity of the printing services market.

None of the foregoing in any way means that Kazakhstan's media have no problems whatsoever. For example, due to objective causes connected with the vast territory of Kazakhstan, metropolitan papers and periodicals do not always reach remote parts of the country and transmission of TV signals sometimes turns out to be very expensive. Moreover, there is a whole number of other problems requiring resolution.

However, it is obvious that the market of printed and electronic mass media has been formed in Kazakhstan. The market regulation mechanisms are now working: only the most interesting and informed print media and television channels survive whereas those incapable of meeting competition have to quit the market. Certainly, from time to time some of them try to play their economic failures off as political harassment, claim that their problems result from pressure brought to bear on the oppositional press and demand from the government easy terms and preferences or additional funds from the state budget.

At present, work is under way in the country on a new draft law on mass media, and the Office of the OSCE Representative on Freedom of the Media is actively assisting these efforts in the form of consultations. Besides, Kazakhstan is weighing up the possibility of decriminalizing defamation.

President Nursultan Nazarbayev's Decree dated 9 September 2005 instructs the Ministry of Culture, Information and Sports as well as the Central Election Committee of the Republic of Kazakhstan to ensure equal access to the media for the presidential candidates during the election campaign.

I would like to note particularly that Kazakhstan's application for chairmanship in the OSCE is an expression of our consistent course towards accelerated economic and political modernization of the country, of a responsible and balanced approach to maintaining international and regional stability and security. We are the first post-Soviet country to seek this high-level position.

Hence Kazakhstan's special responsibility. If our application for chairmanship is granted, we shall be guided by the interests of the Organization in the first place and firmly uphold its underlying principles and standards throughout the entire OSCE space.

In conclusion, I would like to express the hope that the forthcoming two-day forum on problems of pluralism in the media and the Internet will become a significant event in the process of development and further democratization of the media in Central Asia.

OPENING SPEECH BY DARKHAN KALETAYEV

Dear colleagues, conference participants and guests,

Let me express my gratitude to the organizers for the invitation to take part in the work of such an authoritative conference and wish – on behalf of the Administration of the President of the Republic of Kazakhstan – all those present fruitful work and successful results.

The topicality of the declared subject of the conference is beyond doubt. Today, information is a most important resource of influencing social development and political processes. The media have become an integral feature of political life. Moreover, the degree of media influence on public policy will undoubtedly be growing in the course of further development of the democratic institutions.

Meanwhile, pluralism plays the role of a backbone factor. Indeed, it is only under the actual pluralism of opinions that the media can fulfil its main function of providing objective information which also is one of the most important conditions for the existence of democratic society.

In its turn, the increasingly important role of the media in the positive processes of globalization facilitates the objective process of media de-monopolization and pluralization both on the global and national level.

The on-going globalization of the information environment is eroding the boundary lines and contours of the media space in a particular country and globally and changing the parameters and dynamics of its development.

However, since the formation and transformation of media space also depend on a multitude of internal political, social, economic and cultural factors, this multiformity makes media pluralization inevitable.

A fundamentally new information space is vigorously taking shape in our country, which is evidence of the effective functioning of the entire socio-economic and political system of independent Kazakhstan and its gradual involvement in the world information system.

Over the years of independence, Kazakhstan has created a full set of political, economic and legal conditions required for the functioning of independent media. An overwhelming majority of the mass media accounting for over 80 per cent of the country's media are non-governmental.

The underlying principles of democratic society, such as freedom of expression, absence of censorship and access to sources of information, constitute the basis of Kazakhstan's media legislation.

The main indicators of the development of Kazakhstan's information envi-

ronment over the years of independence include the quantitative and qualitative growth of its most important component – mass media, and the making of a dynamic domestic media market.

Over the past ten years, the number of Kazakhstan's media has increased more than 50-fold.

As many as 2,110 mass media operate in Kazakhstan today.

This number includes 1,325 newspapers, 590 journals and 184 electronic media. Information concerning various subjects is disseminated by 11 news agencies.

Every month 20 to 40 new media outlets appear in the country.

The geography of operation of foreign media in the territory of Kazakhstan has been expanded significantly: today, their number in the country exceeds 2,300. More than 150 representatives of foreign mass media from twenty countries of the world are accredited to the country.

Kazakhstan's segment of the Internet is developing at an especially quick pace. All the main Internet access technologies are available in Kazakhstan.

Today, the total number of domain names registered under the domain of KZ is close to 9,000.

More than 200 companies have licenses of Internet Service Providers. The annual growth rate in the ISP market exceeds 30 per cent.

Today, there are one million Internet users in Kazakhstan as against 14,000 users registered in the country in 1999.

Such a breakthrough has largely been made possible by government measures to de-monopolize the telecom market and pursue a sound pricing policy. Since 1 April 2005, various Internet access and services tariffs have been reduced 30 to 50 per cent, primary for schools.

As is generally known, all schools in Kazakhstan have been computerized. Last year, 44 per cent of schools were connected to the Internet, and the figure will have grown to 75 per cent by the end of 2005.

However, it would be wrong to consider the Internet community development process in the light of technical resources only. It is important to take into consideration the political, social and cultural aspects of the World Wide Web.

There is no doubt that the large-scale "Internetization" of Kazakhstan's society gives a new impetus to the development of media pluralism.

Dear colleagues,

An effective market economy has been established in the Republic of Kazakhstan, and the media market is its integral part. The media market will further develop in the overall context of an accelerated economic, social and political modernization set forth by the country's President Nursultan Nazarbayev in his Message to the people of Kazakhstan.

The indisputable priorities on this road are the legal improvement of Kazakhstan information environment, development of media pluralism and content diversity, and government support for mass media regardless of their forms of ownership.

I am confident that a dialogue within the framework of the conference will facilitate the discussion of current media challenges and the search for an adequate response to them.

Once again I wish all of us constructive work and positive results!

CONTRIBUTORS

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- Rakhat Aliyev, First Vice-Minister of Foreign Affairs of Kazakhstan
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Part 1. Latest Developments for the Media in Central Asia

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Part 2. Pluralism in the Media: The Only Criteria for Independence?

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Part 3. Internet: Between Censorship and Free Flow of Information

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I.

**LATEST DEVELOPMENTS FOR THE MEDIA
IN CENTRAL ASIA**

Sophie Redmond

RECENT DEVELOPMENTS IN LIBEL LAW: PRESSING
AHEAD FOR CHANGE

David Banisar

FREEDOM OF INFORMATION IN CENTRAL ASIA 2005:
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Sayora Ruzikulova, Nadezhda Stepanova

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MEDIA LEGISLATION IN KAZAKHSTAN:
HISTORY, TRENDS, OUTLOOK

Sophie Redmond

RECENT DEVELOPMENTS IN LIBEL LAW: PRESSING AHEAD FOR CHANGE

Ensuring libel law does not infringe the right to freedom of expression is fundamental to strengthening the role of the media and a robust democratic society. Libel law serves to protect the reputations of individuals, however the scope for abuse of these laws to stifle open debate on matters of public interest and the legitimate criticism of wrongdoing by officials is well established. It is crucial that defamation laws are not used to silence critics of the political bodies and public figures. When criticism of public institutions is silenced, the public's ability to formulate opinions about its government, officials and other matters of public interest suffers. The media is not able to play its critical role of acting as a watchdog and providing the public with information, exposing corruption and inspiring political debate.

At last year's conference, the Dushanbe Declaration outlined the key ways to tackle libel laws which threatens public debate and governmental accountability:

- The possibility for government officials and politicians (public figures) to sue the media and journalists should be limited;
- Defamation should be decriminalised and replaced with appropriate and narrowly defined civil defamation laws, introducing a defence of 'reasonable publication' and capping damages; and
- If full decriminalisation is not possible in the short term, the possibility to suspend temporarily the applicability of defamation articles should be considered. Laws envisaging the criminal and civil liability of journalists for insulting the honour and dignity for heads of state on behalf of third persons should be abolished.

Since last year's conference, there has not been significant movement towards achieving the aims of the Dushanbe Declaration. As you are aware, prosecutions for criminal defamation have continued in the Central Asian region in the past year and I refer to two high profile cases as examples.

Mr. Nosir Zokirov, a journalist with the Uzbek news service *RFE/RL* for the past eight years was sentenced to six months prison on a charge related to his reporting on Andijan. Charged with insulting a security officer, he was tried with-

out counsel or witnesses, sentenced and imprisoned, all on 26 August 2005.¹

Also, on 6 April 2005, a District Court judge in Kazakhstan found *Zhas Alash* newspaper, and journalists Ruslan Yerbota and Yerik Rahimov, guilty of defamation and fined the paper and journalists 100,000 tenge and 10,000 tenge respectively. The lawsuit was based on seven critical articles published in the newspapers accusing Mr. Abdrahmanov, a member of the lower house of Parliament, of failing to return state-sponsored loans. The court ruled against the defendants despite their counsel proving the claims made in the articles. The documents demonstrated that Mr. Abdrahmanov, as former head of the Yelimay Commercial Fund, had received and failed to return state-sponsored loans.²

There have been some encouraging developments in the region, such as Kyrgyzstan considering repealing its criminal defamation provisions and the moratorium placed on defamation suits in Azerbaijan following the Huseynov murder. Given the continuing prevalence of criminal defamation suits in the region, however, it is critical that further action is taken in the next twelve months.

I would like to emphasize that there is a viable alternative - to waiting for governments to act - in order to achieve the aims of the Dushanbe Declaration and this is to challenge domestic libel laws which infringe freedom of expression in international courts and tribunals.

Pressuring governments by drawing attention to State laws and practices at the international level has repeatedly been shown to be successful. Decisions of international courts and tribunals have led directly to the repeal of laws which are in violation of international treaties and reform of State practices.

The ICCPR and the United Nations Human Rights Committee

All Central Asian States except Kazakhstan have ratified the International Covenant on Civil and Political Rights (the ICCPR). Kazakhstan signed the ICCPR in 2003 and is in the process of ratifying the Convention.

Turkmenistan, Kyrgyzstan, Uzbekistan and Tajikistan have all also signed the Optional Protocol to the ICCPR, thus recognising the competence of one of the key international human rights bodies, the United Nations Human Rights Committee.

¹ International Freedom of Expression Exchange (IFEX) Update, *Appeals Court upholds journalist's conviction, second journalist flees the country as crackdown on media continues*, 23 September 2005 (Update submitted by Committee to Protect Journalists), <http://www.ifex.org/en/content/view/full/69418/>

² IFEX Update, *Newspaper, journalists convicted of defamation and fined*, 27 April 2005 (Update submitted by Adil Soz/IFEX), <http://www.ifex.org/en/content/view/full/66258/>.

As a result, a citizen of any one of these four countries can file a communication with the Human Rights Committee, alleging (amongst other things) that State laws or practices have violated the protection of freedom of expression in Article 19 of the ICCPR.

The United Nations Human Rights Committee is a quasi-judicial body committed to investigating allegations of violations of the ICCPR. It is composed of 18 independent experts who are persons of high moral character and recognized competence in the field of human rights. The Human Rights Committee was established to monitor the implementation of the ICCPR and Protocols in the territory of State parties. State parties must submit reports to the Committee every five years on the measures they have adopted to give effect to the rights recognised in the ICCPR and the progress made on the enjoyment of those rights. In addition, the Committee meets three times a year to investigate and make rulings on alleged violations of the ICCPR.

In the last 12 months there have been two landmark cases concerning libel laws decided by the Human Rights Committee— *Rafael Marques de Morais v Angola*³ and *Victor Ivan Majuwana Kankanamge v Sri Lanka*⁴. In these cases, the Human Rights Committee found that the governments of Angola and Sri Lanka had violated the rights of one of its citizens under Article 19 of the ICCPR and called for compensation and measures to be taken by the State party to prevent future violations.

(i) *Marques de Morais v Angola*

Mr. Marques de Morais wrote several articles critical of the Angolan President in 1999. He claimed that the President was responsible “for the destruction of the country and the calamitous situation of State institutions” and was “accountable for the promotion of incompetence, embezzlement and corruption as political and social values”. He was initially summoned for questioning for three hours and was released. Mr. Marques de Morais then repeated his views on a radio interview and described how he had been treated by the authorities.

He was then arrested at gunpoint by 40 police officers, imprisoned and charged with “materially and continuously committing the crimes characteristic of defamation and slander against the President with aggravating circumstances”.

³ 29 March 2005, Communication No. 1128/2002, CCPR/C/83/D/1128/2002, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7fcd3e33e47034b1c1256ff0004c2c5b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7fcd3e33e47034b1c1256ff0004c2c5b?Opendocument)

⁴ 26 August 2004, Communication No. 909/2000, CCPR/C/81/D/909/2000, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2cf5dad9e10965ddc1256f01004c859d?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2cf5dad9e10965ddc1256f01004c859d?Opendocument)

At his trial Mr. Marques de Morais was not allowed to produce evidence supporting a defence of 'truth'. He was convicted of abuse of the press by defamation and injury to the President, he was sentenced to 6 months imprisonment and given a punitive fine to 'discourage' other offenders. On appeal his conviction for abuse of the press by injury to the President was upheld and he was ordered to pay compensation to the victim, but the application of his custodial sentence was suspended for five years.

Following his trial, Mr. Marques de Morais was prevented from leaving Angola to attend a conference of journalists in South Africa and had his passport confiscated.

Mr. Marques de Morais applied to the Human Rights Committee in 2002, alleging a violation of Articles 9, 12, 14 and 19 of the ICCPR. The Human Rights Committee found violations of Article 9, 12 and 19.

The Human Rights Committee held that:

- Given the paramount importance, in a democratic society, of the right to freedom of expression and of a free and uncensored press or other media, the severity of the sanctions imposed on Mr. Marques de Morais were not a proportionate measure to protect public order or the honour and reputation of the President who, as a public figure, must be open to criticism and opposition. Accordingly, Mr. Marques de Morais' arrest, detention and conviction and the restraints on his ability to travel all constituted compensable violations of Article 19;
- The Committee considered it an aggravating factor that Mr. Marques de Morais' proposed truth defence against the libel charge was ruled out by the Angolan courts; and
- The Committee reiterated its previous rulings that the right to freedom of expression includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.

In addition to Mr. Marques de Morais being entitled to an effective remedy for his arbitrary arrest and detention and violation of his rights under the ICCPR, the State party was reminded it was under an obligation to take measures to prevent any similar violations in the future. Such measures would encompass repeal or reform of the relevant legislative provisions.

(ii) Victor Ivan Majuwana Kankanamge v Sri Lanka

Mr. Ivan was a journalist indicted several times over a number of years for allegedly having defamed high State party officials in newspaper articles and reports. Mr. Ivan felt that the purpose of the indictments and complaints was to harass and intimidate him and interfere with the publication of his newspaper, rather than any factual basis existing for the prosecutions.

In addition to three defamation indictments which led to criminal proceedings, there were nine defamation complaints filed against Mr. Ivan between 1992 and 1997 by the Attorney General. In respect of these nine complaints, the Attorney General decided not to issue criminal proceedings. Furthermore, the Attorney General initiated the proceedings in the High Court although the matters could have been heard by a magistrate.

In 1998, Mr. Ivan applied to the Supreme Court of Sri Lanka for an order invalidating these indictments on the basis of contravening the Constitution or to suspend the indictments. His application was rejected.

In 2000, Mr. Ivan applied to the Human Rights Committee, contending that the Attorney General was exercising his power arbitrarily as he had failed to abide by the statutory requirement of a proper assessment of the facts for a criminal defamation prosecution.

The Human Rights Committee found in Mr. Ivan's favour, finding violations of Articles 14(3)(c) and 19 of the ICCPR, read in conjunction with Article 2(3).

The Human Rights Committee held:

- The government of Sri Lanka had failed to provide any explanation for the prolonged procedural delays in the prosecution of the indictments;
- To keep the indictments pending for several years kept Mr. Ivan in a situation of uncertainty and intimidation resulting in an unacceptable chilling effect which unduly restricted the exercise of his right to freedom of expression; and
- So long as the consequences of the unresolved indictments were hanging over Mr. Ivan, this was a violation of Article 19 of the ICCPR

Following the lodging of Mr. Ivan's complaint to the Human Rights Committee, the Sri Lankan government repealed the Criminal Defamation Law in 2002.⁵

⁵ While Mr. Ivan was charged under s 479 of the *Penal Code*, the repeal of this libel-specific law occurred within the context of Mr. Ivan's communication to the UN Human Rights Committee. The Criminal Defamation Law provided for a two-year jail term and onerous fines for defamation convictions. Civil law provisions governing defamation continue to apply following the repeal of the Criminal Defamation Law.

Also, on 25 June 2004, counsel for Sri Lanka advised the Human Rights Committee that the outstanding indictments against Mr. Ivan had been withdrawn.

Further, this case is significant as the Human Rights Committee did not rely upon previous determinations as authority – the issue of the harassment and intimidation of journalists by vexatious defamation prosecutions had not been specifically considered before by the Committee. This case adds an important new element to the body of rulings on the content of freedom of expression in the context of defamation law.

Conclusion

Both of these cases provide encouraging evidence of the ability and will of international courts and tribunals to pressure States to respect the fundamental importance of freedom of expression in a democracy. Where there does not seem to be viable avenues to challenge libel law domestically, effective alternatives exist.

Most importantly, these cases relate directly to the aims of the Dushanbe Declaration, reaffirming its relevance and the viability of the realisation of its goals. The Human Rights Committee has affirmed that libel laws which give absolute protection to governmental officials and public figures are a violation of the right to freedom of expression, that the harassment and intimidation of journalists through vexatious libel prosecutions will not be tolerated, and the severity of criminal sanctions are incompatible with freedom of expression, which holds paramount importance in a democratic society.

The case law also demonstrates how the provisions of the ICCPR interrelate to support and strengthen each of the universal human rights outlined in the Convention. For example, in the case of *Ivan v Sri Lanka*, the Committee found there had been violations of Article 14 in the unreasonably prolonged prosecution of indictments against Mr. Ivan and Article 19 had been violated by the effect of having these unprosecuted indictments hanging over him, creating a chilling effect on freedom of expression. Similarly, in Mr. Marques de Morais' case, his arrest at gunpoint, detention, his denial of the right to judicial review of the lawfulness of his detention, and the confiscation of his passport were all held to be violations of his rights under the ICCPR, related to the violation of his rights under Article 19.

ARTICLE 19 encourages individuals from the Central Asian States to utilise this avenue of redress.

David Banisar

FREEDOM OF INFORMATION IN CENTRAL ASIA 2005: PROBLEMS AND PROMISES

Access to government information is widely recognized as both an important right and a key legal and administrative mechanism for promoting government accountability.

In Central Asia, the legal rights of access to information are limited. Freedom of Information (FOI) laws are weak or non-existent. There are also continuing problems with overbroad state secrets acts that are used to suppress even basic information in some countries. The most positive development in the last year is the introduction of the draft FOI bill in Kyrgyzstan and the commitment by the government of Kazakhstan to draft a bill.

FOI Globally and Nationally

We have truly entered an “age of transparency.” Over sixty countries worldwide have now adopted comprehensive freedom of information laws and efforts are pending in another forty. Countries are adopting these laws for a variety of reasons including improving democratic accountability, fighting corruption, revealing and remedying past injustices, promoting electronic government, and enhancing administrative reform.

Most national comprehensive FOI laws around the world are broadly similar. The following elements can be found in nearly every FOI law:

- a right of a individual, organization or legal entity to be able to demand information from all public bodies without having to show a legal interest;
- a duty of the body to respond and provide the information. This includes mechanisms for handling requests and time limits for responding to requests;
- exemptions to allow the withholding of certain types of information. These typically require that some harm to the interest must be shown before it can be withheld. These include the protection of national security and international relations, personal privacy, commercial confidentiality, law enforcement and public order, information received in confidence, and internal discussions.
- internal appeals mechanisms for requestors to challenge withholding of information;

- external review of the withholding of information. This includes setting up a external body or referring cases to an existing ombudsman or the court system;
- requirements for government bodies to affirmatively publish some types of information about their structures, rules, and activities;
- sanctions against bodies and officials who intentionally fail to comply with requirements, or modify or destroy documents.

International and Regional Standards

There is a growing body of international laws and agreements that require or encourage countries to adopt FOI standards. Many of these relate to corruption. Increasingly, Central Asian countries, with the exception of Uzbekistan, have joined these efforts.

In December 2005, the *UN Convention Against Corruption* went into force. Articles 10 and 13 of the Convention require that countries adopt measures to improve public transparency. Article 10 on public reporting states:

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 13 on “Participation of society “ states:

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the

active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

2. This participation should be strengthened by such measures as:
 - (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
 - (b) Ensuring that the public has effective access to information;
 - ...
 - (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - For respect of the rights or reputations of others;
 - For the protection of national security or order public or of public health or morals.

The Convention has been signed by Kyrgyzstan and has entered into force in Turkmenistan by accession.

The 1997 *UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (the Aarhus Convention) requires that governments affirmatively make information available and engage citizens before making decisions on environmental issues. It has been signed by forty countries.¹ All of the Central Asian countries except for Uzbekistan have signed the Convention.

Kyrgyzstan and Kazakhstan have formally endorsed the *Asian Development Bank/Organisation for Economic Cooperation and Development Anti-Corruption Action Plan* for Asia and the Pacific.² Pillar 3 of the Action Plan states that governments commit to:

Ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administra-

¹ UNECE. <http://www.unece.org/env/pp/>

² ADB OECD Anti-Corruption Initiative, Anti-Corruption Action Plan for Asia and the Pacific. <http://www1.oecd.org/daf/asiacom/ActionPlan.htm>

tion or, in any other way, be detrimental to the interest of governmental agencies and individuals, through:

- Establishment of public reporting requirements for justice and other governmental agencies that include disclosure about efforts to promote integrity and accountability and combat corruption;
- Implementation of measures providing for a meaningful public right of access to appropriate information.

The *Anti Corruption Network for Transition Economies* was formed “to promote knowledge sharing, donor co-ordination and policy dialogue in the transition economies in Central, Eastern, and South Eastern Europe and the Newly Independent States.” All of the Central Asian states except for Uzbekistan have joined this Network. Further, the Kyrgyz Republic and Tajikistan have agreed to the *Istanbul Anti-Corruption Action Plan*. Pillar 3 of the agreement states that governments commit to:

Ensure public access to information, in particular information on corruption matters through the development and implementation of:

- Requirements to give the public information that includes statements on government efforts to ensure lawfulness, honesty, public scrutiny and corruption prevention in its activities, as well as the results of concrete cases, materials and other reports concerning corruption.
- Measures which ensure that the general public and the media have freedom to request and receive relevant information in relation to prevention and enforcement measures.
- Information systems and data bases concerning corruption, the factors and circumstances that enable it to occur, and measures provided for in governmental and other state programmes/plans for the prevention of corruption, so that such information is available to the public, non-governmental organisations and other civil society institutions.

In the most recent assessment of Kazakhstan in October 2005, the network recommended that it:

Introduce in the rules and procedures a common procedure for the natural and legal persons which would allow receiving information from the state and local authorities; provide for a possibility to appeal the refusal to provide

such information to these bodies without sufficient grounds.³

Previously, it recommended that Tajikistan improve the implementation of the domestic law to allow for better access. It recommended that the government:

Consider creating an independent office of an Information Commissioner to receive appeals under the Law on Access to Information, conduct investigations, and make reports and recommendations. Revise the Access to Information legislation, to limit discretion on the part of the public officials in charge, and to limit the scope of information that could be withheld.⁴

FOI in the OSCE

The OSCE has been active in promoting citizen and civil society access to government information as means to improve good governance to improve democracy and free media. In 2001, the Parliamentary Assembly recommended that:

Urges the OSCE participating States and OSCE institutions to strengthen their efforts to promote transparency and accountability through support for independent and pluralistic media; promoting financial disclosure by public officials, political parties, and candidates for public office; opening budgeting processes with effective internal control systems and suitable financial management systems, and financial and compliance reporting;

In 2003, the Parliamentary Assembly issued a resolution in Rotterdam 2003 stating:

Urges participating States to work with civil society in advancing and supporting ideas of accountability and transparency in government, and the promotion of good governance practices;

The OSCE Representative on Freedom of the Media has joined with the UN Special Rapporteur on Freedom of Opinion and Expression and the OAS Special Rapporteur on Freedom of Expression in expressing the need for

³ Assessment and Recommendations of Kazakhshtan as adopted by the 4th Istanbul Action Plan Review Meeting, 20-21 October 2005

⁴ Tajikistan: Monitoring Report, February 2005.

governments to adopt FOI laws as an essential part of freedom of expression.⁵ These include minimum standards for access laws.

