



THE REPRESENTATIVE ON FREEDOM OF THE MEDIA

**21ST CENTURY CHALLENGES FOR THE
MEDIA IN CENTRAL ASIA:**

Dealing with Libel and Freedom of Information

SIXTH CENTRAL ASIAN MEDIA CONFERENCE
DUSHANBE, 23–24 SEPTEMBER 2004

Vienna 2005

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Dushanbe Declaration	5
Yves Bargain	
<i>Welcoming Remarks</i>	9
Miklos Haraszti	
<i>Opening Statement</i>	13
Karomatullo Olimov	
<i>Opening Statement</i>	17
Contributors	21
1. Latest Developments for the Media in Central Asia	
Sergei Duvanov	
<i>The Situation with Respect to the Media in Kazakhstan</i>	25
Almaz Kalet	
<i>Regional Media in Kyrgyzstan: Myth or Reality</i>	33
Marat Mamadshoyev	
<i>Media Trends in Present-Day Tajikistan</i>	39
Alisher Taksanov	
<i>Between Scylla and Charybdis:</i>	
<i>Uzbek Press in Recent Years</i>	45
2. Libel and Insult Laws as a Challenge to Freedom of the Media	
Peter Noorlander	
<i>Libel and Insult – A Thorny Issue For New Democracies</i>	87
Nadezhda Stepanova	
<i>Libel Laws in Uzbekistan:</i>	
<i>Legal Norms and Their Practical Implementation</i>	101
Junaid Ibodov	
<i>Libel and Defamation Laws:</i>	
<i>The Case of Tajikistan's News Media</i>	109
Shamaral Maichiev	
<i>Unsuccessful Attempts at Humanizing Libel Legislation in</i>	
<i>Kyrgyzstan</i>	115

Rozlana Taukina

*On Support for the Initiative to Revoke the Law on Libel, as a
Factor in Reprisals Against Journalists in Kazakhstan* 119

3. Freedom of Information

David Banisar

*Freedom of Information:
Global Practices and Implementation in Central Asia* 127

Sauytbek Abdrakhmanov

Freedom of Information in Kazakhstan 147

Olga Volkova

Access to Information in Kazakhstan. 151

Nuriddin Karshibaev

*Access to Information:
Its Monitoring and Use in Establishing a Dialogue
Between the Authorities and the Media* 155

Alexander Kulinskyi

*Access to Information in Kyrgyzstan:
Society Expects Transparency from the Authorities.* 163

Rustam Koshmuratov

*Problems with the Allocation of Radio Frequencies
in the Republic of Kyrgyzstan* 169

SIXTH CENTRAL ASIAN MEDIA CONFERENCE
DUSHANBE

**21ST CENTURY CHALLENGES FOR THE MEDIA
IN CENTRAL ASIA: DEALING WITH LIBEL AND
FREEDOM OF INFORMATION**

On 23 and 24 September 2004, the annual Central Asian Media Conference was held in Dushanbe, Tajikistan. The Conference was organized under the auspices of the OSCE Representative on Freedom of the Media, Miklos Haraszti, and the OSCE Centre in Dushanbe.

For the sixth time, more than 100 journalists from four Central Asian countries – Tajikistan, the Kyrgyz Republic, Uzbekistan and Kazakhstan, representatives of non-governmental media organizations, as well as experts and foreign guests came together to discuss the latest developments in the media field. As in previous years, the conference provided a unique opportunity for interaction and exchange of views among the participants.

This year the conference focused on Libel and Legislation on Freedom of Information as modern challenges for the media in the 21st century. The participants agreed that the obsolete Libel Laws which exist in four Central Asian countries are inadequate, even detrimental, to a democracy where freedom of the press and uninhibited discussion of public issues could be diminished by libel sentences used against journalists because of their work.

During the discussion, it was stressed that some Central Asian States have made certain steps towards Freedom of Information, but substantial problems remain. None have laws that meet international standards on access to information. State Secrets' Acts that undermine the right to access to information are often abused. Significant efforts are required to ensure that the region joins the rest of the OSCE in recognizing the right to access to information for the media and the public.

The Conference ended with a declaration on libel and freedom of information, to which all participants subscribed. In addition to this declaration, participants formulated concrete proposals for action which the OSCE Representative on Freedom of the Media will submit to the respective authorities.

Dushanbe Declaration on Libel and Freedom of Information

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

On Libel:

- The possibility for governmental 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.
- 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 of heads of state on behalf of third persons should be abolished.

On 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 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.

Dushanbe, 24 September 2004

WELCOMING REMARKS BY YVES BARGAIN

Dear Mr. Haraszti,

I would like to thank you for the initiative to hold a yearly Central Asia Media Conference and for suggesting Tajikistan as this year's choice. I would also like to thank the Tajik authorities for making it possible for this conference to take place in Dushanbe. First and foremost, I would like to welcome and thank all of the participants of this event, journalists and media experts, for coming to Dushanbe today and tomorrow to contribute to the work of the conference. This conference, which takes place every year under the auspices of the OSCE Representative on Freedom of the Media in a different country, is a major opportunity for all the Central Asian mass media to gather and discuss achievements, problems and possible solutions in their countries and in Central Asia as a whole. Your joint efforts are much needed, and I am sure that your exchange of experiences in these two days will create important working relationships and ideas for cooperation.

As regards Tajikistan, the OSCE has welcomed the birth of many new and independent newspapers in the past two years, a fact that had been unprecedented in the history of this country. These new media have opened up the horizon of the Tajik print press accessing diverse sources of information and offering new points of view. Their creation has shaped, for the first time in Tajikistan, a truly pluralistic media environment, which is an indispensable starting point in the way towards democracy.

Unfortunately, this year this unprecedented progress has been reigned in.

Lately, the independent printing house Jionkhon was closed down and the entire circulation of one of its users was seized on grounds of tax evasion. Although it should be stressed once more that the media must abide by the law and scrupulously carry out all their financial obligations, we regret that the closure of Jionkhon has affected other newspapers,

some of which have not been published for the fifth week in a row. At least 5 newspapers, which represent an important part of the Tajik media landscape, have been repeatedly refused publication by both state and non-state printing houses.

The Centre in Dushanbe has voiced concern over the situation, as well as over the attack on the editor-in-chief Ruzi Nav Rajabi Mirzo. We hope that the culprits will soon be punished.

International commitments of democracy and human rights, as those of the OSCE, implicate a free and pluralistic media environment. Such an environment is possible only in the presence of a wide spectrum of diverse media, with a truly democratic media legislation, including on libel and defamation, and with easy access to information. We will discuss all these subjects in detail during the conference.

A free and pluralistic press is even more needed when a country faces a pre-election period. The elections represent the possibility and the will of the people to choose those candidates who represent their interests, hopes and expectations for the future of their country. This is why voters need to be well informed about their representatives from different sources, which only free and diversified media can provide.

The authorities should facilitate a climate whereby all newspapers, state and non-state, are given equal possibilities to be published, independent of the views they express or their political affiliation.

Freedom of the media has traditionally been one of the key priorities of the OSCE Centre in Dushanbe. Much has been done on the development of the media since the mission opened in Tajikistan 10 years ago. This year alone, €300,000 have been allocated on media projects. The most recent of these, still ongoing, include:

- training programmes for journalists which focused this year on media coverage of elections
- the facilitation of the publication of both independent and state newspapers (Varorud in Khujand, Bomdod in Kurghan-Teppe, and Kulyabskaya Pravda in Kulyab)
- the World Press Freedom Day, where discussions on the political, legal and economic problems faced by the Tajik media were discussed. It

was concluded with awarding 20 journalists and media outlets for their best articles and programmes on freedom of speech, participatory citizenship, democratization and human rights.

- the drafting of a new media law, which was completed in 2002. Unfortunately the draft has not been submitted to the Parliament, but we hope we will see renewed interest in the bill and the political debate on this matter in Tajikistan.

Other projects are being considered for future funding, including in cooperation with other international donors and NGOs.

I would also like to announce the opening of a Media Resource Centre for journalists and legal experts on the media, which will take place in the first week of October. The centre will offer Tajik lawyers training opportunities on legal matters related to the media, as well as legal support and free consulting for Tajik journalists.

As I mentioned earlier, the OSCE Centre in Dushanbe has traditionally attached great importance to media projects in Tajikistan, and intends to continue supporting this area as a priority.

In conclusion, I would like once again to congratulate and thank all of you for your life-long commitment and efforts in such a delicate field of work.

I wish you fruitful working sessions and many constructive ideas for future cooperation.

OPENING STATEMENT BY MIKLOS HARASZTI

Mr. Chairman, Ladies and Gentlemen, Dear Friends,

This is our Sixth Central Asian Media Conference. An initiative started by my predecessor, it has become a major regional event bringing together over 100 journalists from Central Asia. During the next two days we will mostly focus on two themes: libel and access to information.

But first, some general comments on the state of media freedom in this region. The Central Asian participating States continue to remain an area of concern in the OSCE. I receive many reports of media violations. I raise these on a regular basis with the authorities, underlining the importance of a government playing a pro-active role in defending media freedom.

We are all learning, even in the developed democracies mistakes are made, it take decades and decades to establish a relatively fine-tuned democratic model. That is why my criticism is of a constructive type, I am offering advise, legal support, if need be, training.

Central Asia has long been in the focus of the OSCE's attention. We have invested substantial funds in the region. My Office, for example, has reviewed media legislation in several of the countries. Nevertheless, for the time-being at least, we have not seen much improvement in the general media climate. Still, we will continue working with all the constituents - Government, Parliament, media and the NGO community - in trying to help this region develop a free and fair media landscape.

Now, to my long-term plans. The two strategic campaigns I am conducting in the nearest future deal with decriminalising, or in the beginning, at least de-incarcerating, libel; and ensuring better access to information for journalists. Let me provide you with some of our thoughts on these two themes. Similar comments I made last week at the OSCE Permanent Council.

Five OSCE participating States have abolished **libel** as a criminal offence, and turned to its civil-law based handling: USA (although 17

states within this country still retain their criminal libel provisions), Moldova, Ukraine, Bosnia and Herzegovina and Georgia. Also, on 1 July, President Robert Kocharian signed amendments to the Criminal Code partially decriminalizing libel in Armenia. Unfortunately, in June the Kyrgyz Parliament rejected for the third time in seven years an initiative by President Akayev to decriminalise libel.

These ancient libel laws are inadequate, even detrimental, to a modern democracy where freedom of the press and uninhibited discussion of public issues could be diminished by the effect of a criminal libel sentence used against journalists for their work.

In some of our participating States there is wide understanding of the need to provide journalists with a certain privilege when discussing issues of public importance. As with the protection of sources, journalists should also not be open to criminal prosecution or frivolous lawsuits even when the information that they disseminate might be false or derogatory. Weighed against the potential “chilling” effect, this privilege, if often questioned, should not be allowed to erode.

In general, I foresee for my Office several possible lobbying strategies regarding libel:

- Encourage parliamentarians to table proposals to repeal criminal libel legislation;
- Encourage government officials through public information campaigns to refrain from using existing criminal laws to sue the media and journalists;
- Encourage judicial bodies, where criminal libel does exist, to install a moratorium on issuing prison terms, even suspended ones, until the necessary reform;

My Office is currently in the process of developing a database matrix on libel legislation in the OSCE region. This matrix will also be accompanied by a legal analysis that will explain our findings, and help define the best ways to resolve the problem. I hope to present the matrix early next year.

On **access to information**, I plan to take a closer look how the relationship between the governments and the journalists actually works. Just

last week I presented a report on the media coverage of the tragic events in Beslan. One of my findings concerned access to information, or to be more precise, lack of information. Initially, the government was not able to ensure timely, up-to-date information that had to be provided to reporters covering the horrific event as it unfolded. In the end, the situation was more or less resolved for the better and many media outlets, including those under the control of the government, criticised how the information flow had been handled.

Russia, of course, is not the only country where access to information becomes a major issue, especially in a conflict situation. It is not uncommon to slap a government document with a “secret” classification when it is being requested by the press. Often, these documents have nothing to do with national security matters, nevertheless, they get classified and, as a result, kept out of the public eye.

We will discuss both libel and access to information with you and I very much look forward to your views, thoughts, steps forward.



OPENING STATEMENT BY KAROMATULLO OLIMOV

Please permit me to wish all participants in the Conference successful work and our guests an enjoyable stay in our hospitable capital.

I hope the Conference will be constructive and help to promote productive co-operation between the media and governments, achieve greater stability in the region, strengthen the role of the media in supporting the efforts made by states in the struggle against violence, extremism and terrorism and consolidation of friendship and mutual understanding

May I, please, welcome the esteemed participants and guests, who have gathered in our country's capital, the city of Dushanbe, to attend the Sixth Central Asian Media Conference.

This Conference is taking place at a time when our people have recently celebrated the 13th Anniversary of the Independence of the Republic of Tajikistan and is preparing for another jubilee – the 80th Anniversary of the city of Dushanbe as the capital of Tajikistan.

Everyone is aware that, in today's world, the role and significance of the media in people's lives has grown tremendously, and they have become an integral part of the civilized world. Life is poor and incomplete without newspapers, magazines, radio, TV and the Internet. Nations and countries are being drawn increasingly into the information field.

Human nature is such that it always seeks the truth, wants to see and hear it, and find out more and more about it.

How should this truth be presented so that people can not only get knowledge of it, but also become spiritually enriched, more friendly, more responsible towards others, and live without fear and with confidence in tomorrow? Today, this largely depends on what those who form this knowledge and these feelings write and say.

I believe that an exchange of views will help in acquiring experience from one another, draw attention to existing flaws and omissions in our

work as journalists, as well as shortcomings in relations between government structures and the media.

Our country is still in the initial stages of building a democratic, law-governed and secular state. We need to take account of our traditions and the people's mentality and to learn the lessons of the recent past, including in understanding democracy and recognizing its fundamental difference from permissiveness and anarchy.

The United States Ambassador, Richard E. Hoagland, rightly assessing the attitude of the Government towards the media in Tajikistan, noted: "I am not aware of a single case of political pressure being brought on the press by the Tajik Government and, as far as I know, journalists and writers have not been imprisoned for what they have written, as has happened in other countries of Central Asia."

Considerable work has been carried out in Tajikistan to strengthen the legal foundations of the mass media and a number of laws have been passed to ensure the necessary conditions for the functioning of the media. These include the following laws: "On the Press and Other Mass Media", "On Television and Radio Broadcasting", "On Publishing", "On Information", "On Information Protection", "On Copyright and Related Rights", "On Electronic Documents" and so on.

In recent years, thanks to the laws that have been passed and to the constant attention focused on this by the President of the Republic of Tajikistan, Emomali Rakhmonov, the process of democratization in the country has gained significant impetus, including in the sphere of the media and publishing.

There are now 199 state-owned and 154 non-governmental newspapers, magazines and information agencies registered, covering the country, its regions, cities and districts.

There has been an increase in publications by political parties, individuals, NGOs and so on.

Over 20 newspapers of political parties and public associations, and 21 private newspapers are now being published by 47 publishing houses, over 10 of which are privately owned. Private information agencies compete with government ones, and private and corporate

TV and radio agencies operate in the capital and regions, cities and districts of Tajikistan.

All this testifies that the process of democratization is advancing confidently in our country in all spheres of society. It should, however, be noted and justly appreciated that it is less than five years since the war ended here, yet the country is now living under conditions of fully stabilized security.

The country's President Rakhmonov, the Government and state authorities are working all out to ensure political and social stability.

I would like to draw your attention to the somewhat non-objective criticism that has been leveled against the Government of Tajikistan by Mr. Yves Bargain and Mr. Haraszti concerning the failure of certain newspapers to come out. I spoke about this recently to Mr. Bargain. As was announced by the Tax Department of the Ministry for State Revenues and Dues of the Republic of Tajikistan, there was no political agenda behind the suspension of the newspaper. Staff of the given department had discovered certain violations in the operations of the editorial board and the printing office.

Instead of the 2,700 copies of the newspaper indicated by the editorial board, the print run was actually 7,500 copies. Considering this to be an overt violation of the financial laws, the tax authorities temporarily suspended publication of the newspaper and the operation of the Jionkhon printing plant in order to get to the bottom of the matter. As far as the Government is concerned, it did not and could not issue any instructions on closing down newspapers. For this reason, I request the esteemed OSCE representatives not to give economic issues a political hue.

Permit me to express my gratitude to the Conference organizers and OSCE staff for inviting me and for holding such an important discussion.

I hope that the Conference will play a positive role in conducting objective analysis of the situation and will promote further stabilization and development of democratic processes, both in the region as a whole and in our country in particular.



CONTRIBUTORS

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Part 1: Latest Developments for the Media in Central Asia

- Sergei Duvanov, *International Bureau for Human Rights and Rule of Law, Kazakhstan*
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- Marat Mamadshoev, freelance journalist, Tajikistan
- Alisher Taksanov, freelance journalist, Uzbekistan

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I.

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

Sergei Duvanov

THE SITUATION WITH RESPECT TO THE MEDIA IN
KAZAKHSTAN

Almaz Kalet

REGIONAL MEDIA IN KYRGYZSTAN: MYTH OR REALITY

Marat Mamadshoyev

MEDIA TRENDS IN PRESENT-DAY TAJIKISTAN

Alisher Taksanov

BETWEEN SCYLLA AND CHARYBDIS:
UZBEK PRESS IN RECENT YEARS

Sergei Duvanov

THE SITUATION WITH RESPECT TO THE MEDIA IN KAZAKHSTAN

The split in the ruling elite and the run-up to the elections intensified the political struggle in society. This was reflected in the work of the media.

Since the majority of newspapers belong to various industrial and financial groups, political parties and oligarchs, the media journalists found themselves compelled to earn their salaries and royalties in the arena of their owners' battle for power. The pre-election struggle compelled journalists to show their true colours and those who had only recently boasted of their neutrality were engaged in the political struggle. Today every publication promotes on the sly its own people and puts down the others. There can obviously be no question of an unprejudiced coverage of the political process or of any other events for that matter. It is only a question of how to do this wisely, without giving away one's political inclinations. Some manage this, others fail. Yet others do not conceal their bias and openly proclaim themselves as a party rostrum.

The majority of socio-political publications today have a political bias and this applies equally to the media that support the authorities and to opposition newspapers. There is no independent press in the country today (from the point of view of political leaning). The majority of the media are compelled to work in the interests of one political group or another.

Most of the journalist corps predictably ended up in the authorities' camp. The President's daughter, Dariga Nazarbaeva, when founding her media holding, was attempting to gain a strangle hold over the information field. For this purpose, ideological control was initially established over the television channels in general and then a monopoly of national TV broadcasting in particular.

From 1996 onwards, the authorities started “protecting” the TV and radio broadcasts from disloyal journalists. What happened to the independent press in Russia when President Putin came to power, had happened in Kazakhstan five years earlier. True, in Kazakhstan, it was done on a much larger scale. A nation-wide tender was announced for TV and radio broadcasting frequencies and this was used as an excuse to sift out, once and for all, anyone they did not trust.

While leaving the first channel in the hands of government officials, the others that broadcast on a nation-wide scale came under the control of the Family: Khabar and NTK went to the President’s daughter; KTK, to the President’s son-in-law. The other, regional TV channels received licences to broadcast on the condition that they remained loyal and obedient to the authorities. Correspondingly, the journalists of these channels have to subject their work to internal censorship, envisaging this loyalty to the authorities.

By the end of the 1990s, the Family and the oligarchs in the President’s retinue started to lay their hands on newspapers. Existing newspapers were bought up and new ones set up. The leader on the information market at the time, the newspaper *Karavan*, was bought in a voluntary-compulsory manner from the previous owner by the Family’s people and since then this publication has allegedly been the vehicle of the political interests of Rakhat Aliev, the President’s senior son-in-law. A similar thing happened to the newspaper *Novoye Pokoleniye* and a number of other newspapers. As a result, by the time of the parliamentary elections in 1998-1999, the main media were controlled by the Family.

Today the situation remains unchanged: all the national TV stations are under the control of the Family and regional ones exercise self-censorship.

Virtually all the major newspapers are also controlled by members of the Family or people close to them. A few that are independent of the Family (*Vremya* and *Nachnyom s Ponedelnika*) are left alone by the Family because they keep to the tacit principles of self-censorship.

The opposition newspapers *Respublika* and *Soz*, as well as a few regional opposition newspapers, are all the Kazakhstan opposition has in the information field.

The authorities have wisely decided that, under current conditions, there is no need to force anyone to work for them; it is simpler to create the environment in which journalists will benefit from sticking to the rules offered by the authorities.

Economic benefits vs. civil standing, ideological and political attitudes, and one's principles. More simply, the authorities have learned how to buy journalists and the latter how to sell themselves at a profit.

On the other hand, conditions have been created under which political disloyalty on the part of a journalist towards the authorities engenders a negative reaction on the part of the administration and employers. This is manifest in journalists who do not want to play by the rules not being hired, losing their jobs and being beaten up by "persons unknown", as well as administrative and criminal cases being brought against them.

If journalists accept the conditions offered by the Nazarbaev regime for working in the sphere of information and journalism, they will find reasonably well paid work and be sure of their own safety. Those who agree to join the direct ideological catering of the regime (or the pro-authority oligarchs and officials) become members of the highly-paid and socially protected elite. In essence, these journalists become government officials, since they receive their salaries for information support of the policies pursued by their masters, be they the state itself (*Kazakhstanskaya Pravda*, *Yuridicheskaya Gazeta*, Kazakhstan 1) or oligarchs who back up the regime (*Karavan*, *Novoye Pokoleniye*, Express K, Strana i Mir, NTK, KTK, Khabar, ORT-Kazakhstan).

The freedom of the journalists working for these publications is politically tightly restricted: they are only allowed to praise the authorities and criticize the opposition. Sometimes, as an exception, they are told to criticize some or other official in the authorities' camp, which testifies that he has become undesirable to the powers that be.

The journalists from the moderately loyal media enjoy a different level of freedom in their writing (*Panorama*, *Kursiv*, *Rakhat*, *Tan*, *Yuzhnaya*

Stolitsa). Alongside negative comments on political opponents of the authorities, they can allow themselves a little licence to criticize, as it were, individual officials and provide information on the opposition that is not necessarily negative in character.

There are fewer restrictions on journalists working for the moderately oppositional media (*Vremya*, *Nachnyom s Ponedelnika*, *Epokha*, 31 Channel). These newspapers can permit themselves sharper criticism of the authorities, give opposition leaders the chance to speak up and publish opinions that differ from official ones. The only taboo subject is criticism of the President and his Family. In this respect, considering that it is the President who holds the real power in the country, journalism in moderately opposition media is castrated by its very definition.

Opposition media (*Respublika*, *Soz*) impose no restrictions on criticism of the authorities, including the President, but since both newspapers express the interests of the opposition, they restrict journalists in criticizing the opposition itself.

Virtually all the existing media thus impose political restrictions in their editorial policy, which are at best manifest in hushing up certain topics, issues and facts and, at worst, in distorting information and biased interpretation of the facts.

It is clear that, only by taking the above degrees of freedom into account, can one speak about how fully the media in Kazakhstan cover social and political events.

Quite recently, the main journalist corps claimed political indifference by remaining hors de combat. Thus, journalists working for the authorities (say, channels Khabar and Kazakhstan 1) positioned themselves as supporting the idea of consolidation and stability of society and, correspondingly, as standing above the interests of individual political groups. Those who worked for the media of a moderately opposition-loyalist vein boasted political indifference by claiming not to help ambitious politicians in their pursuit of power.

Journalists from the opposition media positioned themselves differently, believing that it is the civic duty of journalists to proclaim their political stand.

One of the methods of fighting the opposition and the democratic part of the public consisted of hounding of the opposition, its leaders and journalists by hatchet-men. For instance, over several years, the newspaper *Dozhiviyom do Ponedelnika*, in one issue after another, poured filth on the heads of the democrats. Neither did the journalists working for this newspaper hesitate to use outright lies and denunciations. This is not surprising, considering that the best friend and, according to rumours, the chief sponsor of this newspaper's editor-in-chief is Colonel Baktasov, head of the southern capital's political investigation service.

Apparently, realizing that such overt and extreme counter-propaganda against the opposition is of little effect, the authorities changed their tactics and now resort more frequently to falsifications, including in the form of newspapers that print lies in order to disorientate and deliberately misinform their readers.

Thus, in the spring of 2000, audio-tapes were anonymously sent to the leading newspapers, supposedly of an interview with one of the opposition leaders, Nurbalat Masanov, by an ITAR-TASS correspondent, containing insults against the Kazakh people. A criminal case of fomenting interethnic dissension was initiated. A number of newspapers and Internet-sites published this fabrication in order to discredit the leader of the opposition and represent him as the enemy of the Kazakh people.

In 2003, during the election campaign to local councils (*maliskhats*), in Almaty issues of the newspaper *451° Fahrenheit* began appearing, published by anonymous authors. This newspaper had been printed back in 1998-1990, when it was popular in democratic and opposition circles. At that time, while I was behind bars, certain unknown "colleagues" put out five issues of the pseudo-*Fahrenheit*, smearing the opposition, democrats and me personally.

On 2 June 2004, a stop-press issue of the opposition newspaper *Assandi Times* appeared on the newspaper stands, though it turned out that the editors of this newspaper had nothing to do with it. The newspaper was produced by the same "anonymous" people. The fake contained "sensational revelations" about the leaders of the opposition and material

called on by its authors to destroy the reputation of the opposition in the readers' eyes.

In all these cases, the attempts to find the producers of the hoax newspapers came to nothing. The law enforcement agencies never found the provocateurs.

It is interesting that the journalists of *Assandi Times* who suggested that the presidential Administration might be behind it all found themselves in court and had to pay a fine of \$350,000 for insulting the presidential Administration.

Every journalist today faces the choice of either working for the authorities or trying to remain honest. In the first case, he must restrict himself with respect to a number of forbidden topics, as well as criticism, on the regional level of the local authorities and on the national level of the president. Within the framework of these restrictions, one might speak in principle of freedom of speech. Many journalists have come to terms with this and, accepting these restrictions as being inevitable, consider themselves to be quite independent. Many colleagues have told me, by the way, to forget all about the President and his Family, to write on a "lower level" and thus avoid any problems. What real journalism can there be, though, if the President – the very pillar of the entire existing political system, the person who holds all the power in his hands – is excluded from the range of topics discussed? Such a restriction deprives journalism of the main thing: profoundness and objectivity.

In the second case, when the journalist does not accept these restrictions, he finds himself walking through a minefield. He risks at best not finding work, at worst ending up in prison.

Between these extremes a whole range of troubles and problems await him. Only the opposition media will print what he writes. By coming out in the opposition newspapers, he runs a serious risk of law suits for insulting officials, troubles with the police and of even being beaten up. His friends and relations might come under the infamous administrative pressure.