FOI in Central Asia

Generally, the situation of access to information has remained poor in the region. No country in the region has successfully adopted and implemented a freedom of information law. State secrecy laws remain overbroad and are often used to suppress information and harass and prosecute journalists. Media laws provide little rights of access.

FOI Laws

Adoption of FOI laws in the region remains limited. Kyrgyzstan, Tajikistan and Uzbekistan have adopted limited laws. None of the laws fully incorporate international standards.⁶ Most of the laws seem quite ineffective, especially in Uzbekistan.

The most significant positive development in the region related to access to information in 2005 was the introduction of the Draft Law on the Freedom and Guarantees of Access to Information in Kyrgyzstan. The draft law sets broad rights of access to information by all citizens and media.⁷ Another positive step forward was the announcement by the Kazakhstan Government at the OSCE meeting in Almaty in October 2005 that it was beginning work on a draft FOI bill based on the CIS Inter-parliamentary Assembly Model bill that it would submit for review and comment by international bodies and experts.

Another possibly important precedent is the approval in September 2005 by the Azerbaijan Parliament of the Law on the Right to Obtain Information. The law provides a good model for Central Asian countries. It sets a broad right of access to information for all citizens, allows only limited exemptions on access, and provides for the creation of an independent oversight body.

⁵ <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1>

⁶ For more details see last years report at Banisar, "Freedom of Information: Global Practices and Implementation in Central Asia", in *21st Century Challenges for the Media in Central Asia: Dealing with Libel and Freedom of Information*, OSCE, 2005.

⁷ See Banisar, Comments on the Kyrgyz Republic Draft Law on the Freedom and Guarantees of Access to Information, September 2005. <http://www.osce.org/item/16882.html>

Secrets Laws

Combined with the weak access laws, there is the adoption problem in all Central Asian nations of state secrets laws. The state secrets laws are nearly identical and provide for very broad definitions and coverage. This broad classification of state secrets is increasingly under challenge as violating Article 19 of the UN International Covenant of Civil and Political Rights. The UN Human Rights Committee in their evaluation of the Uzbek Law on Protection of State Secrets stated:

The Committee is particularly concerned about the definition of „State secrets and other secrets“ as defined in the Law on the Protection of State Secrets. It observes that the definition includes issues relating, inter alia, to science, banking and the commercial sector and is concerned that these restrictions on the freedom to receive and impart information are too wide to be consistent with article 19 of the Covenant. [...] The State party should amend the Law on the Protection of State Secrets to define and considerably reduce the types of issues that are defined as „State secrets and other secrets“, thereby, bringing this law into compliance with article 19 of the Covenant.⁸

OSCE Recommendations

In September 2004, the OSCE Representative on Freedom of the Media called on the governments of Central Asia nations to take the following measures to improve freedom of information:

- Comprehensive laws on Free Access to Information based on international standards should be adopted and their proper implementation ensured.
- Multilateral oversight over the observation of these laws and standards should be ensured and carried out by parliaments, parliamentary commissions open to the public, commissions of public hearings and independent ombudsmen.
- State Secrets' laws should be amended in order to limit their applicability only to that information whose disclosure would significantly threaten

⁸ Concluding observations of the Human Rights Committee : Uzbekistan. 26/04/2001. CCPR/CO/71/UZB

the national security or territorial integrity of a nation.

- Rules by which information is classified should be made public.
- Limitations in time should be established for information classified as secret.
- Criminal liability for journalists connected with the disclosure of state secrets should be limited in cases of public interest.⁹

Conclusion

The nations of Central Asia are significantly behind the majority of the OSCE member states in making information available to their citizens and media. There are have been some setbacks but also some potential improvements. Hopefully, some of these will come to fruition in 2006.

⁹ OSCE, Dushanbe Declaration on Libel and Freedom of Information, 24 September 2004.
http://www.osce.org/documents/rfm/2004/09/3645_en.pdf

Sayora Ruzikulova, Nadezhda Stepanova

MEDIA IN UZBEKISTAN: TODAY'S REALITIES

President Islam Karimov has remarked on many occasions that citizens of Uzbekistan expect from the mass media “in addition to objective, unbiased information on events taking place in the country and beyond, a critical assessment of the activities of government authorities and management structures, open, professional analysis of evils, acute topical problems and everything that holds back our country’s advance towards reforms and renewal”. In his words, self-censorship and expectations of commands from above are still rife among journalists.

The accusation of self-censorship has become a convenient excuse, however, for the authorities to avoid taking responsibility for the absence in the country of freedom of speech and a critical assessment of the activities of those who stand at the helm. The principles of freedom of speech, openness and inadmissibility of censorship declared by top officials and their calls for topical problems in society to be discussed in actual life differ greatly from what the authorities really expect from the mass media. In reality, they want them to be completely under their control.

Table 1.

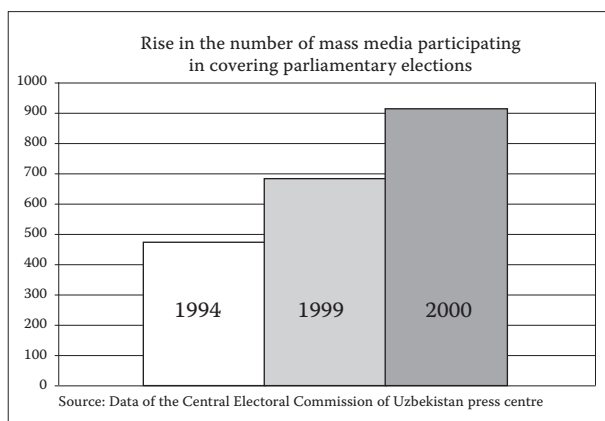
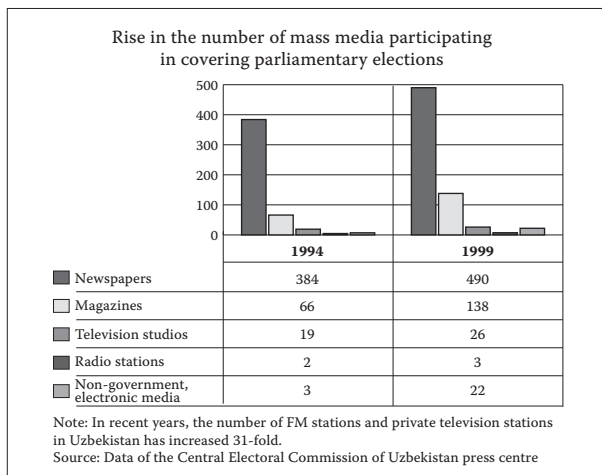


Table 2.

There are too many government structures in the country controlling the work of the mass media:

1. The Uzbekistan Agency for the Press and Information, which is responsible for registering mass media and their monitoring of the legislation.

2. The Uzbekistan Agency for Communications and Informatization, which organizes and issues licences for the right to television broadcasting and monitors observance by television and radio stations of the requirements of the licensing agreements, as well as engages in state regulation in the sphere of electromagnetic compatibility and distribution of radio frequencies for the purposes of radio broadcasting, transmission and delivery of television and radio programmes.

3. The inter-departmental coordination commission for improving and increasing the effectiveness of information activities is called on to co-ordinate activities in the sphere of television and radio broadcasting and take decisions on the issue and recall of special permits (licences) to engage in this activity.

Meanwhile, the main controlling function with respect to the activities of the mass media is exercised in Uzbekistan by the Presidential staff. This is the source of instructions issued to heads and founders of mass media concerning what Uzbek journalists should write about. Like in Soviet times, so-called “law by telephone” is used extensively for this purpose. Similar functions, though on

a smaller scale, are fulfilled at the local level by regional, city and district authorities, which are, at the same time, founders of corresponding state press organs.

The high degree of control exercised over the mass media by the authorities is evidenced by the following facts. From May of this year, the professional parliament of Uzbekistan began regular legislative activities. Somewhat later, accredited representatives of the mass media were granted access to the Legislative Chamber. (Accidentally, the accreditation process itself proved not to be difficult – it was sufficient for the editorial board to send a letter to the Oly Majlis.) The Ministry for Foreign Affairs refuses, however, to accredit foreign journalists or Uzbek citizens working for foreign media, if they are on the list of “unreliables”.

Unfortunately, the parliamentary journalists with access to plenary sessions where draft laws are passed in the course of three hearings, committee meetings, round tables, conferences, and other events held by the parliamentarians, do not acquaint the broad public with the entire scope of socially significant information received. As a rule, they may spend no more than two hours in the meeting halls, although the deputies often work throughout the day. They discussed here, for instance, draft laws of such importance to the people as the Law On Associations of Housing Owners, On Copyright and Related Rights and On Consumer Credits.

In answer to the question as to why journalists leave so early, without listening to the most heated and interesting discussions, a colleague of mine replied that, as a parliamentary correspondent, he goes to the Legislative Chamber just to register his presence. All the information published on the pages of his newspaper on the deputies' legislative activities comes exclusively from the National Information Agency (UzA) and is purely informative in nature. Only once was his material on the results of a meeting of the parliamentary commission actually printed. There had been a frank discussion of a pressing problem at that meeting. The editor had cut out of the article virtually all the criticisms, even though they came from the parliamentarians themselves. Yet, even in that form, it aroused a negative reaction from “above”. As a result, the mass media associate was instructed to attend the parliamentary hearings but to write nothing about them for publication. The journalist complained that his colleagues constantly discuss the problem of the lack of interesting, gripping materials.

Another characteristic example: A correspondent for the main news programme on the Uzbek television, programme “Akhborot” of UzTV, goes to the office of the head of one of the parliamentary services for advice on who he may interview.

Previously, the chief problem for journalists in parliament was to obtain the information needed. The legislators, mainly middle-level officials, were reluctant to make contact with the press and rarely agreed to comment on any given document. Now the deputies are prepared to express their opinions on various issues, but the journalists are in no hurry to listen to them and inform the public of their views, since they know full well that such material will not get through. Editors and founders, motivated by a desire to hold on to their positions or avoid conflicts with the authorities (which, in Uzbekistan today, include not only the Presidential staff, but also the Cabinet of Ministers, the chiefs of all law-enforcement agencies, ministries and departments) throw out any hot story, thereby making the newspapers and magazines, television and radio programmes both boring and insipid.

The Institute for Civil Society Studies monitored one of the two major newspapers in the country – the *Khalk suzy* (Popular Word) daily – and the monitoring results were made public on 10 October at an international conference in Tashkent devoted to the problems of interaction between parliament and the media. The Institute's experts had analyzed all the issues of the newspaper for the period from 1 January to 30 September 2005.

Only in 94 issues did they find information about the activities of the Oly Majlis – just 132 reports, constituting a mere 8 per cent of the total. Of these, short informational accounts made up 74 per cent and interviews 13 per cent; 57 items were UzA products rather than stories by parliamentary journalists. The newspaper published only 10 serious analytical articles, of which only two, in the opinion of the monitors, might have aroused public interest. The paper carried no pictures of the parliament chambers speakers or of committee chairmen. The print-run of the main national daily in Russian has fallen to 5,000 copies to make up a total of 21,000 copies together with the Uzbek language edition; meanwhile, the country's population is 26 million.

The editorial policy of “avoiding unpleasantness” has hit the local press – district, municipal and regional newspapers – hardest. For example, last September, the print-runs of the newspapers *Khorazm khakikati* and *Khorezm-skaya pravda*, which were founded by the Khorezm Region khokimiyat, numbered 1,520 and 663 copies, respectively, while the population of this area is over 1.5 million. The drop in the print-runs of governmental periodicals is due not only to the low incomes of the population; for instance, the sales of *Darakchi* tabloid in this part of the country are fairly high. The point is that people do not care about publications that are not true to real life or do not raise problems of public interest. The Deputy Director of the Public Opinion

Research Centre *Izhtimoiy fikr* (Public Opinion), Marat Khodjimukhamedov, noted in one interview: “Coverage of human rights issues in our mass media is either of an informational-educational or an informational-reporting nature. For example, the newspapers publish certain legal documents and commentaries on them. Or lawyers explain to people their rights in certain spheres. Such materials are, of course, necessary, but the mass media lack analytical articles and reports on the subject of human rights”.

There is also a whole series of taboos: the opposition and its leaders, the shadow economy and corruption, the head of state and his family, government “secrets” and much more. In addition, there are so-called unofficial censors to whom media bosses themselves turn for assistance (as a rule, former censors), as well as backstage consultants, acting on the instructions of the authorities and making recommendations to editorial boards on what can or cannot be published or broadcast.

Criticism is permitted when it is sanctioned by the authorities. There is a high level of self-censorship among journalists working for Uzbekistan’s media, irrespective of their form of ownership. They are “scared to death” to cover anything that has to do with public life. Ignorance of the law is another reason why journalists are, as a rule, unwilling to undertake labour-intensive genres, such as a critical article, journalistic inquiry or various analytical reviews. They are afraid of both the authorities and of making a gaffe owing to their ignorance of the law.

Moreover, a large proportion of the mass media in Uzbekistan, especially in the regions, lack sufficient financial support from the founders, on the one hand, and, on the other hand, are unable to attract advertisers, since the country’s advertising market is fairly narrow and they are not in a position to compete with television in this sphere.

Owing to financial problems, the staff of the newspapers *Amy tongi* (Dawn on the Amu) (Nukus, Karakalpakstan), *Sirdare khakikati* and *Syrdarinskaya pravda* (city of Djizak) have not received salaries for the past three months. As one of the journalists noted, they are delighted by every announcement of firms closing down, messages of congratulation and epitaphs. The only Russian-language newspaper in the Surkhan Darya Region, *Zarya Surkhana*, has not come out since last May and is on the verge of closing down. The last time the staff of this newspaper received their pay was in the third quarter of 2003. The desperate situation has compelled the paper’s journalists to turn to their colleagues with an open letter asking for advice on what to do under the circumstances.

Chart 3.

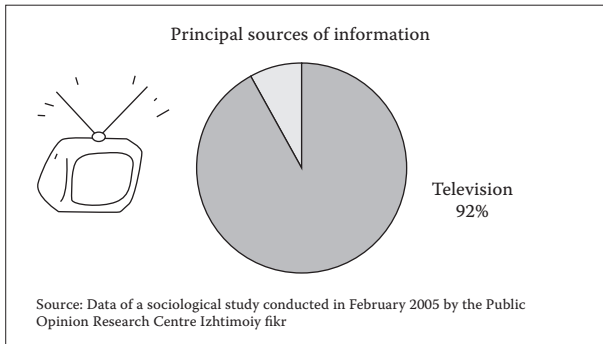


Chart 4.

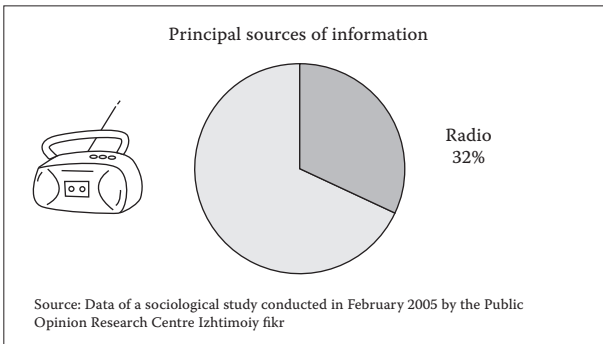
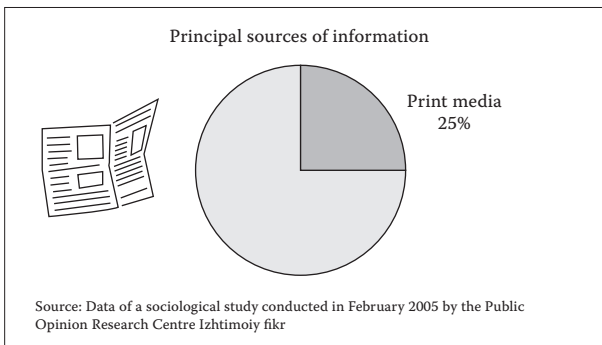


Chart 5.



Public organizations in the media sphere

In Uzbekistan, non-governmental non-commercial organizations in the media sphere also operate under the control of the authorities. The biggest of these are the Creative Union of Journalists (CUJ) and the National Association of the Electronic Mass Media (NAEM). The Creative Union of Journalists was founded on the basis of the Foundation for Media Support and Democratization which was ordered to self-dissolve. It was set up when journalists actively debated the idea of establishing a professional organization and made efforts to that effect. However, government agencies took the grassroots initiative into their own hands and established the Creative Union literally overnight. There were cases when local journalists were brought together and talked into joining new, public, professional organization of journalists by promises of holiday and treatment vouchers and business trips abroad. As a result, the journalists belonging to the Soviet-time Union of Journalists automatically became members of this organization. Yet, the Creative Union itself has no basic resources of its own and is unable to provide assistance to or support for the media and journalists.

The NAEM had some 60 members – non-governmental radio and television channels, cable TV studios, communications and telecom companies. According to its chief, Firdavs Abdukhalikov, they have brought together the small, previously scattered non-governmental television companies and radio stations operating in the regions of Uzbekistan and have started forming a civilized television and radio industry market in the country. The next step was the creation of a unified, non-governmental television network, which has become known as NTT. According to Abdukhalikov, the idea is to acquire and produce a competitive television product, complying with the international copyright rules and the legislation of Uzbekistan, including the Law On the State Language. In the opinion of its ordinary members, the intention is to take control of the activities of all non-governmental television and radio broadcasters.

“We are being forced into a unified television network to broadcast one and the same programme every day from 18:00 to 24:00 hours. A fifth non-governmental channel, broadcasting a common programme throughout the country, has been added to the four government channels. We thought we would combine our resources to purchase foreign television shows and hardware, but that has not happened. They dictate to us how we should operate,” a private television channel owner said heatedly.

It would be surprising if matters were otherwise. The loyalty of the current

NAEM management to the authorities has opened up the way for the Association. A professional organization, capable of independently implementing its ideas and exerting a real influence on public opinion would never manage to get itself registered with Uzbekistan's Ministry of Justice.

Mass media legislation

A tendency has also been observed towards a change of tactics on the part of the authorities vis-à-vis the mass media. Previously, against a background of official declarations about freedom and democracy, overt pressure was brought to bear on the mass media and journalists took virtually no part in the drafting of laws concerning their professional activities. Today, the authorities are using their institutions to try and involve journalists in free discussions of regulatory documents on the media sector. Thus, in March 2005, bi-weekly meetings of the Expert Council of Journalists, set up by the Institute for Civil Society Studies (ICSS), were held at the Institute's premises to discuss proposals for improving effective legislative acts and documents currently being drafted. These are the new versions of the laws On Mass Media and On Copyright and Related Rights, the new Law On Television and Radio Broadcasting, the Law On Telecommunications, the laws On the Economic Bases of Media Activities and On Protection of State Secrets. The experts made amendments and proposals for the government commission to review before the drafts were submitted to the country's parliament for consideration. The plan was for all these documents to be considered and adopted by parliament before the end of the year.

According to one of the experts involved in the work in the Legislative Chamber, Marat Khodjimukhamedov, Deputy Director of the Public Opinion Research Centre *Izhtimoiy fikr* (Public Opinion), the new version of the Law On Mass Media envisages a rule securing the obligation of a highly-placed official to give interviews to journalists. (This draft law has already been submitted by the Cabinet of Ministers to parliament for consideration.) Unfortunately, the authorities' words and deeds rarely meet. Recently, during a conversation with a journalist I know, she complained that, at one meeting, President Islam Karimov asked an official a question the latter could not answer properly. The head of state remarked ironically that the official could speak well with journalists but not at the meeting. Shortly afterwards, the Prime Minister of Uzbekistan instructed the management of the Uzbek Television and Radio Company not to show that official on TV any more. According to the journalist, they have to toil hard cutting out frames featuring that official. After all, he is constantly at the

centre of attention and events and regularly holds talks with foreign guests.

As one ICSS associate, M. Maksudova, has noted, the majority of amendments were rejected by the relevant parliamentary commission. This shows that the authorities' statements about their readiness to co-operate with journalists in drafting regulatory documents are so far just that – mere declarations. In spite of the increasing attention paid by the authorities to the problems of the mass media, it is a troubling sign that the initiative comes only from government agencies and institutions under their control. Journalists and civil society organizations are assigned the role of mere passive executives of the instructions coming down from on high.

Chart 6.

Media coverage of parliamentary activities in Uzbekistan:

Total publications

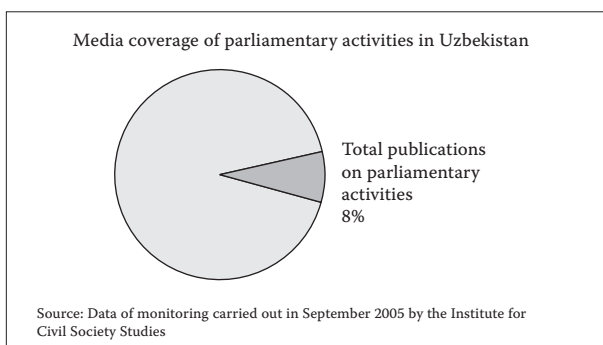


Chart 7.

*Media coverage of parliamentary activities in Uzbekistan:
By type of publication*

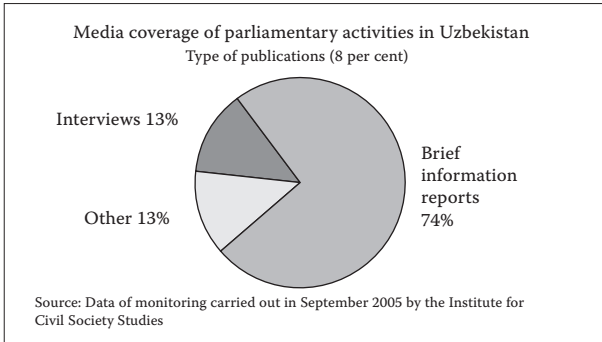
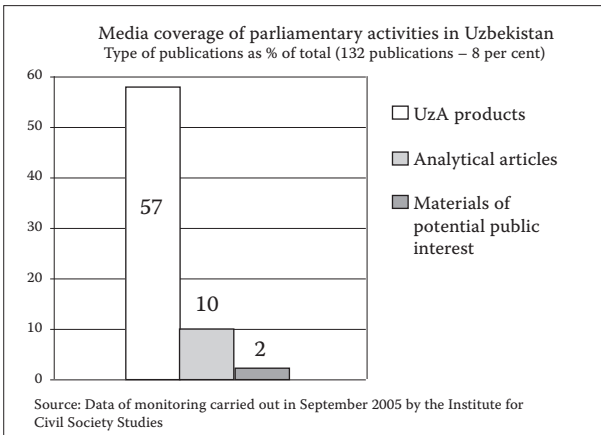


Chart 8.



Suppressing dissent in the media

Until quite recently, few, if any, cases connected with the professional activities of journalists were brought to court. Meanwhile, most journalists prefer not to uphold their rights in court, since they are poorly versed in law, do not believe in the rule of law or a just court ruling, or have no money and time to waste on legal proceedings. Moreover, there are very few judges and lawyers specializing in media cases so far.

Even so, over the last two years, journalists have managed to win several cases and get compensated for the moral and physical damage sustained. This is evidence that judicial reform is gradually making headway. However, further progress in this sphere is a must for judges to do their job properly in respect of the media.

Last year, the authorities made vigorous use of the courts to bring pressure on journalistic organizations in government disfavour. A series of court hearings involving Internews Uzbekistan and the Tashkent office of the international organization Internews Network dragged on almost a year to end up in the closure of both these organizations.

On 12 September, the Tashkent city civil court ruled to suspend for six months the representative office of the international non-governmental organization IREX in Uzbekistan, which implemented a number of media projects in the country.

As for local journalistic organizations, some of these were shut down even without court proceedings but merely by skilfully using scare tactics. A case in point is the Reporter debating club closed down in Bukhara on 2 September.

The head manager of this organization, Obid Shabanov, was forced to call a general meeting of the founders of this non-governmental non-commercial organization with a single item on its agenda – self-liquidation. They were also compelled to write down in the minutes of the general meeting that the organization was experiencing financial difficulties, which had a detrimental effect on fulfilment of its charter goals, which, according to O. Shabanov, was not actually the case. A similar method was used in September to close the Muvozanat (Equilibrium) journalists' club, which operated in the Navoi Region of Uzbekistan.

Over the past year, the mass media have also had their ability tested with respect to providing swift and unbiased coverage of crisis situations. These included the events in Andijan last May. The mass media presented exclusively the official view of the events, while access to any foreign information sources

was strictly controlled – websites were blocked and Russian television channels were simply switched off when they referred to the Andijan events.