The only "air vent" is the Internet. Here it is possible to place any material you like, including sharp criticism of the authorities. Today the oppositional and independent Internet newspapers outperform the pro-

government sites. The popular socio-political sites Navigator, KUB and Eurasia have become one of the main sources of independent information for Kazakh Internet users.

True, considering that only 3% of the population have regular access to the Internet, the influence of these sites is very limited.

In spite of this, for five years now the Nazarbaev regime has been blocking these sites, making it difficult for Kazakh Internet users to access them.

The situation on the Internet is a typical example of the hypocrisy of President Nazarbaev and his retinue: the President constantly declares his support for democracy and freedom of speech, while blocking access to independent and opposition sites.

I know the arguments apologists for the regime use to justify suppression of freedom of speech in the country. Too much freedom and unbridled criticism of the authorities might, so they say, destabilize the situation and reduce the country to anarchy.

Hence it is proposed that, by muzzling the free press and limiting freedom of speech, Nazarbaev's political regime is promoting the stability of Kazakh society. Such is the price for this stability. We are asked to decide what is more important for Kazakhstan: stability attained in this way or democracy with the risk of destabilization. In essence, today this is the main question in determining the prospects for our country's development. The real political orientation of one or another politician and party and the line taken by the country depend on the answer.

Nazarbaev's political line is obviously based on recognizing the priority of stability over democracy. Yet this has nothing in common with democratic principles envisaging stability achieved through observance of human rights and liberties, without any obtuse submission or fear, without suppression of civil activity and initiative. The price the President makes us pay for stability is too much, too high and, most important, contains in itself negation of and, correspondingly, a threat to stability.

Stability without democracy is always stability based on compulsion and fear. By taking this road, we risk ultimately agreeing that the concentration camp is the supreme model of stability.

Yet no one would really praise the heads of the concentration camps for maintaining law and order. So, likewise, how can we call stability based on suppression of dissent and disregard for people's rights and liberties one of President Nazarbaev's achievements? Alas, I believe this is precisely the case when the end does not justify the means.

Almaz Kalet

REGIONAL MEDIA IN KYRGYZSTAN: MYTH OR REALITY

Today, over five hundred print and broadcast media are registered in Kyrgyzstan. The majority of these are regional mass media. Do they, however, have any real influence or authority in the regions? How promising is the market for the regional media in Kyrgyzstan?

It should be specified right away that, out of the five hundred media bodies registered with the Kyrgyzstan Ministry of Justice, only a quarter are currently operating. The example of Naiman-TV, a new private TV company in the Batken Region is indicative in this respect. It was registered almost two years ago, but was to start broadcasting only at the end of September 2004. According to its director, Almaz Karimov, this delay was connected with technical problems and difficulties in obtaining the licence to a frequency. For this reason, I want to specify that this report will be dealing with the regional media bodies that are actually functioning at present.

Regional media largely include periodicals and broadcast networks founded by local authorities, i.e. the local *keneshi* (parliaments). For example, in the Osh Region, the newspapers *Echo Osha* in Russian, *Osh Zhanyrygy* in Kyrgyz and *Ush Sadosi* in Uzbek; *Vesti Issykkulya* and others in the Issyk-Kul Region; of the broadcast networks all the regional subsidiaries of the national TV and radio company.

The only study so far of regional media in Kyrgyzstan was made in 2003. The initiator was the Swiss CIMERA. On the basis of the results obtained, the authors of the study, Gulnara Ibrayeva, Candidate of Sciences (Sociology), and Svetlana Kulikova, Master of Political Sciences and Journalism, wrote a book entitled *The History of the Development and the Current State of the Mass Media in Kyrgyzstan*. The aim of the review of the problems of regional journalism was to analyze the changes that had taken place in the media of Kyrgyzstan since 2001. Focus groups

were formed for detailed analysis. These included journalists and editors of regional media, lecturers at journalism departments and representatives of the local authorities. The study covered four main areas: sources of information; interrelations between the media and the authorities; the requirements of readers, listeners and viewers, and news worthiness; and images of the regions as reflected in regional media and the demand for a true picture of regional life.

As Gulnara Ibrayeva says in an interview with the Kabar information agency, representatives of the media most frequently identify “inadequate financing and instability, which result in the inferior technical facilities, and insufficient material remuneration for the work of journalists not corresponding to its social significance and responsibility” as the main problems of journalism in Kyrgyzstan regions. According to Ibrayeva, representatives of the media in the Issyk-Kul Region also identify the problem of interaction between the media and the authorities: “They spoke of the achievements with respect to freedom of speech over the ten years of independence being very shaky and of the possibility always being there on the regional level of returning to the worst type of diktat on the part of the authorities.” In addition, the researcher speaks of the lack or virtual lack of interest shown by journalists in what is happening in other regions. In Ibrayeva’s opinion, the reason for this lies in the absence of any “elements holding the regions together”, such as common political, financial, cultural and ideological interests.

According to Ulugbek Babagulov, an expert of the non-governmental organization the Freedom House: “In Kyrgyzstan, privately-owned and independent media are mainly concentrated in the capital. As a rule, these newspapers describe the capital’s problems and rarely touch on the socio-political situation in the country’s regions. When such articles do come out, they often lack any in-depth analysis of the events or comprehensive coverage of the problems involved.” For this reason, the people obtain most of their information from the government-owned mass media, whose coverage is distinguished by one-sidedness and lacks objectivity. A clear example of this is provided by the events in the Aksy Region, which gave rise to civil disturbances in the south of Kyrgyzstan. The inhabitants

of the region categorically refused to meet with reporters from the media owned by the government or controlled by the presidential staff, accusing them of lack of objectivity.

The only printed publication is the informational, privately-owned newspaper *Ferghana*, which comes out in Jalal-Abad and is distributed in the Osh and Jalal-Abad regions and partly in Bishkek. Though dozens of print media are actually registered in the southern region, not one of them comes out regularly at least once a week.

The most pressing problem is the financial one. The lack of a more or less thought-out long-term plan for the development of a specific media body, the total absence of an advertising policy, a poor personnel policy – all that has a serious impact on the general development of regional media in Kyrgyzstan.

Over the thirteen years of independence of the Kyrgyz Republic, a completely new and specific form of print and broadcast media has taken shape in the regions, existing exclusively on grants from international organizations. They successfully sell one and the same project to various grant-extending organizations, moving from one sponsor to another. This has given rise to a firm opinion that if the grants ever dry up, they could not be financially successful under contemporary conditions.

This was also a topic of discussion at the conference of editors and publishers of independent mass media in Central Asia, held last year in Bishkek. The organizer of the meeting was the Public Association “Journalists”, with the financial sponsorship of International Media Support, Denmark. In the course of the round table, in which media representatives from Kyrgyzstan, Kazakhstan, Uzbekistan and Tajikistan took part, the following issues were discussed:

- improvement of the quality of journalistic products;
- financial independence of the media under the difficult economic conditions;
- development of the regional Internet.

The meeting concluded with the adoption of general, declarative recommendations for publishers and media bosses.

In general, the question as to how financially successful the regional media can be is clearly seen as a dead end. Commercial success and the media are seen as being incompatible.

According to the chief editor of the non-governmental newspaper *Ferghana*, Bakyt Orunbekov, in an interview to the Institute for War and Peace Reporting: “On the periphery, there are virtually no advertisers; all operating companies and firms are located in the capital and place their ads in the metropolitan newspapers, while considerable profits are earned by newspapers precisely from advertising. Alas, on the periphery, this is not possible, so we are sometimes compelled to print ‘commercial’ material, custom-written articles.”

This opinion is shared by many media chiefs in the regions.

Besides, the term “non-governmental”, rather than “independent” when applied to the mass media, appeared not long ago as a result of the regional media’s desire to have nothing to do with clearly opposition-minded newspapers, radio and TV channels in the capital. In general, this striving not to come into conflict with the authorities is characteristic of all the regional media. Each side observes certain rules of the game and the regional media are inclined to indulge in only “gentle criticism” with respect to some state authority, but never its head.

From time to time, though, certain international organizations, such as Internews-Kyrgyzstan, attempt to break this stereotype, calling for a change of strategy and the form of management in the mass media. Moreover, many seminars, training sessions on management, marketing, distribution and advertising are organized.

The Soros Foundation – Kyrgyzstan, for instance, this year somewhat changed its policy of media support, focusing attention on network participation by all regional media in creating a common Website www.open.kg, into which all information from the entire country is to be channelled.

The main objective of the Open Kyrgyzstan project is, in the opinion of its founders, to develop standards for discussing decisions that are in the works, as well as new methods, formats and instruments for raising the efficiency of decision-making by providing public access to information.

All the media bodies are provided with professional cameras and Internet access for their work. For the first time, no money is provided and payment is not made for news reports unless it is placed on the Website.

The main areas of support extended by the Soros Foundation – Kyrgyzstan in 2004 to the regional media were:

1. Grants and technical support for independent media.
2. Assistance in upgrading the qualifications of journalists and the other mass media staff.
3. Assistance in the design and active operation of Internet newspapers.
4. Assistance in developing media legislation.

The most recent media conference, dedicated to World Press Freedom Day, which was held on 30 April – 1 May 2004 in Osh and was organized by the British organization *Index on Censorship*, also discussed the Internet as an alternative. Central Asian, European and Russian journalists took part in the conference. The most heated debate arose around the Internet's opportunity to provide alternative information at lower technical costs, also taking into account the specifics of the development of regional mass media in the countries of Central Asia. The coverage of events in Uzbekistan has shown how serious the claims are of the Internet with respect to its development and recognition as a mass medium. "I have managed to obtain information promptly thanks to the use of an ICQ Internet-pager," the director of news agency www.ferghana.ru, Daniil Kislov, said in an interview with the regional Internet news agency www.fergana.org. "I always knew what was going on. Until the explosion happened in Tashkent, our site had, on average, 500 hits a day. Subsequently, this grew to 2,500 and more. The role of the Internet in Central Asia cannot be overestimated. Even if you have no opportunity to work on a computer, you often know someone who has one. The Internet obviates the need to send a correspondent right to the centre of events. This became clear during the coverage of the terrorist attacks in Uzbekistan."

Yet the situation has not changed fundamentally over these years. Among Internet projects, only two projects are worth mentioning, both

of them belonging to public organizations and not constituting media proper. These are www.open.kg, belonging to the Soros Foundation – Kyrgyzstan, and www.fergana.org, belonging to the Osh Media Resource Centre. So far only the print and broadcast media lead in the regions, the latter being represented more by TV studios rather than TV companies. Unfortunately, the life span of the regional media is very short. In the Osh Region alone, the following non-governmental newspapers closed down recently: *Delovoi Osh*, *OshPress*, *OshPress-Vesti*, *Mezon*, *Chas Pik*, *Yuzhnaya Stolitsa* and *Region*. Besides, according to the Ministry of Justice data, over 160 media are officially registered in the south of the country.

The content of newspapers and TV and radio programmes in the regions is another matter. The quality of the publications and of information material leaves a lot to be desired. The practices of reprinting materials from the Internet, plagiarism and the publication of made-to-order reports are very widespread.

According to the editor-in-chief of the non-governmental newspaper *Darakshi-Osh*, Alisher Saipov, a low standard of professionalism among journalists is characteristic of the media in the south of Kyrgyzstan.

As Bakyt Ibraimov, an expert on monitoring from the Osh Media Resource Centre, has emphasized: “Non-governmental socio-political publications do not survive under today’s market conditions, since poor management or a complete absence of management afflicts them all. Many media have no such position as manager, whose main function would be to develop and promote a business plan. A manager’s chief goal is to ensure the economic, above all financial, basis for the existence of the media body.” According to him, continuous journalist skills upgrading is also a vital requirement for the development of an independent press.

The future of the regional mass media in Kyrgyzstan depends on the creation of an alternative system for distributing printed publications, the appearance of new, private printing houses, development of the local economy and, consequently, development of the advertising market, as well as higher living standards for the population, which will, of course, relate to the purchasing power of the consumers of information.

Marat Mamadshoyev

MEDIA TRENDS IN PRESENT-DAY TAJIKISTAN

Tajikistan: “Wrong” newspapers are blown away by election winds
“The guards are tired!” Shortly before the parliamentary election, Tajik authorities, predictably, ran out of liberalism and launched a large-scale campaign to pacify news media.

The authorities aimed their attacks mainly at print shops that print unruly newspapers. “It’s not what they write, but what gets printed”. Following an inspection by the tax police, the Jionkhon print shop was shut down – the one that had the boldness to print the newspapers *Ruzi nav* and *Nerui Sukhan*. Quite recently, an audit was launched of another print shop – Karimdjon Kodiri, which also printed several publications seen by the authorities as “not quite appropriate”, such as *Adolat*, the publication of the Democratic Party, etc. Bottom line: *Adolat’s* publication was suspended, and the Democratic Party has submitted a request to the President to help resolve the problem, so that publication of the party’s newspaper is resumed. I don’t think there will be any reply.

The closing down of Jionkhon print shop was a warning to other printers on the part of the authorities. Also, this public whipping of opposition newspapers is a warning to other publications not to over-use freedom of the press. The regime is headed for election and does not want any trouble, especially, from something so trifling as newspapers.

Predictably, after what happened to Jionkhon and the tax problems confronting *Karimjon Kodiri*, just about all the print shops in Dushanbe arrived at a consensus not to publish any “bad” newspapers. The “bad ones” are: *Ruzi nav*, *Nerui Sukhan*, *Odamu Olam*, *Adolat*, *Najot*, and *Zindagi*. None of these papers has been published for more than a month.

According to the authorities, these are just accidents, nothing political. The situation reminds of the joke: “The victim died in an accident, falling on a knife. Seven times”.

But how come it is only opposition papers that are rejected by print shops, although the latter are admittedly short of business? A paradox, Tajik style.

A more civilized avenue, a judicial one, is also pursued in fighting the media. Examples: Judge N. Amirov's action against the *Vecherny Dushanbe* newspaper, Defence Minister Khairullaev's lawsuit against *Odamu Olam*, the Tajikistan Rail Company's lawsuit against the newspaper *Tajikistan*, etc. Not a lot, by other CIS countries' standards. But there were no lawsuits like that in Tajikistan just a while ago.

At the same time, the authorities have taken steps to enhance the effectiveness of their own news media. During the past year, government media have been used quite extensively to punish and smear opposition leaders and journalists. In my opinion, however, no government-owned media, except maybe TVT television, have managed to play a role in shaping public opinion, because they are so obviously engaged. And the quality of their publications is very low.

This sums up the recent trends in the development of Tajik news media.

Otherwise, despite certain cosmetic changes of the past few years, the situation in the media market remains basically unchanged and is still fully controlled by the authorities. The government still holds the commanding heights in the production and distribution of information and is in a position to restore its monopoly at any moment. Just like back in Soviet times.

The government owns the Sharki Ozod publications and printing enterprise, which is just about the only facility that can print newspapers with some quality and at affordable prices, and a few other print shops in Dushanbe. The opposition potential of privately-owned media is small, as we have seen. Besides, now that Jionkhon has been shut down, they are quiet and obedient.

The government still owns all the nationwide television and radio channels, which draw the largest audiences.

Nor have there been any essential changes in licensing electronic news media, whose economic position remains tough. Just about all the

equipment and materials needed for operations are imported, so production costs are high. The situation is further aggravated by the population's low purchasing capacity. The advertising market is relatively small and advertisers are few. All the more so that local business people prefer not to quarrel with the authorities and place no advertisements in the "wrong" publications. Examples? *Ruzi nav* and *Nerui Sukhan* have – had, to be exact – the largest circulations in their category of socio-political publications, but were ignored by advertisers. The reason for that is obvious.

It is fair to mention that the newspapers' request to be exempted from VAT was supported by the president. But, as the newspaper *Asia-Plus* put it, the parliament turned the initiative into a farce. The newspaper companies were only exempted from VAT on delivery operations, which is only a small portion of their costs.

I have already described problems with access to the means of production of printed media, but the present-day situation is plain disaster.

There have been no improvements in the field of information distribution. Tajikistan has no alternative non-government media distribution networks. There are very few newsstands, even in the capital. Many regions still practice mandatory subscription for government publications *Djumhuriyat*, *Sadoi mardum*, and *Minbari halk* which is the official publication of the governing party. All this was mentioned in a recent interview with *Asia-Plus* by Vladimir Vorobyov, editor-in-chief of *Narodnaya gazeta* (another government publication – *The author*). Revealingly, the interview published over a month ago evoked no response from the publications mentioned. No comment?

Access to sources of information is a problem I will not describe in detail. I will just say that the National Association of Independent News Media of Tajikistan issued a statement a month ago describing the problem as very acute.

Reality has dispelled the illusions of certain romantics who used to see these problems as temporary difficulties caused by officials' ignorance or their failure to appreciate the importance of journalists' work. We are now aware that in fact this is a chronic disease of our society, stemming

from corruption and incompetence widely and deeply spread throughout government offices.

Here is one example. During the past year, the executive office of the President of Tajikistan disregarded written inquiries from two newspapers – *Asia-Plus* and *VID* – on two occasions. The inquiries were quite plain and concerned the salaries of officials in the President’s office. One would think that people working at the President’s office should be a model for other civil servants. Indeed, their attitude to news media is a model followed by many officials.

All the problems I have mentioned have been repeatedly highlighted by news media. Just like many other topical issues of society’s life that are not directly related to media problems. In most cases, however, this produced no positive results. As the saying goes, the dogs yap, but the caravan moves on (the media being the dogs and the authorities, the caravan). The opinions of the media – actually, public opinion – are still disregarded when decisions are made.

So I would agree with many of my colleagues saying that such open disregard on behalf of officials renders our work largely pointless. This may have to do with the fact that the government is not yet fully aware of its accountability to the people. Or, more precisely, the people has not made the government understand the degree of its responsibility.

There are certainly some objective factors that hinder the development of news media, such as underfunding, understaffing, power supply interruptions, inadequate printing and other operations facilities, the narrow advertising market, the low buying capacity of the population, and underdeveloped civil society institutions. But the main problem is the authorities’ reluctance to have strong and independent media opposing them and, to a certain degree, monitoring their work. Admitting that the situation is sad is not enough. It’s much more important, in my opinion, to decide on our next steps. Shall we lay down our arms and leave the country? This has been proposed. But, in my opinion, that is no solution.

My conclusion is probably unoriginal: the journalist community must work hard to improve its situation in the Republic of Tajikistan. We have no access to the existing print shops – let’s set up print shops

of our own. The government distribution service is no good – let's set up distribution networks of our own. In doing so, we should partner with other news media and be more active in attracting international organizations' resources.

As a man in the street, I understand why our colleagues try not to apply to courts. But there is no other way. Obtaining positive court decisions is of vital importance. We must punish officials for denying us access to information and to print shops, denying us licenses, etc. We can and we should take the lead in promoting a real judicial reform – one to be implemented in practice, not just in words.

We often refer to other countries, saying that the Russian government dislikes news media, while the government of the United States... I maintain, however, that all governments are alike. No government is particularly fond of news media. But we would rather look at tools and mechanisms that prevent governments from taking arbitrary actions. The U.S. officials would really love to behave the way our government does, but they cannot – the civil society network would not let them.

We, journalists, can and we should make the authorities change their attitudes to us and to news media. The authorities should see us as civil society servants, not as sensation hunters. Officials get elected once in several years, but news media get elected much more often – every week and even every day. In those elections, people vote with their cash, not ballots.

BETWEEN SCYLLA AND CHARYBDIS: UZBEK PRESS IN RECENT YEARS

Alisher Taksanov

Part 1. JOURNALIST ORGANIZATIONS AND MASS MEDIA: NEW TRENDS

The Government insists that all necessary conditions for the media to work efficiently have been created in the Republic, and political, economic and legal factors are available that facilitate certain positive results in their activities. Furthermore, the officials refer to the fact that the media in Uzbekistan have significantly grown in number as compared to the Soviet period.

For instance, according to official statistics as of 1 June 2004, registered by the Press and Information Agency were 964 mass media, including 612 newspapers, 165 journals and magazines, 29 cable TV channels and 102 electronic media. Of course, given the population of 25.7 million, the figures are impressive with one mass medium per 26,600 people. Meanwhile, 368 newspapers and 104 journals and magazines are publications of local administrations (khokimiyats), ministries and departments, 145 newspapers and magazines belong to public organizations, 60 and 17, respectively, are published by businesses and 11 and 2, by private persons. Also periodicals founded by religious organizations exist¹.

What does this actually mean? That the bulk of printed media belong to the government, which is pure nonsense for a country recognized as a democracy. Indeed, there is 1.69 government publications per each non-government periodical issued in the republic, or more than 1.5 times as much. In the case of journals and magazines the ratio is 1:1.86 against the non-government press. Moreover, these government periodicals are economically in a more advantageous situation than public and commer-

¹ *Zerkalo*, No. 26, 24–30 June 2004, pp. 1–2.

cial publications. After all, their staff, as well as logistics, are funded out of the republican budget which guarantees their viability on the market. At the same time, their colleagues in non-government media have to struggle for survival.

We as taxpayers provide for the government media's "maintenance" and get in return unreadable and unrequired information, just garbage. Non-government publishers, apprehensive of harassment, prefer yellow press methods, i.e. avoid political points that may bring them under persecution. In fact, the population being fed up with semi-official information prefer to take a dive into the far-away life of western stars, show business, detective stories, jokes and rumours.

Under authoritarian government mass media become the regime's mouthpiece. They are not interested in showing weaknesses of the Government or its disability to address serious and urgent problems. Such periodicals are subject to censorship and if they do publish any criticisms then only those that have been approved or commissioned "at the top". Journalists employed in government media, naturally, do not make their own investigations, nor do they write analytical articles critical of the activities of all echelons of power. Accordingly, the Government encourages such journalists who deliberately avoid forbidden ground and are writing only flag-waving articles in a high-flown style. Indeed, has a journalist who opposed the Government been ever given a Day of the Press or Independence Day awards? I have never seen any one of them on prize-winner lists. Incidentally, one can hardly speak of political pluralism in a country where opposition media do not exist.

They say that there can be no independent press in principle as he who pays the piper calls the tune. But independence is not measured by who and in what way provides funds for a publication or an article (an oligarch, a party or a businessman) but by a possibility to express in the press or on the air ideas that disagree with the official attitudes, to suggest, certainly, within the law, an alternative version of events or offer a critical assessment of official policies. Perhaps this is more to the point with respect to the concept of free press. Then it may be said that no such press exists in Uzbekistan.

There are non-government mass media which are under total control of government agencies. They are exposed to interference by departments in charge of the so-called monitoring which in reality implies supervision and censorship – the Press and Information Agency, the State Committee for TV and Radio Broadcasting – as well as institutions that have nothing to do with this sphere, such as the tax and customs offices, the prosecutor's office, police, sanitary and epidemiological stations, fire departments, electricity supply services and so on. Higher-level authorities interfere in a disguised manner, among them the Presidential Administration (from his press secretary down to petty officers), the Cabinet, ministries and departments whose “rights and freedoms” were infringed upon by the press.

It is no secret that a budget-funded censorate UzLIT has been operating in Uzbekistan for 12 years. However, under the Constitution and laws on mass media, on safeguards for journalists' professional activities and publishing, censorship is prohibited in the country. Amendments and alterations to these statutes brought no significant changes in the sphere of information. Non-government mass media remain in complete dependence and under control of the authorities. The lack of independent judiciary makes any kind of defence of human rights and freedoms, including in the sphere of information, impractical.

Thus, the Uzbekistan present-day authorities prefer to demonstrate the democratic entourage in the number of media rather than in their quality. Onetime newspaper circulation is from 2,000 to 20,000 copies and only a few periodicals reach 80,000 to 100,000 (for the most part, these are entertainment magazines). Meanwhile, principal consumers are concentrated in the capital and in large regional centres and major cities. Rural areas remain outside the broadcast or press cover. For instance, in some small towns there are no newspapers at all. Communities in mountainous areas are isolated from all media, they are not reached by TV or radio broadcasting, let alone subscription and distribution agency vehicles that simply cannot reach such locations.

In terms of nationalities policy it would be unfair to overlook the fact that some 40 per cent of the media are issued in a non-state language: 53

in Russian, 25 in Karakalpak, 4 in Tajik and 1 in Turkmen; 153 newspapers and magazines are multilingual editions. Out of the total number of periodicals in Uzbekistan 38 specialize in advertising, 15 are fiction and literary journals, and 15 deal with sport².

Since early 2004 certain shifts occurred in the official presentation of public associations engaged in addressing professional affairs of mass media workers. For instance, a Foundation Conference of the Creative Union of Uzbekistan Journalists (CUUJ) was held on 26 March in Tashkent, and the Union's basic objectives were defined as protection of journalists' rights and interests, and organization and consolidation of mass media workers.

The 150 delegates from the regions and the capital city attending the conference approved Regulations on the Union of Journalists and elected a board of 23 members. It was headed by Sherzod Gulyamov, a journalist with a 40-year record of work and chief of the Tashkent International Radio. The journalists believed that his current status would secure Mr. Gulyamov a certain degree of independence from the regime. According to the new organization head, the CUUJ intends to join the International Association of Journalists; it will provide social protection to journalists, monitor compliance with professional ethics, cooperate with foreign journalist organizations, and even put forward for state awards. Sherzod Gulyamov names as a priority nomination of Union members for the December 2004 parliamentary election. In his opinion, some 10,000 journalists working in the Republic represent a strong force in the process of democratization. At the moment the Creative Union includes the National Press Centre, the *Khurriyat* daily and *Uzbekiston matbuoti* ("The Press in Uzbekistan") magazine.

However, this organization has accomplished nothing but a list of top journalists to mark the Day of the Press and Mass Media Workers of Uzbekistan (27 June). None of the opposition journalists appeared on the list. Moreover, the Creative Union acts as a spokesman of all journalists (to which those who did not join it object) although the media do not all

² Data of the Uzbek Press and Information Agency, 1 June 2004.

without exception support the organization encouraged from “the top”. It seems that this entity was established as another controlled mechanism for “the taming of the shrew”.

A little later, in April 2004, a National Association of Electronic Mass Media was set up in Uzbekistan uniting 64 units in the country’s television, cable TV and radio broadcasting. Its Charter declares independence from the government and willingness to develop a civilized media market and to create appropriate economic environment for their work. The head of the public council of the Samarkand STV Broadcasting Company Firdavs Abdukhalikov was elected chairman of the new Association³.

Given some positive changes in the media system, however, there are also trends that are less conducive to democratic processes in the country. For instance, last March the only independent journalists’ organization in the west of Uzbekistan, the Reporter discussion club was suspended in Bukhara⁴. The Club’s accounts were blocked under the re-registration programme for all foreign NGOs pursuant to a relevant regulation by the Uzbekistan Cabinet of Ministers. The issue has now been settled. At the same time, a Freedom of Speech Committee headed by a free lance, Inera Safargaliyeva, has not been registered yet, as well as the Ozod Ovoz (Free Voice) organization led by a former Ozodlik/Liberty Radio reporter Bobomurod Abdullayev. Moreover, their web-sites are blocked by the Uzbek secret services, and Mr. Abdullayev’s web-portal came under a hacker attack.

However, the mass media of Uzbekistan have not yet been recognized by the public as a driving force for reforms and public opinion moulding. This is demonstrated by sociological surveys conducted in Tashkent in January 2004 by Asia-Monitor Centre (this organization specializing in political and economic studies, including mass media development in the region, has no legitimate status because it was founded by journalists and dissident researchers). They show that pompous and praising features having almost nothing to do with real life are not favoured by the popula-

³ Novosti Uzbekistana, 9 April 2004.

⁴ According to NGO Internews-Uzbekistan monitoring, March 2004.

tion facing economic difficulties. Russian-speaking readers, viewers and listeners displayed aggressive attitude and lack of respect towards local press which offers no critical items or reports and no analysis of current events, but biased official information.

Table No. 1

Level of trust to mass media among residents of Tashkent⁵

Mass medium	Trust	Do not trust	Do not know or no answer
Uzbek mass media			
Television and radio broadcasting (state-owned)	34	41	25
Television and radio broadcasting (non-state-owned)	45	25	30
Official press (state-owned)	60	38	2
Private press	39	50	11
Web-sites in the "uz" domain	21	12	67
Foreign mass media			
Television and radio broadcasting	46	49	5
Press	67	23	10
Web-sites	19	10	71

As shown by Table No. 1, foreign press enjoys more trust than national publications. At the same time, Uzbekistan citizens rely more on state-owned than privately-owned periodicals which may be explained by the fact that the governmental press is more interested in avoiding "yellowness" and unverified facts. The high number of "no answer" in the Web-sites section is indicative of this segment of information being not universally accessible or usable in Uzbekistan. Internet users said that the web is free from censorship and there are no forbidden subjects;

⁵ Out of the 378 respondents, 290 are ethnic Uzbeks.

any article can be discussed there and any views, even dissenting ones, can be expressed.

Table No. 2

Reasons why Uzbekistan citizens rely on foreign mass media⁶

Reason	TV and radio	Press	Web-sites
This is an official position of the Government and the State	81	73	25
This is alternative information that prompts one to reflexion and trust	52	56	71
This is interesting and well presented news	78	79	67
There are no "forbidden" subjects	48	71	90

Moreover, Internet enjoys trust because it offers alternative information and users are free to form their own opinion about the official version of an event (see Table No. 2). No doubt, this irritates the Uzbek Government that finds itself unable to offer any serious and sound arguments against the information published on the Internet. Strong reliance on the World Wide Web was expressed by the Russian-speaking population (more than 70 per cent of the respondents), while native people showed a low-key response to Internet information.

Is the Internet a medium of mass information? Legally this approach is justifiable. The Law of the Republic of Uzbekistan on Mass Media says in Article 1 that "mass information media include newspapers, magazines ... electronic information communication". This definition is repeated in the Procedure for Registration of Mass Media approved by a Government Regulation of 30 September 2003. However, no interpretation of the concept of such communication is given.

Can the normal mailing via the Internet be treated as a mass communication medium, and if so, how should one register it? Is it possible

⁶ Several options were offered, questioned were those who earlier expressed their trust to foreign mass media.

in view of the fact that the portal of Yandex alone is used by some three million e-mail address owners? This would imply three million permits (licences)! How many years would the bureaucrats need to issue documents authorizing a mass mailing by a person?! Some people have several mailboxes, and on different portals and in different countries at that – what is to be done in this case? Is the Uzbek law stipulating that an Uzbekistan citizen should obtain a licence for mailing messages through the Russian Yandex applicable in Russia? This is pure nonsense.

In early 2001 classification of web-sites as mass media, with ensuing request to their owners to obtain registration with the Ministry of Information, was attempted in Kazakhstan. The registration problem is a matter of great concern to many free-lance journalists working for Internet publications. The fact that web-sites are registered and hosted in a certain domain seems sufficient. But disputes, so far quiet, go on. For instance, Tribuna-Uz web-site is running a survey on “Whether registration of sites/mailings and bulletins as mass media is really necessary?” On 20 September 2004, 75.41 per cent of the respondents answered “no”, 20.66 per cent said “yes”, and 3.93 per cent did not know⁷.

So the question remains open.

Part 2. MASS MEDIA REGULATORY AND LEGAL FRAMEWORK STILL IMPERFECT

In recent years, the laws and regulations on mass media have undergone certain changes. Both positive and negative trends have been observed in the process. In particular, those provisions of the Mass Media Law that enabled registering agencies to close a mass medium at their own discretion rather than under a court ruling were abolished. One of the negative aspects consisted in censorship responsibilities having been indirectly delegated to editors themselves.

AMENDMENTS TO THE MASS MEDIA LAW. On 30 August 2002, the Parliament of Uzbekistan introduced amendments and alterations to the Law on Mass Media that had been in force from 26 Decem-

⁷ www.tribune-uz.info

ber 1997. These novelties had not been broadly reported in the press and remained a little-known fact for the journalistic community. For instance, almost 67 per cent of journalists questioned had no idea of such amendments⁸.

Five new articles were added to the existing thirty articles. Above all, a reference appeared to prohibit monopoly and unfair competition among the media. No one has the right to own more than 25 per cent of a medium, coming out on the nationwide or local information market. True, many questions arose about calculation of the percentage. If for instance 50 newspapers with circulation of 2,000 each are issued in a region, while one newspaper has a circulation of 100,000 copies, should its 50 per cent share in the regional market be treated as a monopoly? Another example: if the state is a founder of 90 per cent of publications (via departments, local administration or enterprises with state participation), can this be treated as monopoly? What if the private sector owns 70 per cent of all regional newspapers that are loss-making and have a circulation below 20 per cent of the total volume of published or distributed newspapers, how is a monopoly position to be determined in this case? What about a newspaper that is the only one in a region and therefore accounts for 100 per cent of the regional market? The law offers no clear provisions for such cases.

Furthermore, the Mass Media Law stipulates what is included into founding documents (Art. 11-1), introduces articles concerning agreement between the founder and the editorial board (Art. 11-2), rights and obligations of the founder (Art. 11-3) and terms of termination (Art. 11-4). The previous edition of the law did not contain such provisions.

Meanwhile, every law in some way related to mass media contains provisions reproduced from other laws, including the Constitution. For instance, the laws on the media (Art. 4), on safeguards for journalists' professional activities (Art. 4), on principles and guarantees of freedom of information (Art. 8), on publishing (Art. 3) and the Constitution (Art. 67) refer to prohibition of censorship, although in fact the existence of these

⁸ Express survey carried out by Asia-Monitor Centre in December 2003.

provisions for 12 years posed no obstacles to the government agency UzLit to engage in censorship. Such reiterations suggest that these articles are repeated within “minor” laws largely for the sake of image-building since there is no confidence even in the Fundamental Law. Paradoxically, Art. 11-3 of the Mass Media Law stipulates that the founder “shall not be entitled to censorship ... unless otherwise provided by the Articles of Incorporation or the Charter”. In other words, censorship has been pushed down to a lower level, to the founders, where it will not be treated as contrary to law.

Article 6 of the Mass Media Law and Article 4 of the Law on Publishing do not allow using the press for calls to illegal acts, in particular, forcible change of the state system, war-mongering, racial intolerance or disclosure of state secrets (this is also referred to in the Criminal Code but in more severe terms as such actions are treated as punishable offences). However, it is the state that is responsible for the protection of state secrets while a journalist having no security clearance cannot know whether given information is a state secret. Thereby the blame for the inability of a person or an agency to keep secrets should not be shifted on the press.

Worthy of note is the issue of a journalist’s legal status. The Mass Media Law (Art. 8) contains a regulation on editorial staff, and the Law on Journalists’ Professional Activities (Art. 3) states that “the journalist is a person employed by a mass information medium or working for it on a contractual basis and engaged in gathering, analysing and distributing information”. However, in Uzbekistan there are also free-lance journalists who are neither employed nor working on a contractual basis for any editorial office. They work on their own behalf and sell their product to interested publications. But this situation is not referred to in the laws.

Article 11 prohibits founding of mass media by legal entities if their charter capital involves more than 30 per cent of foreign capital. The law provides no grounds for this specific limit. Why should it be 30 per cent, why not 20 per cent or 50 per cent, and in what way is foreign investment inferior to domestic investment? What is the essence of such discrimination? To what extent does this treatment conform with the

laws and with government regulations on foreign investment safeguards in Uzbekistan?

There is another apparent contradiction to the Constitution. Corporations and individuals in Uzbekistan have the right to found a mass medium under Art. 11 of the Mass Media Law, but according to Art. 15 registration can be denied on the grounds of a founder being located outside the republic. What is implied here are apparently residents and non-residents but no explicit reference to them is given. At the same time the Constitution in Art. 18 states that all citizens enjoy the same rights and freedoms and are equal before the law without discrimination, in particular irrespective of their location. Members of Parliament seem to have overlooked this stipulation.

CHANGES IN THE MASS MEDIA LICENSING SYSTEM. The Uzbekistan Government by its Resolution No. 418 of 30 September 2003 approved a Regulation on the Procedure for Mass Media Registration. The Uzbek Press and Information Agency (former State Committee for the Press and Publishing) was tasked with making by the end of the year an inventory of mass media founding documents, bringing them in line with the current law and re-registering those media whose founding documents were substantially amended.

The Cabinet established that supplements to printed publications identifiable as mass media are subject to separate registration in a legally established manner.

According to this Regulation, mass information implies printed, audio, audio-visual and other communications and materials intended for an unlimited number of people. Treated as mass media are newspapers, journals, magazines and bulletins and supplements to them, news agencies, television (cable and over-the-air-and-cable) and radio broadcasting, documentary films, **electronic information communication**, as well as government, non-government and other mass periodicals that have a permanent name.

However, it is not explained what is implied by electronic information communication. If it is the Internet, then this would mean mandatory registration of web-sites not only with the Informatization Agency but

also with the Press Agency. Can one's personal e-mail – visual messages to an unlimited number of people (see the definition of mass information) – now be treated as a mass medium? This question remains unanswered but any Uzbek bureaucrat is able relying on this logic to request personal e-mail box owners to obtain registration with a relevant government agency. This is likely to result in many people having their e-mail on foreign portals that cannot be closed by Uzbek authorities. The same is true in the case of sites hosted outside the .uz domain zone.

Incidentally, the Law of the Republic of Uzbekistan on the Mass Media does not mention “electronic information communication” as a mass medium, so this seems to be the Government's “innovation”.

Advertising mass media are defined as publications in which ads account for over 40 per cent of a separate issue and in the case of TV and radio broadcasting, 10 per cent of each broadcast.

The Regulation confirms the right of corporations and individuals to engage in producing (publishing) mass media upon official registration and issuance of a pertinent certificate. In addition, registration fees are payable for:

- periodicals – 25 legally established minimum monthly wages;
- mass media for children, teenagers and disabled persons, and of educational and cultural-educational nature – 5 minimum monthly wages;
- news agencies, radio and television broadcasts, and documentary films – 30 minimum monthly wages;
- advertising mass media – 50 minimum monthly wages;
- other kinds of mass media – 45 minimum monthly wages.

Issuance of certificates accounts for 70 per cent of the amount of registration fees.

Re-registration is carried out as a result of change of the founder, name, language, address, objectives, target reader (viewer, listener) group, frequency, volume, sources of material supplies and funding.

This position makes one wonder: if a newspaper was previously oriented towards business people and entrepreneurs and then decided to become readable by civil servants, housewives and students, is this a

reason for re-registration? Or if it was a weekly with a circulation of 3,000 copies and then began to come out twice a week with a circulation of 5,000, this may also be a reason for re-registration. Many questions arise in connection with material supplies and funding. If a newspaper obtained a grant from international funds to purchase office and other equipment and decided to earn some income from advertising and public relations activities, now it must hasten to the Press Agency and pay 50 per cent of the proceeds as fees. Here “commercial benefits” to registering agencies is obvious as 50 per cent of revenues from the fees go to their account and the rest to the state budget.

And, finally, if within six months from the date of registration certificate issuance the founder or the editorial office failed to publish a single issue (programme) then their certificate turns into just a slip of paper. A newspaper or programme fail for various reasons (poor quality of printing, increase of paper prices, no electricity supply to a TV station, financial audits conducted by the tax office, etc.) but why is it the grounds for cancelling registration? And can it be treated as closing down of a mass communication medium? Please note that closing down (unless by the founders themselves) can be enforced, according to the Decree of President Islam Karimov of 4 July 2002, by a court ruling **only** (the Law still contains a provision for closing down by decision of the registering agency). Or is it a way to force the founders to re-register? In this case the “commercial” interest is absolutely obvious.

LICENSING OF PUBLISHERS. The Regulation on Licensing of Publishing Activities and members of the Cabinet commission of publishers’ licensing were approved by Uzbekistan Government Resolution No. 275 of 11 June 2004.

Licence is not required for government agencies, courts or public prosecutor’s office for publication of official material, collections of statutory acts and other documents. Enterprises, organizations, educational establishments and research institutions that publish material required for their activities and not intended for distribution among the public also may do this without a licence.

Granting or revocation of licenses or their termination are to be submitted for consideration by the commission through its operating body, the Uzbek Press and Information Agency that is known for its conservative approaches and disapproving attitude to independent and free publications (regrettably absent in Uzbekistan). A working group is set up at the agency for consideration, preparation and presentation of material to a commission meeting.

The commission consists of nine members, including a Government vice-premier as chair and the director general of the Uzbekistan Press and Information Agency as deputy chair, as well as three deputy ministers – of justice, finance and economy and three first deputy chairmen of the anti-trust state committee and tax administration, director of the Shark publishing and printing joint-stock company and a Cabinet officer. In other words, overall representation of bureaucracy and not a single representative of non-government or public organizations related to the media. Surprisingly, the commission includes a representative of the Shark company which, according to some experts, is a monopolist in the sphere and would hardly welcome new rivals on the printing market. Moreover, the commission is headed by Alisher Azizkhodayev who is responsible for ideological aspects in the Government and is known for his far from tolerant attitude to mass media taking an independent stand. Small wonder that obtaining a licence in such circumstances is a very difficult task, especially for those seeking freedom of action.

The regulation stipulates that legal entities can apply for a licence to be issued for a term of five years. The term may be reduced at the applicant's request.

Licence terms and conditions include mandatory compliance with laws, technical standards and other requirements in the sphere of publishing, which is absolutely natural and understandable. Licence holders are prohibited from publishing and distributing products that can be used in propaganda of war, change of regime, undermining security and socio-political stability or legal and cultural foundations of society. However, war propaganda may use a peaceful technical reference handbook on Kalashnikov design or a nuclear physics textbook, i.e.

the above, rather amorphous definition can be applied by bureaucrats as they please.

At the same time, the provision concerning “dissemination of misleading information about Uzbekistan and misrepresentation of its historical, cultural and spiritual values” seems ridiculous. After all, this allows the bureaucrats to ban any publication that offers interpretation of events in any way different from official reports. More than that, this undermines the principle of political pluralism and freedom of thought. In addition, no science-based approach to the study of history and spiritual values can be applied unless it is in line with the so-called independent statehood ideology. For instance, one may well be persecuted for misrepresentation of spiritual values in a feature telling that in the history of feudal society there existed the institute of *bachi* (homosexual relations), self-immolation of women (this is against the Uzbek tradition), domestic violence (revolting slander of family as a “social unit”) and many other things. Tabooed at the moment is the period when Uzbekistan was within the USSR, as well as the life and work of many communist party and Soviet government figures.

Should publication of information provided by an independent non-government entity about the April 2004 events in Tashkent and Bukhara be treated as “undermining civil peace” if it differs from the official perspective? Will a feature reporting corruption in the highest bodies of power and arbitrary behaviour of the punitive agencies be treated as nothing but “undermining security and socio-political stability in the country”? There are many questions which would hardly be addressed by the current government without bias.

The Regulation specifies that licence holders must have an appropriate material and technical base, equipment and other tools and work along the lines specified in the licence. They should ensure reliable security of the premises, equipment and expendables and comply with preventive fire-fighting regulations, sanitary and health protection norms and labour safety rules. A legal entity’s staff should include at least one employee having higher or secondary training in the field and no less than three-year expertise in publishing.

In order to obtain a licence the applicant should submit documents, including information on specific lines of activities and source of financing, availability of a proper material and technical base, payment of application fees, and a state registration certificate. The fee is charged in the amount of five minimum monthly wages⁹ payable to the agency's bank account. In case of the application being rejected the fee is not returned. The state duty for licence issuance is charged in the amount of 10 minimum monthly wages to be payable to the state budget. Publishers specializing in children's and scientific and technical literature, regulatory reference books and products for disabled persons pay 50 per cent of the set amount.

A positive or negative decision should be passed within no more than 30 days from the date of application. A working group examines the documents within 15 days, develops its expert opinion and submits a draft resolution to the commission. The latter examines working group proposals within the remaining 15 days and approves the resolution. The applicant is entitled to appeal against dismissal of licence in a legally established manner.

A licence should be renewed if the licence holder's organizational and legal status or name or location is changed. The fee in this case and also for issuance of duplicate documents is charged in the amount of 2.5 minimum monthly wages. An application for licence extension should be filed no less than two months prior to its expiry.

The Agency has the right to monitor the licence holder's activities, conduct inspections, request and obtain any information it may require. It also compiles inspection certificates, takes measures in case of breaches, initiates licence revocation before the commission and transfers "licence infringement cases" to law enforcement bodies. Given the ideological thrust of such inspections all those found "guilty" will not escape punishment. A licence may be suspended, terminated or revoked under Articles 22, 23 and 24 of the Law on Licensing of Certain Activities. If in the course of court proceedings such a decision is found to be ungrounded

⁹ As of 15 June 2004, the minimum monthly wage was set at 5,440 Soms, \$1 = 1,016.98 Soms, since 1 August it was raised to 6,530 Soms, \$1 = 1,022.35 Soms.

then the agency shall be obliged to reimburse damages incurred by the licence holder.

Information set out in the licence register is available to the public but with fee-based (2.5 minimum monthly wages) access, however, it is provided free of charge to the authorities. Such information should be made available within no more than three days.

The government regulation applies to the publishers' legal activities. According to official statistics for 20 June 2004, out of 915 printshops registered in Uzbekistan, 120 belong to ministries, departments and local administrations, 50 to research institutes and establishments of higher learning, and the rest to joint ventures, production facilities, editorial offices, computer firms, etc. The bulk of printshops are in the non-state sector. There are 58 publishing houses of which 13 are located in the regions and all the rest in Tashkent¹⁰.

However, in the absence of legal opposition across the political system, of free press and of independent judicial power, there cannot be any publishers printing anything differing from the current regime's policies. Thereby this provision will not facilitate democratization of society and even less so of the information environment. It will set just another barrier to independent periodicals and mass media.

THE PRESS AGENCY IMPROVING ITS STRUCTURE. The total number of the Uzbek Press and Information Agency (UzAPI) central staff is to be within the limit of 64 officers, including a 51-strong management staff. This is specified in the Cabinet Resolution on Further Improvements in the Activities of the Uzbek Press and Information Agency of 11 June 2004.

The overall personnel ceiling for the UzAPI regional offices is set at 144, of them 113 are the management staff (including 73 working on a cost-accounting basis and 40 budget financed employees).

The Government approved the proposed organizational structure and the UzAPI Regulation, and also accepted proposals from ministries and departments on the establishment of publishing-and-printing creative

¹⁰ According to the Uzbek Press and Information Agency.

houses. The state publishing house of scientific literature, Uzbekiston Millii Entsiklopediyasi, will be joined by the A. Kodirii and the Abu Ali ibn Sino Publishing Houses, and the Agency will also be in charge of the Society for the Blind Printing House. The structure of the Mass Media Monitoring and Licensing Centre with a staff of 18 persons was approved.

According to the Regulation, UzAPI is an agency of state administration authorized to address the tasks of formulation and implementation of state policies in the sphere of mass information, information exchange, the press, publishing, printing and distribution of periodicals. While logistics and salaries are provided to the Agency from the deductions by subordinate organizations, the Monitoring Centre is financed out of the state budget.

UzAPI is responsible for monitoring the observance of mass media's constitutional right to independent activities, as well as of relevant laws, and guarantees of freedom of speech and the press. The Agency is to promote the development of mass media, publishing and printing for the maximum satisfaction of the public's requirements for information, raising the educational, moral and cultural level of the population, above all the young generation, in the spirit of national independence.

However, the Constitution of Uzbekistan bans any ideology being adopted as the ideology of the state. But nothing is said about the place of the national independence idea within the Constitution framework. Does the government resolution provide any legal and political definition of this "idea"? Certainly not, but this does not bother the bureaucrats.

The tasks include in particular pursuance of the state policy in the press, monitoring of mass media's compliance with current laws, safeguarding rights and interests of individuals and corporations in the sphere of production, distribution and use of information. The Government authorized UzAPI to grant licences and to perform registration, standardization and certification of the above activities, to create equal conditions for information market participants and ensure modernization of the industry.

The ability of the Agency to secure citizens' right of access to information seems doubtful. In particular, the Internet being beyond control

of UzAPI, secret services of Uzbekistan find no problem in inhibiting some web-sites. It is well known that restrictions can be imposed on distribution, obtaining and use of information only by a court ruling. But no national court has ever found a portal in the World Wide Web to be in conflict with law which implies that legal grounds for such restrictions do not exist.

Meanwhile, the Government forbids the Agency to engage in censorship and editing, as well as unjustified interference into the activities of mass media “in any other form”. At the same time it is entitled to issue orders that are binding on corporations and individuals, governmental authorities and economic agents. It is sometimes difficult to distinguish between “what can” and “what cannot be done” as the concepts themselves are vague enough. This will certainly lead to abuses and pressurizing of disobedient mass media.

The UzAPI director general ranks as a minister. A panel is formed within the Agency consisting of 7 members to be approved by the Government. The Agency thereby retains its ministerial status while the public has no impact on the information environment.

THE AUTHORS MAY EXPECT THEIR RIGHTS TO BE PROTECTED. The Regulation on the Uzbek Republican Copyright Agency (UZAAP) was approved by the Government Resolution on Improvements in the Activities of the Uzbek Republican Copyright Agency of 16 June 2004.

The document was intended to improve the system of government authorities and provide copyright protection. The Agency is a state administration body specially authorized to address tasks in the sphere of copyright and allied rights protection. Its logistics support and salaries are financed out of fees received for collecting funds for creative unions and from other sources.

The Agency is in charge of unified state policies in the sphere of copyright and allied rights, implementation and protection of the authors’ property rights, successors and other copyright holders. It also should register works of science, literature and art, as well as authors of these works, and keep records of legal entities and individuals using the objects

of copyright and allied rights within the republic. UzAAP is also responsible for representing their lawful interests abroad and for international cooperation in the sphere.

For this purpose the Agency examines foreign laws and regulations and develops proposals to the government concerning improvement of copyright and neighbouring rights, works to prevent infringement on and to restore such rights, ensures fulfilment of Uzbekistan's obligations under international agreements, etc.

In performing its duties UzAAP requests and obtains necessary information, documents and material from government agencies, public associations, enterprises and officials, and work together with law enforcement agencies to prevent copyright infringement. The Agency is entitled to represent copyright holders' interests in court, to issue expert opinions, act as an intermediary in making of contracts between authors and copyright object users. Statutory acts passed by it are binding on all government authorities and economic agents, whatever their form of ownership, and on individuals.

The Government has also approved the organizational structure of UzAAP with a staff of 17 employees, including 10-strong managerial personnel, 4 of operational and 3 of supporting personnel. The director general of the Agency ranks as a first deputy minister.

According to government experts' estimates, the overall volume of infringing video and audio-products in Uzbekistan reaches 5 to 7 billion Soms a year which includes both locally made and imported produce¹¹. Licensed software products account for no more than 10 per cent of the official market turnover. The national mass media, especially yellow press, use in most cases features reproduced from the Internet or other information media without permission of their authors, copyright holders or their successors.

THE MINISTRY OF CULTURE RETAINS THE RIGHT OF CENSORING IMPORTED AND EXPORTED PUBLICATIONS. On 9 June 2004, the Uzbekistan Cabinet of Ministers issued a Resolution

¹¹ Unofficial information.

on Organization of Activities of the Ministry of Culture of the Republic of Uzbekistan, according to which the ministry is in charge of “pursuing state policies in the sphere of culture, revival and further development on the basis of national independence ideas of ages-old spiritual values, traditions and customs, and rich cultural heritage of the people”.

Nonetheless, there is still no precise definition of the “national independence idea” except for philosophisms of some politicians and the current regime’s ideologists. Moreover, the Constitution of Uzbekistan prohibits any ideology/idea being proclaimed as the state ideology. But this does not bother the Government as it defines as one of its basic tasks to “conduct cultural education work with the population on the basis of the idea of national independence, cultural, spiritual and moral traditions of the people of Uzbekistan...”.

It is an open secret that the late 1990s and early 2000s witnessed a purge of literature “inconsistent” with that idea. As a result books published prior to 1993 were destroyed which included masterpieces of world literature, such as books by Alexander Pushkin, Nikolai Nosov, Prosper Mérimée, Honoré de Balzac, Alexei Tolstoy, Maxim Gorky, Charles Perrault and many others. How can such national independence idea be described as progressive? Is not it reminiscent of the national-socialist idea entertained in Germany in the early 1930s? They also began with “clearing” people through burning books and propagating the exclusive significance of national independence...

The responsibilities of the Ministry of Culture include “creation in museums of displays consonant with national independence ideas and faithfully representing the Uzbek people’s rich heritage”. Indeed, the museums tell nothing about the bloody acts of Emir Timur, his aggressive campaigns. Nor that Uzbekistan was established as a republic exactly 80 years ago thanks to the now hateful Bolsheviks. Nothing is said about the positive influence of Russia on the economy and social sphere in Turkestan because it was an imperial policy.

What is most important, the Ministry of Culture retains the right to take decisions on the import and export of cultural values (printed matter included) and their expert evaluation. Such evaluation made by art

critics, rather than political analysts, historians or economists, found the English-and-Russian-language Swedish journal *Central Asia and Caucasus* that is kept in bonded storage as inconsistent with the above national independence idea. In particular, on 17 September a representative of the journal was given Report of the Expert Evaluation Office No. 101 of 14 September 2001 reading: “Pursuant to Article 15 of the Republic of Uzbekistan Law on the Import and Export of Cultural Values, the Journal of Social and Political Studies *Central Asia and Caucasus*, No. 4 (16), 2001, in Russian and the Journal of Social and Political Studies *Central Asia and Caucasus*, No. 4 (10), 2001, in English shall not be imported into the Republic of Uzbekistan”. As G.I. Akbarova, head, expert evaluation department; D.F. Umarbekov, chief expert; M.Kh. Tajidinov, head, inspection department; F.B. Ruzikulov and N. Rakhimov, chief inspectors, stated, “the facts are obviously distorted, are treated by the authors as they deem fit, misrepresenting actual realities, and are not promoting the interethnic and interdenominational concord reached in the Republic of Uzbekistan” (quoted from the document).