The actual moves by the authorities in the sphere of media freedom are glaringly at odds with their official statements to the effect that freedom of information should be ensured and that the media should become a forum for people to freely express their thoughts and ideas, positions and attitudes towards the events at hand.

Overall, the situation in Uzbekistan shows that society is in need of democratic renewal and genuine openness, above all in the mass media. I believe, however, the authorities will crack down on the media even more harshly rather than change their current attitude to them. All the mass media in the country, irrespective of their form of ownership, are now under government control.

The Internet is the only alternative source of information in Uzbekistan. In spite of the Internet's limitations due to the somewhat underdeveloped communications system and relatively high cost of providers' services (in relation to wages) in the country, it enjoys much greater trust and interest than the official press. People stress that virtual space offers more information on what is going on in the country and abroad.

Igor Shestakov

PROBLEMS OF MEDIA DE-NATIONALISATION IN KYRGYZSTAN

The President of the Kyrgyz Republic is expected to sign a media de-nationalisation decree in the near future.

Thus, Kyrgyzstan will become the first country in Central Asia without a government-owned press.

The Kyrgyz Republic is not alone, however, in specifying such relations between the authorities and the press. Post-revolutionary Ukraine and Georgia both decided previously to set up the media that are independent of the authorities. This process aroused serious disputes and heated debates in these countries, however. Such a course of events is also possible in Kyrgyzstan.

The government-owned press here could hardly be called the favourite child of the former authorities. It was, more likely, treated like a servant, having to justify its official status every day. Moreover, this did not bring any special monetary, material or other benefits to pro-government correspondents working in Bishkek or on the periphery. Their monthly salary is between \$30 and \$80. Technical support from the government also leaves a lot to be desired. The typewriter is still the number one tool in many editorial offices. For example, thanks to foreign assistance, rather than the state budget, the national television company has updated its production facilities. Not only ministries, but also regional tax authorities and prosecutor's offices became "media tycoons" in the country. At the same time, this "love of the printed word" was paid for out of the pockets of the taxpayers, without, moreover, their consent.

First place in the impending de-nationalisation of the mass media belongs to the economic factor. The government commission has not yet published its proposals. According to preliminary information, joint-stock companies are to be set up on the basis of the current official media. The editorial teams are already concerned, however, about when and on what terms they will have to vacate their premises. Will the newspapers retain any property? For instance, a number of government-owned newspapers occupy not a whole building but just a single floor, which the authorities could probably easily do without for the sake of keeping afloat the oldest republican publications, as they could, besides, do without honestly earned editorial equipment. In reality, budget financing covered only an average of 20 to 30 per cent of the requirements of most newspaper teams. This money was, as a rule, spent on paying for paper

and printing services. The retailers of the issues are unlikely to give money back, either. For example, the debts of the Kyrgyzpochtasy monopoly to government-owned publications run into millions of soms. The idea is that, before de-nationalisation, this money should be repaid to the official newspapers to form their authorised capital.

It is not clear who will issue the shares and invest in them. In this situation, it would be more logical to create private companies of another type, such as limited liability companies. It is much more difficult to buy up companies of this type. Thus, representatives of organized crime may appear among the ranks of the new founders of the joint-stock companies to launder their criminal income, including from drug-dealing, by buying up the controlling blocks of shares from impoverished journalists. There is also a danger that the new owners will re-orient the mass media exclusively on serving their own interests. It may turn out that all the pages of a socially significant media outlet will be devoted entirely to the main shareholder. One can forget about any independent editorial policy for many years to come.

In this case, the regional press organs of the government administration will find themselves in the most difficult position. Virtually all such newspapers in Kyrgyzstan are hopelessly unprofitable. They have no resources of their own to turn them into a profitable business, as there are no favourable economic conditions for their development in the regions in general. All the main advertising funds start and end in Bishkek. The banking sector will, most likely, also refuse to grant credit to unprofitable mass media. In addition, hardly a quarter of the editors of these publications are experienced experts in modern newspaper management and marketing. These people had a totally different job to do, such as exchanging the rice or sugar beet received in payment for an article or sale of an issue into the consumer goods required by their staff. Such market mechanisms for media survival are quite widespread in Kyrgyzstan. It is not by chance that a representative of the de-nationalisation commission, Kuban Mambetaliyev, handed down a harsh but realistic verdict: "To be sure, as a result of this reform, it will be the strongest that will survive – those that produce quality output".

Yet even this assertion is quite open to dispute. The press in the Kyrgyz Republic is currently subject to the same taxes as producers of alcohol and sausage. For this reason, the 20 per cent VAT might easily play the part of the executioner's axe not only for small regional papers, but also for the most sound media. As a result, the population may be deprived of its guaranteed constitutional right of access to information and left with only simple advertising publica-

tions that need commercial advertisements rather than serious articles.

For example, the government could exempt the government-owned media from taxes, at least for two years, until they reach a minimum break-even level. In addition, funds could be allocated in the budgets of any level for publication of official materials on advertising terms. Official information must be made public in any case, but it would then also serve as important financial support for the newly-born independent press. The Vice-Premier and head of the government commission, Adakhana Madumarova, asserts that the government will publish a special bulletin for official materials, but it is not clear why the authorities should get rid of the current country-wide publications just in order to set up a new one.

It is widely believed in the country that, in the current socio-political situation, it is still too early to say good-bye to the official press. For example, it is precisely the government-run media that are considered to have an opportunity to publish the entire range of political opinions and points of view, while holding firmly to centrist positions. It is just such publications that are in extremely short supply in post-revolutionary society. Radical political ideas are still making the rounds.

In conclusion, let me quote: "I recommend the reformers first to analyse the economic indicators for each of the denationalized mass media, to study the market and forecast whether the economic climate will promote the development of non-government mass media on the regional level, and only then to come out with any official initiatives". These words were spoken by a Ukrainian, not Kyrgyzstan, politician. They are, however, very topical for the de-nationalisation process in the Kyrgyz Republic as well.

Khurshed Atovullo

THE SITUATION OF THE MEDIA AHEAD OF THE 2006 PRESIDENTIAL ELECTIONS IN TAJIKISTAN

I hate to sound banal, but I must state that the situation in the mass media of the Republic of Tajikistan has seriously deteriorated on the eve of the presidential elections. Several newspapers here have stopped coming out, and two television channels have been shut down. For over a year, no licences have been issued to the electronic mass media, and registration of new newspapers has actually been stopped in the past six months or so.

Eighteen months ago, before the parliamentary elections, the newspapers here showed rather good progress, while the electronic media were at a standstill. The overall number of newspapers and their circulation had grown. For instance, when the *Ruzi Nav* (New Day), a newspaper dealing with socio-political matters, stopped coming out, its circulation had been nearly 15,000. The contents of the newspapers had noticeably improved and so had their information openness. Practically everybody could find a newspaper to his/her liking. We had so-called “moderate” newspapers (such as the *Tajikistan*, *Vecherny Dushanbe*, *Asia-Plus*, *Varorud* and *Business I Politika*), critically-inclined newspapers (the *Ruzi Nav*, *Nerui Sukhan* and *Odamu Olam*), government newspapers (the *Sadoi Mardum*, *Jumkhuriyat* and *Narodnaya Gazeta*) and party newspapers (the *Najot*, *Minbari Khalk* and *Adolat*).

Evident in August 2004 were some facts which showed that newspapers had acquired real influence in society. One of them was the fact that the authorities had granted VAT privileges to newspapers, and another, that the newspaper market had begun increasingly to draw the attention of businessmen and politicians.

However, it was noted already then that the freedom of speech in Tajikistan had no material foundation. To illustrate this observation, a few words about the situation which had developed on the media market a year ago (although all of the conclusions drawn are applicable to the present-day realities).

Despite certain cosmetic changes, the state practically retained its monopoly in the sphere of mass production and dissemination of information. The few most popular radio and television channels of nationwide importance were still controlled by the state. It owned the Sharki Ozod publishing-and-printing complex, practically the only place where newspapers could be printed at a relatively low cost and with high quality, as well as several other printing

houses in the capital.

There were very few private printing offices, and all of them proved to be extremely vulnerable to pressure from the officialdom. And in general, the latest events had shown that business in Tajikistan was very weak and entirely dependent on the authorities.

The economic situation in the media remained difficult. All the production materials were imported from abroad, which raised production costs. And the VAT privileges did not bring any real economic gains to the newspapers.

Problems also remained in the information dissemination sphere. There had never been any alternative, non-governmental organizations concerned with mass media dissemination in Tajikistan. Even in the capital there were very few newsstands. Still practised in many parts of the country was compulsory subscription to such state-controlled newspapers as the *Jumkhuriyat*, *Sadoi Mardum*, and *Minbari Khalk*, the press organ of the ruling party.

Furthermore, the state had such powerful means of maintaining control of the situation as licensing the electronic media and issuing registration certificates to newspapers and magazines.

There also were some other factors that aggravated the situation in mass media. The institutes of civil society in the Republic of Tajikistan proved to be very weak. The level of the legal awareness of media managers, journalists and the people as a whole was rather low. The level of corporate solidarity of the mass media and the journalists was not very high either. The judicial bodies, too, depended heavily on the executive authority. And so, the mass media and the journalists had to oppose the consolidated power structure practically single-handed. In politics, the government capitalized on all these factors in order to “appease the frantic” fourth estate.

The first alarm signal for the newspapers sounded last year, on 29 July, when Rajabi Mirzo, the editor-in-chief of the *Ruzi Nav*, was attacked by an unknown culprit. The attacker hit him on the head with a metal object and disappeared from the scene of crime. He has not been identified and apprehended to this day, although Abdurakhim Kakhorov, First Deputy Minister of Internal Affairs, took personal charge of the investigation of the incident.

That attack was the first but not the last in a series of scandals. With each new incident the situation in the media deteriorated more and more.

After that, under a new slogan, “It doesn’t matter what is written – the important thing is what is printed,” the authorities attacked printing offices. Following visits by tax inspectors, the Jionkhon printing office, which had been bold enough to print the *Ruzi Nav* and the *Nerui Sukhan*, was shut down.

Started next was the auditing of the Karimjon Kodiri printing office which had been putting out some periodicals frowned upon by the authorities, including the newspaper *Adolat*, the organ of the Democratic Party. As a result, the *Adolat* stopped coming out.

The shutting down of the Jionkhon printing office was a kind of warning addressed by the authorities to other printing houses. In its turn, the “demonstration whipping” of the opposition newspapers was meant as a warning to other organs of the press: “Do not abuse freedom, because we have long arms. We are going to take part in the parliamentary elections, and we want no more problems. Especially on account of some paltry papers.”

It is not surprising that, after what happened to Jionkhon and after Karimjon Kodiri was assailed by tax problems, practically all at once the printing offices in the capital decided not to put out the “bad” periodicals. These were: the *Ruzi Nav*, *Nerui Sukhan*, *Odamu Olam*, *Adolat*, *Najot* and *Zindagi*. True, some time later the last two managed to resume their operation. And as for the *Nerui Sukhan*, it had to change its format from A3 to A4 before it could find itself a new printing office.

The authorities insisted that those incidents were not politically motivated. But the fact remains: printing offices refused to co-operate with critically-inclined newspapers. And this despite the fact that the former complained about a scarcity of orders.

Further events demonstrated convincingly the real intentions of the authorities. Having found no suitable printing house at home, the *Ruzi Nav* decided to have its run printed in Bishkek, and it did so. However, on 4 November 2004, when the printed newspapers were brought back to Dushanbe, the whole run was impounded by the officers of the Taxation Inspectorate in Transport of the Ministry for State Revenues and Taxes. The pretext for the action was absurd: it was declared that certain expert appraisals were necessary, including one by the Ministry of Health, to certify that the newspapers presented no danger to people’s health, and another, by the Ministry of Culture, to show that they were of no cultural value. Meanwhile, it is a matter of common knowledge that hundreds of foreign newspapers are being freely brought into the country. And in any case, the above requests should have been made by the customs authorities and not by a taxation body. To this day, the authorities have given no intelligible explanation as to why the entire print run was impounded. On 27 January 2005, the *Nerui Sukhan* weekly stopped being published. In the evening of 26 January, the officers of the Taxation Police Department of the Ministry for State Revenues and Taxes sealed up the Kaikhon printing office which had

been recently opened by the weekly's editor-in-chief, Mukhtor Bokizoda. The entire print run of the freshly published newspaper was confiscated.

As Jamshed Kasirov, the chief of the operations section of the Taxation Police Department, later told the *Asia-Plus*, that printing office had been functioning illegally for several months, without having registered at the Taxation Inspectorate and having paid no taxes. Furthermore, according to the conclusion made by the Tajikstandart agency, that printing office did not conform to the state standards, and according to the Ministry of Culture, it had no right to put out printed matter.

Later on, the accusations made against the *Nerui Sukhan* were not confirmed. It turned out that there had been no serious violation of the law on the newspaper's part. This was stated in a letter of the Ministry of Culture published on 17 December in the newspaper *Asia-Plus*.

Continuation of the theme: The trial of Mukhtor Bokizoda

Recently, Judge Safarali Kurbonov presided over the Firdavsi district court session in the city of Dushanbe to hear the criminal case of Mukhtor Bokizoda, chairman of the Foundation for Remembrance and Protection of Journalists of Tajikistan and the editor-in-chief of the independent newspaper *Nerui Sukhan*. The judge re-stated the original charge of "inflicting material damage through deception or abuse of trust" brought by the pre-trial investigation bodies against Bokizoda under Article 253 of the Criminal Code of the Republic of Tajikistan into "theft" under Article 244, Part 1 and sentenced Bokizoda to two years of corrective labour with 20 per cent of his salary withheld in favour of the state.

At the end of the court proceedings, Bokizoda and his defence counsel, Inoyat Inoyatov, answered questions put by local and foreign journalists and expressed their disagreement with the court ruling. Mukhtor Bokizoda, in particular, stated that, since the criminal case against him was politically motivated, he incurred no guilt in the supposed crime of making unlawful use of electricity, and hoped until the very last minute that the court would drop the charge and acquit him. In his turn, counsel Inoyatov stated that he believed the court ruling to be unjust and that he would lodge an appeal against the ruling of the district court with the Dushanbe City Court within a period of seven days as prescribed by law.

Let us recall that the criminal case against Mukhtor Bokizoda was initiated on the basis of a suit entered by the Tax Police Department of the Ministry for State Revenues and Levies of the Republic of Tajikistan for unlawful use

of electricity from city lighting sources under Article 253, Part 2, Clause „b“ of the Criminal Code of the Republic of Tajikistan (“infliction of material damage through deception or abuse of trust”). The amount of the damage was determined in the amount of 1,678 somoni 98 dirams (about \$500), 300 somoni (\$100) of which Bokizoda had already paid and intended to pay the outstanding amount shortly.

Meanwhile, the deputy editor-in-chief of the *Nerui Sukhan*, Vahhob Odinayev, was sentenced to one year’s corrective labour with 30 percent of salary withdrawn in favour of the state. This ruling was passed on 31 May by in the Firdavsi district court. The journalist himself told an Associated Press correspondent of this. According to Odinayev, in the near future he would have to submit his recognisance not to leave.

Vahhob Odinayev, better known as Vahhobi Latif, was accused of violating Article 6, Clause 2 of the Law of the Republic of Tajikistan “On the Press and Other Mass Media”, which envisages liability for publication of defamatory materials. In February 2004, an article titled “When Rakhmonov Becomes Putin?” (“Raxhmonov kai Putin meshavad?”) was published in the *Nerui Sukhan*. Its author, A.Sh. Mirzoyev, asserted that one of the lecturers at the law faculty of one of the country’s higher educational institutions was taking \$50 bribes from every student for the exams. Subsequently, when the named lecturer entered a suit, the *Nerui Sukhan* editorial board was unable to find the author of this article. As a result, Odinayev was convicted under Article 332, Part 1 of the Criminal Code of the Republic of Tajikistan for “negligence”.

From time to time, the authorities declared, through their representatives, that the *Ruzi Nav* had stopped coming out because of certain violations of the law. In particular, this was stated at a press conference on 19 April by Azizmat Imomov, Tajikistan’s Deputy Minister of Justice. He noted that the newspaper’s activity had been examined by the Republic’s Procurator General’s Office, and it would “soon make public its conclusions concerning possible violations of the law”, A. Imomov added.

Some time later, however, writing in the *Asia-Plus*, Rajabi Mirzo, editor-in-chief of the *Ruzi Nav*, declared that the Deputy Minister’s words had nothing to do with the truth. He emphasized that nobody had stopped the activity of the *Ruzi Nav*, and pointed out that such a thing was possible only upon the order of a law court or the decision of the founders. And there had been no such decisions, Rajabi Mirzo stressed. He wondered what was behind Imomov’s words: a slanderous attempt, abuse of the freedom of speech or legal inaptitude?

The increasing pressure being exerted on the independent press in Tajiki-

stan has forced the influential international organization Reporters Without Borders to change its opinion of this country.

The organization's press release issued on 1 February 2005 said: "Observed in Tajikistan lately has been a growing threat to free coverage by the independent mass media of events taking place in that country."

One might also recall the considerably increased number of lawsuits brought against media outlets, which the latter have nearly always lost lately. In some cases, the sums of compensation for moral damage, enforced by law courts, have been inordinately large. For instance, in the lawsuit of N. Abdullayev against the *Nerui Sukhan* and the journalist N. Aminov, the court enforced the payment of 50,000 somoni (about \$16,000), which is equivalent to 4,167 minimum wages in Tajikistan.

It was after the parliamentary elections that the operation of two television studios, Somonien (Dushanbe) and Guli Bodom (Kanibadam), was suspended. According to the deputy director of the State TV Inspection Board, Barakatullo Abdulfaizov, in the case of Guli Bodom the studio's operation was suspended following a complaint made by Emin Sanginov, chairman of the Kanibadam city council. He explained further that when he came to Kanibadam and visited the Guli Bodom station, he found none of its officials present. He was met by some people, obvious outsiders, who said they represented the founders of the television channel. "Such a situation," he said, "is contrary to Tajikistan's legislation, for television broadcasting must be managed by competent, responsible people, not by outsiders. It was then that the decision was taken to suspend the operation of Guli Bodom for a three-month period."

As for the Somonien studio, it was shut down, in Abdulfaizov's words, because its licence had expired on 31 December 2004. "On 27 December 2004," he said, "we warned Ikrom Mirzoyev, the director of the television studio, about the pending expiry. But he gave no reaction to that. Because of the important political events in Tajikistan (the parliamentary elections) scheduled for 27 February 2005 we decided not to suspend the operation of the studio and let it have the opportunity to cover the election campaign. Later on, at the end of March, on the basis of the material compiled by the State TV Inspection Board, and by decision of the Licensing Commission, the operation of that television studio was suspended."

To achieve their ends the authorities also made use of the legislative lever. Adopted in February 2004 were amendments to the law on television and radio broadcasting according to which licensing became solely the charge of the government. This, however, obstructed the entire process. Now applicants for

licences were turned away on the pretext that the necessary normative base was absent. In particular, now there was no Regulation on the Granting of Licences. And if there is no such document, there is no licence. That's that.

In the past two years (2003-2004) at least four organizations were unable to obtain a broadcasting licence. Chakhon, an independent television and radio broadcasting station, has been trying to obtain a licence for four years without result. Its director, Zafar Kurbonov, said in an interview to the radio station Ozodi that he had even turned to Majlisi namoyandagon, the lower house of Parliament, for help, but all to no avail.

Furthermore, the authorities have made a "timely" discovery of some legal discrepancies in the rules for registering periodicals. Between May 2002 and November 2004 there was a kind of "dual power" in the matter of registering such mass media. In accordance with the law, periodicals were supposed to obtain an appropriate decision from the Ministry of Culture and then register at a notary office. In actual fact, there is quite a number of newspapers in Tajikistan which have been registered by the Ministry of Culture without being granted the right of a legal entity. However, in late 2004, prior to the parliamentary election campaign, the state authorities noticed this collision in law practice. On the eve of important political events in the Republic, they used that collision to deny registration to new alternative mass media.

According to some sources, in late 2004 as many as 30 applications for registration had been submitted by media outlets to the appropriate bodies of state power (the Ministry of Justice and the Ministry of Culture). However, no legal actions concerning registration refusals were recorded by the judicial bodies.

Nevertheless, as of 1 January 2005, no single authoritative body in charge of Tajikistan's media register had been legislatively established. And so, all data concerning media outlets active in the Republic require verification.

Many experts associate the deteriorating situation in Tajikistan's mass media with the coming elections.

Serik Nugmanov

MEDIA LEGISLATION – A WAY FORWARD FOR KAZAKHSTAN

I would like to inform you about some of the issues surrounding the development of the mass media in Kazakhstan.

The mass media play an important role in the life of any society. With the passage of time, the influence of the mass media has extended to all spheres of human life and activity, from economics and politics to the private life of the individual.

In today's world, the mass media perform informational, educational, critical, watch-dog, and other functions.

In democratic nations like Kazakhstan, the mass media are seen as a source of information and participate in the shaping of one's personality.

In addition, the mass media facilitate the development of science and art, work to improve the tastes of the audience, and bring high standards to everyday life.

The media laws of the Republic of Kazakhstan are vast and multi-level. They include the relevant provisions of the Constitution, the Law on the Mass Media, and other regulatory and legal acts.

The current media law was adopted in 1999.

This law regulates social relations in the area of mass media and provides government guarantees of their freedom in accordance with the Constitution of the Republic of Kazakhstan. The law has introduced an application procedure for media outlet registration and expanded the rights of journalists in the performance of their professional duties.

Meanwhile, the experience gained in implementing the law has, along with the development of the public life, shown that it is in need of improvement.

The public considers the liberalization of the media's legal field of operation, the stimulation of their development, and the strengthening of the country's informational environment as a whole to be of great importance. The public has also insisted on ensuring transparency and openness in the operation of government agencies.

The need to adopt a new media law was noted in the President's address to the nation on 4 April 2003. The new law would take into account the present-day realities of ensuring freedom of expression and protecting journalists from pressure applied by outlet owners. It would also punish officials more harshly for interfering in the operation of a free press.

The need for statutory regulation of the information market results from the dynamic development of Kazakhstan's mass media, the Internet and cable television, the expansion of foreign broadcasting, and the wide use of contemporary technologies.

The norms of the current law thus do not account fully for the interests of the media, the government, or the public.

The government attempted in due course to draft a new version of the Media Law. However, as is well known, this bill was, at the President's request, declared unconstitutional by the Constitutional Council.

In its turn, Kazakhstan's Congress of Journalists, together with the Adil Soz International Foundation for the Protection of Freedom of Speech and other non-governmental organizations, presented to the public on 18 April 2005 its own draft of the Media Law which in their view reflects both the interests of a free press and the role of the government in dealing with the mass media, and resolves all of the issues now facing journalists and the media in a way favourable to them.

In the opinion of those who drafted the law, its provisions meet democratic standards in the area of ensuring the human right to freedom of speech, and is aimed at raising the independence of journalists' creative potential and creating legal foundations, based on the principles of legality and respect for other people's views, for the free expression by people of their views, convictions and opinions.

The draft law determines the social status of the mass media, institutes a system for protecting representatives of the media from unlawful interference in their activities, establishes the conditions for developing the domestic information market, and lays down the limits of acceptability in enjoying the right to freedom of speech. Regulations for the operation of the mass media and guarantees for the legal performance of journalistic duties are prescribed in more detail.

Presented in the draft is an extensive conceptual framework encompassing 35 various terms and definitions that are actively used by the mass media in different areas of operation.

Both the rights and obligations of journalists are expanded, testifying to the increased responsibility of journalists in disseminating their information and imposing additional demands on them as they perform their professional duties.

The National Commission on Issues of Democracy and Civil Society, which reports directly to the President of the Republic of Kazakhstan, unanimously approved the bill's main provisions at its July session this year.

The above bill is thus the best and most acceptable version of a legislative act designed to regulate present-day societal relations in the area of developing the mass media.

At present, the bill is being actively debated within the government agencies concerned, with those who drafted it also taking part.

In line with this work, I believe that we should support the Law on the Mass Media proposed by the Congress of Journalists and work for its further advancement and most rapid adoption. The realities of today demonstrate the need for this law.

Tamara Kaleyeva

POLARIZATION OF KAZAKHSTAN'S MEDIA ON THE EVE OF PRESIDENTIAL ELECTIONS

To begin with, I'd like to make my starting point clear. As you may know, Turkmenistan is the only Central Asian country which has no problems associated with freedom of expression. This is simply because there is no such freedom there. However, this sad fact of life in a neighbouring country is no reason for us to feel exultant over our own achievements. True, we have different, democratic reference points, but even then Kazakhstan's mass media are faced with formidable problems.