In conditions of political pluralism such conception as “treated by the authors as they deem fit” simply cannot exist because any researcher has the right to set forth one’s version (hypothesis or opinion) in any form the author deems fit. But art critics lacking relevant training conducted expert evaluation of a political journal and banned it for Uzbekistan.

Currently many Russian, Kazakhstan and Kyrgyz publications are banned for import to Uzbekistan. They also fail customs control for ideological reasons. A volume of Vladimir Lenin was withdrawn as “illegal press” from an off-loaded passenger at the Tashkent airport. Customs officers warned that books by Karl Marx and Friedrich Engels are banned for import, however, the Government has no objections to the books by Nietzsche whose ideas guided Adolf Hitler; at any rate, the customs officer did not find this author on the prohibition list.

The Ministry of Culture “shall run the state register of objects of cultural heritage, make arrangements for and conduct historical and cultural expert evaluation thereof”, as well as “shall determine classification of cultural values”. According to the register, books and the encyclopedia

published before 1961 are the property of Uzbekistan whatever their form of ownership. As a result, people going abroad can take with them, say, a book published in 1932 only by permission from the Ministry of Culture and only on the “temporary exportation” terms. Those who are leaving the country for permanent residence abroad cannot take with them any books inherited or bought by them. But the Ministry does not seem to care much about the fact that this is against the property inviolability principle.

As a result, people in despair burn or junk the “cultural heritage” of the Uzbek people which, however, hardly troubles the ministry with its dog-in-the-manger attitude.

The cultural ministry’s experts determine the “value” of paintings, films, video- and audio-products in terms of the national independence idea. Information media (tape cassettes, CDs and videocassettes) can be taken out of the country if they do not contain any information representing the republic in an unfavourable light as this would be inconsistent with the national independence idea. Reports on corruption and poverty widespread in the country, the drying-up Aral Sea or biological weapons laboratory on the Svobodny Isle – all this falls under “export bans”.

To sum up, the Ministry of Culture can be safely described as an agency responsible for political culture and punitive operations against the dissenters.

Part 3. INFORMATION MARKET EXPANDING IN UZBEKISTAN

EVENTS. In October 2003 a two-day First Specialized State Exhibition, Info-Business 2003, representing information producers and distributors was held in Tashkent. It was organized by the Manufacturers and Entrepreneurs Chamber of Uzbekistan (PTPU), Zakovat, a public foundation for information support to business, and the state commercial and exhibition centre UzExpoCentre.

The exhibition was held by decision of the Co-ordinating Council for the Promotion of Small Business and Private Enterprise, an agency under the Uzbek Government responsible for the study and resolution of the private sector problems. As the editor-in-chief of the *Tax and Cus-*

toms News newspaper Mikhail Perper said at the opening ceremony, its main objective was to let business people have a first-hand impression of the role of information in business capacity building, to help them establish partnership contacts with top professionals operating on the information market, and enhance their competitiveness in the domestic marketplace.

“This specialized exhibition is fundamentally different from all exhibitions previously held in Uzbekistan as even at the preparatory stage a large-scale advertising campaign was launched aimed at introducing its participants beforehand and thereby to stir up potential partners’ interest”, said Erkin Urinov, first deputy chairman of PTPU. “Within the framework of the exhibition itself every participant will be able to arrange a mini-presentation of his products and services or a special workshop.”

More than 60 Uzbek firms distributing information required by business and representing small and medium businesses, as well as international sponsors of information projects took part in Info-Business 2003, among them producers of legal-information, reference and address databases, accounting programmes, information and advertising catalogues, and telephone directories. Consulting, business advice and legal support firms also displayed their products. In addition, advertising agencies, banks and insurance companies, distributors of software, computers, duplicators and other information processing equipment, and Internet providers took part in the exhibition.

Worthy of note are some of them, such as newspapers: *Private Property – Mening mulkim*, *Uzbekistan Business Partner – Hamkor*, *Banking Bulletin – Bank akhborotnomasi*, and *Orient Business Herald*, journals and magazines: *Market*, *Money*, *Credit – Bozor*, *pul va kredit*, *Business Courier*, and advertising and information directory *Golden Pages*; press distributors Alexander Market, BTL, and Master-Press; information product companies, including Nuron among others.

Within the exhibition framework information and consultation seminars were held on taxation policies for 2004, problems and prospects of foreign economic relations liberalization, tax management planning, business plan development, and borrowings. Particular attention was

given to the transition to a new chart of accounts, exercise of audited economic agent's rights and responsibilities, protection of entrepreneurs' rights, and effective promotional campaigns.

From 7 to 10 September 2004, four-day exhibitions, O'ZBEK in PRINT (printing, publishing and advertising) and O'ZUPACK-2004 (wrappings, packages and labels) were held at the UzExpoCentre commercial and exhibition centre in Tashkent.

These were organized by an Uzbek-Russian joint venture, PolRos, and the SurPress firm with official support provided by the Uzbek agencies for the press and information and for foreign economic relations, and the Russian embassy. More than 30 Uzbek and 20 foreign companies displayed equipment, materials and technology in basic sectors of publishing and printing. Put on display were the latest printing machines, binding and label-making equipment, copiers, office equipment and packing units. Also represented at the exhibitions were a wide range of screen printing, flexographic and offset printing machines, design, text and illustration processing facilities.

The participants in the exhibition included the Uzbek state production association Davlat Belgisi, Russian private companies, Itrako and Vneshmaltigraf, the British Yam International, to name but a few.

At the same time, as was noted by an Uzbek publishing house employee attending the exhibitions, with all the equipment displayed the quality of printing products is still inferior to similar western products, Russian in particular. "The books printed there and here differ like chalk from cheese", he said. Hopefully, such events would help improve the quality of Uzbek printed products .

SOCIOLOGICAL SURVEYS. Uzbek businessmen name mass media as the principal source of information on latest changes in Uzbek laws: in 2002 this was indicated by 37 per cent of the respondents, while in 2001 the figure was 38 per cent.

This result was obtained by International Financial Corporation experts who conducted a survey among 2,000 private companies in Uzbekistan and issued a report, Business Environment in the Eyes of Small and Medium Business.

It should be noted that this is a good result as only 12 per cent of the respondents named the authorities as a source of information. Professional associations were named by 9 per cent (5 per cent in 2001), law firms by 6 per cent (7 per cent), and the Law electronic system by 3 per cent (6 per cent). At the same time, 33 per cent believe that their friends and colleagues are also a reliable source of information, while according to IFC experts, “in many cases these sources may offer just a general idea of a document’s main point”.

As the media in Uzbekistan do not always cover actual legal problems business people, understandably, betray poor legal literacy. In 2003, 76 per cent of entrepreneurs spoke of their fragmentary knowledge of laws regulating their activities. This is a particularly serious problem with small and microbusinesses.

The Internet is also a source of necessary information although it is used by a mere 5 per cent of small and medium business respondents. In 2002 World Wide Web users included 35 per cent that were looking for information on local market partners (against 10 per cent in 2001) and 35 per cent using e-mail for business correspondence (7 per cent). At the same time, the search for goods and services offered on the local market grew from 15 per cent to 35 per cent; for information on laws and regulations increased from 10 per cent up to 28 per cent; for market analysis, from 10 per cent to 24 per cent; and for news, from 15 per cent to 21 per cent. As regards Internet search for information on goods and services offered on foreign markets, here an upward trend is also observed: from 10 per cent to 20 per cent; from 9 per cent to 20 per cent in search for partners; and from 7 per cent up to 17 per cent for external market analysis.

PRESS ECONOMICS. In 2003, 111 facilities within the Press and Information Agency system were privatized, which accounts for 7.3 per cent of the overall volume of denationalization effected by ministries and departments¹².

From January to November 2003, the printing industry of Uzbekistan earned a profit of 2,983 billion Soms, or 35.4 per cent of the 2002 level.

¹² *Socio-Economic Development Results in the Republic of Uzbekistan for 2003*, Tashkent, State Statistics Committee of the Republic of Uzbekistan, p. 29.

It should be noted that in 2002 the industry's profit was 139.9 per cent up on 2001. Overdue accounts receivable of the printing industry amounted to 562.5 million Soms, including 561.5 million due from customers and buyers and 1.0 million in advance payments. Overdue accounts payable made 591.3 million Soms, with almost 100 per cent debt payable to suppliers.

INVESTMENT. According to the investment programme for 2004 approved by the Uzbekistan Government, capital investment earmarks for mass media monitoring equipment were approved by the Uzbekistan Government in the amount of 500 million Soms. The equipment will be supplied to the Press and Information Agency and used for state management in the sphere of mass media activities.

In addition, government financing will be provided for the reconstruction and fitting out of TV and radio broadcast facilities in the amount of 500 million Soms to improve the coverage and quality of TV and radio broadcasting across the republic. Another 500 million Soms, earmarked for the reconstruction of the Tashkent TV tower, special accident recovery management and Information Technologies Centre, will be provided to the Uzbek Communications and Information Agency.

BFE AG, Bayerische Hipo and Vereins Bank (Germany) provided US\$122.4 million for technical upgrading of the Uzbekistan TV and Radio Company system. According to experts, the balance of accounts as of 1 January 2004 will be US\$45.44 million with US\$2.9 million to be used during 2004.

The Japanese International Cooperation Bank has earlier provided US\$89.3 million for the development of Uzbekistan's telecom network of which US\$46.8 million is planned to be used in 2004. The US corporation Belam Inc. and the Bank of New York provided US\$5.2 million for the upgrading and development of the National Data Communications Network, of which US\$1.6 million will be used in the next year. This will improve the Internet and e-mail use system. The German KvB Bank provided US\$6.3 financing for the delivery of equipment, assembly, setup and putting in operation of a radio-frequency spectrum technical control system. According to experts, this would facilitate regulation of Uzbek

electronic media operation and relay broadcasts from other countries.

In the sphere of publishing, loans and investment are also provided by the Government and by international donors. In particular, the Ministry of Public Education received US\$19.20 million from the Asian Bank of Development for the improvement of the textbook and educational literature publishing system at the first stage and US\$20 million at the second stage.

In 2003 German-made Starline-30 four-colour offset machines with a capacity of 20,000 to 30,000 copies of books, newspapers or magazines per hour were installed at the Tashkent printing combine. A KBA Rapida machine printing high-quality maps and atlases for schools, organizations and institutions was put into operation at the Cartography production association.

INTERNET. The number of operators and providers in Uzbekistan has grown by 137.8 per cent since 2002 to reach 187. During the same period the number of Internet users almost doubled, or grew by more than 500,000, with growth rates being 219 per cent in the capital city, 290 per cent in Samarkand Region, and 243 per cent in Kashkadarya. The number of licence holders in data transmission network design, construction, operation and rendering of services was reported to increase 2.2 times in 2003, and by 1 January 2004 reached 278, with 183 of them rendering Internet services via multi-access points. The bulk of licence holders are concentrated in Tashkent (76.3 per cent) and major regional centres.

Direct access to international information networks is provided by 10 data transmission operators. International channel bandwidth increased 1.8 times at an access speed of 32.8 Mbit/sec.

The Republic of Uzbekistan government portal “gov.uz” was launched as the first stage in the establishment of interaction between the authorities and citizens through the Internet, i.e. a step towards the creation of the so-called electronic government. Connected to the Internet are 468 government agencies, or 163.8 per cent more than in 2002. The process of national information resources formation was going on; for instance, by 1 January 2004, 2,563 web-sites were registered in the “.uz” domain (as against 576 in 2002).

On 9 August 2004 a regulation on the procedure for Internet access provision at public Internet access facilities, drawn up by the Uzbek Communications and Information Agency (UzASI), came into force.

The document regulates relationships between Internet services providers and users, formulates requirements to public access facilities and the procedure for Internet services provision. A World Wide Web access provider should obtain official registration and formalize authorizing documents. Telecommunication equipment should be supplied with a conformity certificate.

In provision of such services gathering, collecting, processing and distribution of any information infringing on personal privacy, secrecy of correspondence or other messages from an individual without permission is not allowed, as well as of information distribution of which is prohibited by current legislation. The Regulation establishes the rights and obligations of Internet services providers and users. However, the document says nothing about web-site censorship which has been practised in Uzbekistan for many years.

Part 4. MONITORING OF MALPRACTICES IN THE SPHERE OF MASS COMMUNICATION

Freedom of speech monitoring in Uzbekistan, as well as control over the media activities is exercised by several organizations, both government agencies (the Press and Information Agency and the National Security Service) and non-government organizations including the Freedom of Speech Committee of Inera Safargaliyeva. The latter's reports are available on its regularly updated web-site: www.freeuz.org.

Surveys are also conducted by Internews, an international organization, experts with their findings published in the Internet on a monthly basis (see Table No. 3). Some 60 violations are recorded every month on the average.

Table No. 3
**Freedom of speech violation monitoring in Uzbekistan conducted
 by the Internews NGO for 2004¹³**

Month	Total violations	Actual situation of mass media in the political climate context	Information on direct violations of mass media and journalists' rights	Conflicts and charges brought against mass media and journalists
March	51	14	34	3
April	74	20	47	7
May	45	10	31	4
July	66	23	37	6

Table No. 4 shows that Uzbek journalists are above all exposed to the media being rejecting information in fear of repressions in business, private life, place of residence, etc. This reason is followed by “unwillingness to stir up public opinion”, i.e. it is feared that certain information can be harmful to society, above all, to the authorities which were unable or reluctant to make any transformations. A majority of the respondents also said that sometimes they were simply denied information without explanation of reasons.

¹³ Based on reports sent by Internews experts by e-mail.

Table No. 4

Reasons for denial of information (percentage of the total number of respondents)

Explanation	Uzbekistan ¹⁴		Russia ¹⁵
	2003	2004	1997
This is classified information	20	24	49.3
The chief forbids to disclose information	40	52	23.2
Lack of time, intention or means to search for information	60	41	17.4
Requested information in not available	52	39	13.0
No explanation at all	71	77	12.7
Information is incomplete	56	28	8.5
Likelihood of misrepresentation or misuse of information	40	36	8.5
Reluctance to deal with a given mass medium	10	22	8.3
Unwillingness to stir up public opinion	62	70	5.8
Fear of having personal problems	80	79	4.3
A journalist's refusal to pay for information	8	15	2.9

However, a prevalent trend in Russia was denial of information because it is classified or because the chief forbids dealing with journalists.

Speaking of censorship, it is self-censorship that is a widespread practice in Uzbekistan which implies that journalists themselves would not publish the facts that may have negative implications for them, their employer, family, political party or any group, society or the state.

¹⁴ The respondents – one hundred mass media people – could select more than one answer.

¹⁵ *A Journalist in Search of Information. Glasnost Protection Foundation/Rights of the Press Protection Centre, Human Rights, Moscow, 1997, p. 7.*

On the other hand, the authorities or a group of persons may apply special methods of encouraging mass media self-censorship. This is, for instance, the carrot-and-stick approach where the “carrots” offered to journalists are as follows:

- promotion, higher royalties or salary;
- trips abroad, special status;
- personal benefits (paid holiday trip, air ticket, service vehicle) and awards (prizes, medals and orders, diplomas, etc.);
- accreditation and access to exclusive events.

Viewed as “sticks” may be:

- denial of accreditation or other barriers in Uzbekistan;
- various technical obstacles to mass media operations (higher rates and prices for printing, paper, lease of premises, electricity, difficulties with distribution of publications, etc.);
- threatening with inspections intended to reveal even minor violations by the prosecutor’s office, tax inspectorate, sanitary and epidemiological station, electricity supply and fire control services, and others;
- information blockade, intimidation of partners.

It should be noted that “sticks” and “carrots” could be cited infinitely each of them working in a certain situation. This implies not just the economic situation of the publisher but also the mentality of its employees, of the local population, political impact of various groups and position of the authorities.

INTERNET remains a sphere where censorship is most graphically manifested. Ever more technically sophisticated methods are applied by secret services in an attempt to get Internet under total control. It is not just some features on web-sites or the sites themselves being cut off. If you try Kazakhstan’s Navigator or Republic retrieval system, then “Forbidden” will appear. In some cases your computer would say it cannot “find” the server you are looking for, in others it would make some odd errors. Then some information retrieval system will appear but it won’t work if you try to reach any Uzbek opposition sites.

Some features are cut off in such a way that a home page would appear instead. Some time ago the UzSaiNet provider managed to hide

certain features on a popular CentreAsia site: they could not be found in the News but would “unexpectedly” appear if you chose Discussion. The programmers were forced to use this kind of tricks. As information hardly can be continuously and completely withheld, secret services opted for simply blocking data, but in a very sophisticated and effective manner: now they are “withholding” time.

As I compared CentreAsia information I got through the provider ARS-Inform and from a special, block evading site (www.proxeone.com), I found there was a twelve hour difference in time!!! For instance, whereas the unblocked site on 28 May 2004 showed the following time and information:

14:56 – Kazakhstan’s officials are embarrassed. What should they do about Russians having arrived from Uzbekistan as oralmans.

The filtered site showed at that very moment, with a huge time gap:

02:17 – Monarch’s Friend Nursultan. Did Nazarbayev taste Prince Felipe’s wedding-cake?

During the time gap secret service censors are able to read and analyse information and give instructions on blocking a certain feature.

VIOLATIONS BY PERIODICALS. Some national periodicals based in Tashkent reject notices and advertisements of private persons if they are not citizens of Uzbekistan or do not have a capital-city registration certificate¹⁶.

For instance, a staff member of the *Private Sector* supplement to the *PressTIZh* weekly who is responsible for accepting notices for publication referred to a Regulation on Placement of Advertisements approved by Resolution No. 4 of the State Committee for Anti-Trust Policies and Encouragement of Competition dated 26 March 2001. Article 13 of the document reads: “In case of publication of personal notices by private persons, agreements may be signed with them in various forms (order-form, application, etc.) with mandatory statement of necessary information about the advertiser (passport details)”.

¹⁶ A registration certificate is a given locality residence permit issued by local authorities to a citizen or non-resident. It has been preserved since Soviet times as a powerful disincentive for democratic transformations, a source of discrimination and corruption.

When it was pointed out to her that the regulation says nothing about accepting advertisements from citizens of Kazakhstan, Kyrgyzstan or other states being prohibited and not a word about a registration certificate, she still insisted that this was implied by Article 13. Therefore she says no to any person having a temporary registration. She seemed to be unaware of being in breach of Article 23 of the Constitution reading: “Foreign citizens and stateless persons on the territory of Uzbekistan enjoy rights and freedoms in accordance with international legal standards”.

She also confirmed that a request may be denied if a non-resident does not have an Uzbek registration certificate. In doing this the editorial office violates Article 18 of the Constitution saying: “All citizens of the Republic of Uzbekistan enjoy equal rights and freedoms. They are equal before the law without distinction as to gender, race, nationality, language, religion, social origins, convictions, personal or social status”.

One must admit that this is not the case in all periodicals. Interviews with *Tasvir*, *EKO* and *Biznes-Vestnik Vostoka* weeklies showed that what is needed are passport details and availability of a local registration certificate does not matter. According to some journalists, ads are reviewed by punitive and repressive agencies and if an advertiser is not a resident of Tashkent and even Uzbekistan such periodicals are severely punished. However, I could not find any documents regulating punishment for such activities either in current laws or official documents available, or in the Criminal Code or any other code. It is not clear, however, why mass media are treated as a supervising body? What are elements of crime in an advertisement being published by a foreigner?

The question is still open: is it periodicals’ initiative or a clumsy encouragement by official censors?

Incidentally, a journalist Emilia Li has been for many months hounded by the punitive and repressive agencies for the lack of registration in the capital. They do not let her live and work in Tashkent referring to anti-constitutional by-laws and departmental directives.

Other offences committed by periodicals. Under Article 21 of the Republic of Uzbekistan Mass Media Law, every issue of a periodical should carry certain data, including the name and address of the editorial

office, names of the founders, full name of the editor, a given periodical's registration number and date of issue, and specially for newspapers, also the time of passing for the press, distribution index, circulation, name and address of the printer.

However, this legal requirement is not met by all periodicals. Take, for instance, a newspaper published in Tashkent. A republican Tajik-language *Ovozi tochik*, governmental Russian-language Pravda Vostoka, departmental *Chastnaya sobstvennost'* or private EKO do not show the circulation, a party paper *Golos Uzbekistana* or specialized *Bankovskie vedomosti* carry no index. In some issues the time of release is omitted¹⁷.

Perhaps this is due to the editors' poor memory, but as such things are regularly observed, independent experts offer a somewhat different explanation. They believe that if advertisers find out that a newspaper's circulation is 2,500 to 6,000 copies they would no longer place their ads in a periodical because circulation as low as that would bring them no benefit, hence the editors' "lapses of memory". However, this may lay a mine that would explode in case of a tax audit, as tax officers may reasonably suspect that in real fact the circulation is bigger and that unreported copies are sold unofficially to evade taxes.

According to experts, the distribution index is not shown because sometimes newspapers are distributed via individuals rather than corporate distributors. For instance, on Thursdays and Fridays, a busy wholesale market for freshly printed newspapers can be seen near the Shark printing house, with individual distributors paying in cash. While corporate distributors keep records of volumes purchased and distributed, individual distributors do not keep proper accounts and may have "skim money".

At one time some periodicals tried to hold illegal printing and sale in check. This involved popular Russian newspapers printed and distributed in Uzbekistan and some Uzbek papers. The point is that the demand for a certain printed mass medium has its natural limit and it goes up only together with the public's purchasing power. Illegal copies are sold first,

¹⁷ According to monitoring conducted in January 2004.

while officially printed ones are returned to the producer as overissue (paradoxically, some editors even had to buy back their own newspapers from distributors at a higher price than these had been earlier sold to them). The editorial office suffers losses and the shadow economy is flourishing.

The fight against this practice has subsided of late, but it is not known for certain whether the illegal printing mechanism has been actually stopped.

Part 5. FREEDOM OF INFORMATION OR INFORMATION SECURITY?

The information product is frequently compared to a blast mine with a strong “undermining capacity” for society. What does this mean?

In recent years in Central Asia, especially after terrorist attacks of 11 September, an idea of information security was launched along with all kind of measures to protect information against its discretionary and unauthorized use. This was explained by a number of reasons: harmful extraneous ideological influence, young people’s moral deterioration and departure from traditions and cultural values, as well as espionage and many other things within bureaucratic mental ability. Of course, there is an element of truth, but to my mind the threat is strongly exaggerated, for the information environment both inside the republic and across the region at large is really weak. How can information move freely (in the form of journalistic products, private opinions, news, documents, etc.) if it comes up against many barriers, in particular, all manner of censorship? In Kazakhstan and Kyrgyzstan which used to be viewed as “islets of democracy” today journalists are persecuted and opposition publications closed down, while in Turkmenistan mass media are under total control of one person, and in Tajikistan the press is to be cautious not to cause political friction. In Uzbekistan journalists are either denied accreditation, or put under departmental censorship, or denied free access to information.

“In order to write something on an issue of concern to the public I need information”, says a journalist from one of Uzbekistan’s state papers. “It is available to the authorities but they, out of fear that they may disclose

some state ‘secret’, prefer to ignore journalists. And if they give information you may be sure to find nothing of interest”. For instance, in December 2002 an incident occurred in Ashgabad when Turkmen secret services smashed into the Uzbekistan Embassy allegedly in search of terrorists. This was certainly a flagrant violation of international law. However, Uzbek press reported the incident by publishing Foreign Ministry official note of protest only. No serious discussion or comments followed either from experts and journalists or the authorities which otherwise should have disclosed certain foreign policy problems. Naturally, neither the press nor the TV reported on the Uzbek-Turkmen relations nor did they provide any intelligible explanation of reasons behind such aggravation of relations between the two “fraternal” states.

Article 7 of the Law on Freedom of Information Principles and Safeguards reads: “Mass media jointly with the source and author of information shall be responsible for the authenticity of information according to a legally established procedure”. But how can speculation or an assumption be authentic? How can one prove that life exists on Mars? One can only presume that it does. Then the author falls under a pertinent penal clause, and this is the instrument applied by the fighters for information security.

In addition to the access to information problem, another critical issue in Uzbekistan is universal information security applied by the authorities allegedly to defend interests (military, political, economic, cultural and other) of the country. As a result most documents circulating within the bureaucratic system have “For Official Use Only” grading, but even the absence of this stamp does not imply that the document is open. Press services established at various ministries and departments sometimes avoid mass media people apparently because they are not sure how much of this or that information they can give. Of course, one can always use a press-release but they provide almost no information apart from high-sounding words of no interest to journalists. However, these press-releases are frequently reproduced without any serious editing.

Incompetence in information security matters leads to extremities which, however, are common practice in an authoritarian state. Cen-

sorship, an instrument secretly launched allegedly for the purpose of protecting state secrets, in real fact is a filter for sifting “superfluous” information. And the authorities can label as “superfluous” any information which they do not like or which would discredit them before the public. Therefore one would rarely find in the Uzbek press features about corruption, shadow economy, poverty or arbitrary rule of the bureaucrats because this implies that the authorities are either unable or unwilling to put an end to such practices. They prefer to keep silent and leave the public in the dark – that’s the point of censorship.

Information security is often confused with hostile forces’ opposition to formation of the national ideology for which our authorities care so much. However, the Constitution of the Republic of Uzbekistan expressly states that no ideas can be established as ideology of the state. The national ideology advocates nonetheless suggest that extraneous information impact should be countered through controlled mass media which should be made responsible, among other things, for the formation of such public consciousness and opinion that would satisfy the state. “Globalization is washing out our moral and ethical values. The population feels ever less esteem for the government and is looking for another authority worthy of respect”, they say. “Hence the need to put technical and other barriers to such information onslaught”. It is clear that the struggle against “alien ideology” implies the struggle against dissent, a policy of inculcating “respect” for bureaucracy, for those who represent and symbolize the regime, and to counter opposition as something inconsistent with “national traditions and mentality”. Emir Timur, whose “exploits” are well known in the countries he vanquished, is presented as an example of moral policies, and patriarchal conservative standards as moral criteria. Those who wish to look at these things from another perspective are enemies of “national ideology” and thereby undermine information security and create confusion in people’s minds.