I do not think that anyone speaking on behalf of Kazakhstan will argue against an obvious fact: the coverage of upcoming presidential election by our media is anything but objective. The overwhelming majority of newspapers and all of the television channels devote 99 per cent of their space and air time allocated for socio-political topics to extolling the merits of the incumbent President. The other presidential candidates are only mentioned in the brief reports issued by the Central Election Commission. The common candidate of the opposition is also given only brief and, moreover, critical coverage. It seems certain that at this conference, Mr. Doszhan, the Vice-Minister of Information, will refer to the fact that in Kazakhstan, there are over 2,000 media outlets, including the opposition press, and that their number is constantly growing, as proof that freedom of expression is flourishing in the country. Without disputing this fact, I will only add that there are a mere dozen opposition papers among all those thousands. As far as the upcoming elections are concerned, the opposition papers carry detailed reports on what the opposition is doing, and severe criticisms of the authorities. Newspapers that give an unbiased coverage of both sides are even fewer in number.

As we all know, however, the overall unanimity of the Soviet press did not really reflect the country's public opinion. Still less is it possible to secure a unanimous public approval of the authorities or a wholesale condemnation of the "renegades" in democratic Kazakhstan. What then still holds Kazakhstan's mass media from presenting an objective picture of the entire range of views and opinions?

Alas, the reasons for that are not new. Though 80 per cent of the mass media are not government-owned, they are weak economically and therefore dependent. Media editors have to dance to the authorities' tune because of the

budget financing which is now widespread in the form of government order or subsidies to the owner whose business depends on the favourable attitude of the powers that be. I believe that this time the administrative resource in the form of telephone calls from the internal policy departments of the *akimats* and summons to the various commissions and election headquarters of the same *akimats* will be used even more than it was during the past parliamentary elections. Suffice it to mention that last year, on the eve of the elections, the entire staff of the metropolitan newspaper *Vechernyaya Astana* joined the presidential Otan party having forgotten that they were a non-partisan media outlet supposed to be unbiased towards all candidates from all parties and movements.

Where an editor is economically independent or psychologically strong enough to defy being “reined in”, legislative and judicial mechanisms come into play.

Later today, a representative of the Congress of Kazakhstan’s Journalists is to make a report on a new draft law “On the Mass Media”, which this time has been drawn up not by the officials of the Ministry of Information, but by non-governmental organizations. The Adil Soz Foundation that I represent here is one of the co-authors of the draft. Undoubtedly, it has many good novel aspects which journalists will find useful – if the draft becomes a law. However, we have no illusions about it. We do not think that as soon as the new law has been adopted everything will be just fine and that *glasnost* will reign supreme in the country. The draft is the result of a compromise, and we have been much criticized for its half-way character. While we bow to the criticism, we still believe that if our draft, as it is today, passes through Parliament, it will mean a small but important step towards democratizing mass media legislation. Meanwhile, over recent years, all changes in legislation have only worsened the freedom of expression situation.

In fact, neither present legislation nor the new draft law contain the democratic provision that a public official must have lesser – not greater – protection of his personal non-property rights. Introducing such a provision now is simply unrealistic: government officials will do their utmost to stop it, and so will the parliamentarians who keep complaining about being harassed by journalists. Last year, out of total of 80 lawsuits for protection of honour and dignity, 32 were brought by various officials and 47 by legal entities. This year, the proportion has been approximately the same. Furthermore, last year’s parliamentary elections started the practice of lawsuits being filed by higher government bodies. Thus, the presidential staff instituted a lawsuit for protection of its honour, dignity and business reputation against the *Assandi Times*,

an opposition newspaper, and won an indemnity of 50 million tenge. As a result, the newspaper had to close down. The leaders of the Ak Zhol opposition party held a press conference at which they stated that during the elections they were shadowed by certain people in plain clothes, presumably national security agents. Several newspapers published that statement. Affronted by the publication, the leadership of the National Security Committee filed a lawsuit – not against the Ak Zhol party leaders who had made that statement, and not even against all of the mass media that had published it – but solely against the opposition newspaper *Zhuma Times-DAT*, the successor of two opposition newspapers – the *DAT* and the *SoldAT*, both of which had been closed down some time earlier. Quite naturally, even before the court proceedings began, everybody knew that the omnipotent government agency was sure to win over the small newspaper. The editorial board of the newspaper literally had to pass the hat round its readers to collect 5 million tenge (about \$40,000) the paper had to pay in damages.

We have included in the new draft law provisions on the decriminalization of defamation – something the OSCE insists on. But let's be realistic: this will hardly improve the situation to any appreciable degree, for Article 318 (envisaging criminal liability for insulting the President), as well as several other articles protecting, under pain of imprisonment, high officials from criticism, have been left intact.

Lawsuits demanding reparation of moral damage have exceeded all reasonable limits, amounting to hundreds of trillions of tenge and threatening to ruin various publications. Of course, such inordinate demands are absurd, but claims amounting to millions have become quite common. We propose making such lawsuits more responsible and envisage a 5-per cent stamp duty on the overall claim. If you can prove that the information spread about you is nothing but slander, you will certainly find the money to pay the stamp duty because this amount will be recouped upon the decision of the court. It is doubtful, however, that the officials, together with the deputies, will let this provision through. In the last parliament there were quite a few deputies who filed multimillion lawsuits against journalists and media outlets. It would be logical to expect that there are such people in this parliament, too. By the way, Mr. Aliyev is well known to Kazakhstan's journalists not only owing to his services as the country's representative in the OSCE but also for his multimillion lawsuits against the mass media, claiming that they humiliated him by alleging that he was the owner of certain media outlets. To be sure, in discussing the above-mentioned provision, none of the high-ranking officials would admit that he/

she wishes to retain the ability to smash any media body which dares criticize his/her actions. Formal speeches will be made, insisting that it is impermissible to infringe upon the right of citizens to defend their honour and dignity. Incidentally, the OSCE expert assessment of our draft law was something of a disservice to us. Its author, Ms. Petrova, has used the same untenable argument against limiting the amount of compensation for moral damage.

Anyway, the situation will not be satisfactorily resolved by the law “On the Mass Media” alone even if the proposed draft law were adopted in its original form. For instance, in the new “Civil Servant Code of Honour”, which was formalized by a presidential decree, there is a provision saying that without the consent and approval of the superiors a civil servant must not come into contact with the press. And now journalists are often denied access to information on the basis of that provision. The Code also says that in the event of publication of critical material the civil servant criticized therein must demand a refutation or an appropriate response. This automatically entails an increase in the number of lawsuits brought against the mass media.

Struggle against terrorism, for national security and for political stability, is being stepped up in Kazakhstan – just as this is being done all over the world. But such noble efforts are being repeatedly abused to infringe on the rights of the mass media and of individual journalists. For instance, no sooner had the *Uralskaya Nedelya*, an independent newspaper in Western Kazakhstan, started publishing letters from readers who discussed the idea of renaming the city of Uralsk than there came a warning from the local Prosecutor’s Office that it was impermissible to engage in fomenting interethnic discord. On the eve of the presidential elections, the Prosecutor General’s Office attempted to scare the country’s journalists by reporting certain “facts” of the mass media allegedly encouraging discord, discrimination and the staging of provocations, and by warning those who persisted in their pernicious actions in regard to the “presidential candidate” that an inevitable punishment awaited them all.

Last year and the year before, in criticizing the governmental draft of the law “On the Mass Media”, the general public voiced its indignation over the proposal to forbid foreigners to hold the post of editor-in-chief. This year, the proposed ban was introduced under the pretext of promoting national security. The result was quite shameful. For instance, deprived by a court order of the right to engage in publishing, Ermurat Bapi, the former editor-in-chief of the newspaper *Zhuma Times-DAT*, is now mentioned in the publisher’s imprint as the newspaper’s “chief reader”. Another instance: the former editor-in-chief of the newspaper *Respublika* which, since it was closed some time ago, now

comes out under the logo of the *Soz* newspaper, has become head of the editorial board.

Our journalists have long since learned how to counteract the absurd and reactionary innovations of the officialdom. But today, it is obvious that the bureaucrats have also learned how to outwit the clever journalists. This is much easier for them to do since they wield power. The last few months have furnished a spectacular example: the newspaper *Respublika*, which was repeatedly closed down under various pretexts over the past three years, has been shut down again this year. This time the pretext was that the newspaper had published a reprint of Zhirinovsky's interview. Acting jointly with the Prosecutor's Office and using the appropriate court procedure, the Ministry of Culture, Information and Sport deprived the newspaper owner of his rights and revoked the paper's registration certificate. Last June, five legal entities applied for the registration of five newspapers. All of the papers had long names containing the same word – "Respublika" (Republic). These names were: "Business Review. The Republic", "Our Republic. A Review of the Week's Events", "The Republic – Facts, Events, People. A Kaleidoscope of the Week", "The Republican News. A Business Review", and "The Republic – Our World. An Analytical Weekly". Because they received no response to their applications for several months, the applicants turned to a court of law. On 29 September, during the judicial proceedings, a representative of the Ministry informed the court that five registration certificates for identically named newspapers had been granted to another citizen on 25 May – ten days before the applications were submitted by those five legal entities. There is no way of verifying whether the Ministry was telling the truth: its Internet site contains no list of registered media outlets. It has been absent from the site since the time Altynbek Sarsenbayev, the former Minister of Information, left his post after the parliamentary elections. I don't think that we'll be able to see the list in the near future, for it would reveal the petty tricks which make it possible to keep out publications that are deemed undesirable. In the draft law on the mass media we proposed introducing registration by notice. But just as before, the government wouldn't even hear about it. And now our co-author, the Congress of Kazakhstan's Journalists, is also strongly against it.

A veritable hide-and-seek game is now going on around the distribution of opposition publications. Every day we get reports that so-called "people in plain clothes" have confiscated issues of such newspapers as the *Soz*, *Svoboda Slova*, or *Pravda Kazakhstana*. They do so with no regard for procedural propriety, confiscating them from retail and wholesale distributors and taking them off

mail trains. Remarkably, not a single time have the official bodies announced that they are taking steps to investigate such acts of lawlessness and put a stop to them. Even more deplorable is the fact that these acts of expropriation of the opposition papers draw no response from their better-off opposite colleagues. Whereas during politically calm periods there still is talk of journalists' solidarity, just before and during elections, when the masters tighten their grip on the media, all mention of professional solidarity disappears.

The disgraceful game of taming the press will be going on and on as long as the main incentive to the officials remains their superiors' approval or disapproval as well as their own petty gains and conveniences, and not observance of the citizens' constitutional right to freedom of receiving and disseminating information, and as long as the journalists themselves remain ignorant of their main civic mission.

Kanat Sakhariyanov

MEDIA LEGISLATION IN KAZAKHSTAN: HISTORY, TRENDS, OUTLOOK

Introduction

Freedom of expression, guaranteed by the Constitution of the Republic of Kazakhstan, is a condition for the democratic development of the country and its movement towards creating institutions of civil society, and the mass media are a vital instrument of this progress.

In his February 2005 Message to the Nation, the Kazakhstan President pointed out the ongoing need to continually create and maintain all legal and other conditions ensuring freedom of expression and the right to receive and disseminate information. On the other hand, there should be a clear legislative barrier to abusing freedom of expression.

Media legislation is intended to regulate the rights, freedoms, and obligations of the “fourth estate”. We believe that this legislation is, in terms of its significance, on the same level with such constitutional acts as the Law on Parliament, the Law on Government, and the Law on Courts and the Status of Judges.

History

The Kazakh SSR Law on the Press and Other Mass Media was adopted on 28 June 1991.

The new Republic of Kazakhstan Law on Mass Media, which in certain respects tightened the demands made of the mass media, was adopted on 23 July 1999.

Amendments regulating the mass media even more strictly and tightening up a number of rules were made to the law on 3 May 2001.

A new draft of the Republic of Kazakhstan Law on Mass Media was submitted to Parliament in 2003. The draft, which was approved by Parliament in March 2004, was no different in its tendency towards tightening up the rules regulating the activities of the mass media and did not correspond to the principle of freedom of expression, which is partially expressed in the media’s freedom of operation without fear of being shut down. Universally recognized international organizations noted that the draft law was “anti-democratic”.

The President of the Republic of Kazakhstan refused to sign the draft law and used his prerogative to forward it to the Constitutional Council for their review. As a result, the new Law on Mass Media was declared unconstitutional

in April 2004 and was not signed by the President.

Work on media legislation continued, and on 8 July 2005, in order to guarantee national security, amendments and additions were made to Kazakhstan's Law on Mass Media, restricting media freedoms and expanding the legal grounds for suspending and shutting down media outlets.

If it was possible previously to shut down a media outlet for the violation of provisions of just one article (*the violation of constitutional norms prohibiting propaganda and agitation for the forcible change of the constitutional system; violation of the territorial integrity of the Republic of Kazakhstan; undermining state security; advocating war, social, racial, ethnic, religious, class and clan supremacy; the cult of cruelty and violence; pornography; as well as the dissemination of information constituting state secrets of the Republic of Kazakhstan or other secrets protected by law*), the changes in the law significantly expand the list of grounds for suspending and shutting down media outlets. Technical infractions like failing to re-register a media outlet on time are unjustifiably placed on the same level with such criminal offences as calling for the forcible change of the constitutional system, etc.

It was fairly noted in the 4 April 2003 Presidential Message to the Nation that “**there is now a pressing need to adopt a new Law on Mass Media** that would take into account the present-day realities of guaranteeing freedom of expression and protecting journalists from pressure applied by media owners, and would punish officials more harshly for interfering in the operations of a free press”.

An alternative draft of the Republic of Kazakhstan Law on Mass Media that, in our view, fully reflects both the interests of a free press and the tasks of the authorities in preventing abuse by the media outlets of freedoms granted to them, was subsequently presented to the public at the Congress of Journalists of Kazakhstan [CJK] on 18 April 2005.

Our Law

The drafts of the Republic of Kazakhstan Law on Mass Media and the Law on Making Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Mass Media Issues were developed to meet the need of upgrading our media legislation so that it corresponds to the modern standards of media regulation.

The draft laws were drawn up jointly by several public organizations, all of which welcomed the fact that, for the first time ever, the laws were being writ-

ten by professionals engaged directly in the media industry.

In drafting these laws, we proceeded from the premise that they should:

correspond to the legislative traditions of the Republic of Kazakhstan and not contradict the Constitution;

be aimed at liberalizing legislation while also taking into account the country's true level of democracy and informational sovereignty.

The draft laws fill the gaps in media legislation, strengthen the provision on the equal use of the national language in TV and radio programmes, and call for the decriminalization of defamation. They prohibit the propaganda and condonation of terrorism and extremism. The institution of media suspension and shut-down is liberalized in accordance with the world trend. The suspension and shutting down of a media outlet is possible exclusively by decision of its owner or a court of law. The grounds for suspending and shutting down media outlets are reduced to cases of committing serious socially dangerous acts. The one-year limitation period for defamation claims is established, as is the right to use the image of a public office holder without his/her prior consent provided, of course, that his/her honour and dignity are not impugned. The draft law also lays down the reciprocal obligations of the litigants to bear the burden of proving the truth or falsity of the information disseminated. It is also stipulated that the amount of the defamation claim state duty be a percentage of the damages claimed. This will help prevent the filing of unwarranted multimillion claims by journalists and media owners. Another key issue is the provision freeing a media owner, editor-in-chief, or journalist from liability for misreporting.

The article on the jurisdiction of the authorized agency, the Ministry of Information, still raises questions, however. The point is that a media outlet may be suspended or shut down only by decision of its owner or by court order.

Given the decriminalization of defamation, the relevant provisions are to be excluded from the Criminal Code of the Republic of Kazakhstan.

It is also proposed that a grace period be offered between the publication and enforcement of these laws so that the media may adapt to the new legal requirements.

Our draft law will in the near future be submitted to Parliament for their review. It is our fervent hope that its adoption will create civilized legal founda-

tions for the operation of all mass media.

The main advantages of the draft laws are presented in the Appendix.

The Government and the Media

At the moment, the dialogue between the government and the media has taken a number of positive new turns. We feel the real support offered by government agencies in drafting the new Law on Mass Media.

The Ministry of Culture, Information and Sport has repeatedly stated that the draft prepared by public organizations and initiated at the Fourth Congress of Journalists of Kazakhstan now has the advantage, and that the ministry will do all it can to help.

Comments that significantly improved the draft were collected earlier this month from government agencies.

The OSCE's Assessment

At the request of the Congress of Journalists of Kazakhstan the draft mass media law and the accompanying draft law on making amendments to other legislative acts were submitted to the OSCE for review.

In this connection, the Congress of Journalists of Kazakhstan would like to express its deep gratitude to the OSCE, along with its conviction that such co-operation corresponds to the interests of both the OSCE and Kazakhstan in ensuring security and co-operation in the Central Asia region.

As one OSCE expert noted,

“Careful analysis of the draft law allows us to conclude that its present version has been greatly improved by the authors and leaves fewer grounds for concern with regard to the professional activities of journalists and the mass media as a whole.

“The progress made by the authors attests eloquently to their favourable perception of the role of the mass media in post-totalitarian society as a whole and the importance of legal guarantees for journalists.

“Ideally, it would be better to have different laws on the printed and electronic

media, since this draft does not include many important aspects of organizing TV and radio broadcasting.

“Unfortunately, the civil law aspects of issues with respect to media ownership remain incomplete or contradictory.

“The question of whether the commercialization of media operations should be allowed is, as can be seen from the text, a delicate one and demands political will for it to be resolved. The taking of such a decision is inevitable, however, considering the trends in the developing world, where market processes and healthy competition stimulate progress and development. The mass media are no exception.

“Certain provisions of the draft law are excessively liberal in granting privileges to journalists. This is not worth doing if society has accepted the value of a free and independent press.

“In a democratic society, journalists cannot and must not have special rights. Guaranteed professional rights and a safe environment for journalists to operate in can be and is a pledge of their successful work for the benefit of their fellow citizens.

“Such an approach coincides with universally accepted standards and will serve the interests of Kazakhstan society.

“We are pleased to state that the authors of the draft law succeed in their aim of liberalizing current mass media legislation by excluding from the Republic of Kazakhstan’s Criminal Code a number of provisions that undoubtedly restrict freedom of expression and have a chilling effect on freedom of the media in fulfilling their role of a public watchdog of the actions of representatives of different branches of government.

“The draft decriminalizes:

- ***slander** (Article 129 of the Criminal Code);*
- ***infringement of the honour and dignity of a deputy and obstruction of his/her work** (Article 319 of the Criminal Code);*
- ***insult of a government official** (Article 320 of the Criminal Code);*
- ***slander of the judge, public prosecutor, investigating officer, questman, court bailiff, officer of justice** (Article 343 of the Criminal Code).”*

Elections

We have now come to the edge of our next Rubicon: presidential elections, the outcome of which will determine our future. On 4 December the people of Kazakhstan will make their choice for the next seven years. The quality of the electoral process, its transparency, and its honesty guarantee that it will be a right choice. We want a decent future for ourselves and our children, and we are convinced that free elections are the way to achieve this.

We believe that the carrying out of such tasks demands a large measure of self-sacrifice and places great responsibility on the mass media. We believe that the more objective the media are, the easier it will be to elect a worthy leader.

Kazakhstan's mass media are signatories to the Media Charter for Clean Elections, the main slogan of which is "The electorate makes an election. The media give only the facts and do not force their opinions and values upon the electorate."

We believe that, if the mass media pass this examination, it will be a tremendous contribution towards strengthening democratic principles in Kazakhstan and a great help in our intention to chair the OSCE in 2009.

Recommendations for Strengthening Freedom of Expression

1. Improving the legal framework for the free functioning of free media;
2. Developing the dialogue between the government and non-governmental organizations;
3. Strengthening international co-operation and sharing experience.

Appendix 1

The Advantages of the Draft Laws

1. The CJK draft law is based on Republic of Kazakhstan Constitutional Council resolution No. 4 of 21 April 2004 recognizing that the Republic of Kazakhstan draft law on Mass Media approved by Parliament did not correspond to reality.
2. The conceptual framework is expanded, eliminating a number of gaps.
3. The concept of the mass media is precisely defined. The mass media are viewed as a periodically renewed product of intellectual and other activity manifested in the form of periodically issued publications, television and radio broadcasts, and so on. The mass media are thus distinguished from media outlet owners, who have rights and obligations and are liable for media content.
4. The concepts of “digital multi-channel terrestrial network” and “satellite network” are introduced with respect to the delivery of television and radio signals.
5. The “source of information” concept is introduced, and the source of information is made liable for the content of information disseminated by the mass media.
6. The concept of “re-transmission” is updated, taking into account that the operators of cable networks re-transmit TV programmes and are not liable for the content of the latter; and that the owners of domestic TV channels also re-transmit programmes, but there is a 20 per cent cap on foreign TV programmes re-transmission.
7. The concept of “hard information” is introduced, meaning information that has been demonstrated to be true about people, things, facts, events, phenomena, and processes. Such information thus does not include opinions, personal views, or critical judgments. The draft law contains the following provision: “Everyone shall have the right to freely express and disseminate his/her views, convictions, opinions, and critical judgments. The expression of views, convictions, opinions, and critical judgments shall not entail any liability.”

8. The draft law says that no one has the right to order media editors to make any kind of material public, unless otherwise stipulated by the laws of the Republic of Kazakhstan.
9. In light of the growth of international terrorism and extremism, and of events in the nations of the former Soviet Union, the draft law (along with the prohibitions stipulated in the Constitution) bans the propaganda and condonation of terrorism and extremism, the dissemination of information that reveals the technical methods and tactics of carrying out anti-terrorist operations in the Republic of Kazakhstan for the duration of a declared state of emergency.
10. A provision is introduced prohibiting the monopolization of any type of mass media (periodical publications, TV or radio programmes, and other types of mass media).
11. The use of hidden messages aimed at influencing people on the subconscious level and/or negatively affecting their health is forbidden in the mass media.
12. The period for meeting the standards of language balance is defined more clearly. The volume of broadcasts in the national language over one week ought to be no less than the volume of broadcasts in other languages. The draft law firmly establishes that there ought to be an even distribution of TV and radio broadcasts in the national language for every 24 hours of transmitting.
13. The powers of the authorized agency are set out with the proviso that any of its initiatives associated with suspending or shutting down media outlets, or suspending or cancelling licences or certificates of registration, can be taken only through the courts.
14. In order to ensure a competitive environment, it is stated that the government should guarantee equal access for the owners of media outlets, regardless of the form of their ownership, to bidding for government contracts.

15. A procedure and mechanism for selling a media outlet to another person is set out. That is, a media outlet is now considered to be a piece of intellectual property. The owner of an outlet may transfer the right to use the outlet's name to another person.
16. The status and rights of media editors are clarified. It is stated that editorial boards are not legal entities. An editorial board has the right to adopt an internal regulatory document defining the conceptual nature of its operations, the rules of journalist professional ethics, employee responsibilities, and the requirements for an employee's level of culture, artistic quality, and professional skills.
17. Since the mass media are one of the state's most important democratic institutions and influence the shaping of public opinion, a clear procedure for their registration is considered to be of fundamental importance. The authorized agency is empowered to deny registration on technical grounds only.
18. The grounds for the re-registration of a media outlet with the supervisory agency are reduced.
19. A media outlet's certificate of registration may be declared invalid only based on judicial proceedings and for clearly stated reasons.
20. The practice of suspending or shutting down a media outlet is liberalized considerably. The suspension and shutting down of a media outlet is possible exclusively by decision of the outlet's owner or by court order. It is established that a court has the right to suspend a media outlet only in cases where the provisions of Article 3 of the draft law are violated. The court has the right to shut down a media outlet in cases of a repeat violation of the provisions of Article 3 of the draft law. The grounds for suspending and shutting down a media outlet are thus reduced only to instances where a serious socially dangerous act has been committed. Violations by outlet owners, editorial boards, or journalists of other provisions stipulated by the draft law should be punishable exclusively by administrative action (in the form of monetary fines).