Speaking of information security one point is to be emphasized: it exists in an environment which itself is a closed society in terms of information. On this basis the authorities can treat as dangerous anything that is in fact a person’s natural right to the freedom of speech, of thought,

opinion, ideology, of consciousness and religion. Apparently this was the reason why in November 2002 the Uzbekistan foreign minister warned the journalists against “erroneous” description of the state’s foreign policy moves. This is censorship of its kind. Its “noble” aim is to prevent damage to the state’s image and not to further enhance the already existing tensions in Uzbekistan’s relations with “fraternal” countries created by bureaucrats over a long period of “friendship”. In other words, the aim is not to reveal mistakes made by the Government itself because our Government is wise and far-sighted and infallible. True, some people may commit a mistake but these are particular and rare cases. Most serious mistakes are made by journalists disclosing our faults and shortcomings to the enemy and “washing dirty linen in public”. So, as soon as information security is translated into specific actions, the press is deprived of inherent civil rights.

In particular, bans on certain mass media activities are implied here. For instance, the Khoresm TV station LC was closed, as well as Europe-Plus and My City radio stations, the Sesame radio station was silent for quite a long time, the Grand radio station got into difficulties right after a well-known journalist Alo Khodjayev began to work for it (in summer 2004 he was forced to leave the job). This is also done through denial of accreditation to foreign journalists whose writings are inconsistent with the “information security” principles. This also happened to me when the Foreign Ministry denied my accreditation on 3 December 2002.

Regrettably, information security is understood by the authorities as mass media cooperation with them in order to avoid publicity concerning negative facts and trends in society. Their attempts to achieve cemeterial stability as the only way of regulating all social processes lead to pressurizing those who are not willing to live in a “cemetery”. Those who work in collaboration with secret services and squeals on their colleagues are a symbol of information security. Everybody else is the enemy and should be defamed so that they no longer would represent a danger to the authorities...

II.

**LIBEL AND INSULT LAWS AS A CHALLENGE TO
FREEDOM OF THE MEDIA**

Peter Noorlander

LIBEL AND INSULT – A THORNY ISSUE FOR NEW
DEMOCRACIES

Nadezhda Stepanova

LIBEL LAWS IN UZBEKISTAN: LEGAL NORMS AND THEIR
PRACTICAL IMPLEMENTATION

Junaid Ibodov

LIBEL AND DEFAMATION LAWS:
THE CASE OF TAJIKISTAN'S NEWS MEDIA

Shamaral Maichiev

UNSUCCESSFUL ATTEMPTS AT HUMANIZING LIBEL
LEGISLATION IN KYRGYZSTAN

Rozlana Taukina

ON SUPPORT FOR THE INITIATIVE TO REVOKE THE
LAW ON LIBEL, AS A FACTOR IN REPRISALS AGAINST
JOURNALISTS IN KAZAKHSTAN

LIBEL AND INSULT – A THORNY ISSUE FOR NEW DEMOCRACIES

*Peter Noorlander*¹

Free expression plays a vital role in the democratic process. Without a free flow of information and ideas, the public cannot formulate opinions about its government, elected officials and other matters of public interest. The media plays a particularly important role, providing the public with information and acting as a watchdog, exposing corruption and inspiring political debate. As the US Supreme Court has noted, “speech concerning public affairs is more than self-expression; it is the essence of self-government.”²

In many countries, defamation law³ represents one of the most serious threats to the open discussion which underpins democracy. While most people agree defamation laws serve a legitimate purpose, political bodies and public figures often abuse these laws to silence their critics. In some cases, governments effectively muzzle debate and critical voices by invoking harsh defamation laws to fine or imprison members of the opposition and journalists. In others, the technicalities of litigation and the cost of defending defamation actions serve to chill free discussion on matters of public interest.

ARTICLE 19, the Global Campaign for Free Expression, has been working on reform of defamation laws around the world, including in Central Asia. In our experience, despite continuous lobbying both by NGOs and by international organisations such as the Organisation for Security and Cooperation in Europe (OSCE), defamation continues to be

¹ This presentation draws on a paper delivered at a Council of Europe on defamation, which can be found at <http://www.coe.int>.

² *Garrison v. Louisiana*, 379 US 64 (1964) at 74-5

³ I use the generic term of defamation, which covers libel and insult as well as slander.

a major problem in the region. This is so despite the many international treaties that have been ratified by the Central Asian states that guarantee freedom of expression as fundamental in democratic society. We believe that one of the reasons for this is that there simply is not sufficient awareness amongst the media and media lawyers of international law pertaining to freedom of expression. If States were challenged more often before international courts and tribunals, they would be forced to amend their laws and practices to bring them into line with international standards on freedom of expression. This paper will therefore give an overview of the relevant standards developed under international treaties, and ways to enforce these standards before national and international courts. It will end on a practical note, with a brief guide on how to submit a complaint to the UN Human Rights Committee.

The right to freedom of expression and defamation laws

The right to freedom of expression is guaranteed under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR),⁴ the main regional human rights treaties⁵ as well as a range of OSCE Declarations. Of these, the most important to the Central Asian states are the ICCPR and the OSCE Declarations. All Central Asian states except for Kazakhstan have ratified the ICCPR – Kazakhstan signed it in 2003 and is currently in the process of ratification – and as OSCE Member States, all Central Asian States have agreed to the relevant body of OSCE law. Because the European Convention on Human Rights is an important tool in elaborating the right to freedom of expression under the International Covenant on Civil and Political Rights, I shall refer to the case law developed under this treaty by the European court of Human Rights as well.

A number of key standards relating to defamation law have emerged from the jurisprudence of the Human Rights Committee and the European Court of Human Rights, as well as statements by international bodies

⁴ UN General Assembly Resolution 2200A(XXI), 16 December 1966, in force 23 March 1976.

⁵ The European Convention on Human Rights, American Convention on Human Rights and the African charter on Human and Peoples' Rights.

such as the OSCE and the comparative jurisprudence of superior national courts. ARTICLE 19 has collected these together within one publication, *Defining Defamation*,⁶ which, amongst other things, contains key principles dealing with criminal defamation, the status of public bodies and public officials, defamation defences and remedies. I will discuss these in turn.

Criminal Defamation

One of the most serious problems in the area of defamation is the existence of criminal defamation laws in most Central Asian countries. The key problem with these laws is that a breach may lead to a custodial sentence or another form of harsh sanction, such as a suspension of the right to practise journalism. Even where these are rarely applied, the problem remains, since the severe nature of these sanctions means they cast a long shadow. Suspended sentences also exert a significant chilling effect as subsequent breach within the prescribed period means that the sentence will be imposed. It is now well-established that unduly harsh penalties, of themselves, represent a breach of the right to freedom of expression even if circumstances justify some sanction for abuse of this right.

International bodies such as the UN and the OSCE have long recognised the threat posed by criminal defamation laws and have recommended that they should be abolished. For example, the OSCE Parliamentary Assembly has called for the abolition of all laws that provide criminal penalties for the defamation of public figures or which penalize the defamation of the State, State organs, or public officials as such.⁷ The UN Special Rapporteur together with his OSCE and OAS⁸ counterparts has gone even further, and said that “[c]riminal defamation is not a justi-

⁶ London: ARTICLE 19, 2000. These principles have attained significant international endorsement, including by the three official mandates on freedom of expression, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression: See their Joint Declaration of 30 November 2000. The document can be found at <http://www.article19.org>.

⁷ Warsaw Declaration of the OSCE Parliamentary Assembly, 8 July 1997, par. 140.

⁸ Organisation of American States.

fiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”⁹

The UN Human Rights Committee has several times expressed its concern over the misuse of criminal defamation laws, recommending a thorough reform in countries as wide-ranging as Azerbaijan,¹⁰ Norway,¹¹ and Cameroon.¹² In a case before it from Sri Lanka, the Committee held that a situation where a newspaper editor had a criminal defamation case pending against him for several years violated the right to freedom of expression. It stated that “to keep pending ... the indictments for the criminal offence of defamation for a period of several years after the entry into force of the Optional Protocol for the State party left the author in a situation of uncertainty and intimidation, despite the author’s efforts to have them terminated, and thus had a chilling effect which unduly restricted the author’s exercise of his right to freedom of expression”.¹³

The European Court of Human Rights, although it has never directly ruled on the legitimacy of criminal defamation laws, has never upheld a prison sentence or other serious sanctions in that context. In *Castells v. Spain*, the Court reiterated that:

[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.¹⁴

In the same case, the Court stated that criminal measures should only be adopted where States act “in their capacity as guarantors of public

⁹ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 10 December 2002.

¹⁰ Concluding observations of the Human Rights Committee: Azerbaijan, UN Doc. CCPR/CO/73/AZE, 12 November 2001.

¹¹ Concluding Observations of the Human Rights Committee: Norway, UN Doc. CCPR/C/79/Add.112, 1 November 1999.

¹² Concluding observations of the Human Rights Committee: Cameroon, UN Doc. CPR/C/79/Add.116, 4 November 1999.

¹³ Communication No. 909/2000: Sri Lanka, 26 August 2004, UN Doc. CCPR/C/81/D/909/2000, at par. 9.4.

¹⁴ Judgment of 23 April 1992, Application No. 11798, at para. 46.

order” and where such measures are, “[i]ntended to react appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith.”¹⁵ It is significant that in that case, which involved a conviction for defamation, the Court referred to the application of criminal measures only as a means of maintaining public order, and not as a means of protecting reputations, the purpose of defamation laws.

ARTICLE 19 takes the position that all criminal defamation laws are contrary to the guarantee of freedom of expression. Our Principle 4(a) states:

All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.

However, in recognition of the fact that many countries do have criminal defamation laws which are unlikely to be repealed in the very near future, Principle 4(b) states:

As a practical matter, in recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:

- i. no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;
- ii. the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;
- iii. public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;
- iv. prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

¹⁵ *Ibid.*

Public bodies and officials

It is abundantly recognised in international law that both public bodies and public officials should tolerate greater levels of criticism than ordinary individuals. Criticism of government is vital to the success of a democracy and defamation suits inhibit free debate about vital matters of public concern. In consequence, public bodies as such should not be allowed to sue in defamation and governments should tolerate a virtually limitless degree of criticism. The US Supreme Court has stated unequivocally that “no court of last resort in this country has ever held, or even suggested, that prosecution for libel on government have any place in the American system of jurisprudence.”¹⁶ The same has been recognised at the international level. The European Court of Human Rights has said that, “[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician.”¹⁷ In response to this, the UN Human Rights Committee and the OSCE Parliamentary Assembly have recommended the abolition of laws criminalising defamation of the state.¹⁸

International courts have also held that public officials, while they can sue if they are defamed in their private capacity, should tolerate significantly more criticism than ordinary individuals. This is based on two key factors. First, it is of the greatest importance that public officials, like public bodies, are subjected to open debate and criticism. Second, public officials have knowingly opened themselves up to criticism by their choice of profession. The leading judgment, recognised internationally, is of the European Court of Human Rights in a case emanating from Austria. Observing that it is detrimental to democracy to allow politicians to sue the media in defamation as a way of suppressing criticism, the Court held that, “[t]he limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike

¹⁶ *New York Times v. Sullivan*, 376 U.S. 254, 11 L. Ed. 2d 686, 84 S. Ct. 710 (1964), quoting *Tribune Co.*, 139 N.E. at 88.

¹⁷ See, for example, *Incal v. Turkey*, 9 June 1998, Application No. 22678/93, at para 54.

¹⁸ E.g. Concluding observations of the Human Rights Committee: Mexico, 27 July 1999, UN Doc. No. CCPR/C/79/Add.109, par. 14; Warsaw Declaration of the OSCE Parliamentary Assembly, 8 July 1997, par. 140.

the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.”¹⁹ This reasoning has been recognised by other human rights courts,²⁰ and extended to public officials as well as politicians.²¹

It is understood that politicians must tolerate not only criticism, but harsh words as well.²² “[The right to freedom of expression extends] not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.”²³

Defences

A strong system of defences is essential if defamation laws are not unreasonably to restrict the free flow of information and ideas. The four defences noted below – drawn from international and comparative jurisprudence – are of particular importance.

First, it should be a complete defence to an allegation of defamation that the statements in question were true.²⁴ One cannot protect a reputation one does not deserve and, where the impugned statements are true, there is no legitimate reputation to protect. This does not mean, however, that other causes of action, for example an invasion of privacy, may not be available. Where the statements involve a matter of public interest, the onus should lie on the plaintiff to prove their falsity.

Second, no one should be liable for a statement of opinion, defined as a statement which cannot be shown to be true or false or which cannot reasonably be interpreted as stating a fact (for example because it is

¹⁹ *Lingens v. Austria*, 24 June 1986, Application No. 9815/82, para. 42.

²⁰ E.g. *Canese v. Paraguay*, Inter-American Court of Human Rights, 31 August 2004, Series C 111.

²¹ *Thoma v. Luxembourg*, 29 March 2001, Application No. 38432/97, European Court of Human Rights, par. 47.

²² E.g. *Dichand and others v. Austria*, 25 February 2002, Application No. 29271/95 (European Court of Human Rights).

²³ *Ibid.*

²⁴ *Castells v. Spain*, note 14.

rhetoric, satire or jest).²⁵ Opinions are by definition subjective in nature and courts should not judge whether or not it is appropriate to articulate them. Furthermore, no one should be required to prove the truth of a statement of opinion or value judgement.²⁶

Third, even where a statement of fact on a matter of public concern has been shown to be false, defamation defendants should benefit from a defence of reasonable publication. This defence is established if it is reasonable in all the circumstances for a person in the position of the defendant to have disseminated the material in the manner and form he or she did. The need for this rule is based on the harsh nature of the traditional rule in some jurisdictions according to which defendants are liable whenever they disseminate false statements, or statements which they cannot prove to be true. This traditional rule is particularly unfair for the media, which are under a duty to satisfy the public's right to know and often cannot wait until they are sure that every fact alleged is true before they publish or broadcast a story. Even the best journalists make honest mistakes and to leave them open to punishment for every false allegation would be to undermine the public interest in receiving timely information. A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably, while allowing plaintiffs to sue those who have not. For the media, acting in accordance with accepted professional standards should normally satisfy the reasonableness test.²⁷

Fourth, certain types of statements should never attract liability under defamation law, while other statements should be exempt from liability unless they can be shown to have been made with malice, in the sense of ill-will or spite. The former category should include, for example, statements made during judicial proceedings, statements before elected bodies

²⁵ E.g. *Oberschlick v. Austria*, 23 May 1991, Application No. 11662/85 (European Court of Human Rights), par. 63.

²⁶ *Unabhängige Initiative Informationsvielfalt v. Austria*, 26 February 2002, Application No. 28525/95 (European Court of Human Rights), par. 39.

²⁷ E.g. *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999, Application No. 21980/93 (European Court of Human Rights), par. 65.

and fair reports on such statements.²⁸ The latter category should protect statements which the speaker is under a legal, moral or social duty to make. An example would be reporting of suspected crime to the police. In each of these cases, the public interest in the statements being made outweighs any private reputation interest in suppressing the statements.

Remedies

It has already been noted that the guarantee of freedom of expression prohibits disproportionate sanctions for defamatory statements. This requires the authorities to establish a regime of remedies which, while redressing the harm to reputation from defamatory statements, also exerts a minimal chilling effect on freedom of expression. Traditionally, the dominant remedy for defamation in civil law has been pecuniary in nature but monetary remedies often have a negative effect on the free flow of information. A variety of less intrusive but still effective alternative remedies exist – such as the issuance of an apology or correction, or the publication of a judgement finding the statements to be defamatory – which should be prioritised.

Pecuniary awards should be subject to legal limits, as well as process guarantees, to ensure that they do not become excessive. As a general rule, they should never be disproportionate or have a chilling effect on the freedom of expression of the publication concerned, or other publications.²⁹

As noted above, imprisonment can never be regarded as an appropriate response to defamation. The European Court of Human Rights has never upheld a sentence of actual imprisonment and international bodies have frequently emphasised the illegitimacy of defamation laws providing for imprisonment as a sanction. For example, in its 1994 annual report the Human Rights Committee criticised Iceland for maintaining the possibility of custodial sanctions for defamation, even though these had apparently not been applied. The Committee similarly noted their concerns in this regard in relation to Norway and Jordan.³⁰ In 1995 the Committee criti-

²⁸ E.g. *A v. the United Kingdom*, 17 December 2002, Application No. 35373/97.

²⁹ *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, Application No. 18139/91 (European Court of Human Rights).

cised Tunisia for its penalties in relation to defamation, insult and false information and concern was expressed about the continued imprisonment of journalists in Morocco.³¹ In relation to Kyrgyzstan, the Committee commented, in 2000, that “[j]ournalists and human rights activists subjected to imprisonment in contravention of articles 9 and 19 of the Covenant should be released, rehabilitated and given compensation.”³²

The UN Commission on Human Rights adopts an annual resolution on the right to freedom of expression, and it, too, has expressed concern at the possibility of imprisonment as a sanction for defamation. Its 1998 Resolution states that, “[the Commission] expresses its concern at the extensive occurrence of detention, long-term detention...persecution and harassment, including through the abuse of legal provisions on criminal libel...directed at persons who exercise the right to freedom of opinion and expression.”³³

Enforcing international standards on freedom of expression

Many of the standards outlined above are reasonably well-known amongst defenders of freedom of the media in Central Asia. What is less known is that these standards do not represent a faraway international or western ‘ideal’, but that they are ‘hard’ law and can be enforced before international courts as well as before the national courts of most Central Asian States.

Turkmenistan, Kyrgyzstan, Uzbekistan and Tajikistan have all ratified the International Covenant on Civil and Political Rights.³⁴ Kazakhstan has signed it and is in the process of ratification. This means that the first four States are bound to guarantee to their citizens the rights provided under

³⁰ Annual General Assembly Report of the Human Rights Committee, 21/9/94, Volume I, No. A/49/40, paras. 78, 91 and 236.

³¹ Annual General Assembly Report of the Human Rights Committee, 3/10/95, No. A/50/40, paras. 89 and 113.

³² Concluding observations of the Human Rights Committee: Kyrgyzstan. 24 July 2000, UN Doc. CCPR/CO/69/KGZ.

³³ UN Commission on Human Rights, The Right to freedom of opinion and expression, Commission on Human Rights resolution 1998/42, 17 April 1998, UN Doc. E/CN.4/RES/1998/42.

³⁴ Kyrgyzstan ratified on 7 January 1994; Tajikistan on 4 April 1999; Turkmenistan on 1 August 1997 and Uzbekistan on 28 December 1995.

this treaty, while Kazakhstan is under a legal obligation not to take any steps that would be contrary to the purpose and spirit of this international treaty.³⁵ The right to freedom of expression is guaranteed under Article 19 of the ICCPR and comparative law emanating from such bodies as the European Court of Human Rights may be used to elucidate the substance of this right in the absence of authoritative Human Rights Committee material.³⁶ This brings the standards outlined above clearly within the scope of Article 19 of the ICCPR. These standards can then be argued at both a national and at an international level.

Arguing international human rights law before national courts

All Central Asian States have a provision in their constitution to the effect that international treaty norms that are directly enforceable, such as human rights provisions, have the force of law and, in the cases of Turkmenistan and Kazakhstan, *have priority over national laws that contradict them*.³⁷ Additionally, in certain cases, media-specific laws provide explicitly for the primacy of international law. This is the case in relation to Kazakhstan's mass media law, for example.³⁸ In theory, this means that individuals in these countries can invoke international law on freedom of expression before national courts when challenging unduly restrictive norms on defamation. To our knowledge, no such claim has been successfully brought in any of the Central Asian republics to date – but this is not to say that it is an avenue that ought not be explored. The Central Asian States have guaranteed to their citizens that they will implement international human rights law in their national jurisdictions, and they ought to be challenged on their failure to do so.

³⁵ Article 18 of the Vienna Convention on the Law of the Treaties, entry into force: 27 January 1980

³⁶ The Human Rights Committee is the body mandated to supervise the implementation of the Convention and interpret its provisions.

³⁷ Article 4, Constitution of Kazakhstan; Article 12, Constitution of Kyrgyzstan; Article 10, Constitution of Tajikistan; Article 6, Constitution of Turkmenistan. The preamble of the Constitution of Uzbekistan contains a weaker recognition of the principle of primacy of international law, which is not however found in the operative part of the Constitution.

³⁸ E.g. Article 4 of the Kazakhstan Mass Media Law.

Bringing claims before international courts

In addition to signing up to the substantive provisions of the International Covenant on Civil and Political Rights, Turkmenistan, Kyrgyzstan, Uzbekistan and Tajikistan have moreover recognised the competence of the Human Rights Committee under the Optional Protocol to the ICCPR³⁹ to adjudicate on complaints from individuals. This means that individuals within the territory or under the jurisdiction of one of these States⁴⁰ can submit complaints to the Human Rights Committee arguing that their rights have been breached.

Compared with established human rights courts such as the European Court of Human Rights, the UN Human Rights Committee is an under-used avenue of redress, receiving relatively few complaints and allegations. This is unfortunate since, although unlike the European Court of Human Rights its findings are not strictly legally enforceable, in practice it has some rate of success in the implementation of its decisions. For example, in June 2001, the government of Cameroon, following a recommendation by the Committee,⁴¹ agreed to pay a journalist who had been jailed in violation of his right to freedom of expression US\$137,000.⁴² In other cases, the respondent States ultimately changed their domestic laws and practices as a result of Human Rights Committee decisions.⁴³

The procedure for applying to the Human Rights Committee is relatively simple. A person who claims that their rights have been breached may write to the Committee lodging a complaint and providing information to support the complaint. The Committee will first examine whether the complaint is admissible or not. Briefly, the conditions for admissibility are as follows:

³⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Kyrgyzstan ratified on 7 January 1995; Tajikistan on 4 April 1999; Turkmenistan on 1 August 1997 and Uzbekistan on 28 December 1995.

⁴⁰ This includes non-citizens resident in the country as well as citizens.

⁴¹ *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).

⁴² The journalist had been represented by ARTICLE 19.

⁴³ E.g. *Toonen v. Australia*, Communication No. 488/1992, 31 March 1994, UN Doc. CCPR/C/50/D/488/1992; *Broeks v. the Netherlands*, Communication No. 172/1984, 9 April 1987.

- communications must not be anonymous and should be sent in by the individual who claims that his or her rights have been violated by the State;⁴⁴
- the complaint must relate to a violation of one of the provisions of the ICCPR, and not have taken place prior to the relevant country's ratification of the ICCPR;
- the complainant must have gone through all domestic courts before complaining to the Human Rights Committee; and
- the complaint cannot be considered if the same problem is being investigated under another international procedure.

If the Committee deems a communication admissible, it invites further information from the State concerned, for which it will set a six-month deadline. The complainant may comment on the State's views, and then the Committee issues its decision on whether a violation has occurred. If necessary, the Committee may request interim measures to be taken by the State pending its consideration of the merits of a case.⁴⁵ If it concludes that a violation occurred, it generally also offers its view as to what measures the state is obliged to take in order to remedy or redress the violation. Such measures can include payment of compensation,⁴⁶ amendment of impugned legislation⁴⁷ or the release of persons.⁴⁸

A model form for complaints can be found here:

<http://www.unhchr.ch/html/menu6/2/annex1.pdf>

The Committee will need a fair amount of supporting documentation that substantiate the complaint, such as original court decisions. In theory, complaints can be issued by fax⁴⁹ or email,⁵⁰ but in practice, given the large amount of supporting materials, it is better to post materials.

⁴⁴ When the alleged victim is unable to submit the communication, the Committee may consider a communication from another person who must prove that he or she is acting on behalf of the alleged victim. A third party with no apparent links with the person whose rights have allegedly been violated cannot submit a communication – note that this limit the extent to which NGOs may submit 'general' complaints.

⁴⁵ Rule 86 of the Committee's Rules of Procedure, CCPR/C/3/Rev.7 – 4 August 2004.

⁴⁶ See *Mukong v. Cameroon*, note 41.

⁴⁷ E.g. *Toonen v. Australia*, note 43.

⁴⁸ E.g. *Bolaños v. Ecuador*, Communication No. 238/1987, 13 July 1987.

⁴⁹ 00 41 22 917 9022

⁵⁰ tb-petitions@ohchr.org.

ARTICLE 19 encourages individuals from the Central Asian States to avail themselves of this procedure.

Nadezhda Stepanova**LIBEL LAWS IN UZBEKISTAN: LEGAL NORMS AND THEIR PRACTICAL IMPLEMENTATION**

Defamation is punishable under Uzbek legislation. The specific laws establishing liability are the Administrative Code of the Republic of Uzbekistan (Articles 40 and 41), the Criminal Code (Articles 139 and 140), and the Civil Code (Articles 99, 100, 1021, and 1022).

The Administrative Code provides legal definitions of “libel” and “insult”. “Libel” is spreading defamatory fabrications about a person which are known to be false. Insult is an intentional denigration of a person’s honour and dignity. Libel is punishable by a fine equalling one to three minimum monthly wages. Insult is punishable by a fine equalling one to two minimum monthly wages. The minimum monthly wage in Uzbekistan today is about 6,500 sums, which equals US\$6.2, or 5.4 Euros.

Article 100 of the Civil Code, entitled “Protection of Honour, Dignity, and Business Reputation”, sets the procedure for protecting the honour, dignity, and business reputation of both individuals and entities. A citizen may demand by court action the defamatory information about him or her be refuted, and after the person’s death the case may be pursued by other interested persons, such as relatives. If such information is published in the media, a refutation shall be published in the same media. This provision is also stipulated in Article 27 of the Law on Mass Media. It says that entities and individuals whose rights and lawful interests have been violated by a publication may request that a refutation be published in the same medium body.

If defamatory information is contained in a document issued by an organization, such document shall be replaced or recalled. Besides, the affected citizen may claim compensation of losses or moral damage. The rules protecting the business reputation of an individual are applicable to the business reputation of a legal entity.

According to Article 1022 of the same Code, “moral damage shall be compensated in cash. The amount of the moral damage compensation shall be determined by court, depending on the physical and moral suffering inflicted on the injured party and on the degree of the guilt of the trespasser, if guilt is the ground for the compensation. The amount of damage compensation shall be determined with due regard for requirements of reasonableness and justice”.

So compensation amounts are not limited by law and are entirely at the court’s discretion. This makes it possible for plaintiffs to claim exorbitant sums of money. There are specific cases illustrating this.

Uzbek civil law has no special provisions for enhanced protection of government, State, or other officials from injury to their honour and dignity, or from libel or insult. Article 158 of the Criminal Code (“Offences against the President of the Republic of Uzbekistan”) stipulates, however, liability for insulting or libelling the President of Uzbekistan. Such offences are punishable by up to three years of corrective labour or up to six months of detention, or up to five years of confinement. All other citizens, including public figures and celebrities, fall under Article 100 of the Civil Code.

However, Article 13 in the Law On Principles and Guarantees of Freedom of Information (“Information Security of the Person”) stipulates that personal information about individuals shall be treated as confidential.

So government officials and public figures, relying on this article, often request that journalists must pre-approve any information about them, even biographical data.

In Uzbekistan, libel and insult also involve criminal liability. It is stipulated in the Criminal Code of the Republic of Uzbekistan, as adopted on 22 September 1994 and in effect since 1 April 1995. It is hard to say whether there are any plans to modify criminal law as regards liability for defamation, libel, and insult. As a rule, such plans are not made public. Any changes in legislation become known to the people when published in the press. The date of the publication is the date of putting the law into execution.

Draft laws are published in the press, for the purpose of nationwide discussion, according to the authorities, but the results of such discus-

sions have never been disclosed. Even information about differences of opinion among members of parliament in the process of the adoption of a law never makes it to the news media. So plans to change legislation may exist, but they are not discussed in the media.

The maximum term of imprisonment for denigrating a person's honour and dignity, for libel and insult, as stipulated by the Criminal Code, is three years. The maximum punishment for libel is the same. Insult may be punished by up to six months' detention. The maximum fine that may be imposed for denigrating a person's honour and dignity, for libel and insult is 150 minimum monthly wages. At present, the minimum monthly wage in Uzbekistan is about US\$6.5.

The maximum fine for libel is 100 minimum monthly wages and for insult, 150 minimum monthly wages.

Desecration of the symbols of State is also punishable under the Criminal Code (Article 215). The symbols of State are the State flag, the State emblem, the State Anthem of the Republic of Uzbekistan or the Republic of Karakalpakstan. Such acts may be punished by a fine equaling up to 25 minimum monthly wages or up to three years of corrective labour or a detention for up to three months.

According to information from the Supreme Court of Uzbekistan, 14 proceedings under Article 139 of the Criminal Code (Liability for Libel) were conducted in 2003, and four cases were tried in the first half of 2004. Twelve cases involving charges under Article 140 (Liability for Insult) were tried in 2003, and 10 cases, in the first half of 2004. As for the Civil Code provisions, 338 cases were examined in 2003 and 67 in January to July 2004 under Article 100 (Protection of Honour, Dignity, and Business Reputation). These are general statistics.

Regrettably, we have no statistics about cases involving news media. Monitoring conducted in Uzbekistan indicate that cases involving news media account for an insignificant percentage of the total number.

In May 2003, a libel suit was filed against the editorial office of the newspaper *Zerkalo 21* and its editor-in-chief, Yusuf Kabuldjanov. The plaintiff was Judge D. Saidaliyev of the Shaikhontokhur District Court. The lawsuit was filed after the newspaper published an article by journal-

ist Nadezhda Zharkova, titled “The Prosecutor Files a Protest” (Issue No. 12 (168) for the week of 20-26 March 2003). The article was about an impostor, who had conned a large amount of money out of four people in Bukhara. He was arrested and tried by the Shaikhontokhur District Court. The presiding judge, D. Saidaliyev, ruled that the defendant be released from custody, despite the evidence against him, and the case be remanded for additional investigation. The journalist and the editor-in-chief were accused of defaming Judge Saidaliyev, because the article published in the newspaper said, “Mind you: this person (Saidaliyev) has been authorized by the State to represent the law, to protect the rights of Uzbekistan’s citizens, and to protect them from criminals.”

After the first court session, Nadezhda Zharkova relocated outside Uzbekistan, whereupon the lawsuit was filed against the newspaper’s editor-in-chief, but not the editorial office. The plaintiff said he had no complaints against the editorial office. The amount of the claim was 10 million sums (about US\$10,000). Later the case was supplemented with a claim of 100 million sums (US\$100,000), complaints against the editorial office, and a request that the newspaper’s assets be seized. The plaintiff’s claim of 100 million sums for moral damage was later denied, but the lawsuit, initially brought against the author of the article and the editor-in-chief, is now a lawsuit against the editorial office. The above editor-in-chief is no longer employed by the newspaper. Proceedings in the case are still on to this day.

In another interesting case, the Shaikhontokhur Interdistrict Court of Tashkent defeated a libel and moral damage claim against Abdukayum Yuldashev, formerly the editor-in-chief of the *Mokhiyat* newspaper, in the amount of 84 million sums (about US\$84,000). After months of proceedings, in December 2003, the claim was defeated by the court. The claim had been filed after the newspaper published seven satiric poems (in June 2003), one of which mentioned Uzbek poet Alim Buri. Buri saw that mention as insulting and filed a defamation and moral damage suit against Abdukayum Yuldashev, then the editor-in-chief of the *Mokhiyat* newspaper.

Initially, Alim Buriev claimed 27 million sums (US\$27,000), one million sums per year of his literary career. At the first court session,

Buri filed an additional lawsuit claiming another 15 million sums (US\$15,000), one million sums per book he had written. The publishing of the above-mentioned satiric poem harmed his books, too, he claimed. By the end of the proceedings, the plaintiff doubled the amount of the claim, to a total of 84 million sums.

According to the defendant's lawyer, Bakhtiyer Shakhnazarov of Internews, experts in the proceedings were well-known and reputable persons: Khurshid Dostmuhammad, a member of the Oliy Majlis, Kozokboi Yuldashev, Head of the Chair of Contemporary Uzbek Literature of the National University, Safar Matchanov, Head of the Chair of Contemporary Uzbek Literature of the Nizami Teacher Training University, Safo Ochigov, Head of Division at *Ukituvchi* Publishing House, and others. They helped to demonstrate it to the court that A. Yuldashev was not guilty, and all the plaintiff's claims were defeated. The presiding judge was Bakhrom Tangabayev. The plaintiff availed himself of the right to contest the decision and filed a complaint with a higher court, which also ruled to dismiss it. There have been other court decisions in favour of mass media. They show that just rulings are possible, that law can prevail, and that it is important to set precedents.

Amusingly, Alim Buri had to face a lawsuit in court as a defendant some time later. He wrote a critical article and faced a lawsuit requesting protection of honour, dignity, and business reputation. He had to apply to the same defence lawyers, who had defended his opponent a while ago. According to one of the lawyers, Buri worried that his request would be denied. But it wasn't, for he was facing a lawsuit for writing an article.

Another case involved the *Mokhiyat* newspaper. In November 2003, the Mirabad Interdistrict Civil Court of Tashkent rendered a decision on a lawsuit against the newspaper and its journalist Kayum Muminov. The court sustained a defamation claim filed by Gulsara Erbutayeva, chief physician of the Angren children's hospital, who requested a moral damage compensation to the amount of 10 million sums (about US\$10,000). However, the court of appeals found all the facts in the article to be true. The court proceedings were suspended, after the Tashkent Region Pros-

ecutor's Office sent a letter to the Angren prosecutor's office to consider initiating criminal proceedings against Erbutayeva.

All these facts indicate that, despite the government's inclination to place news media under stricter control, journalists do have opportunities to defend their rights in court. Good examples to be followed by journalists are provided by certain court cases won by news media. These cases were won largely thanks to the NGO Internews, an implementing organization for an OSCE project to defend journalists in court, against defamation and other claims. The defence of the Mokhiyat journalists was part of that project.

The choice of certain publications as targets for defamation lawsuits is far from accidental. In government-owned news media "phone-call law" has been and still is widely practised. A phone call from an official can ban any publication or broadcast. The newspapers that faced the judicial proceedings are non-government media.

They were active in criticizing negative phenomena currently existing in Uzbekistan, especially in the latter half of 2002 and the first half of 2003. After official censorship was abolished in May 2002, newspapers and, to a lesser extent, radio and television companies, became more critical in discussing existing problems. But the situation changed by the end of 2003, when censorship by government officials was replaced by news media owners' censorship and self-censorship. This has led to ridiculous things. According to journalists, the editors-in-chief of some newspapers (mostly non-government ones) hire (unofficially) former censors as advisors to read their newspaper materials before sending them to print in order to avoid potential trouble. Newspaper owners, who formerly never saw their newspapers until they were published, now read all the articles very thoroughly – to make sure they are trouble-proof!

Phone-call law censorship, self-censorship, and indirect censorship by owners have altered the editorial policies of non-government newspapers, which used to lead the effort to build an information environment for discussing various subjects important to society. Today, most newspapers prefer not to exacerbate relations with the authorities, and this has

certainly contributed to a reduction of complaints against news media, including defamation complaints.

The current situation is similar to that in 2001, when only three claims were tried by the Mirabad Interdistrict Court of Tashkent (during the whole calendar year). One was a defamation and moral damage suit filed by Fazriddin Saminzhanov under the Civil Code, against the *Darakchi* newspaper owned by STV television company, a limited liability company in Samarkand. The complaint was filed on 30 June 2001. It said that on 24 May 2001 the newspaper carried a story in the “Crime” column (its title: “Beware of Cars”), about two guys out of job, who had committed crimes and were sentenced to 10 years and six months and 11 years and nine months of confinement, respectively. The article was illustrated by the photos of two reputable men, who had nothing to do with the publication or the crimes, – F. Saminzhanov, an administrative law instructor at the Tashkent Law Institute and a student of his. The plaintiff claimed 20 million sums in moral damages (one US dollar then equalled 1,500 sums) and 20,000 sums in legal costs.

In 2001, another lawsuit against the *Darakchi* newspaper was tried by the Mirabad Interdistrict Court (its jurisdiction covers the area where most Tashkent-based press media have their offices), in another wrong-photo case. The newspaper had carried a story about a lady and her love affairs at a health resort, accompanied by the photo of a homemaker, a lady who had government decorations, well-known and esteemed in her home region.

The small number of lawsuits against newspapers directly had to do with the fact that there was little or no criticism of national ministries or other government agencies in any of the numerous district, city, or national news media. Newspapers, magazines, and TV and radio broadcasts proudly reported glorious labour accomplishments “on the path of economic transformations and transition to market relationships”, largely ignoring the complex problems confronting society along that path of transformations and reform.

Why sue news media that publish nothing but praise? Unless they publish the wrong photo, like *Darakchi* did...

Paradoxically, a large number of civil proceedings in defamation cases is an indicator of society's openness and freedom of speech.

As for criminal liability of journalists for libel and insult, that legal rule is not applied. There are no sensational or investigative stories in Uzbekistan's news media. No compromising information is published, no battles of publications are fought. All criticism has moved into web publications, which have no legal status and, in fact, are not news media under the law. So no journalists have been jailed for libel or insult.

There have been some criminal proceedings against news media people, but, as a rule, over extortion or other non-defamation offences.

Junaid Ibodov

LIBEL AND DEFAMATION LAWS: THE CASE OF
TAJKISTAN'S NEWS MEDIA

II

The subject of my report could be defined differently, for example, “honour, dignity, and business reputation as a target for media attacks”. This would probably bring the concept closer to the reality. Yet, we need to get the terminology straight first. First of all, what is defamation? The word is now used as a generic term covering libel, insult, dissemination of defamatory information, impairment of honour and dignity, etc. These are the terms used in the legislation of Tajikistan, rather than “defamation”. So, speaking of legislative regulation of the subject matter of our discussion in Tajikistan, one should bear it in mind that there are two forms (or types) of such regulation. One is civil-law protection of honour, dignity, and business reputation, and the other is criminal-law regulation.

There is no harm in identifying the characteristic features of each concept we are discussing, and we will try to define these concepts (although, admittedly, definitions are many, and some contradict each other).

Honour is a positive assessment of a person's qualities by others, a positive public opinion about the person.

Dignity is a positive self-assessment based on a public assessment. A reputation is a public assessment of a person's significant qualities. In other words, reputation is a narrower concept, it has to do with a person's professional, moral, and, possibly, business qualities.

Legislative protection of honour, dignity, and (business) reputation is based on constitutional norms. Articles 5 and 42 of the Constitution of Tajikistan stipulate that “the life, honour, dignity, and other rights of the individual are sacred” and that “on the territory of Tajikistan, everyone person is obliged to recognize rights, freedoms, dignity of others, and honour”.

It is important to note that dissemination of false information about a person is not only a form of the contamination of the information

environment, but may also, under certain circumstances, be a violation of the person's rights.

The Civil Code of the Republic of Tajikistan (Article 174) recognizes a citizen's right "to demand by court action that information that impairs the citizen's honour, dignity, or business reputation be refuted, unless the person who has disseminated such information proves that it is true". If such information is published by news media, the same news media shall publish a refutation free of charge (Article 174, part 2). It ought to be noted that the Article refers to "information" only, and not journalists' personal opinions or judgments, which, in our opinion, may not be verified as true or false.

Unlike the similar provision of the Civil Code, say, of the Russian Federation, the above Article of the Civil Code of Tajikistan stipulates that a lawsuit may only be filed if the media body in question refuses to publish a refutation or fails to publish it within one month, or if the media body is dissolved. In other words, a person may file a lawsuit only if the out-of-court settlement procedure does not work for some reason.

Speaking of the right to refutation, it should be remembered that this refers to "information that is defamatory to a person's honour and dignity". "Defamatory information," as defined in Decree No. 8 of the Tajikistan's Supreme Court Plenum (dated 4 June 1992), "is information that impairs a person's honour and dignity ... in public eyes or in the eyes of certain individuals, in terms of compliance with laws and moral principles of society."

However, the legislator has provided (also in Article 174 of the Civil Code) another opportunity for a person injured by a publication (apart from the right to a refutation). A person whose rights or law-protected interests have been injured by a publication in the media has the right to have a response published in the same media free of charge. The out-of-court settlement procedure for demanding refutation applies to response publication as well.

We are now discussing civil law protection of honour and dignity. What is civil law protection? Briefly, this means a civil court examining a claim filed by a person who believes that he or she has been injured

by a media publication or broadcast. Please note that only a physical person, an individual, may be a plaintiff or, respectively, target of crime (libel/insult) in civil or criminal proceedings, and not an entity (a legal person), to which the concept of “honour and dignity” does not apply. It is absurd for an entity (on the strength of being a body of power) to seek protection of its “honour and dignity”. So far we have been discussing protection of honour and dignity in the news media as stipulated by the Civil Code. But what provisions are there in the specific law – the Law of the Republic of Tajikistan on the Press and Other News Media?

Article 24 of that law also provides citizens with the right to request publication of a refutation or a response in the same media that has published defamatory information. The grounds for that right are essentially the same as per Article 174 of the Civil Code. Article 26 of the Law stipulates that a person may move the court within one year after the publication he/she wants to contest. The Civil Code (Article 231) sets no limitations on actions to protect personal non-property rights (which include protection of honour and dignity). Article 231 of the Civil Code does contain a reservation: “except for instances provided for by law”. Maybe this is where the provisions of Article 26 of the Law should be applied. But we don’t know for certain, because so far there are no precedents. It should also be remembered that, as per the Civil Code (Article 174), a person’s honour and dignity may be protected even after the person’s death, when requested by interested persons. The term “interested persons” is not defined in the laws. Presumably, this primarily refers to relatives. But, as shown by (other countries’) court practice, this may lead to controversies. For example, many lawyers believe that honour and dignity, as personal non-property rights, are not inheritable. Lawsuits for libel and insult are filed against the editorial office and the author of the publication. If the author uses a pseudonym or is anonymous, the only defendant is the editorial office. The editorial board may disclose the author’s identity – given the author’s consent – and then the author will be a co-defendant. But if the editorial office is not a legal entity, it may not be party to the court proceedings, and then the media body founder should be the defendant in the proceedings.

In certain cases, news media are exempted from liability for publishing false information under the Tajik laws (the Media Law). Article 35 of the Media Law stipulates that news media shall be exempted from liability for publishing false information in four cases:

1. if such information has appeared in official publications;
2. if it is obtained from news agencies or the press services of government or public organizations;
3. if it is a verbal quotation of speeches delivered by members of Councils of Deputies at Council Congresses or sessions, or by delegates of public organization congresses, conferences, and plenums, or of official statements by officials of government or public organizations;
4. if such information is contained in author's live broadcasts or in texts that are not subject to editing under this Law, such as a citizen's response.

I have to warn journalists against misinterpreting these exemptions. The point is that, even in the four cases listed in Article 35 of the Law, the medium body that has published or broadcast the information will be the defendant in court. In the course of the court proceedings, however, the editorial office may have the source of the information sued as a co-defendant. Another misconception shared by many media journalists and editors: they tend to believe that publishing a refutation automatically exempts them from liability for damages and moral harm caused by publication of defamatory information. That is not so: Article 174 of the Civil Code stipulates that citizens may apply to court to seek damages and harm indemnification, as well as publication of a refutation.

A few words about criminal liability. Libel is defined (Article 135 of the Criminal Code of the Republic of Tajikistan) as dissemination (in the media) of information known to be false that defames the honour and dignity of another person. Two things are important in this respect.

First: only an individual, i.e. a physical person, can be the object of libel, so only an individual may be libelled, but not an organization or a state.

Second: this refers to “information known to be false”. According to the law, the information disseminator (a journalist or an editorial office) should have known (prior to the publication) that it is false. Put even more simply, for this provision to be applied, the journalist would have to testify in court that he/she had known that the information was false but decided to publish it anyway.

As for the term “insult in the media” (Article 136 of the Criminal Code of the Republic of Tajikistan), it is defined as “denigration of another person’s honour and dignity expressed in an indecent form”. Two things about this definition should be borne in mind. First, only a “person”, an individual can be insulted. Second, whether the information is true or false is of no relevance here. What matters is the “indecent form”, and that, in turn, depends on many societal factors – social, moral, etc. Investigating authorities and courts often order scientific and other expert examinations to establish whether a certain expression is insulting to a specific person at a given time.

Shamaral MaichievUNSUCCESSFUL ATTEMPTS AT HUMANIZING LIBEL
LEGISLATION IN KYRGYZSTAN

To begin with, I would like to give some interesting facts and figures from the protection of honour, dignity and business reputation case-law of courts in the Kyrgyz Republic for 2002 and the six months of 2003 as cited in the Review of Honour, Dignity and Business Reputation Protection Case-Law of 5 December 2003 compiled by the Courts Brief and Judicial Statistics Analysis Office of the Supreme Court of the Kyrgyz Republic.

According to judicial statistics, the courts introduced 103 libel and insult cases in 2001; 135 in 2002; and 242 in 2003. Of this total, 103 cases, or 21.5 per cent, were examined, and 282 cases, or 58.7 per cent, dismissed under the law of criminal procedure. Over the same period, from 2001 to 2003, the courts considered one case of insult of a trial participant (a judge) or contempt of court (art. 312 of the Penal Code) and 11 cases of public insult of government officials (art. 342 of the Penal Code).

These figures are indicative of the growing number of cases for the protection of honour, dignity and business reputation. Thus, the courts of first instance introduced 131 cases in 2001, 152 in 2002, and 138 in the first six months of 2003, with 70 per cent of the 103 claims heard in 2002 and the first half of 2003 were decided in favour of the plaintiffs. One in every three cases was dismissed and one in every five was closed on the grounds provided for under procedural law.

Of the 91 (44 per cent) appeals against court judgements 55 (60 per cent), were lost, and decisions were changed in 18 cases, mainly concerning the amount of compensation.

Thirteen judgements were re-opened through the exercise of supervisory powers, of which 8 (61 per cent), were left standing.

As the above statistics show, journalists get punished under criminal law, and our country witnessed several sensational cases of journalists groundlessly brought to trial under criminal charges and illegally imprisoned. These proceedings were broadly discussed by the civil society that made repeated demands on the authorities that imprisonment as criminal penalty for libel be abolished.

Since 1999, the President of the Kyrgyz Republic has three times initiated before the Jogorku Kenesh of the Kyrgyz Republic a draft law decriminalizing the libel and insult provisions which envisage imprisonment as punishment for these offences. These three attempts made by the President proved unsuccessful as the Jogorku Kenesh defeated the bill three times. The issue was enthusiastically discussed in the media: some viewed the President's efforts as democratic and others described them as a kind of image-building trick. Be that as it may, such are the facts.

Civilized countries have long since decriminalized libel as archaic and undemocratic. They believe that libel and insult fall within the jurisdiction of civil rather than criminal law. It is fair to say that criminal responsibility for libel and insult still exists not only in post-Soviet states but, for instance, in Germany. In Germany, however, these articles have not been applied in practice for over 40 years now. In the United Kingdom, 90 per cent of claims for the protection of business reputation are not filed with courts but with public organizations engaged in mediatory efforts in the media sphere. For example, a large number of complaints against the media are filed with the Press Complaints Commission which addressed cases of defamation from an objective and unbiased standpoint. This is another evidence of the efficiency of a self-regulatory system to problems arising in connection with the media.

International experts ("Defining Defamation", a series of international standards, Article 19, London, July 2000) define the principles of criminal defamation as follows:

1. All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.

2. As a practical matter, in recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:
 - (a) no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;
 - (b) the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;
 - (c) public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;
 - (d) prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

I do not mean that journalists or the media should not bear any responsibility whatsoever. We are against criminal responsibility for libel or insult. We are firmly convinced that criminal responsibility can successfully be replaced with administrative sanctions, sizable money penalties or responsibility of a journalist or a media body under civil law. Almost in all cases, when a person won a criminal case against a journalist for defamation and insult, that person simultaneously filed a civil complaint to protect his or her honour.

Rozlana Taukina

II

**ON SUPPORT FOR THE INITIATIVE TO REVOKE THE
LAW ON LIBEL, AS A FACTOR IN REPRISALS AGAINST
JOURNALISTS IN KAZAKHSTAN**

A tendency to exercise control over the media in Central Asia can be observed in Kyrgyzstan, Kazakhstan, Tajikistan, and Uzbekistan. The difference is just in the degree of pressure brought to bear on the media, but the desire to control the information which is published or broadcast is gaining strength, as is the desire to prevent disloyal, adverse information coming in from abroad, from the international media. There is only one reason for this: the presidents of all these countries in Central Asia have been in power since 1991 (not counting their term as leaders of the CPSU in these republics, when they were part of the USSR). Under the constitutions of all these Central Asian countries, the presidents had the right to be elected for no more than two terms of 4 years. These terms have long since expired, of course, but the presidents have remained in power for third and fourth terms. Their desire to prevent questioning the legitimacy of the presidents' authority, to prohibit any discussion of the rotation mechanism, to deprive claimants to power not only of a public rostrum and media coverage, but also to conceal information on their imprisonment or exile from the country, are incentives to regulate all political information in their countries. For this reason, in virtually every Central Asian country, there is a tendency to impose increasingly greater restrictions on freedom of speech, to suppress the independent media and persecute journalists who write the unbiased truth about the situation in the country and cover the activities of politicians who oppose the authoritarian regime in their country.

Take Kazakhstan as an example, I can say that our president makes very skilful use of democratic statements in order to conceal the authoritarian and harsh system of government in the country. This is why, with

each passing year, there is increasingly more evidence in Kazakhstan of pressure brought to bear on the media and individual journalists.

A trick frequently used against journalists is to accuse them of libel and initiate lengthy court proceedings. The case against journalist Genady Benditsky who wrote for the national newspaper *Vremya* (with a circulation of 169,186 copies) is indicative. The journalist wrote an article saying that millions of dollars allocated from the country's budget to the Ministry of Defence to cover debts to Ukrainian and Russian plants which repaired military equipment had simply vanished. The document on funds allocation was passed by the parliament. The plants in Ukraine and Russia said that they had never received the money and the debts were still outstanding. But the Ministry of Defence refers to the agency company that managed the funds. The agency company is headed in Kazakhstan by ex-deputy Prime Minister Asygat Zhabagin, a high level official. The mention of his company and his name in the article not only provoked his anger but also gave rise to threats addressed to Mr. Benditsky. A libel suit was then brought against the journalist, and the court demanded a 5-year term of imprisonment. Our organization Journalists in Trouble acted as a public defender in court. We gave the fact of the accusation extensive publicity both within the country and abroad, asking for support from Reporters without Frontiers and the Committee for the Protection of Journalists. It is only due to this uproar that the president intervened and demanded to examine the case on its merits. As a result, an investigation began in Kazakhstan into the disappearance of the money from the budget and Mr. Benditsky was found not guilty. This, however, is the only case of a journalist managing to prove himself to be in the right. There have been no cases in Kazakhstan where journalists have been imprisoned for libel, as is often done in Uzbekistan, but there are at least 40 cases a year when a journalist or a newspaper or the editorial board of a TV station is fined and made to pay damages.

Here is the most recent example of a typical court ruling on a libel suit against a newspaper.

A fake issue was circulated in Kazakhstan of the most popular national newspaper *Assandi Times* (circulation 36,200), which is in opposition

to the authorities and criticizes top level officials. The fake issue had the same print run, but its articles were overtly extremist in character. The provocative articles were supposedly authored by the writers of the real *Assandi Times* and well-known politicians from opposition parties. That same day, the newspaper's editorial board held an emergency press conference, announcing that the journalists had nothing to do with writing and publishing the fake issue. Moreover, the editorial board made a statement, calling on the law-enforcement agencies and the public prosecutor's office to find those responsible for producing the fake issue. If the guilty parties were not found, the newspaper declared, it would assume the authorities to have been responsible, in particular the presidential staff. The statement was made at the press conference on Thursday and on Monday a demand was received from the presidential staff to refute the version of this organization's involvement in producing the fake issue. The most amazing thing is that the staff did not wait for the legally established thirty days, or even for the next issue of the newspaper, which comes out on Fridays, but brought a libel suit against the newspaper that same Wednesday. The hearings proceeded at a great speed, since the aim was to close down this "inconvenient" newspaper as quickly as possible before the parliamentary elections.

The judge dismissed all of the lawyers' requests to perform a linguistic expert analysis, since the editorial board's statement did not contain libel, only a possible version. As a result, the court assessed a penalty in the amount of 50 million tenge, which is the equivalent of US\$700,000, to be paid by the newspaper to the presidential staff for moral damage to the image of a government agency. The authors of the fake issue were never found or punished, but the newspaper went bankrupt, since it did not have so much money. The court also tried to arrest the *Assandi Times* assets, but it has none. All the newspaper's property belongs to the Journalists in Trouble Foundation, which provided equipment for its free use. The tax authorities immediately visited the Journalists in Trouble Foundation, however, and fined its president, that is, myself, US\$400 for improper execution of the contract on the free use. They could not, however, arrest or confiscate the equipment itself. The same newspaper team is now

publishing a paper entitled *Respublika*, without changing its style or the subjects it covered.

This example of how the presidential staff uses the Criminal Code provisions for accusing the press of libel shows how common such punishment measures have become in the country.

I would like to stress a tendency: the provision on libel and insult of honour and dignity is used in Kazakhstan's judicial practice as a weapon against the press, in order to close down newspapers or bankrupt them.

There were quite a few cases when strong pressure was brought to bear on a periodical or a TV channel, binding them by an amicable agreement to avoid sensitive and anti-government topics in exchange for keeping their business. Independent periodicals are thus virtually induced to become loyal and agreeable to the authorities.

Let me also underline the tendency to make selective use of the libel provision in Kazakhstan judicial practice. Opponents of the regime cannot use the libel provision in their own defence, as their suits are not accepted by the courts. For example, the newspaper *Express-K* wrote a vile article on the politician Guljan Yergaliyeva, comparing her to a mangy cat, looking like a young girl from behind and an old witch from the front, and using other similar insults concerning her appearance. At the same time, she was unfoundedly accused of 20-year-old financial violations. The aim of the article was to discredit the authoritative opposition leader. The newspaper *Express-K* waged a similar defamation campaign targeted against the leaders of the Ak Zhol party and Kazkommerzbank – a business competitor of the newspaper's founder. Newspapers like this get away with everything and the courts refuse to accept suits against them.