21. In order to protect the health of the population, it is stipulated that the technical parameters of TV and radio signals, both at signal-forming and signal-propagating channels, must correspond to the requirements of the Republic of Kazakhstan's current state standards and other regulatory documents.
22. In order to promote the government's information policy, it is stipulated that the broadcasting of TV and radio programmes produced on government orders ought to be mandatory, as part of the package of re-broadcast programmes on cable and cable-OTA TV and radio broadcasting networks.
23. Given the rapid pace of construction in major cities, and in order to protect the interests of the audience, it is stated that, within the TV and radio coverage areas, no work shall be done that would interfere with the reception of TV and radio programmes or degrade their technical quality. Legal entities and private individuals found guilty of this shall recompense at their own cost all the expenses associated with restoring the quality of TV and radio reception. Industrial noise generated during TV and radio broadcasts is to be eliminated at the expense of those who own, operate, or manage the sources of such noise.
24. Conditions are set out for radio frequency allocation by a special commission. To ensure transparency and fairness in the commission's proceedings, it is stipulated that the commission shall contain an equal number of representatives from government agencies, the media, and non-governmental organizations.
25. It is directly established that the operating licences of TV and radio broadcasting organizations can be cancelled, revoked, or suspended only by a valid court order, on grounds provided for by the laws of the Republic of Kazakhstan.
26. Exceptional cases of and conditions for TV and radio broadcasting without a licence are defined.
27. In order to inform the public of emergency situations in a timely manner, and to protect people's health and lives, it is clearly stipulated that there shall be no cover-up or delayed presentation of information, and that government officials shall not knowingly present false information in the areas of public safety or the taking of immediate measures to ensure national defence, secu-

rity, and law and order in the Republic of Kazakhstan; the same is true with respect to information on emergency situations of a natural or technogenic nature. Officials of government agencies and other organizations shall provide information on such matters to representatives of the mass media as soon as they are asked for it.

28. It is stipulated that the courts shall have no right to prohibit representatives of the media from attending court sessions and making audio and video recordings, or taking motion or still pictures, except in cases provided for by the laws of the Republic of Kazakhstan.
29. To ensure that the mass media will indeed do their duty as an institution acting in the public interest, it is stipulated that the government agencies, other organizations, and officials whose actions are subjected to criticism in the mass media must, within ten days from the moment such information is made public, provide the media outlets' editorial boards with a written explanation of the essence of the circumstances criticized.
30. The right to refutation and response is clearly specified. It is established that private individuals shall have the right to refute reports impugning their honour, dignity, and business reputation, while legal entities shall have the right to refute reports that harm their business reputation only.
31. A definition is given of defamatory statements, the main criterion of which is that information, harmful to the honour, dignity, and business reputation of a private individual (or the business reputation of a legal entity) from the viewpoint of observing the laws and moral principles of society, does not correspond to reality.
32. It is stipulated that information containing truthful criticism of a person's inadequate performance as well as information expressed as one's personal views, convictions, opinions, or critical judgments, shall not be subject to refutation.
33. The period of limitation for claims to refute defamatory information or for publishing a response in a media outlet, shall be one year from the day such information appeared in that media outlet.

34. It is stipulated that the size of the state duty levied on the moral damage claims filed shall be calculated as a percentage of the damages claimed, and determined by the Tax Code of the Republic of Kazakhstan. This will help prevent the filing of such lawsuits against media outlet owners and journalists in which moral damages are reckoned in millions and billions of U.S. dollars.
35. Special status is established for journalists: this finds that, by virtue of their professional activities, journalists exercise their rights and bear their responsibilities in the public interest, and have the statutory right to disseminate information on a person's activities in order to promote public interests.
36. The institution of accreditation is set up in such a manner that government agencies are to guarantee conditions for journalists to exercise their rights in the accrediting organizations free of any restrictions that are not provided for by law.
37. The list of instances of release from liability for disseminating information that does not correspond to reality has been legitimately expanded. It is stipulated that, in the following cases, neither the outlet owner, the editor-in-chief (editor), nor the journalist is to be held liable for the dissemination in the media of information that does not correspond to reality:
 - 1) if this information is contained in official reports or documents;
 - 2) if this information is received from advertising or informational agencies, or the press services of government agencies or other organizations;
 - 3) if this information is a literal reproduction of speakers' words;
 - 4) in other instances where the editor-in-chief (editor) and the journalist acted in good faith and in the interests of the public, or were unable to verify the reliability of disseminated information of an extraordinary nature.

It is stated plainly that it is the source of information that is liable for the dissemination in the mass media of information constituting state secrets or other secrets protected by law.

II.

**PLURALISM IN THE MEDIA:
THE ONLY CRITERIA FOR INDEPENDENCE?**

Salla Nazarenko

PLURALIST MEDIA IN A PLURALIST SOCIETY –
JUST AN ILLUSION IN CENTRAL ASIA?

Ardak Doszhan

KAZAKHSTAN'S MASS MEDIA:
THE PRESENT STATE AND PROSPECTS

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PLURALISM IN THE MASS MEDIA OF TAJIKISTAN:
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Salla NazarenkoPLURALIST MEDIA IN A PLURALIST SOCIETY –
JUST AN ILLUSION IN CENTRAL ASIA?

First of all I want to say that the things I say in this presentation do not represent the official viewpoint of International Freedom of Expression Exchange, but are my own personal opinions and views.

This is the third time, at least, that I am taking part in this conference, and the first time that I am here making a presentation.

When starting to prepare my presentation, I kept thinking of the constructive and positive things that I could say. I did not want to start by saying that things have gotten worse and future looks bad. I actually thought of how great it would be to say that in fact these kind of events have become unnecessary, since Central Asian media has become more free and professional, and that the Presidents that run these countries have finally understood that there is no Soviet Union anymore, and the concepts of collective propagator, agitator and organizer have also expired long ago. It would be great to go home and tell my husband, who is Kyrgyz citizen, that you know what, Mr. Bakiev did bring democracy to Kyrgyzstan, and that there will be an interesting rally for presidency in Kazakhstan, since Nazarbayev is giving room to other candidates.

Needless to say, none of this has happened.

IFEX, the organization that I represent, is a network of 64 free expression organizations in the world that monitor and report on free expression violations, with the aim of bringing worldwide attention on the perpetrators.

A short check-up in our website told me that our members, that include such organizations as Reporters Without Borders, Committee to Protect Journalists, Adil Soz, Freedom House, Human Right Watch and so on, have reported numerous cases of violation of freedom of expression in Central Asia this year. Practically every two or three days we got news from the region, with headlines like “newspaper blocked from publishing”, “journalist attacked”, “issue of newspaper seized”. This does not even count the dozens of more subtle interferences with freedom of expression that occur weekly such as illegal dismissals of journalists or denials of access to information. This gives you an idea of the situation. The details can be found in our website as well as the site of local free expression organizations that do very valuable work of monitoring the violations of journalists’ and media outlets’ rights. But this all can be found in the Internet, so let me move towards the topic of our session.

Pluralism

Pluralism is usually agreed to mean a means of avoiding the conflicts that naturally arise between people of differing opinions. It means that one is open to other peoples' views, meaning that one is willing to ignore the fundamental differences in opinions and practices for the sake of „harmony“ and promotion of a „marketplace of ideas.“

Whenever differences arise, one is supposed to „respect“ the other, and permit the other to live as they see fit, even if it contradicts one's sincere understanding of what is real and right. This is the theory of pluralism. Everyone has different ideas, but if everyone simply lets each think as they please, everyone can get along.

This is a definition I found in the Internet. It also said that historically, pluralism has turned out to be completely impractical, however, it remains an ideal. The idea of pluralism is always there, when one thinks about democracy and human rights.

In joining the OSCE in early 1990s the Central Asian governments agreed that pluralist democracy based on the rule of law is the only permissible system of government.

In this commitment the Central Asian governments also agreed that only a democratic state is able to guarantee human rights.

Let us take a look of what has happened to these ideas of pluralism and freedom of speech this year. I am not discussing Turkmenistan here.

- Uzbekistan. All of you know what happened in the city of Andijan in May this year.

Free expression news from this year include human rights activist forced into psychiatric detention, media support organization Internews being closed down, reporter being jailed for insulting a security officer.

I have been to Uzbekistan twice. Of those people that I used to work and meet with, two have received prison sentences, two have immigrated and the rest have either lost their jobs or prefer not to know anything anymore. The atmosphere, even before the terrorist attacks in Tashkent and Andijan, was paranoid. When you have a meeting with local journalists, the person you meet tells you that the previous person you met works for the government, and this goes on and on. Journalists, who in an ideal world are supposed to work together to fight for freedom of speech, are going slightly mad.

- Tajikistan

After the end of the civil war the situation seemed promising. Reporters Without Borders as well as other media freedom watchdogs used to rate Tajikistan the best country in the region in terms of press freedom.

However, President Rakhmonov's honeymoon with journalists was not a long one.

According to the National Association for Independent Mass Media in Tajikistan, NANSMIT, since the year 2000, cases of threat, attack, and even murders of journalists have been regularly registered in the country. This year the OSCE Representative on Freedom of the Media, Mr. Miklos Haraszti, already has expressed concern over the issues of broadcasting licences as well as the situation around four newspapers that are not being published anymore. President Emomali Rakhmonov is making the life of opposition press very difficult.

- Kyrgyzstan

In Kyrgyzstan, this year was historic. The revolution in March was partly a result of the work of certain fearless journalists. Revolution brought people new hopes of anti-corrupt government, democracy and eventually, better life. President Kurmanbek Bakiev has promised to reform state television and gradually get rid of the system of state media. Newspaper *MSN* has become a legitimate voice instead of a constantly harassed enemy of the government.

President Bakiev has not been criticized much yet. Time will tell, what happens, when the critique starts. Yet a normal phenomenon in a pluralist democracy, criticism is a hard thing to cope with for Central Asian Presidents.

- Kazakhstan

Kazakhstan, the host country of the conference, wants to become the Chair of the OSCE in 2009.

This despite the fact that in all rankings on freedom of speech or media freedom, the country has gone downhill from year to year. Right now we are only about two months away from the Presidential elections, and just a bit less than two weeks ago six newspapers that have covered an opposition candidate's presidential campaign were prevented from publishing their current editions. New York-based Committee to Protect Journalists stated that this already questions the legitimacy of upcoming elections.

After spending a considerable amount of time in this country I see the situation in Kazakhstan the following way: pluralism in Kazakhstan today means sharing opinions and views in a framework strictly defined and controlled by President Nazarbaev and his family.

If the OSCE members agree that this country is ready for Chairmanship, it is time to question the value of the OSCE.

If we compare the four countries, I need to say that I have been happy to see the amount of NGO's in Tajikistan and Kyrgyzstan growing. Severe free expression violations in these countries are followed by a wave of protest not only internationally but locally. This does not happen in Uzbekistan, where registering a free expression NGO is a mission impossible, and until this year it was a rarity in Kazakhstan as well. Luckily, as Tamara Kaleyeva said earlier today, the amount of free expression organizations is growing here.

As a conclusion I want to get back to the concept of pluralism.

If we talk about pluralism together with democracy and democracy together with transparency, there is one thing that I have already mentioned, that stops this development from taking place in Central Asia.

That is corruption and the overwhelming power that the Presidents in all of the countries have over judiciary and executive.

The same way as in Kyrgyzstan Askar Akaev promised to fight against corruption, and it turned out that his government and family are very much involved, in other countries the presidents denounce corruption and still think it is normal that their family members get jobs as ambassadors or heads of big companies.

Earlier this year, Kurmanbek Bakiev of Kyrgyzstan named Rina Prijivoit, a journalist famous for her courage, as the OSCE Ambassador in Vienna. He also named Samira Sydykova, another famous editor-in-chief, as the Ambassador of Kyrgyzstan in the US. As a result people started to think that things are changing. Qualified people instead of relatives and acquaintances are getting the jobs. And what happens next? Bakiev's brother becomes the Ambassador for Kyrgyzstan in Germany. Not to mention how things are in Kazakhstan.

All the years I have spent in Central Asia have taught me one thing: as long as tribalism and corrupt practices are as widespread as they are, on all the levels of all the societies, from kindergarten to the highest instances of power, little will be achieved. The thing that really has to change is that it is time to understand that presidency of a country is not a family business. This is where corruption begins, and dreams about pluralism remain dreams.

IFEX and its partner groups in each Central Asian country will keep documenting the free expression situation as it continues to deteriorate, in the hope that it will force regional and international bodies such as the OSCE and others to find more effective ways to improve the situation in the region.

Ardak Doszhan**KAZAKHSTAN'S MASS MEDIA:
THE PRESENT STATE AND PROSPECTS**

Right from the start, upon acquiring its sovereignty and independence, the Republic of Kazakhstan got down to introducing fundamental changes in the sphere of mass information, which consisted in creating the necessary conditions for the development of independent mass media. This was prompted by the awareness of the fact that the existence of developed, organizationally strong and free mass media is one of the fundamental features of a democratic society. Thus, under Kazakhstan's legislation, it is forbidden to interfere in any way with the activity of the mass media, provided this activity is in accordance with the law. Also, the Constitution of the country prohibits censorship.

Kazakhstan believes that ensuring the rights and freedoms of citizens to receive and impart information is a necessary condition for the building of a democratic state. The Republic fully shares the views expressed in Article 9.1 of the Document of the Copenhagen Conference on the Human Dimension: "The right to freedom of expression ... will include freedom to hold opinions and to receive and impart information and ideas..." The Republic also shares the views contained in Article 24 of the Document which says: "The participating States will ensure that the exercise of all the human rights and fundamental freedoms ... will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law..." As you may know, the lower house of Kazakhstan's Parliament has recently voted for ratifying the International Covenant on Civil and Political Rights without any reservations.

It should be noted that freedom of speech is the necessary condition for exercising most of the constitutional rights and freedoms, above all political ones, and that it is part of the inalienable right of every citizen to take an active part in the life of civil society.

The provisions set forth in Paragraphs 1 and 2 of Article 20 of the Constitution deal with the constitutional right to the freedom of speech. According to them, "The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law..." These provisions are fully reflected in Paragraphs 1 and 2 of Article 2 of the Law on the Mass Media of the Republic of Kazakhstan. In fact, this article makes

those constitutional provisions more concrete.

The Republic's legislation contains no norms or regulations which prohibit citizens to receive or disseminate information. The only exception is information which constitutes state secrets or some other kind of secrets protected by the law.

Today, the essential, basic elements of the information market have been formed in Kazakhstan. They include non-state-owned mass media, which is now a dominant segment, a wide differentiation of information subjects, and the appearance of fairly large media companies. Whereas until 1990 there were only ten republican newspapers and magazines and 21 television and radio channels in Kazakhstan, each of them state-owned, today the Republic has 2,110 media outlets, including 1,325 newspapers and 590 magazines, 184 television and radio companies, and 11 information agencies. Seventy-seven per cent of Kazakhstan's mass media are not state-owned. Public organizations own 218 media outlets, and 17 belong to religious associations.

It is known that practically all the political parties, including opposition ones, as well as a number of public organizations, have their own periodicals and access to the programmes of both republican and regional broadcasting media.

At the coming presidential elections all the candidates without exception will be afforded equal access to the republican and regional mass media. This is stipulated in the Law on Elections as well as in a special presidential decree.

In addition to Kazakh and Russian, the main two languages in Kazakhstan, the Republic publishes newspapers and magazines and runs broadcasts in 11 other languages, including Ukrainian, Polish, English, German, Korean, Uighur, Turkish and Dungan. Furthermore, the state renders financial support to the national mass media. Every year, following an open contest, state support is granted to four national press organs published in German, Korean, Ukrainian and Uighur.

Current on Kazakhstan's information market are products of 2,265 foreign mass media, including 2,183 newspapers and magazines and 82 television and radio programmes.

Such a great multiformity and linguistic variety, far from hindering, only stimulates the boisterous development of Kazakhstan's own mass media and broadens the scope of information. This is largely promoted by the annual placing of a budget-financed state order for the conduct of a state information policy. This order is awarded according to the results of open contests among the mass media, regardless of their form of ownership.

Working productively in the country are such public organizations concerned with upholding the rights of journalists as the Congress of Kazakhstan's Journalists, the Union of Kazakhstan's Journalists, television and radio broadcasters' associations of Kazakhstan, various media centres, and representative offices of international organizations. The freedom of speech situation in the country is being monitored by all sorts of human rights organizations, and we are aware of the fact that besides positive comments there often are critical remarks on the situation in that sphere.

The appropriate state bodies carefully examine all of the mentioned facts concerning violation of citizens' rights and freedoms and take the necessary corrective and preventive measures, all in keeping with Kazakhstan's legislation.

Moreover, within the framework of financing socially significant projects of non-governmental organizations, in order to facilitate the development of the mass media, grants were allocated early this year to such authoritative non-governmental mass media organizations as the National Association of Television and Radio Broadcasters which represents more than 30 TV and radio companies, the Association of Kazakhstan's Television and Radio Broadcasters which expresses the interests of TV and radio companies as well as of space satellite communication operators, the Public Foundation "North Kazakhstan's Media Centre" (the city of Kostanai), and the Association of Mass Information Media Workers (Zhambyl Region). These organizations conduct training seminars for journalists on problems of civic development in Kazakhstan.

As for further improving the legislation in our sphere of activity, particularly the draft law on the mass media, we all know that the Congress of Journalists in Kazakhstan, an authoritative public organization, has prepared a new draft of the said law, which is being presented in Astana today at a meeting of the National Commission on Problems of Democracy, in which the President of the Republic is taking part. Our position is this: in view of the Government's readiness to consider the draft law, we have held several working meetings with its developers, the Congress of Journalists.

And so I think we'll soon start discussing the draft in Parliament.

The process of forming the country's mass media has been far from simple; at the same time it has not been spontaneous or strictly predetermined. I believe that ensuring the further free and effective development of the country's information space is not so much a prerogative of the state and its structures only, which are working in the right direction and doing all they can, as, first and foremost, of society as a whole: the journalistic community, all sorts of public associations, and citizens. Everyone must contribute to this process.

We hope that holding forums like this one will make it possible in the future to find optimal solutions to problems that have been outlined here today.

Nurali Davlatov, Adolat Umarova

PLURALISM IN THE MASS MEDIA OF TAJIKISTAN: THE EXPERIENCE OF THE PAST YEAR – GAINS AND LOSSES

In any contemporary society, political pluralism is manifested in a respectful attitude towards law and current traditions, along with religious sentiments and moral values, so long as human rights are protected and there is political openness. It is impossible, however, to guarantee the above criteria if there are no independent (or, more properly, non-governmental) mass media.

An analysis of Tajikistan's mass media in the period under review shows that there is pluralism, but not to the degree that one might wish. This is because, as last year's parliamentary elections drew ever nearer, such independent media outlets as *Ruzi Nav*, *Nerui Sukhan* (Power of Speech), *Odamu Olam* (Man and the World), and *Adolat* (Justice) ceased publishing. Officially, not one of these newspapers was closed; nevertheless, the government and private printers in Tajikistan stopped collaborating with them, even though it is reliably known that many printers (both government and private) are standing idle due to a lack of customers. This demonstrates that the refusal to publish non-governmental media did not come about without interference from government authorities. The government thus showed it will not under any circumstances tolerate non-conformism in Tajik society, even though leaders of different rank talk from their high rostrums about supporting pluralism.

Only *Nerui Sukhan* kept operating, for the time being: it switched over to a non-standard A4 format. We say "for the time being" because the Kaikhon print shop was closed on 26 January exactly one month before parliamentary elections, on the grounds of "illegal use of electrical energy". As a result, Mukhtor Bokizoda was sentenced by Firdavsinsky district court of Dushanbe to two years' probation in September of this year.

The above measures were taken with the aim of bringing political pluralism in Tajikistan, if not to zero, then to a minimum.

The following situation now attains: the government media continue to close their eyes to the country's worst problems, while the existing non-governmental media cover matters of secondary importance. In other words, the most burning issues are covered very carefully in order to avoid trouble with the authorities. This has been demonstrated by a number of recent publications dealing with the sensational criminal investigations against former Tajikistan Minister of Internal Affairs Ya. Salimov and former Presidential Guard Com-

mander G. Mirzoyev (People's Front field commanders who made a huge contribution to the strengthening of E. Rakhmonov's government), and former Democratic Party and Tajikgaz Chairman M. Iskandarov (another influential ex commander of the armed Tajik opposition).

In August of this year, *Nerui Sukhan* and *Odamu Olam* each published one issue. Another newspaper, *Ruzi Nav*, still comes out from time to time in a run of 100 copies, all in A4 format. This paper has now declared itself to be an opposition paper.

For the sake of fairness, it should be noted that these non-governmental newspapers made their own contribution to the development of pluralism in Tajikistan. For the first time since the 1992 civil war, Tajikistan's journalists had conquered their fears and begun to cover issues that worried the public. There were a great many such problems: presidential and parliamentary elections, bureaucracy, corruption, unemployment, and the narcomafia, to name a few.

Non-governmental media began to cover these issues in particular. We believe that they made mistakes: for example, instead of carrying out their indirect responsibilities (i.e., impartially covering existing problems), they began to passionately accuse the Government and President of all the deadly sins. It is no secret that the Tajik authorities have a great many shortcomings. It would therefore have been more correct for the media to use analyst and expert opinions rather than make crude personal attacks. Our journalists took an untried path and began to foist their own opinions onto their readers. Another serious problem was that the independent media frequently failed to observe professional ethics. Mukhtor Bokizoda, the editor-in-chief of *Nerui Sukhan*, had this to say on the matter: "We did not always debate things properly and were not always tolerant of others' views".

It was probably for this reason that some of the paper's "targets" considered the criticism aimed at them to be libellous. The affair ended up in court, with one of the paper's correspondents getting a year's probation. For his response, published in the paper, the court fined journalist N. Aminov 50,000 somoni, or more than \$16,000. The plaintiff, however, N. Abdullayev, an instructor at the National University's Faculty of Law, waived the compensation for the emotional suffering he had incurred.

We then saw that the government media began to talk about the government only in positive terms, while the independent media spoke of it only negatively. Whether the government media began to sharply criticize independent newspapers and their heroes voluntarily or because they were ordered to is unimportant. Government figures who had once been influential but were now

chafing under their retirement became the main heroes of the non-governmental papers. Former Presidential Guard Commander G. Mirzoyev and former Tajikgaz Chairman M. Iskandarov can also be included in this list: the former is now awaiting trial, while the latter was sentenced last week to 23 years. The main thing, however, is that far from everyone in Tajikistan saw these men as champions of justice.

When one considers that the battle in Tajikistan took place against the backdrop of victorious coloured revolutions, it is not hard to guess what made government officials start thinking of how to rid themselves of the troublesome non-governmental media.

Mukhtor Bokizoda believes that, in the pages of *Nerui Sukhan*, he provided all political party leaders with a rostrum to voice their views from, but they limited their statements to criticism of other political parties, especially the ruling party: "There was a great deal of just criticism in their words, but at the same time they themselves did not offer any serious political programmes for leading Tajikistan out of its crisis".

Now there is only one year left before presidential elections in Tajikistan. As we mentioned above, the non-governmental media in Tajikistan now avoid covering major problems in a serious manner. They do not want to be closed down due to their criticism of the President, the Government, or the ruling party. They are either very cautious in their coverage or write about things that present no threat to their newspapers. There are today virtually no political discussions in the pages of the media, and the activities of political parties are not covered. When one considers that, among these organizations, only two parties – the ruling NDPT and the IRPT – have their own press organs, it is easy to imagine how the remaining parties' participation in the elections will be covered, given the absence of pluralism in the mass media. It is not known how they are preparing for the presidential elections.

Meanwhile, the official media write about President Rakhmonov's wise politics, and nothing else. The founders and chief editors of newspapers do not want them to be closed down due to their criticism of the President, the Government, or the ruling party. Now that among the six political parties only two have their own press organs, it is only natural that they use the independent media for their own ends. The experience of Tajikistan media shows that they do not care a sixpence about journalist ethics, because the main goal of any political party is coming to power.

As we see it, no journalist has such a goal. The journalist is not a political or opposition leader and even less a revolutionary. The journalist has a totally

different mission.

The sole gain this year will most likely be the registration of the new non-governmental political paper *Millat* (The Nation), which started coming out on 1 September 2005.

Will new newspapers be registered in Tajikistan in the next few months? It is hard to answer this question. It is easier to answer another one: What should the independent media expect once the presidential campaign gets under way in Tajikistan?

In our opinion, the authorities will do their best to try and restrict pluralism in the independent media. This is clear from court rulings in respect of journalists, cases of preventing printing houses from printing newspapers, and stepped-up propaganda in the official mass media. Therefore, under the circumstances, the independent media should work out joint tactics and behaviour patterns. First, solidarity among journalists of the independent media is a must. Second, each media outlet should have on its staff a journalist well-versed in election law to cover the election process. In order to save their face, the independent media should treat all political parties on an equal basis, because showing preference to any one party would discredit them.

In the area of pluralism, one can see that it is very difficult today to speak of gains over the last year for Tajikistan's mass media; it is easier to speak of their losses. The issues raised in non-governmental media are not presented forcefully, while government media avoid serious issues altogether.

A situation now attains in which subscriptions to government newspapers are basically growing, since many of these papers' readers are government officials, who, we are sure, had to subscribe to these papers. Independent distributors refuse to put them on sale, because there is no demand for them. In our view, we today need several professional Tajik-language newspapers that will competently cover the current problems in Tajik society.