One more example of how easy it is to use the libel and insult provisions against the independent press. Moreover, please note how absurd the accusations often sound. In Kazakhstan, there is an Internet newspaper called *Navigator*, which received a libel and insult suit from parliament deputy Serik Abdrakhmanov. He decided to sue the Internet newspaper for unfavourable comments made about him on the Forum, where information about deputy Abdrakhmanov was discussed anony-

mously. The deputy was not concerned about why the Internet site should be held liable for anonymous comments – he demanded damages and that the newspaper be closed down.

I would like to conclude my speech with these examples and to support the international initiative to eliminate the libel and insult provisions from the Criminal Code, since practice shows that ordinary citizens hardly ever make use of them, while there is a multitude of cases when they are used by officials to punish journalists. I believe that ordinary citizens would be satisfied with the article in the administrative code, which protects them against libel. In the Kazakhstan Administrative Code, there is a separate section dealing with the protection of citizens against libel, with more than 20 articles envisaging imposition of enormous fines on the guilty parties. We know that these articles may also be used to scare off journalists, but a fine is a lesser evil than imprisonment. That is why we demand decriminalization of the relevant legislation of all the countries in Central Asia.

III.

FREEDOM OF INFORMATION

David Banisar

FREEDOM OF INFORMATION: GLOBAL PRACTICES AND
IMPLEMENTATION IN CENTRAL ASIA

Sauytbek Abdrakhmanov

FREEDOM OF INFORMATION IN KAZAKHSTAN

Olga Volkova

ACCESS TO INFORMATION IN KAZAKHSTAN

Nuriddin Karshibaev

ACCESS TO INFORMATION: ITS MONITORING AND USE
IN ESTABLISHING A DIALOGUE BETWEEN THE
AUTHORITIES AND THE MEDIA

Alexander Kulinskyi

ACCESS TO INFORMATION IN KYRGYZSTAN:
SOCIETY EXPECTS TRANSPARENCY FROM
THE AUTHORITIES

Rustam Koshmuratov

PROBLEMS WITH THE ALLOCATION OF RADIO
FREQUENCIES IN THE REPUBLIC OF KYRGYZSTAN

FREEDOM OF INFORMATION: GLOBAL PRACTICES AND IMPLEMENTATION IN CENTRAL ASIA

David Banisar

III

Overview

It is now widely recognized that transparency in public affairs is positive for both governments and citizens. Over 60 countries have adopted comprehensive freedom of information (FOI) acts to facilitate access to records held by government bodies and over forty more have pending efforts.¹ Most countries have also a variety of other laws including media acts, environmental protection and archives laws that allow for access to information.

The legal regimes and practices in the Central Asian states are significantly behind the rest of the OSCE participating States in providing for media and citizen access to information held by government bodies. None have adopted adequate laws providing for a strong right of access to information and what laws the countries have adopted are undermined by broad acts on state secrets that classify information in often seemingly arbitrary ways and uncooperative practices by officials.

The Benefits of Freedom of Information

Access to government records and information provides for numerous benefits for both governments and citizens:

- **Democratic Participation and Understanding.** Citizens are better able to participate in the democratic process when they have information about the activities and policies of the government. Public awareness of the reasons behind decisions can improve support and reduce misunderstandings and dissatisfaction. Individual members of Parliament are also better able to conduct oversight.

¹ See Appendix A for a list of countries that have adopted comprehensive laws.

- **Improved Government Decision-Making.** Decisions that will eventually be made public are more likely to be based on objective and justifiable reasons and confidence in the government is improved if it is known that the decisions will be predictable. The World Bank has found that “more transparent governments govern better for a wide variety of governance indicators such as government effectiveness, regulatory burden, corruption, voice and accountability, the rule of law, bureaucratic efficiency, contract repudiation, expropriation risk and [a combined transparency corruption index].”²
- **Diminished Opportunity for Corrupt Practices.** FOI legislation is a key tool in anticorruption measures. Citizen and media use of FOI in many countries have revealed corrupt practices previously unknown or ignored by authorities. The UN Convention on Corruption calls for governments to make procurement information generally available. In Thailand, the Prime Minister recently called for the public to use the Official Information Act to assist the government in reducing corruption.
- **Redressing Past Harms.** In countries that have recently made the transition to democracy, FOI laws allow governments to break with the past and allow society, victims of abuse and their families to better understand what happened. In Central Europe, most countries have adopted laws allowing for access by citizens and others to the files of the former secret police.
- **Improved Government Efficiency and Recordkeeping.** FOI can also improve the internal flow of information within governments. Excessive secrecy reduces the ability of government departments to share information, and thus impinges upon efficiency. Many countries have reported that enacting FOI laws actually improved coordination and policy development. In many countries, the adoption of FOI laws has resulted in a measurable improvement in recordkeeping practices as government agencies are prompted to revise their record-keeping to meet the new legal requirements. Moreover, the right of access to

² Roumeen Islam, Do more transparent governments govern better? (World Bank 2003). http://econ.worldbank.org/files/27369_wps3077.pdf

government files ensures that records are accurate and that decisions are not based on outdated information.

International Obligations With Regards to Access to Information

There is a growing body of agreements, treaties, resolutions, guidelines and model bills adopted by international organizations promoting access to information as a international human right and as a key part of administrative law on issues such as environmental protection and anti-corruption.

At its first session in 1946, the General Assembly of the United Nations recognized the importance of freedom of information and expression.³ This was incorporated into Article 19 of the 1948 UN Declaration of Human Rights which states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

FOI was thus considered an essential part of freedom of expression. Since 1993, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression to the Commission on Human Rights has advised that access to information is a separate human right. In his 1998 report to the Human Rights Committee, he stated:

The right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a freedom on its own... that the right to access to information held by the Government must be the rule rather than the exception. Furthermore, there must be a general right of access to certain types of information related to what may be called "State activity", for example, meetings and decision-making forums should be open to the public wherever possible.⁴

This call for access has especially been adopted in the field of environmental protection. The 1992 Rio Principles adopted by the UN Earth

³ Resolution 59(1), 14 December 1946.

⁴ Promotion and protection of the right to freedom of opinion and expression, Report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1997/26. E/CN.4/1998/40. 28 January 1998; The right to freedom of opinion and expression: Report of the Special Rapporteur, Ambeyi Ligabo. United Nations Economic and Social Council E/CN.4/2004/62, 12 December 2003.

Summit call for access to information on the environment held by public authorities so as to enhance citizens' participation in decision-making about environmental matters.⁵ This led to the adoption of the 1997 UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) which requires that governments affirmatively make information available and engage citizens before making decisions on environmental issues.⁶ It has now been signed by forty countries. In the region, all of the Central Asian countries except for Uzbekistan have signed the Convention.

The Council of Europe has also been active in developing the right to information. The COE Ministers first issued a resolution in 1979 calling on member countries to adopt FOI laws. Since then, it has reiterated that recommendation several times and has assisted member countries in developing and implementing laws. In 2002, it issued detailed guidelines for member countries on developing access laws and is currently discussing developing the first international treaty on access to information.⁷

Article 10 of the European Convention on Human Rights (ECHR) provides for the right to free speech based on the UNDHR. While the Court has not ruled that Article 10 provides for the right of access to information, it has found numerous times that the right of access to information is a right found in other provisions. For example, Article 8, which provides for the right of privacy to individuals, also includes the right to obtain records about yourself and furthermore provides for a positive obligation on the part of governments to make information about other important issues such as environmental hazards available to communities.

All Central Asian countries have, as members of the UN, the OSCE, the CIS and other international organizations, ratified most international human rights documents without any reservations or derogations. Interna-

⁵ Principle 10, Rio Declaration on the Environment and Development.
<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

⁶ UNECE. <http://www.unece.org/env/pp/>

⁷ Council of Europe, Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, 2002.
http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r2.htm

tional law prevails in the constitutions of all the Central Asian countries and in cases of conflict between national and international duties of the state, international ones have the superior status. However, there are some laws that contradict the provisions in the constitution and by-laws are directly enforced. Courts have resisted applying international law and, in cases of conflicts of internal laws are reluctant to apply the constitution, thus prioritizing by-laws.

Constitutional Rights to Access to Information

Globally, freedom of information is increasingly being included specifically in recently developed or modified constitutions. Over fifty countries' constitutions now include a right to access of information. In some countries such as Estonia, Hungary, Finland, Moldova, Poland and Portugal, the Constitution provides for a general right of information to all citizens. In others, it is limited to a right to access records about the person or his interests.

All five states' constitutions provide for freedom of expression. According to the constitutions, the media are free and must function in compliance with the laws. Media are also responsible for the accuracy of the information and censorship is prohibited.

Most of the constitutions also recognize some right of access to government-held information. Article 25 of the Constitution of the Republic of Tajikistan states that: "Governmental organs, social associations, and officials are obligated to provide each person with the possibility of receiving and becoming acquainted with documents that affect her or his rights and interests". Similarly, Article 30 of the 1992 Uzbek Constitution requires "state bodies, public associations, and officials" to allow citizens access to "documents, resolutions, and other materials, relating to their rights and interests" and Article 18(3) of the Kazakhstan Constitution allows for citizens access to information that relates to their "rights and interests" from State bodies, public associations, officials, and the mass media. Article 26 of the Constitution of Turkmenistan provides for citizens to "have the right to receive information". Article 16(6) of the Constitution of the Kyrgyz Republic

allows citizens the right to be “acquainted with personal information” held by government bodies.

However, these rights of access are immediately followed by broad derogations in the name of protection on state and other secrets. The Turkmen Constitution restricts access when “such information is a governmental, official, or commercial secret”. The Kyrgyz Constitution limits access when the information is a “state or other secret protected by law.” The Tajik Constitution limits it “in cases anticipated by law”. In practice, these limitations are given greater status than the right to know.

Comprehensive Right to Information Laws

Laws opening government records and processes are now commonplace among democratic countries. Nearly sixty countries have adopted comprehensive laws to facilitate access and over forty more countries having pending bills or proposals. The laws are broadly similar, allowing for a general right by citizens, residents and often anyone else to demand information from government bodies. There are exemptions in cases such as the withholding of critical information and appeals processes and oversight.

Basic Elements of Right to Information Laws

- **A General Right to Know.** FOI laws generally provide for the right of any individual, organization or legal entity to be able to demand information (defined in some legislation as documents or records) from public bodies without having to show a legal interest. Often there are provisions to allow for citizens to have greater access to otherwise exempt information in cases where there is a pending administrative appeal or a request to access personal information about the person.
- **Obligation of Public Bodies to Provide Information.** The government body is obligated to respond to demands for information held by the body in any form (print, electronic, audio-visual etc.) and must provide the information in the format requested. There are also rules regarding the procedures that must be followed by both the requestor and the public body. These rules include requirements for the format of

the request, procedures for appointing officials and handling requests and time limits for responding to requests. The South African Promotion of Access to Information Act extends the obligations to private bodies when it is necessary to protect individual rights. Similarly, data protection acts in most countries allow for individuals to access personal information held by private bodies.

- **Exemptions to the Right to Know.** All laws provide for exemptions to the right to know which allow for the withholding of certain limited sensitive information. Typically, the laws require that the public body show that some harm to the interest will occur if it is released before the information can be withheld. Once the harm has passed, then the information should be released. Most laws also stipulate that only the sensitive information in a document should be withheld and that the rest of the document or record should be released. The Council of Europe recommends the following exemptions:
 - ⇨ national security, defence and international relations;
 - ⇨ public safety;
 - ⇨ the prevention, investigation and prosecution of criminal activities;
 - ⇨ privacy and other legitimate private interests;
 - ⇨ commercial and other economic interests, be they private or public;
 - ⇨ the equality of parties concerning court proceedings;
 - ⇨ nature;
 - ⇨ inspection, control and supervision by public authorities;
 - ⇨ the economic, monetary and exchange rate policies of the state;
 - ⇨ the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.⁸

Many laws also provide for information to be released if there is an overriding public interest in disclosure. This typically includes cases where there is a public emergency, violations of laws and envi-

⁸ Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, 21 February 2002.

ronmental concerns. Some countries' laws and the COE Guidelines require that all exemptions be subject to the public interest test.

- **Internal Appeals.** Nearly all countries provide for requestors to have the right to ask for an administrative appeal regarding withholdings of information. The review is typically done by a higher level official in the government body or by a superior body in the same ministry. The advantage of these procedures is that they can be carried out relatively quickly and inexpensively. However, their utility is often limited by the reality that officials from the same department review the decision and are likely to uphold decisions by their colleagues. Under standard administrative procedure as practiced in most countries, internal appeals must be exhausted before external reviews can be requested.
- **External Review and Oversight.** Most countries provide for an independent external body which can be asked to review cases where information is withheld. This external body is meant to issue opinions on the legality of the withholdings. In many countries, the parliamentary ombudsman, under its general power of investigating maladministration, reviews cases. A number of countries including Hungary, Slovenia, Estonia, Thailand, Mexico, France, the United Kingdom and Canada have created a specialized body called an Information Commission which reviews cases and also promotes freedom of information through public advocacy and the provision of training and guidance to the public and government bodies. Almost all countries also provide for a separate review of the decision by an independent court or tribunal.
- **Duty to Publish.** Most laws include a requirement for government bodies to affirmatively publish some type of information about their structures, rules, and activities. Newer laws such as laws in Poland and Estonia require that government bodies create web sites and that they make information available by electronic means. Electronic networks are an efficient method of providing information. The Council of the European Union makes available many of the documents it creates in its electronic register, including any document released under its access regulations. This has resulted in both improved access by citi-

zens and efficiency gains by the secretariat. As noted by the Council in the most recent annual report: “If the number of documents directly accessible to the public increases, the number of documents requested decreases.”⁹ However, one major barrier to this approach in the Central Asian region is the fact that many individuals are not able to use electronic resources due to lack of access or training.

- **Sanctions for Officials Who Fail to Follow the Requirements of the Law.** These can include administrative sanctions against government bodies or officials and criminal penalties in extreme cases such as the unlawful destruction of documents or deliberate obstruction in releasing information. Many countries also provide for legal fees to be paid for by the government body when it is found that the body withheld information without justification.

FOI Laws in Central Asia

In the region, Kyrgyzstan, Tajikistan and Uzbekistan have adopted FOI laws that are roughly based on these elements. None of the laws fully incorporate the elements above and the laws are better described as general information policy laws rather than laws that provide for a comprehensive right of access to information. Of the laws, the 2002 Tajikistan Law of Information most fully incorporates international practices in its text, but not necessarily in practice.

One major problem is that the laws in the region generally do not provide detailed procedures for requests such as are found in international practices. The laws often refer to by-laws and other laws and regulations. For example, the Law of the Kyrgyz Republic on Guarantees and Free Access guarantees citizens a right of access and states that the request must be in writing but does not provide a comprehensive list of legitimate exemptions. In practice, there are some types of information that are hardly accessible because of the absence of the instructions and regulations to which most laws refer. For example, it is difficult in many

⁹ See Annual report of the Council on the implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, 7 March 2003.

countries for the family to find information on the time of execution and on the place of burial in cases of a death penalty.

Another major problem is the broad exemptions set out in the laws that go beyond international practices. For example, the Uzbekistan Law on the Principles and Guarantees of Freedom of Information provides for exemptions to protect the “nation’s spiritual, cultural and scientific potential” and the “moral values of the community.”

As noted above, the laws don’t often directly relate to making information available. Many of the laws contain prohibitions on the dissemination of information by the media. Article 10 of the Law of the Kyrgyz Republic on Guarantees and Free Access to Information prohibits the mass media from disseminating ten categories of information including pornography, “unprintable expressions”, “wittingly false information” and prohibits media from advertising without registering and licenses. Not every Central Asian state publishes its policy or strategy in one or another matter.

There is also a serious problem with access to by-laws and other secondary legislation. The Cabinet of Ministers in some countries issues two types of decrees/norms: those which are open and accessible to society called ‘white publications’ and those called ‘red publications’, which are targeted to some internal issues and/or to secret or strategic issues and are not accessible to the public. ‘Red publications’ are essentially regulations and instructions for the state agencies but most of them constitute public information or regulations of some public relations. In the Republic of Uzbekistan, when the Cabinet of Minister issued Decree N543 in December 2003 on the procedure of INGOs and IGOs registration, INGOs were informed by the Ministry about new procedures but none of them could access the mentioned decree legally.

There is also limited application on local and regional levels. Access to the norms or acts of local government administration is quite hard. In most cases there is no regulation on that issue; however such acts have direct power.

Media Laws

All of the Central Asian countries have laws on regulating the mass media and on the activities of journalists. All of the laws provide for some additional rights of access by the media on their face and limit censorship. However, in practice, the media laws in the Central Asian region are more focused on controlling the media than about providing access. These include requirements on media and journalists registration before they can operate and broad limits on disclosure of information.

In Kazakhstan, the Law on Mass Media provides that government bodies, public associations, government officials and mass media must provide citizens with information including documents and sources on issues that affect the citizens' interests. Journalists are given the right to visit government offices, attend meetings and events and to have access to documents except for those that contain state secrets. In Tajikistan, the Law on Press and Other Mass Media requires public bodies and officials to "supply the information necessary to the mass media" and gives journalists the right to demand information and review documents from public bodies and officials.

The 1997 Uzbek and Kyrgyz laws on the professional activities of journalists both give journalists the right to "gather, analyse, and distribute information...apply to state bodies, self-administration bodies...in order to receive information" and to "have access to documents, materials and information, excluding those containing information, which is a state or any other secret protected by the law."

Even in Turkmenistan, where the Soviet-era Law on the Press and Other Media still remains in force, journalists are given the right to demand information from public bodies and officials.

The media laws also include penalties for the publication of broad categories of information including state and commercial secrets, insults to the civic dignity of people and to state symbols.

State Secrets Acts

Every country has highly sensitive information relating to national security that needs protection and rules relating to the protection of

this information. There is often a conflict between these procedures and freedom of information. FOI acts are based on the presumption that information should be available to the public. Broad exemptions to access imposed by security protections frequently raise serious concerns about national security being used to undermine basic rights, a situation that even occurs in some of the most long-standing democracies. Ensuring national security is important to all nations but the balance between national security and freedom of information is frequently skewed towards national security.

A properly functioning security of information system recognizes that a limited amount of sensitive information needs to be protected and then, only for the duration that it is sensitive. The level of protection should be based on the sensitivity of information and less sensitive information should be given lesser protections or none at all. There are substantial monetary costs relating to the protection of classified information. In the United States, it costs an estimated \$7 billion each year to protect classified information. It can also lead to the withholding of information due to misfeasance, incompetence and corruption. Perhaps, most importantly for the state, excessive classification leads to a weakening of the protection of the important information. US Supreme Court Justice Potter Stewart noted in the *Pentagon Papers* case “When everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion.”

Many countries around the world have adopted laws that set out detailed procedures regarding the classification and declassification of information which could affect national security. These laws set rules on the types of information that can be classified, limitations, the duration of the classification and procedures for vetting of employees. New members of NATO were required to adopt these laws on protection of classified information as a condition of joining the organization. Most CIS countries have adopted laws on state secrets based on the Russian State Secrets Act.

The most significant barrier to access to information in Central Asia is the use of vague and broad acts regarding the protection of state secrets. Every country in the region has adopted such a law and they are remarkably similar. These acts were all adopted shortly after the independence of the countries.

Elements of State Secrets/Protection of Classified Information Acts

- Types of information to be protected. A properly written state secrets act limits its protections to only that information which release of would seriously undermine the national security or the territorial integrity of the nation. The Slovenian Classified Information Act defines it as “a threat to the vital interests of the country” (needed for a top secret designation). In Peru, it is defined as “a threat to the constitutional order, independence, territorial integrity and defence capability of the country”.

The types of information protected must also be clear. A properly functioning system provides for a clear delineation of the types of information that are being protected so that the system cannot be arbitrarily used to restrict information in the name of national security. The US Executive Order on Classification sets out eight areas that are eligible for classification:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security, which includes defence against trans-national terrorism;
- (f) United States Government programs for safeguarding nuclear materials or facilities;

- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to national security, which includes defence against trans-national terrorism; or
- (h) weapons of mass destruction.¹⁰

The laws in Central Asia all fail to set reasonable limits on the imposition of secrets. For the most part, the laws only set out vague standards for the protection of the nation and include other issues such as economic and political interests. There are many examples of inappropriate information being covered under the secrets acts. In Tajikistan and Uzbekistan, information on the use of the death penalty is a state secret. In Tajikistan, information on economic growth was classified in 2003. In Turkmenistan, it has been reported that medical personal are being warned to not speak about cases of the plague because that is considered a state secret.

It is often unclear what secrets are protected. In Uzbekistan, the lack of a published list of which information is protected as state secrets leads to concern about officials creating new categories without limit. It was generally seen as a positive step in Uzbekistan when the Chief Inspection for the Protection of State Secrets in the Press, which was generally seen as a mechanism for censoring the media, was removed. It is still unclear if this has had any substantive effect on the publication of information or has brought any clarity on defining what state secrets, if published, could subject the media to prosecution under the criminal code for revealing information.

- **Levels of Classification.** Most State Secrets and Classified Information laws create a tier of categories of security. Secrets are typically divided into levels of “Top Secret”, “Secret,” “Confidential” and “Restricted” or “For Official Use”. Each level sets different thresholds for access, use and protection. The Russian law on State Secrets creates three categories: “Of Special Importance”, “Top Secret” and “Secret.” Secret information is general limited to that which would harm national

¹⁰ Executive Order 13,292, Further Amendment to Executive Order 12958 Classified National Security Information, March 28, 2003. Also See Ireland Freedom of Information Act, Section 24; Canadian Access to Information Act, Section 15; Bulgarian Law for the Protection of Classified Information, Appendix No. 1 of Article 25.

security if disclosed. For example, the Slovenian Classified Information Act states, “SECRET classification shall be applied to classified information the disclosure of which, to unauthorised persons, could seriously harm the security or interests of the Republic of Slovenia.” The US Executive Order on Classified National Security Information (EO 12958) sets “secret” as “shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.” Most of the laws in the region follow this approach to some extent. The Kazakhstan law on Protection of State Secrets adopts the Russian approach of three tiers. The Uzbekistan law adopts categories on state, military and official secrets but does not distinguish time limits or levels of sensitivity.

- **Duration.** Typically, state secrets set limits on the length of time that information should be classified. It is generally recognized that information should only be classified for the period in which the harm in withholding it is greater than the public good in releasing it. Classified information is best thought of as having a “lifecycle”¹¹. Through different stages, the information’s need for protection will change. The older the information, the less likely that the harms will be realized and the higher the public interest for releasing the information.

Most laws require that information should only be classified for as long as it is necessary for protecting the interests needed. The duration is typically found in older acts and ranges from thirty to fifty years. The Russian Law on State Secret sets a limit of thirty years. More recent acts have started to set the duration based on the level of classification and have imposed shorter limits ranging from fifteen to twenty years on the maximum duration for information to remain classified. The US Executive Order sets a default of ten years unless it can be shown that it needs a longer duration. The Bulgarian Protection of Classified Information Act sets a limit of 30 years for Top Secret, 15 years for Secret, 5 years for Confidential and 2 years for an official secret.

¹¹ See Background on the Principles and Process of “Life Cycle Risk Assessment”, <http://www.opsec.org/opsnews/Sep97/protected/Secrecy.html>

Most of the laws in Central Asia do not provide for these set limits on classification in the text of the law. One significant exception is Kazakhstan, which sets a limit of twenty years with a possibility of renewal. The Uzbekistan and Turkmenistan laws set no maximum time frame but only require that the information is reviewed every five years.

- **Prohibition on Information From Being Classified.** Most secrets acts typically provide that certain categories of information cannot be classified. These typically include human rights violations, violations of other laws, and information relating to environmental hazards.

The CIS Inter-parliamentary Assembly Model Law on State Secrets, not in itself a model of liberal access, provides for a much more detailed list of items that cannot be classified:

- 1.) On emergency situations and catastrophes which threaten security and health of citizens, and their consequences, as well as on natural calamities, their official forecasts and consequences;
- 2.) On the state of the environment, healthcare, sanitation, demography, education, culture, agriculture, as well as criminality;
- 3.) On privileges, compensation and preferences granted by the state to citizens, officials and organisations;
- 4.) Facts of human rights and fundamental freedoms of a citizen;
- 5.) Sizes of gold and currency assets of the national bank and government (budget) reserve of precious metals and stones;
- 6.) On facts of violation of law by state organs, organisations and their officials;
- 7.) Mass repressions for political, social and other reasons, including data stored in archives...¹²

The US Executive Order states that information cannot be classified to “conceal violations of law, inefficiency, or administrative error, prevent embarrassment to a person, organization or agency, retain competition, or prevent or delay the release of information that does not require protection in the interest of national security information.” It also prohibits basic scientific information not clearly related to

¹² Model Law on State Secrets, Adopted at the 21st Plenary session of the CIS Interparliamentary Assembly (Decision 21–10 of 16 June 2003)

national security from being classified. The Slovenian Protection of Classified Information Act prohibits the classification of information relating to crimes.¹³ The Moldovan Law on State Secrets prohibits classification of the “true situation in the sphere of education, health protection, ecology, agriculture, trade, and justice”.

The exemptions in the Central Asian laws are typically much less detailed. The Uzbekistan law does not define any categories of information that cannot be classified. The Turkmenistan law limits classification to only information relating to rights, freedoms and lawful interests and to information that endangers personal safety and health.

- **Oversight.** In many state secrets acts, a specialized body is created which makes decisions on the categories of information to be classified, and provides vetting of those who are authorized to access classified information. They also can review decisions concerning classification. In Russia, the Interdepartmental Commission for Safeguarding the State Secret was created by the Secrets Act. In Hungary, under the Secrecy Act of 1995, the Parliamentary Commissioner for Data Protection and Freedom of Information is entitled to change the classification of state and official secrets.¹⁴ In the US, the Information Security Oversight Office, an office of the National Archives, is currently reviewing the decision by the Pentagon to classify the report on torture by military and civilian employees in Iraq. Most of the Central Asian legislation lacks an independent body to review their decisions. The bodies that are asked to review, such as the National Security Service in Uzbekistan, after the same as those that create the secrets.
- **Criminal Code Provisions.** Most countries also have provisions in their criminal codes that prohibit the unauthorized disclosure of secret information to foreign governments and often to anyone else as well. Often, they also prohibit the further redistribution by others, such as the media, of information that is considered secret. Typically, however, the recently adopted FOI laws override the Secrets Acts prohibitions on release of information except in the case of national

¹³ Article 6, Classified Information Act

¹⁴ Hungary, Act LXV of 1995 on State Secrets and Official Secrets.

security information. In New Zealand, the government repealed the OSA when the Official Information Act was adopted in 1982. Cases where the use of the criminal code provisions to punish newspapers for publishing “state secrets” are common in the region.