Bakyt Ibraimov**MEDIA PLURALISM IN KYRGYZSTAN:
BEFORE AND AFTER THE REVOLUTION**

This report analyses the development of the mass media in the light of the latest events in Kyrgyzstan. In particular, it considers the state of the country's mass media before and after the Revolution of 24 March 2005. It also considers the attitude of the new powers that be towards the principles of democracy, freedom of expression and pluralism in the mass media, as well as the de-nationalisation of the official mass media which last has aroused heated discussions both among journalists and government officials.

In recent years the media situation in Kyrgyzstan has been determined by the actions of the authorities, which caused tension in civil society. Access to socially significant information has been limited, and freedom of expression frequently violated.

The predictions of media experts that this problem would be particularly acute during the pre-election period have come true. At the same time, the experts insisted that this problem should be resolved at the legislative level. The right of everyone freely and without hindrance to seek, receive, analyse, produce, transmit and disseminate information was laid down in the law of the Kyrgyz Republic "On Guarantees and Freedom of Access to Information". It proclaims that the state must protect the right of everyone to information, while access to information may only be restricted by law. Parliament alone has the right to restrict access to information by adopting an appropriate law, and no other government agency can do that.

The scarcity of information or refusal by government agencies to make it available to journalists negatively affects not only the image of the mass media but also the entire process of social development. In some cases, the public, unable to learn about the views of the other side, is compelled to receive one-sided information. Media workers admit that they often have to tell the public that the other side is unwilling to comment on, or to give its appraisal of, this or that event, thereby contributing to the bias of the published material.

Although the right of journalists – just as that of every citizen – to freedom of receiving and disseminating information (except such information as may constitute a state secret) is guaranteed by the country's Constitution and the relevant laws, the former authorities of Kyrgyzstan used all sorts of methods to limit journalists' access to socially significant information. These

methods included direct and indirect refusal by government officials to make information available to journalists, as well as illegitimate denial of accreditation. Furthermore, preferences and privileges were given to the government-controlled media, while others were restricted in gaining access to meetings of government agencies, court sessions, and press conferences held by high-ranking officials.

The authorities gave an unjustly broad interpretation of the threat presented by extremist groupings, referring to the need of ensuring “information security of the state and society” and creating “a system of opposing information expansion”. This was repeatedly mentioned by ex-President Askar Akayev. Speaking at a Security Council meeting on 23 October 2004, he declared that “the activity of certain mass media outlets was detrimental to the stability of society, imparting to it elements of civil confrontation and conflict”. Already then, the authorities were aware that certain non-governmental media outlets engaged in publicizing the political opposition blocs and movements which had made their appearance in Kyrgyzstan on the eve of the parliamentary and presidential elections.

At a press conference held on the eve of 2005, the country’s first President remarked, in a live broadcast of a government-owned television channel, that such blocs and movements had been created with the funds of some international organizations for the purpose of generating discord among the people and organizing revolutions patterned on those carried out in Georgia and Ukraine.

Certain media actions staged by various organizations have shown that freedom of expression – one of Kyrgyzstan’s main achievements – was losing ground from year to year. Journalists and media experts, including foreign ones, stated that Kyrgyzstan’s “fourth estate” was living through hard times, being attacked and pressured from all sides. And this despite the fact that our legislation contains no restrictions on access to information and that our law “On the Mass Media” is one of the most liberal in the Commonwealth of Independent States.

According to some international organizations, official Bishkek began curtailing freedom of expression upon President Akayev’s statement, made in his annual address to the nation, to the effect that certain media outlets, purporting to exercise their right to freedom of expression, have chosen ideological terrorism as a means of attaining their ends.

For instance, Rachel Denber, a prominent Human Rights Watch activist, declared on 28 December 2004 that the government of Kyrgyzstan had taken

measures to tighten its control of the news media and other institutions of civil society just before the parliamentary elections scheduled for 27 February 2005.

There is no doubt that the authorities expected the non-governmental media – just as the government-controlled ones – to become the chief link between the powers that be and the electorate, while during the election campaign they did not exclude a clash of interests. Formerly, the power structures had the possibility of exerting pressure via printing houses or by putting forward multimillion claims. Later on, this niche was occupied by the supervisory agencies.

From January 2005 on, the confrontation between the authorities and the mass media intensified. The cause of that was the publication, in a number of opposition newspapers, of the verbatim report of a “secret” meeting of Kyrgyzstan’s government which, allegedly, considered the problem of neutralizing the opposition during parliamentary elections. Against this background, the government-owned mass media began fervently upholding the interests of the authorities and, as a result, an information war flared up. Commenting on this situation at the Media and Elections forum, Kuban Mambetaliyev, chairman of the Journalists public association, noted that the “media war” in Kyrgyzstan was gathering momentum, and that new technologies were employed to pit Kyrgyzstan’s government-controlled media against their non-governmental counterparts.

Clearly, there can be no talk of pluralism in a situation like that. The coalition For Democracy and Civil Society appealed to the government, requesting it to ensure strict observance by the government-owned media of the rules prescribed by the Election Code for coverage of the election campaign. The statement said that the voters in Kyrgyzstan were deprived of the opportunity to obtain complete and authentic information on the events taking place in the country from the government-controlled media. In this connection, two pro-government newspapers were pointed out in particular – the *Erkin Too* and *Slovo Kyrgyzstana*.

Quoting the editor-in-chief of a pro-government Kyrgyzstan newspaper, the Integrated Regional Information Network (IRIN) of the UN Office for the Coordination of Humanitarian Affairs reported that this newspaper was compelled to cover the election campaign in the country in accordance with the recommendations issued by the presidential staff. The report said further that the editors of all the government-controlled mass media had received strict instructions concerning coverage of the elections. In particular, these instructions recommended creating an information vacuum round the opposition candidates.

In an open letter to President Akayev, the Human Rights Watch expressed concern over the media situation in the Kyrgyz Republic, noting that the opposition's access to television broadcasts had been limited, while the government was using its influence on the broadcasting mass media for the vilification of those who criticized the powers that be. The letter pointed out that for many years the government, or those connected with it, maintained strict control over the national television channels. The letter also expressed regret that the authorities still used lawsuits against critically-minded newspapers and invented new methods of exerting pressure on them, including on their administrative resources. By way of example, the letter referred to what it called the instance of illegitimate application of anti-trust legislation against a leading independent newspaper.

The situation reached its climax on 17 February 2005, when, speaking on a government-controlled television channel, President Akayev accused the newspaper *MSN* of slandering his family. He threatened to institute a lawsuit and called upon the people to support him. Appearing on the same television channel two days later, State Secretary Osmonakun Ibraimov conducted a live show in which prominent personalities took part. A noted academician and doctor of medicine stated then that he would like to destroy some of the journalists he hated so much right on the operating table. According to a number of journalist organizations, that live broadcast exceeded all limits of common sense.

A few days before the start of parliamentary elections two incidents occurred which laid bare the true policy of the government: the Azattyk radio station was turned off its frequencies in the VHF and FM bands, and the American printing house called "Mass Media Support Centre", which published local and regional newspapers, was cut off from its electric power supply. Those incidents were assessed as curtailment of voters' rights to free access to information.

After the first round of parliamentary elections Sulaiman Imanbayev, head of Kyrgyzstan's Central Election Commission, refuted the statements that pressure had been exerted on the mass media during the election campaign. According to him, over 90 mass media outlets took part in the election canvassing for candidates, and only 18 of these were government-owned. He said that each candidate, regardless of his/her political orientation, was afforded free time for appearing on the government-owned radio and television channels to take part in the debates. Also, each candidate was allowed to submit one page of typewritten text for publication in the press. "No one's freedoms were curtailed; all of the parliamentary candidates enjoyed equal rights, and all statements to the contrary are not true," Sulaiman Imanbayev declared.

On the eve of the storming of the Government House in Bishkek, the non-governmental organization Internews-Kyrgyzstan published a statement on the information situation in the electronic mass media with regard to the events in the south of the country. The statement expressed concern about the information blockade which was established in the country on the eve of the revolution. In this connection, the organization called on the government agencies to abstain from exerting pressure on the mass media and from abusing the air time of the government-owned channel maintained with the taxpayers' money. "Because of the interference of the authorities in the work of the electronic mass media," the statement ran, "the people of Kyrgyzstan did not receive authentic information about what was really happening. The absence of adequate, well-balanced coverage of the events in the south and in some northern parts of the country gave rise to all sorts of rumours and led to the manipulation of public opinion, which destabilized the situation even more."

A similar opinion was voiced by Anvar Artykov, Chairman of the Regional Kenesh (Parliament) of the Osh Region (now the acting governor of the Osh Region). On 21 March 2005, he told the AKI press news agency that unless the staff of the Osh-3000 television company started covering the events taking place in the southern capital objectively, the protesters would have no choice but to capture the premises of that company. Similar statements were made by the protesters in the neighbouring Jalal-Abad Region, who accused the government-controlled mass media of distorting the meaning of the events taking place in the south of Kyrgyzstan.

In any case, one can say that the mass media have played a decisive role in the pre-revolutionary situation in Kyrgyzstan. Following the change of government in Kyrgyzstan on 24 March 2005, acting President Kurmanbek Bakiev stated in a live television broadcast that all of the newspapers, including government-controlled ones, should be free. He also supported the idea of transforming the National Television and Radio Corporation (NTRC) into a public television channel. Furthermore, he stressed the importance of providing authentic and objective information. To perform this function, he said, the mass media must be free from any kind of pressure.

But all that was said on the spur of an euphoric moment when the new authorities in the person of its high-ranking officials promised to give the government-owned mass media "free rein". Right after the revolution Bakiev spoke of the need for modernizing the foundations of the state as soon as possible and for strengthening freedom of expression. But so far, none of that has been done. The acting President appointed new editor-in-chiefs of three

government-controlled newspapers and the chief of the NTRC, who, as before, take their orders from the head of state.

On 31 May 2005, addressing the heads of the official press organs gathered at a media forum, Adakhm Madumarov, acting Vice-Prime Minister of the Kyrgyz Republic, said: "Write whatever you want, sail wherever you want." But soon the authorities realized that the promised reform of the government-owned mass media might negatively affect the coverage of the activities of the government agencies themselves. The problem is still unresolved despite the fact that a task force for government-controlled media de-nationalisation has been set up by a decree of Kyrgyzstan's acting President.

The question of whether the government needs the press should be re-framed as follows: "Does the public need the press?" If there is market demand for the press, the press will survive; and if there is no demand, do the new authorities have the right to maintain the press with the taxpayers' money? Some people have suggested a new incorporation approach whereby 51 per cent of the stock is owned by the government and the rest by the paper's staff. Media experts believe, however, that this approach would hardly change anything: most of the government-owned media would simply become semi-governmental.

It is well known that there are no government-owned mass media abroad; there are merely different media bodies which express different viewpoints. If we have a large number of non-governmental media bodies, they will, accordingly, reflect the interests of this or that group of the population. The truth will then be born of such pluralism, of a conflict of opinions. And it is only natural that any business entity can establish a television or radio company or a newspaper and make its own views and interests known to the public and the government.

At present, there is much controversy round the NTRC. The media forum mentioned earlier issued a resolution addressed to Kurmanbek Bakiev, which pointed out the need for adopting a law on broadcasting and for establishing a public television network on the basis of the NTRC. Later on it turned out that the NTRC was not on the list of the mass media subject to de-nationalisation. Adakhm Madumarov explained this fact by a desire not to jeopardize the country's information security as well as the ideological component of the country's development. The NTRC leaders supported this view and declared that its "governmental" status already presupposed expressing the interests of the public at large. Therefore, it was suggested that the NTRC should be left alone and that only the corporation's southern branch, the Osh-3000 TV

company, should be turned into a public television channel.

In an interview to the Bely Parokhod news agency, Abdygany Erkebayev, Zhogorku Kenesh (Parliament) ex-speaker, noted that at the time, there was less media pluralism and difference of opinion than before, and that the leading opposition newspaper had become pro-government. He also noted that so far no progress had been made in reforming the mass media. Still worse, harsh pressure was brought to bear on those media which criticized the authorities.

Obviously, the government has decided not to part with one of its main ideological instruments for the time being. However, many political scientists and media experts see the immediate future of Kyrgyzstan's mass media in different ways. If the government-owned newspapers are allowed to fend for themselves, not all of them will be able to survive in the present conditions, for some of them are not ready to switch over to self-financing. This is especially true of the areas which have, for the most part, government-owned district and regional papers. If that should come about, all of the district newspapers may cease to exist, and then the public there would be deprived of practically any kind of information.

In the opinion of other experts, if no reform is carried out, the present war between the government-owned and non-governmental media will continue, and so will the loud praises sung to various officials and the President. It is also said that the government-owned press has long since become a thing of the past in all democratic countries, while in this country the editors of the leading national periodicals are still being appointed by presidential decrees. On the other hand, if media reform is carried through, some media outlets will close down, and only the fittest of them will survive. And the higher the level of their competitiveness on the media market, the higher the level of their professionalism will be, and this will ensure their customers a higher-quality product.

An important role in the development of the mass media is assigned to a new draft law "On Broadcasting," which today is being considered by one of Parliament's committees. The draft law provides for reforming the electronic mass media, particularly the government-owned television channels. However, certain officials go out of their way to sabotage and boycott this draft law.

The media are bound to face huge obstacles in the near future. Therefore, our main job is finding constructive solutions to our current problems to rule out any limitation of freedom of expression.

Anar Zhailganova

HONOUR, DIGNITY AND BUSINESS REPUTATION PROTECTION IN THE MASS MEDIA IN KAZAKHSTAN

Under the Constitution, every citizen is entitled to the protection of his/her honour, dignity and business reputation. Pursuant to Article 56 of the Code of Civil Procedure [CPC], defamation proceedings shall be instituted on the basis of lawsuits filed by citizens, organizations and other entities entitled to seek legal protection of their rights and the statutory interests of other persons.

Disputes on the protection of honour, dignity and business reputation centre on personal property and non-property relations.

Article 143 of the CPC puts honour, dignity and business reputation in the personal relations category but does not elaborate on these notions, therefore their interpretations will be found in Regulatory Resolution No. 6 passed by the Supreme Court of the Republic of Kazakhstan [RK] on 18 December 1992 and entitled *On the Application in Case-Law of Courts of Legislation on the Protection of the Honour, Dignity and Business Reputation of Individuals and Legal Entities* (as amended by Resolution No. 5 of the Plenum of the RK Supreme Court of 15 May 1998 and Regulatory Resolution No. 10 of the RK Supreme Court of 18 June 2004):

Honour means the social rating of a person, the measure of his/her moral values and civic attitudes.

Dignity means a person's self-appraisal of his/her own qualities and abilities, world outlook and social standing.

Business reputation means a sustainable positive assessment by public opinion of a person's business (professional) qualities.

Article 17 (1) of the Constitution of the Republic of Kazakhstan (hereinafter referred to as the Constitution) provides that a person's dignity shall be inviolable. Under Article 18 (1 and 2) of the Constitution, everyone shall have the right to inviolability of private life, personal or family secrets, protection of honour and dignity, confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages. Any restrictions of this right shall be permitted only in the cases and according to the procedure directly established by law.

Article 20 of the Constitution guarantees freedom of speech and creative endeavour.

Article 141 (2) of the Civil Code provides that personal non-property rights

shall be protected by a court of law in accordance with the procedure envisaged by the Code of Civil Procedure. Articles 144, 145 and 146 of the Civil Code deal with the right to confidentiality of private life, to one's own personal images and to the inviolability of the home.

Therefore, the right to the protection of honour and dignity, provided for under the Fundamental Law, and the judicial procedure for protecting the said rights established by the Civil Code testify that there are restrictions on freedom of expression and of the media to prevent any abuse of the above rights.

These rules are further elaborated on in more detail in the Republic of Kazakhstan Law On Mass Media of 23 July 1999 (hereinafter referred to as the Media Law).

Since Article 143 (4) of the Civil Code provides that a person's request for the publication of a refutation or response in a media outlet shall be considered by a court of law if this media outlet refused to publish it or failed to publish it within a month or was liquidated, the court has to verify the claimant's statement to the effect that he/she had to move to the court because the media outlet had failed to consider his/her refutation request in due time.

Article 19 of the Media Law lays down in detail the procedure for refuting defamatory information disseminated by the media. Article 143 (2) of the Civil Code stipulates that every citizen shall be entitled to court remedies in any case of defamation.

Under Article 19 (3) of the Media Law, an individual's or legal entity's request for the publication of a refutation or response in a media outlet shall be heard by a court of law, if this media outlet turned down the request or failed to publish it within a month or was liquidated.

In the meantime, most courts do not regard this provision of the law to be mandatory on the grounds that the Constitution entitles everyone to the judicial protection of his/her rights and freedoms and therefore everyone may demand in court that statements encroaching on his/her honour, dignity or business reputation be refuted; the same is true of legal entities in respect of business reputation only. In our opinion, this approach is not quite correct because in this case the procedure for refuting defamatory statements, established by law, is ignored; what is more, we believe that the Constitution and the Mass Media Law are not at variance with each other on that score.

Para 2 of Regulatory Resolution No. 6 passed by the Supreme Court of the Republic of Kazakhstan on 18 December 1992 and entitled "On the Application in Case-Law of Courts of Legislation on the Protection of the

Honour, Dignity and Business Reputation of Individuals and Legal Entities” provides that in hearing civil cases initiated on the grounds, and in accordance with the procedure, provided for under Articles 141 and 143 of the Civil Code, Articles 24 and 152 of the Code of Civil Procedure, the court of law shall make certain (1) whether the information the claimant seeks refutation of has actually been published; (2) whether this information defames the claimant’s honour, dignity and business reputation; (3) whether this information is true. This rule provides for the use of a special remedy to protect a citizen’s honour, dignity and business reputation – refutation of the defamatory statements disseminated by the media; this method can be used if the three above conditions are met in their entirety. At the same time, there are cases of such statements being true but couched in insulting and defamatory terms, or not lending themselves to verification being the defendant’s subjective assessments or judgements. These matters are to be decided at the legislative level.

If information obtained from another source has been reproduced, this source shall be sued in which case the burden of proving the authenticity of the information published shall rest with the defendant.

The defendant shall prove the information published is authentic, while the claimant only has to prove the fact that defamatory information has been published.

This provision found in Article 141 (3) and Article 143 (1) of the Civil Code is only half-met by courts on the assumption that the claimant has to prove just the fact that information was published rather than the fact that the information published indeed defamed the claimant.

It is noteworthy that the media shall be free to criticize government agencies if they fail to perform their duties or exercise their powers properly because they are public institutions by definition. Therefore, in the event of government authorities considering any statement carried by a media as an encroachment on their rights and legitimate interests they may come up with a response to that statement in the same media, offering a different interpretation of the matter in hand. This rule ought to have been provided for by the Media Law and legalized, anyway. But even now government agencies may well opt for such a solution to a conflict instead of clamping down on critical publications.

If a statement made public by the media is not defamatory, the lawsuit demanding their refutation shall be dismissed.

A response to a statement of claim shall not be regarded as publication of defamatory information in respect of a litigant because it is neither a statement addressed to an organization or office-holder, nor a message, in whatever form, to several persons or even one person. Such objections may, as already mentioned, be raised as part of exercising a litigant's right to the choice of his/her opinion and stand on the claim pursuant to the provisions of Article 15 of the CPC.

The judiciary should bear in mind that if the information at issue was aired at the hearing of another case by the parties thereto and by witnesses at attendance as testimonial evidence and taken into account by the court when delivering its judgement, it cannot be challenged in accordance with the procedure provided for under Article 143 of the Civil Code because the CPC has established a special procedure for examining and assessing this evidence. Such a demand actually amounts to insistence that the information and evidence on the cases heard previously be reevaluated by the court.

If the above-mentioned persons air such information in court concerning persons who are not parties to the legal proceedings and who regard such information as untruthful and defamatory, the latter may protect their rights in accordance with the procedure provided for under Article 143 of the Civil Code.

Apology as a remedy in a defamation case is not provided for by law. The practice is different, however.

Considering that no one can be compelled to voice his/her opinions or convictions or to forsake them, the court shall not obligate the defendants in such cases to apologize to the claimants in whatever form. A reservation should be made here to the effect that certain courts consider it acceptable practice to obligate defendants in such cases to offer public apologies to the claimants because such practice is in line with the provisions of Para 12 of the current Regulatory Resolution *On the Application in Case-Law of Courts of Legislation on the Protection of the Honour, Dignity and Business Reputation of Individuals and Legal Entities*. Such an interpretation appears to be not quite correct because the above-mentioned paragraph of the Resolution provides for the public exposure of defamatory information as mendacious (at company meet-

ings, in the press, on the radio, television, etc.).

An analysis of judicial practice shows that there have been cases of litigants reaching an amicable settlement on condition that the parties apologize to one another.

It is noteworthy in this connection that the court may approve an amicable settlement whereby the defendant offers an apology to the claimant for spreading false defamatory information with regard to the latter. Such practice neither violates the rights and legitimate interests of third parties, nor runs counter to law.

Having satisfied a claim, the court should specify the defamatory statements found to be false, the way of and procedure for refuting them.

Moral damage assessment, correlation with losses.

The judiciary should bear in mind that property and non-property damage ensuing from impinging upon honour, dignity and business reputation shall be compensated in accordance with the damage covering regulations. The regulations stipulate that material losses shall be compensated only if the person found guilty of spreading defamatory information has been established, and moral damages, irrespective of this.

The amount of moral damages shall be reasonably and fairly determined by the court. This matter is dealt with under Para 13 of the Regulatory Resolution which says that the extent of moral (non-property) damage shall be specified in the court judgement in terms of cash depending on the nature of defamatory information at issue (accusations of criminal offences, administrative and civil offences, immoral acts, etc.), the scope of their spread, the defendant's financial position and other circumstances worthy of attention. The list also specifies the form of the defendant's guilt, which is wrong, to our mind, because this runs counter to the provisions of Article 951 (3.3) of the Civil Code. Notably, judicial practice varies on that score, since the law does not set the clear criteria for determining the extent of moral damage. In our opinion, the court should award damages proceeding from the nature and content of defamatory information and the scope of its spread. The amount of compensation for the moral damage sustained should be commensurate with the harm done and not lead to any infringement of freedom of information.

What criteria do courts go by in judging whether defamatory information is true or false?

Legislation now in force does not establish any information authenticity criteria. However, I agree with the opinion that it is obvious that information about events which did not actually take place where and when they are alleged to have happened is not true.

In this connection it is worth noting that the courts should distinguish between statements of facts whose authenticity can be verified, and value judgements, opinions and views which are not subject to judicial protection under Article 143 of the Civil Code being the defendant's subjective opinions and presumptions which do not lend themselves to verification. If a subjective opinion has been voiced in a form insulting the claimant's honour, dignity and business reputation, the defendant may be prosecuted at law in accordance with Article 130 (insult) of the Criminal Code of the Republic of Kazakhstan.

In our opinion, this issue should best be settled by a civil procedure, with amendments made to the current rules on protecting honour, dignity and business reputation (Article 143 of the Civil Code) and on moral damage compensation (Article 951 (3) of the Civil Code). Article 143 of the Civil Code could be enlarged as follows: "A private citizen or legal entity in respect of whom insulting statements have been made which, even though true, infringe upon his/her honour, dignity or business reputation, may demand compensation for moral damage and losses incurred thereby".

Article 951 (3.3) of the Civil Code may include a novel provision to the effect that moral damage has been incurred through the spread, in insulting form, of information which, even though true, infringes on honour, dignity and business reputation.

If petitions (complaints) filed with government or other authorities have been turned down as ungrounded, can one turn to a court of law for protection of his/her honour, dignity and business reputation?

The judiciary should bear in mind that if a citizen files a petition with various government authorities which they have found to be unsubstantiated, this circumstance cannot in itself serve as grounds for holding the citizen liable under civil law as provided for under Article 143 of the Civil Code because in this case the citizen has exercised his/her constitutional right to apply to agencies which are legally bound to check incoming information rather than made a

false and defamatory statement. Such a petition may be granted only if the court finds a complaint lodged with the government authorities totally ungrounded and motivated not by the applicant's desire to do his/her civic duty or to protect his/her lawful rights and interests but solely by the intention to do harm to another person – in other words, if an abuse of rights has taken place.

Do courts take different approaches to moral damage recovery in hearing cases to protect one's honour and dignity, and cases to protect one's non-material values (inviolability of the home, privacy, etc.)?

Very few claims for damages incurred by impingement on non-material values (Articles 144-146) are filed, but the judiciary should bear in mind that grounds for moral damage recovery vary in terms of form of guilt. For example, if damage has been done by spreading information that impinges on honour, dignity and business reputation, compensation shall be recovered irrespective of the harm-doer's guilt; otherwise, it is necessary to prove the harm-doer guilty.

Courts should distinguish cases of protecting honour, dignity and business reputation (Articles 141-143 of the Civil Code) from cases of protecting other non-material values (provided for under Articles 144-146 of the Civil Code), violated by disseminating information about a citizen the confidentiality of which is expressly protected by the Constitution and other laws and the dissemination of which may cause moral damage even when this information is true and does not defame the claimant's honour, dignity and business reputation.

Stepan Balakin

PLURALISM OR ITS ABSENCE IN UZBEK MEDIA

Introduction

“So many men, so many minds”, the old saying goes. However, a difference of opinion often engenders conflicts between people, and not only between individuals, but between groups of people, ethnic groups, and ultimately between states. The problem is that, as a result of this, it is the people themselves that suffer, especially when their vital interests are affected and even more so when these are collective, corporate or clan interests. After all, an idea, as we know from the fundamentals of Marxism-Leninism, becomes a material force when taken up by the masses.

The new century has not brought liberation from conflicts of ideas and the danger of a global catastrophe that might be provoked by such a conflict of opinions, ideas and ideologies, is so real that many have realized that we must learn to come to an agreement on even the most acute issues. Then pluralism would develop smoothly into tolerance, which would allow people with different ideas to coexist in peace. In the USSR, the word pluralism was introduced into common usage by Mikhail Gorbachev, the first and last President of this now almost mythical empire. It was the departure from the common charter and from the undisputed directives of the Central Committee of the Communist Party of the Soviet Union that constituted one of the reasons (in addition to the economic one!) for the collapse of the empire. In the 1920s and 1930s, citizens of the young Land of the Soviets who disagreed with the ideology of socialism that was declared the main one in all social and state development would be sent to labour camps or exterminated. In the 1960s and 1970s, dissidents were imprisoned or exiled. The first shoots of pluralism grew in people’s minds throughout the 70 years of Soviet power – finding expression in various jokes, sayings, anti-Soviet songs and underground literature. In the second half of the 1980s, pluralism finally eroded the once monolithic colossus named the Soviet Union and it fell, splintering into a number of independent states. Thus, the Cold War between world imperialism and the USSR ended in victory for the former. There are justifiable concerns that the integrity of the independent states that made up the former Soviet Union might fall victim to pluralism. Confirmation of this is provided by the colour revolutions. So far, Uzbekistan is successfully standing up against this threat.

Problems of Journalism in Uzbekistan

When it gained independence, Uzbekistan proclaimed the basic democratic rights for its citizens, including access to information and freedom of expression.

Article 29. Everyone shall have the right to freedom of thought, speech and belief. Everyone shall have the right to seek, receive and disseminate any information, with the exception of information directed against the existing constitutional system and other restrictions established by law.

Freedom of opinions and their expression may be restricted by law on the ground of state or other secrets.

According to the country's Constitution (Article 67), censorship has not been permitted since the very beginning of independence, though it took over ten years for the institution of censorship to actually be dismantled. Liability for the content of publications that in any way embosom violations of guidelines that are not so much constitutional in nature as recommended from above was transferred from the censors to the editors-in-chief of the mass media. These guidelines apply to virtually every sphere of public life, but special attention is focused on domestic and foreign policy of the government. If a journalist covers issues of culture, art, sport, housing and amenities, and the like, he/she must still remember that his/her point of view on current events might go against official guidelines, sometimes tacit ones, which might bring trouble for him/her personally and the publication in which such material appears. For this reason, editors-in-chief, even if they know that material offered by a journalist is correct and does not contain any state secrets or anti-constitutional statements, must always be extremely careful. Quite recently, in mid-August, one journalist of a so-called independent newspaper fished out from the Internet and published information about the OSCE Centre in Tashkent organizing a summer school in the mountains, at one of the health camps (Semurg), for 80 higher education students from Tashkent, the Tashkent and Syr Darya regions. Neither the executive editor nor the editor-in-chief of the paper attached any particular importance to this information, since they had no relevant instructions, and nor had the journalist. After the issue came out, an angry voice from on high made it clear that that information should not have been published, owing to disagreements over evaluation of the Andijan events. The journalist was issued a warning for breaching labour and professional discipline. The

conclusion automatically suggests itself that the newspaper simply needs a competent censor. About a month before the actual abolition of the institution of censorship, a meeting was held in the journalists' club, at which the deputy editor-in-chief of another Tashkent-based independent newspaper boasted that they had no censorship and printed their newspaper without a censor's small stamp and signature. A colleague of his from another newspaper advised him to take on a censor and pay him a salary, so that the editor and the author might both sleep peacefully. If the government is only in the throes of building a democratic society, but it is not yet clear when it will be completed, government control of all the processes taking place in society, particularly in the mass media, is quite explicable and understandable. After all, not for nothing has President Islam Karimov put forward the convincing slogan "From a strong state to a strong society", which explains so much. On the other hand, it is also logical that all contradictions are regulated by Law, which, as we know, applies equally to all members of society. That is, when people have agreed on the rules of the game, they must abide by these rules, especially if these people represent the government authorities. According to the Constitution of the Republic of Uzbekistan, every citizen has the right to express his/her opinion and stand up for it. This applies specially to journalists, who must be allowed to retain this right!

We live, however, in the real world, under real conditions that have taken shape not only over the last decade and a half. The people's mentality, based on local traditions, cannot be changed overnight, nor should it be, since much in this mentality is worthy of emulation: industriousness, collectivism, sincerity in relations, respect for the old, hospitality, and love of children. Yet who would condemn reverence and fear of authority and consumerism? In general, the ordinary people do not really care that there is someone over them – the aksakal (elder) of the local Mahalla (Soviet), the hokim (governor) of the district or town, who, in accordance with **Article 103**, "exercises his/her powers *on the principles of sole command* and is personally responsible for the decisions and actions of the bodies under his/her command" and "*within his/her jurisdiction* makes decisions that are binding on all enterprises, institutions, organizations, associations, as well as officials and citizens on the corresponding territory". This means that if a journalist, as a citizen, lives on this "corresponding territory", he/she is obliged to comply with the decisions of the representative of the local authorities. The system of strict vertical hierarchy from the head of state down to the aksakal of the local Mahalla allows the entire population, including journalists, to be kept within the field of vision. If, then, a journalist

works for a government or departmental newspaper, this control also applies to his/her professional activities, ensuring that the content of the articles complies with the guidelines of the powers-that-be.

Once, about twenty years ago, a Soviet corporate newspaper published by the All-Union Knowledge Society, entitled *Argumenty I Fakty*, very rapidly became extremely popular. The reason for its success was the broad pluralism of the views of the authors writing for it, which contrasted sharply with the monotony of other Soviet newspapers. Today's editors are trying to apply the same method. In 2002, in another independent newspaper, *Business Vestnik Vostoka*, a change of founder occurred. Up to that time, for a period of two years, the paper's four journalists, under the ideological leadership of a very principled deputy editor-in-chief, managed to publish materials concerning matters that were, to put it mildly, better left alone. First of all, this applied to the convertibility of the national currency unit, the sum, as well as problems associated with the environment, small and medium-sized business, and relations between Uzbekistan and the International Monetary Fund. In a short time, the newspaper achieved a very high rating. The time came, however, when a new owner of the newspaper appeared, the private company Saipro, which already owned the Internet portal UzReport. The newspaper team were told either to revise their views, that is, write materials lacking in punch, or leave. The journalists chose the second option and the deputy editor-in-chief, Inna Kogai, who was 48 years old, simply died from a heart attack. This example reminds us how risky it is to have your own viewpoint, your own principled position under an authoritarian regime such as, according to political scientists, the current regime in Uzbekistan.

The Opinion of a Regional Journalist

In central, republican newspapers, where each department has been headed for many years by one and the same, ideologically diehard people, it is quite difficult to find examples of pluralism, even on such issues as public utilities, tourism and the environment. And their first commandment is: thou shalt not criticize the local authorities! Because, if you do, you infringe on the interests of the entire system. For this reason, a multi-level defence mechanism comes into play within the system and the material is simply rejected. The situation in the regions is no better, but rather more routine. Let us take one of the central regions – the Samarkand Region. Here is what independent journalist Solekh Yakhyayev recounts.

“In Samarkand, there are several newspapers that are mouthpieces of the local authorities. One of the main Samarkand newspapers is *Zarafshon*, founded by the local hokimiyat (district council) and the regional Council of People’s Deputies. The former is also the founder of the Russian-language newspaper *Samarkandsky Vestnik* and of the Tajik-language newspaper *Ovozi Samarkand*. These three newspapers are the main press organs through which our regional authorities carry out their propaganda, provide news and dictate the topics that should be imposed on the local readership. Their print-runs are not large – about 1,500 copies and, by the end of the year even fewer – about 600-700 copies. This picture speaks for itself. These newspapers avoid the topics of real interest to our readers. And this answer exhausts the question of pluralism, because if there were pluralism even to the extent of 20-25 per cent, these newspapers would come out in much larger print-runs.

“What are the subjects that really interest the Samarkand readers? First, they would like full information about unusual, extraordinary events, and not just the weather, but also socio-political developments, like the Andijan disturbances that occurred in May this year. Meanwhile, journalists who try to touch on such topics are intimidated and persecuted. The adoption and enforcement of the criminal laws on defamation and infringement on the constitutional system, provide excuses for stepping up the pressure brought to bear on journalists and other media workers to influence their ability to draw justified conclusions, and for restricting their freedom of expression.

“Topics that should really be immediately covered by newspapers are not covered at all or only after the event has already become outdated. And even then such events are covered in a one-sided manner, only from the official position, criticizing those who dare to hold different views about these facts.

“What, then, do the pages of the newspapers actually contain? First of all, reports on labour feats in the cotton fields. This is very reminiscent of Soviet times: how many people gathered to carry out voluntary, unpaid labour, how well students and schoolchildren live in the fields. Official chronicles, directives and resolutions constitute the information found scattered about on the front pages of all the newspapers. At the same time, page proofing skills are very limited and unprofessional – without even knowing the content, one is put off by the very appearance of the newspaper. World news is always a day or two late, when people already know everything by word-of-mouth, such as Hurricane Katrina, which killed thousands of people in the United States. Such is the situation in which the people of one of the central parts of the country, very popular with foreign tourists, find themselves. Yet you will not find any

newspapers in English here advertising tourism, local sites and ancient monuments. One gets the impression that the government is not concerned with as many foreigners as possible knowing about Samarkand's historical monuments. On the other hand, there are three government newspapers, setting the tone for the other newspapers, which bring out repetitious old themes in the same officious manner. True, we have quite a few departmental and private newspapers printing poor quality works of amateur detective writers, crime stories, sometimes based on facts obtained from the prosecutors' offices or judicial authorities. These private newspapers come out in large print-runs, since they are read by people in the countryside, mostly young people, who have no access to quality newspapers – they simply have to read what our press offers. And the only thing of interest there is, in the main, material gleaned from the Internet. A lot of newspaper space is taken up by TV-guides, astrological forecasts and private advertisements on the sale and purchase of real estate and various goods and on job vacancies. Important for the Uzbek reader is the fact that he/she is offered, in the native language, translations from the foreign mass media, magazines and good books, news from the lives of international stars of stage and screen. This rubbish is what the private newspapers use to attract higher and secondary school students.

“Speaking of the newspapers containing discussions of any problems with the participation of political scientists, professional economists and public figures, no such discussions are to be found. The only opinions published are those of scientists, experts and professionals who unambiguously support the position of the government, the country's leadership and the local authorities. This situation could be resolved without particularly irritating the central authorities by publishing only local news and discussing topics of local significance, without touching on government policies. People would participate with considerable interest in newspaper publications, radio and television shows directly concerning their own lives and problems. When you ask people in the street what subjects they would like to see in the newspapers, they always answer, in the first place, information about work and job vacancies. In second place comes crime news – where a murder took place, who was robbed, which organizations were investigated by the prosecutor's office and the tax authorities and how many violations were revealed there. Thus, they are interested in real detective work. In third place come topics associated with health and medicine, followed by problems connected with housing and utilities – leaking roofs, broken water mains, and the like. Yet for all the audacity of the Uzbek editors, they hardly touch on these issues”.

The situation described by the Samarkand journalist is also typical of Karakalpakstan, of Surkhandarya and of other regions, but the journalists I met with there asked me to keep their names out of this article.

Let me add that the newspaper *Novosti Uzbekistana*, which I represent, has a column entitled “Open microphone”, in which readers views are published about various problems in different spheres of life. But they are, as a rule, of a domestic routine nature. There are many urgent problems that I am not even going to try to name.

From Karim Bakhriyev's Book

The press of the Republic of Uzbekistan is under strict government control. In spite of the official existence of an independent press, the founders of which are public organizations or business entities, one cannot speak confidently about their complete independence in the presentation of political events taking place in the country. Like in the other former Soviet republics, as already stated, self-censorship, internal editorial censorship and censorship by the owner are widespread in Uzbekistan. The content of newspapers, magazines, radio and television programmes largely depends on the opinion of government officials, who follow closely what is published and broadcast by the Uzbekistan media. For this reason, it is impossible to find in the press any independent investigations into serious events, such as terrorist acts, or independent views on the political situation in the country. If such material does find its way into print, its authors are persecuted.

In the opinion of the experts, a modern set of laws regulating the mass media has been drafted and passed in Uzbekistan, including the April 1997 law “On Protection of the Professional Activities of Journalists” which is unique for the entire post-Soviet environment. Neither the journalists nor the government agencies apply this law, however, for creating conditions for freedom of expression.

The ineffectiveness of the laws results not only in an independent press virtually failing to develop, but also in serious violations of the rights of journalists and persecution of mass media editors. Over recent years, a number of journalists have been given various prison sentences. Owing to the closed nature of the law-enforcement agencies, it is difficult to judge to what extent these cases are connected with violations of the right to freedom of expression. This year, in connection with the well-known events, more pressure has been brought to bear on journalists.

President Islam Karimov's Opinion About the Mass Media

When congratulating the country's journalists on their professional holiday, Press and Mass Media Day (27 June 2005), the President noted the tremendous importance of the mass media in informing and forming public opinion, especially in the age of globalization. The head of state noted that a journalist should "get to the essence of pressing and priority issues of interest to readers and the broad public".

"Only a journalist who is true to his/her profession and lives by the interests of the country and the people, the concerns of other people, can earn prestige and respect", he stressed.

"Whom does the true journalist serve, for whom does he/she work selflessly and for whom does he/she put his/her life in danger?" the President asked in his message of greeting and answered: "For our hard-working people, so that it gives in to no one for anything. For a bright future, happiness and well-being for this country's young people. For this rich earth, for the sacred Homeland".

Islam Karimov could not ignore the topic of the "information war", supposedly waged by the foreign mass media after the May events in Andijan.

"It is most unfortunate that in various parts of the world the mass media often become a tool for exerting ideological pressure and serve the self-seeking goals of certain political forces. The current conditions, when supremacy in the information sphere decides much, require each independent state firmly to protect its national interests not only from the political, economic and defence point of view, but also from that of information security", the President noted. Assessing the work of the local mass media in this respect, Islam Karimov reprimanded them for "falling far behind in the perception, analysis and interpretation of events taking place in the country and the rest of the world, and coverage of existing shortcomings and problems".

"Our journalists lack resolution and courage in providing the broad and comprehensive coverage of today's life, the hopes and strivings of the people of their country, in fostering democratic values in people's minds, and in challenging the forces and obstacles obstructing our development", he explained.

"For the utmost pluralism of opinion and views taking firm root in our society, the large-scale organization of activities of the non-governmental mass media and the creation of a public television channel are of particular importance. There can be no doubt that work in this direction, especially the organization of an independent public foundation to support the mass media, the opening of two-year higher courses in journalism at the National Uni-

versity of Uzbekistan, encouragement of press workers' activities and worthy recognition of their hard, creative work will soon bring positive results", Islam Karimov concluded.

The main question today for us, as for the other countries of Central Asia, is still how to respond to the challenges of globalization, which are arising throughout the world together with universalization, informatization and standardization. These processes require information openness, and each nation must make its own choice.

Is there a country that can match the global challenges with something unique of its own and even dare to protect this with its own economic possibilities? No! So a recipe has to be found for the only correct strategy that would allow our country to become needed by the rest of the world in the light of this new challenge. Although, moreover, globalization processes have always taken place, since there have always been relations between countries, today, by virtue of new information and telecommunications technologies, everything has changed sharply. The geographical factor has been given in to the need to raise the standard of living, education, healthcare, science and, of course, journalism, in any country. This includes Uzbekistan, where, I can assure you, there are wonderful people and there are, indeed, journalists who try to express and stand up for their opinion on the pages of the newspapers!

In conclusion, I would like to return to the topic with which we began – the influence exerted on the people's mentality by the super-idea, a sort of anti-pluralism. This idea, imposed by force of conviction or simply by raw force, unites bearers of the most diverse points of view and is itself becoming a material force. I believe that there is a certain cyclical pattern in the emergence of such super-ideas in society, as was the case with the ideas of the vulgar socialism of the Bolsheviks and the equally vulgar national-socialism of the Nazis. You all know very well what this led to. Super-ideas are born, live in people's minds and, finally, exhaust themselves. Then pluralism begins to dominate in society once more, until the time a new super-idea emerges, such as the idea of globalism, which is capable of uniting huge cohorts of like-thinking people under its banner, to the detriment of those who will always stand up for their own, particular point of view.

III.

**INTERNET: BETWEEN CENSORSHIP
AND FREE FLOW OF INFORMATION**

III

Christian Möller

FREE INTERNET: A MUST FOR FREE EXPRESSION

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Christian Möller

FREE INTERNET: A MUST FOR FREE EXPRESSION

Let me briefly give you an account of some of the activities of the OSCE RFOM in the field of media freedom on the Internet:

- Starting from 2003 three Amsterdam Conferences on “Freedom of the Media on the Internet” have been organized. The 2005 Conference was focusing on Central Asia and South Caucasus.
- There have been quite a couple of publications on this topic. The latest, i.e. “The Media Freedom Internet Cookbook”, has also been translated into the Russian language.
- Also, a whole set of Recommendations, Statements and “Recipes” on principles of media freedom on the Internet have been developed. All of them have also been translated. We hope that these principles and best practices serve as guidelines for all OSCE participating States.

All publications and recommendations are available on our website.

Let me mention one of the most recent RFOM activities, which is a follow up from the HDIM in Warsaw in September 2005: There we were informed on a paper called “Regulations for the Allocation of Domain Space in the Kazakhstan Segment of the Internet” which was the opportunity for our Office to take a closer look at this issue.

Domain names are the “names” of websites that make them easily retrievable, e.g. osce.org.

For every country top level domain (ccTLD) on the Internet, e.g. dot-KZ or dot-DE, there must be rules to administer the registration of Domain Names. Normally a Name Information Center (NIC), e.g. KazNIC, is set up as a Registrar who deals with request for new domain names.

The Representative on Freedom of the Media commissioned a legal review from an independent media NGO to get a clearer picture of what these regulations should look like with a regard to Freedom of Expression. This review raises a couple of questions that are of possible concern for the Office of RFOM. Of course, these questions are not only valid for Kazakhstan but also touch on principles that should be observed in all other countries:

- 1) Is the body that is administering the allocation of Internet Domain names – the Name Information Center (NIC) – for example KazNIC – independent?
- 2) And is it protected from governmental influence?
- 3) Is the allocation of Domain Names guided purely by technical matters of the Domain Name System (DNS)? There should be no judgement by these bodies of the content of a website, this should be left exclusively to courts.
- 4) Is the openness of the Internet maintained? For example there is no necessity to prescribe that content must be hosted within a certain country. Quite the contrary, I am concerned that it might in fact create a problem for freedom of expression. On a worldwide structure like the Internet every publisher should be able to choose freely where he wants his content to be hosted.

Having said this, I would just like to reiterate two of the main principles RFOM repeatedly included in his Recommendations on Freedom of the Media on the Internet:

- 1) State regulation of the Internet should be limited to a minimum and to fields where it is unavoidable. The Internet develops and flourishes best without state interference. At the same time, in the rare cases when regulation is necessary, always the least restrictive approach should be taken.

And

- 2) – as mentioned in the Joint Declaration of RFOM together with Reporters Without Borders - : There should be no obligation of licensing websites and no mandatory registering of websites with state authorities (except for the technical administration of the DNS).

Colin Guard**OBSERVATIONS ON INTERNET FREEDOM AND
DEVELOPMENT IN ELEVEN COUNTRIES OF EURASIA**

III

The Bureau of Educational and Cultural Affairs of the US State Department currently funds the Internet Access and Training Program, a network of 75 free Internet access and training centers in eleven countries of Eurasia. As part of the United States' public diplomacy efforts, the program was created with the aim of bringing the people of Eurasia into closer contact with the people of the United States. It is not primarily a media development program, but does provide journalists and citizens throughout the region with opportunities to obtain information from a variety of sources through the Web and e-mail, to publish articles and websites, and to exchange information through regular online chats.

Most of the time and energy of our staff is spent managing our training program in this geographically far-flung network, maintaining our technical facilities, and organizing online chats for our target audiences of NGO leaders, government officials, educators, journalists and alumni who have returned to their home countries after study in the United States. We do not have the budget or staffing to conduct research on the state of the Internet or media in the countries in which we operate, or to monitor developments in policy in a systematic way. Our unscientific observations about the state of Internet development and effects of government policies are therefore based on the experiences of our staff and users as they go about the business of improving the flow of information both within and across national borders in Eurasia.

Following are a few of the significant observations that emerge from our work, comparing the experiences we have had in different countries.

Government policies and development

We have observed an inverse correlation between the level of Internet development in a given country and the degree of control the government of that country tries to exert over society. The slowest and least reliable Internet services are those in Turkmenistan, with Belarus in second place. Ukraine and Georgia have the most vibrant markets for Internet services and also the most independent civil society actors. Our experience has shown that a controlling government does much more to inhibit development of the Internet than does a low level of economic development. For example, in Tajikistan, whose eco-

conomic development was set back at least a decade by a civil war in the 1990s, we have been witnessing steady development over the last few years, with connectivity options increasing, and prices going down, while neighboring Uzbekistan, which had no civil war and has far greater natural resources, has been in a holding pattern for several years.

Blocking and filtering of websites

Blocking and filtering of websites certainly hinders citizens' access to information, but it is only one small part of the larger problem of administrative pressure on ISPs and other enterprises, which directly affects citizens' access to Internet services. Once people have Internet access, they are often able to get around government blocking measures, although the blocking does make their access to information more difficult. Last week we checked which countries' governments are currently blocking websites, and the results were unsurprising. The most controlling governments are blocking websites and relatively liberal governments are not. Specifically, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Tajikistan, and Ukraine are not at present blocking any websites to our knowledge, although some of these countries have blocked some websites in the past, mostly in the run-up to elections.

Belarus, Kazakhstan, Turkmenistan and Uzbekistan are blocking opposition-related websites and articles critical of the government. Turkmenistan and Uzbekistan are blocking the largest number of websites and Web pages. At this point I should note that the First Deputy Minister of Foreign Affairs stated in his remarks yesterday that there is no blocking of websites in Kazakhstan. He is misinformed; there is blocking of websites in Kazakhstan. For example, I checked www.eurasia.org.ru from my hotel room last night and was able to verify that although the website is functional and accessible in other countries, it is not accessible through Kazakhstani Internet channels.

The focus of all of the governments is political opposition, and challenges to the presidents specifically. We are not aware of any blocking of websites on the basis of obscenity or other concerns.

All of the governments that block websites do so unofficially and opaquely. All of them deny that they are doing so. We can deduce that these governments therefore see value in convincing somebody that no blocking is taking place, although we are unsure who that somebody might be.

Sources of news in Eurasia

The most important source of news for our users in the eleven countries in

which we operate is the Russian-language press, which is of course dominated by Moscow-based organizations that reflect the interests of the Putin government. Many of our staff and users consider Russian news sources to be generally biased and sensational. Those of our stakeholders able to read it generally consider the English-language online press more objective, independent and professional. The more liberal countries have respected online newspapers in their national languages, but in other countries the locally-produced news is of such low quality and contains so little information that it is not widely read. The Russian press can be expected to predominate for some time, as our users who can read Russian still outnumber those who can read English by roughly ten to one, and Russia-based websites load faster than US websites from most points in our network, because of geographical proximity. Coverage of local issues is understandably limited in the foreign press, but of course some coverage of local issues is better than no coverage, which is what local outlets in the more repressive countries provide.

Government attitudes toward the Internet

On the positive side, we have not observed that any government is opposed to Internet development per se or sees it as a general threat. All of the governments have programs directed toward development of the Internet, limited in effectiveness mostly by inadequate budgets. No government has taken control over the Internet to the degree that they have taken control of traditional media outlets. Further, the Internet is still reaching a minority of the population in most countries, meaning that the medium has not registered in importance among officials to the extent that television and radio have.

Tentative conclusions

From our perspective, there are very few specific government actions we can cite that have helped Internet development along in Eurasia, but it is easy to cite many policies that have hindered it. Benign neglect would therefore seem to be the most effective policy option, if the goal is an increase in the free flow of information.

Ultimately, Internet development is a choice made by governments to control or not control economic and civil actors. The spirit and effect, if not the letter, of specific policies will flow out of that choice.

Turko Dikaev

MASS MEDIA IN THE REPUBLIC OF TAJIKISTAN: INTERNET GROSSLY MISUSED

Laws regulating media in the Republic of Tajikistan. Freedom of speech, of the press and the right to use mass media are guaranteed and protected by Article 30 of the Constitution of Tajikistan. Moreover, limiting access to public information is prohibited under Article 25 of the Republic of Tajikistan Law on Information.

Besides, Article 31 of the Law on the Press and Other Media gives journalists the right to seek, obtain and disseminate information by any legal means. In its turn, Article 5 of this law makes it binding on government, political and public organizations, movements, and officials to provide information requested by the media.

In practice, however, access to information, narrow as it is, is further restricted by measures taken in violation of media and journalists rights, to prevent its spreading. These rights are breached in various forms: information is denied outright; journalists are barred access to certain events and places out of “secrecy” and “confidentiality” considerations; requests for information are repeatedly re directed until they finally end up going round in circles.

Self-censorship, taboos, “sacred cows”: As a result, high-ranking corruptionists, the military, the police, narcobarons, the government, parliament and the President are kept well out of the media’s reach, with the curtain lifted an inch or two only when it comes to scandals looked into by the Prosecutor General’s Office or the Supreme Court.

Preventive measures taken by civil servants. The first *Civil Servant v. Media* case was heard in March 2004. Deputy Chairman of the Dushanbe City Court N. Amirov filed a defamation suit against lawyer S. Djurayev for a “libelous” article about him carried by the *Vecherny Dushanbe* weekly of 5 March 2004. This criminal case was heard in the same court under the claimant’s chairmanship. In the course of the proceedings, Djurayev revealed a number of procedural law violations and described them in his article in detail. The case was won by the claimant, with the court ruling that 5,000 somoni (\$1,667) be exacted in damages from the paper’s editors and from the author. That touched off an avalanche of litigations. The last case heard in August 2005 merits a place in the Guinness Book of Records – Mukhtor Bokizoda, editor-in-chief of the independent paper *Nerui Sukhan*, was sentenced to two years of corrective

labour for stealing electric power, of all things.

Computerization of the country: the Internet as a means of filling in newspaper space with reprints, not as a media outlet. We are entering the information society stage, after all, even though a bit later than the developed countries. Information is invading Tajik society and ever more people are engaged in receiving, storing and processing it. Informatization is beginning to permeate all spheres of life – production, science, culture, public education, rest and leisure. New information technologies are becoming a reality in the country which is being computerized at an ever faster rate. Even President Emomali Rakhmonov opened a website of his own on 5 October 2005. Formally, Tajikistan's mass media are part of that virtual world. In reality, they do not always answer their purpose. Each self-respecting publication has a website or a webpage of its own (although not all of these publications really care for their good name, judging by the material they carry). They offer their exclusive information commodities but for a price ("Sorry, this is a paid service!"). Hundreds of on-line pages created with the help of IREX, Relief and other international organizations and sponsors contain junk not worth wasting one's time on. Reigning supreme on these "departmental" pages are the same laws and principles that dominate their hard-copy versions – self-censorship, suppression of important news and information; just for a change, these publications occasionally provoke clashes between Russian- and Tajik-language journalists. Internet journalism, as such, is non-existent in the country. Instead of serving as an inexhaustible source of information for political and economic commentators and analysts, the local Internet offers nothing but reprints. Believe it or not, some papers in our country are filled, from the front page to the last, with Internet reprints having nothing to do with Tajikistan.

Sofia Issenova

INTERNET AND INFORMATION SPACE DEVELOPMENT
IN KAZAKHSTAN

Telecommunications market development in Kazakhstan: liberalization problems and monopolies

The fast-growing telecommunications industry is a crucial factor in the development of the electronic media and Internet in Kazakhstan and is part of the infrastructure that serves to pursue a consistent information policy and to form an electronic government in Kazakhstan.

Therefore, a narrowly sectoral approach often taken to relevant problems is not quite correct.

Successful interactive relationships between the state and the telecommunications sector may take on two forms: public control over communications sector reforms or greater involvement of the government in settling cardinal issues.

Today, society needs badly an adequate adjustment of problems related to telecommunications.

Government policy in the Internet sphere: national security issues or illegitimate regulation?

This year, the Agency for Informatization and Communications [AIC] has adopted the Rules for the distribution of domain space of Kazakhstan's Internet segment.

The document raised a squall of surprised responses and comments both from professionals and amateurs having to do with Kazakhstan's segment of the Internet. Bewilderment bred rumours in the shape of speculations on: What's the big idea? Who stands to gain? Is this a matter of incompetence on the part of core developers or another attempt at imposing censorship and control on information in Kazakhstan's Internet zone? Do the Rules offer a loophole for using them selectively?

As a matter of fact all these questions are about Clause 8.2 which has already become scandalous: "Registration of a domain name may be suspended in the following cases:

2) if WEB-servers the domain names of which are part of the domain name being registered are based outside the Republic of Kazakhstan;

An estimated 50 to 70 per cent of the web servers having the KZ domain name are hosted abroad – in Russia, the United States, the United Kingdom, and elsewhere – because it is cheaper and more effective that way. Hosted abroad are the web servers of not merely private individuals or small business companies, but world mega-brands of the KZ segment (www.google.kz, for example), a number of news agencies' sites and web publications popular in Kazakhstan.

AIC experts hold that the adoption of this regulatory document was motivated by national security considerations.

We suggest several scenarios for the development of Kazakhstan's Internet segment and Internet publications.

Obviously, instead of seeking to regulate and control the Internet zone by any means, the government ought to stimulate the development of civilized self-regulation mechanisms. As regards our country and the Authorized Agency, the law makers laying down rules in such a specific sphere as the Internet should, at least, secure the consensus of all the stakeholders. It looks as if an attempt is made to impose on Kazakhstan's Internet some sort of controlled "citizenship" carrying with it clear-cut obligations and minimum benefits.

Formation of electronic government as an element of e-democracy and the common information field in Kazakhstan

The Electronic Government Concept was adopted on 8 June 2004. The National Two-Year Programme for Electronic Government Formation (2005-2007) was approved by the President's Decree in November 2004. The Programme was supplemented with a List of Basic E-Government Services (about 85 services). Mind you, a preliminary analysis shows that 80-90 per cent of these services amount to a mere provision of information, i.e. do not envisage interactive mechanisms of communication between the government, on the one hand, and the public, business community, etc., on the other.

Theoretically, the electronic government is to

- respond to grassroots requests regardless of the way they have been submitted (by telephone, in person, by mail or via a website);

- lower expenses and simplify the procedure of interaction between the business community and the government;
- reduce the government's operating expenses;
- facilitate access for the handicapped;
- enhance government transparency and accountability.

In Kazakhstan, we do not see, most unfortunately, a situation where two processes are running in parallel – that of government service reform towards greater transparency on the strength of real political will, and that of electronic government taking shape.

The government authorities' websites contain minimum information, almost none of them regarded as an adequate source of information either by the public or by journalists.

In our report, we shall present results of national executive agencies' websites review carried out under the GIPI project.

Information policy: no unified integration approach

At present, the Republic of Kazakhstan is in bad need of a well-thought-out and balanced government information policy concept with clearly defined goals, tasks and objectives.

The working out of such concept calls for an in-depth analysis of international experience both in technical spheres and in the sphere of human rights, and for an analysis of its implementation trends and mechanisms, of the outcomes of its impact on the nation's socio-economic, political and cultural progress.

The problem is that information policy is not yet taken in Kazakhstan as a complex phenomenon complete with a multitude of closely intertwined components and subjects that are to make up an integrated system. Over the years, government information policy mostly embraced problems connected with the activities of the mass media and their relationship with the government.

Actually, informatization policy boiled down to providing scientific, technical, production and economic conditions for the development and implementation of information technologies, information infrastructure and an information resources forming system. Informatization policy is practically isolated from the policy pursued by the government in the mass media and telecommunications sectors. The shaping of information policy calls for an analysis of individual sectors and taking geopolitical, foreign economic, socio-economic, scientific, technical and cultural aspects of the country's progress in general.

Today, Kazakhstan is arriving at the perception of information policy as a system of government measures in various spheres of the economy, socio-political life and culture of the nation. So, the awareness and vision of information policy as a qualitatively novel phenomenon incorporating new ICT-based management methods (e-government, etc.) are obviously here. There remain, however, old challenges and threats in the way of the formation of a single information space and information society.

Alo Khodjayev

THE INTERNET MEDIA IN UZBEKISTAN

The on-line media situation in today's Uzbekistan is much like that the country's mass media at large have found themselves in over the recent period. There are some important differences, nevertheless.

First of all, as distinct from the hard-copy press, television and radio broadcasting strictly regulated by a number of laws, there is no legislative act so far specifically targeting Internet publications as mass media. *So far*, I stress, because attempts to legally muzzle all Internet sites are already being made in the country.

Second, this is exactly why liberal analytical Internet publications (of which there are too few, alas) alone offer our free-thinking journalists and political analysts an outlet for airing their views.

Third, for all the impetuous progress being made by information technology, on-line publications (as distinct from the other media) are not yet readily accessible to most people. According to the latest statistics, there are over 800,000 netizens in the country.

Nevertheless, one can say that in Uzbekistan, the Internet has a unique role to play in keeping people informed of the true situation at home and explaining to them various aspects of the Government's foreign and domestic policy.

To begin with, let me say a few words about the progress of information and communications technology [ICT] in Uzbekistan. It would be no exaggeration to say that ICT is infiltrating ever deeper into various spheres of life in Uzbekistan. The Government has adopted a set of instruments aimed at promoting progress in that sphere over the past few years.

This year alone, it has passed the Informatization Development Concept for the Republic of Uzbekistan, the Targets for the Development of Telecommunications, Data Transmission and ICT Application Networks Until the Year 2010, the Programme for ICT Application by Government Agencies and Local Government Bodies Until the Year 2010, the Programme for the Formation and Development of the National Information Retrieval System and others.

The Computer-Related Incident Response Service, the first of its kind in the entire Central Asian region, went into operation early last October. This goes to show that the Government has gone quite far in introducing and promoting information technologies – specifically, in providing for information security.

The Government insists that the resource base of the Internet's national segment be increased, that more information be provided on the economy, culture, art, history and literature of Uzbekistan, on the situation in the spheres of science and education here, especially in the national language because the information the Uznet offers is available in Russian mostly.

Uzbekistan pays special attention to meeting the information requirements of high-school and college students who account for most of the Internet audience. At the end of September, Uzbekistan's Ziyonet public education information network was introduced with a view to promoting youth education and cognitive information resources in the national segment of the Internet.

Internet is becoming more widespread as a communication medium and a source of information for ordinary people in Uzbekistan. Over the nine months of this year the number of Internet users in the country has increased by 125,000 and now amounts, as I have already pointed out, to over 800,000 of our 26-million population.

The on-line media have a crucial role to play in Uzbekistan. Notwithstanding their limited reach owing to a small number of netizens and to the blocking of access by Internet service providers, they remain, despite total censorship, among the few sources of updated and trustworthy information about what's going on in the country.

Last year, however, the situation in Uzbekistan's on-line media market changed sharply for the worse. The crisis was triggered by the events in Andijan during which access to local on-line publications – and the popular Russian resources such as Lenta.ru, Gazeta.ru and others – was blocked. Previously, Internet publications had been blocked only at random and never suppressed wholesale as is the case now.

Over the past two years our independent journalists have been regularly accused by Uzbekistan's government-dominated press, radio and television of being subservient to the West.

The going is tough for Uzbekistan-based Internet media journalists today. They have no free access to their own sites and, besides, are compelled to take special precautions. Not being subject to registration as mass media or regulated by any legislative acts apparently makes life easier for them but, on the other hand, leaves them vulnerable to persecution.

The on-line media situation in Uzbekistan can be illustrated by the following example. At the recent national Internet festival, independent media were not even entered in the website competition by the qualifying jury for the alleged reason that there was no access to the sites in question from Uzbekistan.

And that despite the statement made by Uzbekistan Foreign Minister Elyor Ganiyev at the 2 June briefing in Tashkent to the effect that “fabrications concerning the Internet go beyond all limits. Internet access restrictions are out of the question today. In the age of modern information technologies, it would be naïve, at the very least, to take the assertions about Internet site blocking seriously”.

The above-mentioned competition’s qualifying jury members – IT experts and journalists – named 44 winners in various nominations and concluded, without further ado, that “if a site would not open, it is its owner’s problem rather than that of the local providers”.

Like other post-Soviet countries, Uzbekistan offers Internet-only publications and on-line versions of the traditional media. Russian and neighbouring countries’ websites and foreign Internet resources are immensely popular.

This review focuses solely on the most sought-after information sites carrying publications of special interest to the general public and to the authorities.

Internet publications first appeared in Uzbekistan in the late 1990s. They drew their materials from various sources mostly and contained practically no original features of their own. As the Internet kept gaining in popularity as a source of information, regular on-line media were formed on the basis of existing resources.

Ferghana.ru, started in the fall of 1998, is among the oldest and more popular Internet sites. It was established by Daniil Kislov, a Muscovite originally from Ferghana. As time went on, he launched news bulletins (reprints mostly), and in August 2001 had the site registered as a media body in Russia. Today, most of the Ferghana.ru content is by its own authors. The site made a name for itself as it covered the March 2005 events in Kyrgyzstan when even Russia’s leading media referred to it for the latest news. The site’s daily audience runs into thousands.

The attendance of the website Uzland.infor – another Uznet old-timer in existence since February 1998, popular before the Andijan crisis – has slipped dramatically of late. The slippage comes from access difficulties owing to blocking and, besides, from scarcity of original site content amid growing Internet user demand for exclusive materials.

The Arena website (Freeuz.org) of the Freedom of Speech and Expression Committee also commands an extensive audience despite its specific media focus. Recently, however, this Tashkent-based website, in existence since February 2004, has expanded its menu to include other topics of current interest besides the media situation.

The Internet portal UzReport.com, part of the *Business Newsletter of the*

East private printed weekly, is one of the country's oldest websites and the all-time attendance leader. Although a private publication, it never makes its own comments on critical issues. Moreover, following the Andijan events, it started the *Truth about Terror* page given over to reprints of explicitly anti-Western articles from the Uzbek press.

The better known traditional media sites include that of the National Information Agency of Uzbekistan – UzA.uz. Opened in December 2000, it is the only on-line source of official government information – hence its high attendance ratings.

The website Vesti.uz, backed by the Russian Federation Embassy, has been functioning in Tashkent since rather recently. Although much of its content is not to be found in the official press, the agency is anything but unbiased. For example, its coverage of the trial of Andijan protesters faithfully echoed the official papers' presentation of it. Quote: "The trial is taking its course, with Uzbek and foreign journalists, diplomats and human rights activists following the proceedings without hindrance. This, however, is what is annoying the West that has taken advantage of this tragic episode in the country's history to discredit Uzbekistan".

Other sources of information for users in Uzbekistan are the websites Centrasia.org, Navigator (Navi.kz) and the Uzbek-language ones: Ozodlik.org and BBCUzbek.com. Incidentally, the latter is accessible to local users notwithstanding the severe criticism the authorities and official press are levelling at the BBC.

Let me now dwell in more detail on the Tribune-uz.info website I have the honour of running. The Tribune-uz.info Internet publication has been in existence since December 2003. At present, the site is one of the few independent Internet publications based in Uzbekistan proper.

The website deals with a broad range of questions having to do with Uzbekistan and other countries of the region. Its main sections are: Politics, Economics, Society, Mass Media, Interviews, Commentaries and Press Reviews. Since its inception, the site has carried over 5,600 features in Russian, Uzbek and English. It invites contributions by journalists from various parts of Uzbekistan, from Kazakhstan, Kyrgyzstan and Tajikistan. The Press Reviews section merits special mention: it features weekly reviews and translations of the more interesting and controversial articles from the Uzbekistan press.

On 14 May 2005, i.e. on the day following the events in Andijan, the Tribune-uz website was blocked for Uzbekistan users and can now be accessed only using anonymizers. The Tribune-uz site is targeted on audiences in the

United States, Russia, Uzbekistan, European and other countries (foreign users predominate because local ones use anonymizers to access the site). The site's daily visitors amount to 800 unique users, their number growing manifold on days of emergency situations.

Amid the tightening of censorship on Internet content, the region's leading Internet publications – Ferghana.ru, Tribune-uz.info, Uzland.info, Freeuz.org and Centrasia.org – launched a *Down with Censorship on the Internet* action. The action calls for blacklisting the Internet cafes and providers of Uzbekistan and other countries of the region which block website access and thus deny people a chance to receive information from alternative sources. The shame list of providers and other entities caught censoring Internet media is continuously added to at www.shamelist.ru (incidentally, this website is blocked in Uzbekistan).

In spite of all the difficulties, Uzbekistan's independent Internet publications are carrying on their lofty mission of bringing all those concerned the truth about the uneasy realities of our life.

Alexander Kolosov

INTERNET MEDIA: AN IMPORTANT BUT UNDERUSED TOOL FOR FREE INFORMATION DISTRIBUTION IN KAZAKHSTAN

III

It is logical to consider the “Internet and mass media” problem in connection with other components of the information environment and with account for the Internet’s special role due to globalization, the technical specifics of the traditional media (which determine their high dependence on the publisher) and the information revolution.

According to the latest data produced by Russian researchers, *in Moscow, about 5 of the 9 million inhabitants do not read newspapers or magazines at all today and there are 122 periodical publications acquired by subscription for every 1,000 people, which is less than half the figure for Russia as a whole. The number of books published per person is 22.2 per cent of the 1989 figure. This situation violates people’s rights to receive full, objective, reliable and timely information from printed sources; it engenders conditions for the spiritual impoverishment of the people and manipulation of their consciousness*¹.

Such studies have not been undertaken in Kazakhstan, but the results would probably be no better.

It is natural to suggest that the information gaps might be filled by the Internet, which, in contrast to television, cannot be controlled from a single centre and thus provides an opportunity to make independent decisions.

All applications for the third Kazakhstan Website competition AWARD 2005 are now in, including 18 participants in the On-line Periodicals nomination (without hard copy versions) – seemingly quite a few. A closer look reveals, however, that no more than 4 or at most 5 can really be considered as such.

The others are versions of printed media, databases of recruiting agencies, interest clubs and the like. No one disputes that such publications are necessary, but they have a narrow target audience, so they can really be seen as means of corporate rather than mass information.

The total number of such publications for Kazakhstan is small. Navi.kz and Gazeta.kz are the best known; Prof.in.kz for accountants and market researchers and Mediaprovinzes.kz for journalists. In all, up to about ten at most.

The question naturally arises as to why there are so few information mass

¹ <http://www.businesspress.ru/newspaper/article.asp?mId=1632&aId=83527>

media sites on the Internet. Even given that an Internet publication is in comparison more economical than a printed – let alone broadcast – one, it is much more difficult to exert administrative pressure on it.

The answer is:

- The Internet audience is small: 600,000 regular users out of a population of 15 million. Where is the guarantee, moreover, that the majority of them will take a look at the necessary site? Yet neither can one be sure that a printed newspaper will reach its target audience.
- No one has studied the influence Internet mass media have on their readership – either quantitatively or qualitatively. One can judge only by indirect indicators: the number of Internet users (which is difficult enough to count), the number of visits to sites (if there are counters), the number of participants in Internet voting, the reaction of parliament members and other media to published materials and so on.

The established impression that the Internet is not widely used is probably the main reason that publishers pay so little attention to its information field.

On the other hand, the level of knowledge among journalists about the opportunities offered by the Internet is not high enough. It is regarded merely as a library, a source of information for adding to the large number of pages of periodical publications – hence the scant attention paid to interactive opportunities. They are used only on forums, for discussing published articles. Examples like our project “The History of the Kazakhstan Internet”, when new authors and new sections appear as a result of previous publications, are few and far between.

One cannot but be amazed by journalists who ask questions such as: “Would you tell our readers what the Internet is and how it can be used?” or “Is it true that viruses are going to kill the Internet next year?” That is, the questions would often have been understandable 5-6 years ago, but they are out of place today.

Kazakhstan higher educational institutions have many faculties or departments of journalism, but nowhere is there the possibility of taking the Internet as a special subject. Yet it is clear that not only is this a different means of putting information across, but it also provides much broader opportunities.

Another reason that no such special subject exists yet is that there are few people with practical experience who are prepared to work with students. They

are, indeed, few in number, but there has always been a problem of attracting practical workers into teaching at higher educational institutions. Yet a solution was found. I can state with confidence that, at least in our city, there are highly qualified journalists who are prepared to hand over their experience. For example, Alfia Mingazova and Alexei Sorokin, who run the *Teenager* Internet magazine for adolescents, and are, at the same time, excellent teachers.

The modern media form public opinion – in all spheres, including with respect to formation of their audience. By promoting advanced, broadly accessible technical solutions, helping increase the number of Internet users, journalists could render invaluable assistance in developing our society as a whole. For example:

The idea of a super-cheap computer came from the founder of the Massachusetts Institute of Technology Media Lab, Nicholas Negroponte. Initially an ordinary desk-top machine was discussed, but they have now moved on to a \$100 laptop. The official presentation will take place in November. The plan is then to supply them in their millions to the developing countries, while the Governor of Massachusetts, Mitt Romney, wants to buy another half million laptops for schoolchildren in his state.²

The gradual migration to Linux platforms, away from Microsoft software, which dominate here in pirated copies or licensed versions sold at monopoly high prices, is one of the most pressing tasks in resolving a multitude of problems, including those of a legal nature. I would really like our journalists' community to look ahead and not stand up for the corporate interests of current suppliers of full-featured, and consequently expensive, computer technology. This happens not as a result of a desire to resist technical and social progress, but of simple ignorance and inadequate qualifications, meaning that the first thing we need to do is to raise the level of knowledge among journalists with respect to information technology. Besides, progress in the development of hardware and software does not always mean a steady transition to more complex and therefore more expensive technical solutions. It often advances by non-standard routes that are hard to understand if the necessary knowledge is lacking.

Each solution of genius always passes through three stages: "this is totally absurd", "there is something in this" and "how did we live without this?"

In Kazakhstan, the Internet is currently in the second stage, which is dragging out. At the turn of the century, the hopes were much rosier than current reality. Even so, though not as fast as one might wish, the audience is expanding,

² <http://www.membrana.ru/lenta/?4246>

channels are expanding, and the number of sites is growing and their content is improving.

At the same time, the Internet has not yet become a vital daily requirement for a substantial part of the population. The creation of sites is mostly the business of enthusiasts working “for the sake of an idea”. There is no acute need on the part of the education sector, the business community, the government authorities or the mass media for new information technologies. They can get by without them for the time being. The raw material-based economy and a budget based on oil and intermediary trade are part of yesterday and today, but definitely not of tomorrow.

The national electronic government programme has announced serious attention on the part of the government, but it is a long way from announcements to changes in practice. The experience of Eastern Europe and of the former Soviet republics indicates unambiguously that, without government intervention, the vicious circle of “enthusiasm – action – lack of money” cannot be broken. The authorities tend, for some reason, to regard the Internet as a distributor of inappropriate information, rather than a mechanism for implementing government policy. This is a serious but, unfortunately, widespread misconception. In reality, the Internet cannot, in itself, be either “good” or “bad”. It is no more than a tool, and the winner is the one who makes the best of it.

As of today, the main organizers and sponsors of initiatives in the sphere of information technology are international organizations. The public values their contribution, but grants eventually peter out and one would like to think that there will not be too great a gap between support by international organizations and public investment.

Budget funds will not, in themselves, solve anything. There is too great a danger of budget attrition. Working mechanisms are needed. This is the main problem. Yet such mechanisms do exist! They have been set up, among others, by the currently unpopular NGOs.

So, the main task of our organization is to seek out and trigger public initiatives in developing the Internet, including the on-line media.