Conclusion

The Central Asian states have made some steps towards freedom of information but substantial problems remain. None have laws that meet international standards on access to information. State Secrets Acts undermine the right of access and are often abused. Significant efforts are required to ensure that the region joins the rest of the OSCE in recognizing the right of access.

Appendix 1 - List of National Freedom of Information Laws

The following countries have adopted national access to information laws. Not all laws have been implemented or are considered effective. For a review of these countries’ laws, see David Banisar, Freedom of Information and Access to Government Record Laws Around the World. <http://www.freedominfo.org/survey.htm>

- | | |
|------------------------|--------------------|
| Albania | Denmark |
| Angola | Dominican Republic |
| Armenia | Ecuador |
| Australia | Estonia |
| Austria | Finland |
| Belgium | France |
| Belize | Georgia |
| Bosnia and Herzegovina | Greece |
| Bulgaria | Hungary |
| Canada | Iceland |
| Colombia | India |
| Croatia | Ireland |
| Czech Republic | Israel |

Italy	Portugal
Jamaica	Romania
Japan	Serbia
South Korea	Slovakia
Kosovo	Slovenia
Kyrgyz Republic	South Africa
Latvia	Spain
Liechtenstein	Sweden
Lithuania	Switzerland
Mexico	Tajikistan
Moldova	Thailand
Netherlands	Trinidad and Tobago
New Zealand	Turkey
Norway	Ukraine
Pakistan	United Kingdom
Panama	United States
Peru	Uzbekistan
Poland	Zimbabwe

Sauytbek Abdrakhmanov

FREEDOM OF INFORMATION IN KAZAKHSTAN

First of all, I'd like to thank the organizers of this seminar and the OSCE Centre for creating the necessary conditions for productive work. For the second day running we have had a useful exchange of opinions on vitally important issues relating to the democratization of public life, the mass media in particular.

When Ivar Vikki, the OSCE ambassador to the Republic of Kazakhstan, and I met in Astana and he suggested that I should speak on the subject of "Access to Information", I accepted his suggestion with pleasure. The degree of public awareness and freedom of information are the key factors of the democratization process. You must be familiar with the maxim: "Information is the main currency of democracy." And that is quite true. The more information we get, the more democracy we have. And vice versa. The more information we get, the more trust there is. And vice versa.

In this connection I recall the parable told by the great Confucius. Once he was asked: "A government has three assets: the army, food supplies and the people's trust. If one of these assets had to be given up, which should it be?" Confucius replied: "The army. With food supplies a country can hold out for a fairly long time." He was asked then another question: "And if one of the remaining two assets had to be given up, which should it be?" Confucius replied: "Food supplies. A country can live without food for several days, whereas without the people's trust it cannot last a single day."

Of course, I'm not sure about the precise wording of that parable, but its essence is there.

The people's trust is ensured by truth. Truth and nothing else. And it is we, media workers in the first place, who bring truth to the people.

As a former Minister of Information, I can state positively that efforts are being made towards this end in the Republic of Kazakhstan. Today,

about 80 per cent of over 2,000 media bodies in Kazakhstan are non-governmental companies. Since the very first years of the country's independence there was a fairly broad network of the opposition media. You can judge by yourselves about the extent of freedom of speech in Kazakhstan from the addresses given by my colleagues. Forgetting about the elementary requirements of the presumption of innocence, we can accuse anybody of anything – even despite a public refutation of incriminating facts.

Under effective law, information shall be available to the public and shall not be subject to any restrictions, except in the cases provided for in a particular article of the Constitution of the Republic of Kazakhstan. For instance, the mass media shall not be used for subversive propaganda or calls for a forcible change of the constitutional system, for violating the territorial integrity of the Republic of Kazakhstan, undermining the security of the state, inciting war, disseminating the ideas of social, racial, national, religious, estate or clan superiority, advocating cruelty and violence, spreading pornography, as well as for disclosing information constituting state secrets of the Republic of Kazakhstan or any other secret information protected by law.

To construe the above as an infringement of freedom of speech would be naive, to say the least.

The legislation now in force envisages certain rules of providing information by government agencies and other organizations at the request of mass media representatives, with the exception of information constituting state secrets of the Republic of Kazakhstan, and it also envisages responsibility for refusal to provide information.

It gives me pleasure to inform you that Kazakhstan is getting down to creating an e-government. We have carefully studied Estonia's experience in that area. There is no doubt that an e-government will facilitate access to information on the operation of power structures. Quite naturally, journalists, too, will be able to use this innovation.

In addition, we are working on a draft law on Information and Protection of Information. The Government has already submitted it to the parliament, and it will be considered by the new Majilis. By the way, I feel it my duty to say that since the results of the elections in Kazakhstan,

which were held only three days ago, have not yet been finalized, it is wrong to make unfounded accusations of any violations against anyone, particularly in view of the fact that international observers (there were over a thousand of them) have on the whole positively appraised the degree of openness of the elections.

Issues pertaining to protection against harmful information have to be regulated. The term “harmful information” has to be specified. It is the kind of information that contains propaganda or calls for a forcible change of the constitutional system, is aimed at violating the territorial integrity of the Republic of Kazakhstan; undermining the security of the state; inciting war; disseminating the ideas of social, racial, national, religious, estate or clan superiority; advocating cruelty and violence; containing propaganda and justification of terrorism and extremism, of the use and distribution of narcotic drugs, psychotropic substances, precursors, and pornography; as well as information disclosing state secrets or any other secret information protected by law; also information disclosing the technical methods and tactics of antiterrorist operations during their conduct in the Republic of Kazakhstan; information containing falsified facts of natural or man-made disasters, quarantines or other emergency situations constituting a threat to human life; unfair, untruthful, unethical, patently false and covert advertising; information containing secret inserts acting on people’s subconscious and/or detrimental to their health, which is incompatible with the requirements of ethics and public morality; information crippling the information resources and infrastructure of the Republic of Kazakhstan; infringing on people’s privacy and violating the rules of pre-election canvassing; false information which harms the honour and dignity or business reputation of individuals or legal entities, or damaging the country’s international relations and its prestige; and information compiled with the use of unprintable language.

Do the people who drafted the law advocate a return to censorship? No, they don’t.

I’d like to tell you about something I saw and heard in the United States. On 20 December 2001, our delegation visited the very place in New York where the tragedy of September 11 had occurred. Our American

counterparts told us about the State Department's request addressed to all TV channels to refrain from relishing scenes of horror – people jumping out of skyscraper windows (many of them died of heart failure during the fall), smashed skulls, pools of blood, and so on. All TV channels without exception complied with that request. What I'm trying to say is this: we cannot, on the basis of all that, assert that now there is censorship in the United States and that the truth was concealed from TV viewers. On the contrary, during those terrible days the greatest truth aimed at achieving the supreme goal was to prevent undermining the morale of that great nation, to prevent the spread of panic, and to prevent provoking new acts of terrorism. The supreme truth was a manifestation of supreme state wisdom.

Regrettably, it is precisely supreme wisdom which the so-called "independent" media often lack. Judging by the speeches of our colleagues, this is true of many media bodies in Central Asia. I said the "so-called independent news media" because the notion of independence of the mass media is highly relative and conditional. Today, we use the term "independent" with reference to the media bodies which are not featuring government-sponsored programmes or are not subsidized by the Government. All right, let's suppose that the media partly owned by the state are "dependent" to some extent – since they implement certain government-sponsored projects (although that is an arguable point as well). But the other media are also dependent. Maybe even more so. Speaking here yesterday, Mr. Duvanov admitted that some independent newspapers had become political party organs. And that is the truth, bitter truth. They now depend on the leadership of those parties. Still others depend on their founders and sponsors. The degree of the dependence of "grant-consumers" is proportional to the amount of the grants.

By the way, there's a good joke which is relevant in this connection: "The independent media are those media on which nothing depends."

I repeat: that's only a joke. Let's do everything to keep that joke merely a joke. Although every joke has a grain of truth in it.

If absolute freedom is impossible, then absolute independence is impossible either. The way I see it, in the period of transition, the mass media in our countries should depend only on the ideas of Independence.

Olga Volkova

ACCESS TO INFORMATION IN KAZAKHSTAN

First of all, on behalf of the organization which has delegated me – the Centre for Legal Assistance to the Mass Media (Karaganda, Kazakhstan) – I’d like to thank the organizers of the OSCE workshop for holding such a topical conference. Indeed, today, during the democratic development of states, the right of access to information, as well as defamation issues, are very meaningful. Having heard the speeches of media representatives from some Asian countries and compared the facts they mentioned, I can say that the situation with criminal prosecution of journalists for insult or libel is much better in the Republic of Kazakhstan, particularly in the Karaganda Region. However, as regards access to information, the situation leaves much to be desired.

For instance, in the five years that our nongovernmental organization has been in existence, there was only one attempt to call a journalist to account on criminal charges for libel, but the attempt failed because his actions lacked the elements of a crime provided for under Article 129 (Libel) of the Criminal Code of the Republic of Kazakhstan. And there has not been a single case of a journalist being brought to book under Article 130 (Insult) of the Criminal Code.

Of course, the inclusion of such articles in the Criminal Code of the Republic of Kazakhstan is intended, on the one hand, to discourage journalists from “spicy” writing, and, on the other, to protect the honour, dignity and professional reputation of people against all sorts of defamation. Therefore, it would be wrong to assert categorically that the presence of Articles 129 and 130 in the Criminal Code of the Republic of Kazakhstan is a hindrance to the professional activity of journalists. Indeed, in the course of democratic development many countries of Europe have decriminalized their libel and insult laws in regard to the journalists who may now incur only civil liability for such offences. Obviously, it took those countries more than a few years to arrive at this important

decision, and this is only natural: the standard of journalists' civil law awareness and professionalism must be really high for that. Therefore, it would be very useful for us to consider in the future decriminalizing the legal provisions on libel and insult – since our state is advancing along the road of democracy.

As far as the constitutional right of citizens, including journalists, to receive information is concerned, journalists in the Karaganda Region have lately had serious problems in gaining access to information. More often than not, such problems have been caused by state bodies, and sometimes by private organizations. Recently, more and more journalists have complained to our centre about problems connected with obtaining information at law courts. They were denied access to information under various pretexts: persons in charge of issuing information pleaded a shortage of time, or they had no comments to make, or they had to get permission from their superiors first, or they simply refused to have anything to do with the media. Such problems are very surprising to us since the effective legislation of Kazakhstan clearly specifies the guarantees to the media in obtaining information as well as the time-limits for issuing it, and provides for the liability of persons who have refused to give out information on no grounds – although there is no specific article to that effect. In some cases, the right of journalists to have access to unclassified information may be flagrantly violated – an obvious failure to comply with the law. Therefore, we believe, there should be liability provisions for a groundless refusal to grant information either in the Code of Administrative Offences or in the Criminal Code of the Republic of Kazakhstan.

Another very important aspect of the matter is obtaining courtroom information. Once again I'll have to refer to the procedural norms of the Republic of Kazakhstan (its codes of criminal and civil procedure) which strictly regulate the publicity of judicial examination and, at the same time, guarantee the right of obtaining courtroom information. Thus, Article 19 of the Code of Civil Procedure provides for free access of citizens (including journalists) to open trials. Moreover, it specifies that those in the courtroom have the right to take notes of the proceedings

from their places in the courtroom or to use audio recording. As far as video recording is concerned, the electronic media are allowed to do so only with the permission of the presiding judge and in the absence of objections from the parties to the proceedings. Regrettably, the news media have increasingly complained lately about courtroom information being withheld from them, as well as about being denied permission to make video recordings of the proceedings, and about the officials' plain unwillingness to communicate with the press. Our organization has taken steps to adjust problems that arise: we have conducted workshops with government officials and the media people aimed at enhancing informational cooperation between the courts and the media. For a while it seemed that the problems had been resolved, but now they are rising again with renewed force. We have repeatedly appealed to court chairmen urging them to ensure openness and to observe the rights of journalists to obtain information. On the whole, our efforts were not in vain – there were some positive results, but at times we were compelled to appeal even to Supreme Court Chairman K. Mami.

Sometimes, during court proceedings, one could notice a kind of discrimination against the electronic media. For instance, newspaper reporters were allowed to be present at a court session and to make audio recordings, while television companies, for which video recordings are essential, were refused permission to be present under various pretexts: a litigant's disagreement, improper clothing, etc. I have even witnessed a TV cameraman being forcibly expelled from the courtroom. In this connection, we believe that a complete equality of rights must be ensured for all the media and that video recording of all court proceedings must be allowed. And if a party to the proceedings should object to being recorded on video, it must be guaranteed not to be shown on the television screen in news reports.

For fairness' sake I will note that there have been isolated cases where problems with obtaining information arose because journalists were ignorant of their rights and requested information that constituted commercial or state secrets. In the majority of cases, however, journalists were denied access to unclassified socially meaningful information. In the latter cases,

of course, representatives of the state bodies, private organizations and mass media should display mutual responsibility, mutual professionalism and mutual respect.

The steps being taken by the OSCE are very necessary and significant for the further democratization of countries and for observance of human rights, including the right of access to information.

Nuriddin Karshibayev**ACCESS TO INFORMATION: ITS MONITORING AND
USE IN ESTABLISHING A DIALOGUE BETWEEN THE
AUTHORITIES AND THE MEDIA**

III

The National Association of the Independent Mass Media of Tajikistan (NANSMIT) has been monitoring for the second year running the observance of the rights of journalists and the mass media in Tajikistan. We started enthusiastically to track the situation in the media to obtain **facts and arguments for negotiations with government agencies** because at various conferences, seminars and round tables the government officials always demanded to cite specific facts and events when the talk focused on the infringement of the rights of journalists and the media. That is why we started to register every instance of the violation of the rights of journalists and the media by all accessible methods, enlisting volunteers. Today, we are carrying out systematic monitoring within the framework of two regional projects: the Project for the Support of the Mass Media in Central Asia (financed by the Swiss Agency for Development and Cooperation) and the Project called the Protection of the Democratic Principles of Freedom of Speech in the Operation of the Media in Central Asia (realized jointly by Adil Soz and other organizations of journalists in Central Asia with the support of USAID). The monitoring reports testify to the fact that restricted access to socially relevant information and the obstacles preventing its spread are the most frequently encountered violations of freedom of speech in Kyrgyzstan, Uzbekistan and Tajikistan.

Although the constitutions and respective laws in these countries guarantee the right of journalists, just as of any citizen, to free access to and dissemination of information, except for the information constituting state secret, the authorities employ diverse methods of restricting journalists' access to socially relevant information. These include direct and indirect refusals by government officials to provide information, unjusti-

fied denials of accreditation, and preferential treatment of government media bodies as compared to non-governmental and opposition media in the provision of information. This also involves journalists' restricted access to the sessions of collegial government bodies, judicial proceedings and the press conferences of top-ranking officials.

Our monitoring database shows that even ecological information, in particular information on radioactive waste, is kept secret, although Article 6 of the Law on State Secrets of the Republic of Tajikistan does not qualify information on the environmental condition and people's health as state secrets. However, journalists are denied access to the sources of this information. For example, on 15 March 2004 a correspondent of the Tajik radio Ozodi (Freedom), Kholiki Sangin, applied to the waste management inspectorate head, State Committee for Nature Conservation and Forestry, for information about radioactive waste in the Faizabad District. However, Abdusal Dzhrayev, the head of the inspectorate, refrained from providing information, telling Mr. Sangin that the Faizabad tailings storage facility was not within their competence and advised the correspondent to seek information about it somewhere else. On the following day, the journalist approached Mr. Mukhabbatsho Khikmatov, head of the Agency for Radioactive Safety, the Tajik Academy of Sciences, for information about the country's radiation safety, and also about the abandoned tailings storage facilities. However, Mr. Khikmatov refused to talk to the journalist on this topic saying that the journalist could speak about that only with the President of the Academy of Sciences, Ulmas Mirsaidov.

The actions of the above officials constitute both a violation of national legislation on access to information and non-compliance with the requirements of international law. For example, the Aarhus Convention recognized by Tajikistan proclaims that the public shall be informed about the procedures of participation in the process of taking decisions on issues relating to the environment, shall have free access to them and know how to use them. While noting the important role of the mass media, the same document encourages efforts to inform the broad public about the decisions affecting the environment and sustainable development, and participation of the public in the decision-making process.

The absence of a well-defined legal framework for information falling under the category of “state secret” and the extremely long statutory procedure of considering requests for information create a favourable legal environment for the authorities’ arbitrary behaviour in providing socially relevant information. Of special concern is the fact that the authorities often unjustifiably broadly interpret the threat arising from international extremist groupings, referring to the need to assure “the information security of society and the state” and create “a system to counter information expansion”. Meanwhile, all kinds of obstacles are put in the way of the media bodies’ efforts to ensure transparency of the government agencies’ activities – the main condition of the successful building of civil society in Central Asian countries.

As the start of the election campaign in Tajikistan is nearing, the problem of access to information is becoming increasingly topical. Government officials refuse to provide information to journalists and prevent in every possible way the exercise of citizens’ rights to receive objective and updated information on the social, political and economic situation in the country. In the past eight months alone (January-August 2004), the service in charge of monitoring the observance of the rights of journalists and the media in Tajikistan, operating under the National Association of the Independent Mass Media of Tajikistan (NANSMIT), registered 74 cases of restricted access or refusal to provide socially relevant information. In this connection, on 17 August 2004, NANSMIT circulated a statement and expressed its concern over the increasingly frequent cases of journalists’ restricted access to information, particularly to governmental information.

Here are some of the examples: on 12 August 2004, Abdukodyr Murodov, chief physician of the city of Kulyab, refused to answer the questions of Turko Dikayev, correspondent of the Asia-Plus independent news agency in Kulyab, about the sanitary condition of the city’s streets and the prohibited incineration of garbage at dump sites. The chief physician motivated his refusal by the fact that he was not authorized to answer the journalist’s questions, all the more so, the questions of an independent journalist, in the absence of an official representative of

khukumat (administration) of the city of Kulyab. This ban, according to the journalist, is the latest invention of Khatlon officials who have coined the term of “patriotic censorship” to protect the image of the trouble-free city of Kulyab until the celebration of its 2,700th anniversary on 9 September 2005.

Unfortunately, under plausible pretexts, many officials have imposed unofficial censorship, prohibited by the Constitution of Tajikistan, to prevent the leak of adverse information about the functioning of their structures.

On 8 May 2004, deputy head of the interior department of the Shuroabad District, police lieutenant colonel E. Safarov refused to provide information to the above journalist, referring to the strict instruction of deputy interior minister of Tajikistan Abdurakhim Radzhabov: “No contacts with journalists, no interviews with them!” According to Mr. E. Safarov, the deputy minister visited that district the day before, on 7 May, and at a meeting with the staff of the district’s interior department banned any communications with journalists.

Not infrequently, government officials openly refuse to provide information. In mid-June 2004 the correspondent of the Avesto news agency, Boris Khairuddinov, applied over the phone to the international department of the Health Ministry of Tajikistan for information about Minister Faizulloev’s trip abroad. Head of the international department Guldzhakhon Tumanova asked the journalist to call after lunch but she could not be reached at that time. Boris Khairuddinov had to call for three days to get in touch with Ms Tumanova and when he managed to reach her over the phone, he heard complaints about a bad mood and reproaches for being persistent instead of the required information. When the correspondent told her that information provision was her duty, Ms Tumanova said rude things and rang off.

One can cite other examples as well. However, the monitoring reports, as was noted above, must serve as **an instrument for establishing a dialogue between the authorities and the media**. We have already issued two reports on information access and disseminated them among the mass media, governmental, public and international organizations. We

also compile monthly reports available on the web sites www.nansmit.org and www.cafspeech.kz. The reports are also distributed by e-mail and by courier in hard copies in the Tajik, Russian and English languages. NANSMIT often issues statements, encouraging all government agencies to observe strictly the legal provisions on journalists' access to information and to prevent impeding journalists in their mission of informing the public. **This is one of the methods to publicly lobby the interests of the media and journalists.** At the same time, we are vigorously lobbying such interests in the media: newspapers and TV and radio programmes regularly cover the issue of access to socially relevant information. So, a public discussion of this issue in Tajik media has become a reality.

Some success has been scored in broadening access to information. For example, in the Sogdh Region, from 18 to 24 months ago, representatives of private media bodies were systematically denied access to events organized by government agencies. Today, after taking part in several seminars and round table discussions, the regional administration realized the need to co-operate with all the media and now holds weekly press conferences to which it invites representatives of local and foreign media, irrespective of their form of ownership. During the discussion of information access sources held in the region, representatives of the region's administration themselves (for instance, head of the information and analysis centre Narzullo Dadoboyev) expressed their readiness to co-operate and noted the need to implement educational programmes among the staff of government agencies press services. We organized training seminars in the city of Khudjand (the administrative centre of the Sogdh Region) with the purpose of training journalists and the staff of press services in the skills of effective interaction, to ensure the media bodies' equal access to comprehensive and unbiased information. Training seminars helped representatives of the authorities and journalists to comprehend their roles in informing the public in order to enable the power structures and the media to fulfil their mission.

Incidentally, **the use of the monitoring results in the process of training**, i.e. training seminars on promoting interaction between government agencies and the media, is also an effective method of establishing a

dialogue. At seminars we discuss specific examples of restricted access to information. For example, on 13 January a correspondent of Tajik service of the radio Freedom Kholiki Sangin approached Mr. Pirov, chairman of the court of the city of Vakhdat, with a request to get acquainted with the materials of the judicial proceedings. However, the court chairman told the journalist that he would give him any information only upon receiving a written or oral permission from the chairman of the Tajik Council of Justice. It should be noted that at a seminar of the National Association of the Independent Mass Media of Tajikistan (NANSMIT) devoted to the interaction of judicial bodies with the media, head of the staff of Tajikistan's Council of Justice Yusuf Salimov noted that Mr. Pirov was wrong when referred to the Council of Justice. "He was authorized himself to solve the issue of providing information to the journalist," he said.

The staff of government agencies press services and of the prosecutor's office took part in these seminars. They contribute to establishing direct contacts between journalists and government agencies representatives.

The monitoring database will enable us to **lobby the interests of the media and journalists in the parliament to change and amend the laws** relating to the activity of the media. At a press conference on access to information, parliament deputy Usmon Nazir expressed his readiness to lobby the interests of the media and journalists in improving the norms of legislation on access to information.

Despite some success in establishing co-operation between the media and the authorities, the issue of access to information in Tajikistan still remains topical. In our view, the easy access of citizens to the necessary and socially relevant information is the most reliable indicator of the openness of government. Only well-informed citizens can take right decisions, which is quite important on the eve of major political events – the elections. To make access to information a norm of life in society, it is necessary to improve the legislation on the media, adopt comprehensive laws on free access to information based on international standards.

NANSMIT called on and will continue to appeal to the representatives of government agencies and other structures to abide by law and international standards of freedom of speech and observe public interests

in the exercise of citizens' rights to obtain socially relevant information through the media. At the same time, NANSMIT recommends that journalists should defend more insistently their professional rights, and in case of their violation, dispute the actions of government officials under law of the Republic of Tajikistan.

Alexander Kulinskyi**ACCESS TO INFORMATION IN KYRGYZSTAN: SOCIETY EXPECTS TRANSPARENCY FROM THE AUTHORITIES**

In Kyrgyzstan, the people's right to receive information is stipulated in the Constitution and specified in the 1997 Law on Guarantees and Freedom of Access to Information. In practice, however, the right is violated, with regard to ordinary people, anyway. So with every year, journalists and public activists are increasingly dissatisfied with the existing legislation.

The Law on Guarantees and Freedom of Access to Information in itself is far from perfect. It has lots of faults and loopholes available to bureaucrats. By and large, all the fourteen articles of that law are declarations explaining and specifying the relevant constitutional article. Besides, according to a sociological survey that assessed access of Kyrgyz population to information of government bodies of various levels, which was conducted by a local NGO called "Corruption-Free Future – Transparency International" – less than half government officials have heard of the Law On Guarantees and Freedom of Access to Information and even fewer of them have actually read it.

An experiment was staged in the course of the survey. As provided for by the above-mentioned law, the NGO "Corruption-Free Future – Transparency International" sent inquiries to 73 government ministries and agencies on behalf of a legal entity and the same number of inquiries on behalf of a physical person (an individual). The legal entity asked to present information on the agency's annual budget, its web-site address, and information about participation in government programmes and accountability to higher authorities. The mock inquiry on behalf of an individual requested information about job vacancies in the government body, pay levels, annual leave, overtime pay rates. All the inquiries were carefully structured to avoid requesting any information that might be classified as "secret", "top secret", or "official use only".

One of the main conclusions from the experiment is that a legal entity can obtain information in reply to its request with a greater ease than an individual. Most of the government agencies replied to the legal entity inquiries – sooner and in a more civil and polite manner. Curiously, the agencies whose function is to protect the constitutional rights of citizens, responded neither to the legal entity nor to the individual. The Office of the Prosecutor General and the Constitutional Court first tried to find out, in a not-very-civil manner, what were the grounds for requesting the information, and finally refused to provide it. Both agencies were considered to be the most impenetrable in the country (both scored zero on a 28-point rating scale). May I remind you that these are the results of a sociological survey of Kyrgyz population’s access to government information, which was conducted by the NGO “Corruption-Free Future – Transparency International”, with financial support from the Soros-Kyrgyzstan Foundation.

A conference on access to information held in Bishkek in summer 2004 was attended by journalists, government officials, press secretaries of government ministries and agencies, and NGO leaders. They discussed potential amendments to the existing Law On Guarantees and Freedom of Access to Information. Numerous proposals to improve the law were made by the media and NGO representatives. In particular, the journalist community proposed classifying information into three types:

1) **Permanently available information** – information that should be accessible 24 hours a day at any location. This includes:

- a) information on how to contact government ministries, agencies, and other government organizations, their business hours, job vacancies, and bidding processes;
- b) biographical data of the executive officers of ministries and agencies and legal entities;
- c) all regulations and draft laws of national and local government bodies;
- d) registration data on all the registered political parties, NGOs, news media, commercial banks, government-owned and privately-owned healthcare, and educational institutions (to be updated at least once a month);

- e) the country's main social and economic indicators by month, quarter, six months, and year;
- f) the status of Kyrgyzstan's internal and external debt (to be updated at least once a week);
- g) crime and law enforcement agencies' performance statistics by month, quarter, six months, and year;
- h) regular reports of local councils (*kenesh*) and self-government bodies by month, quarter, six months, and year;
- i) information about emergencies, riots, environmental accidents, and natural disasters;
- j) civil servants' declarations (returns), as required by the new Law On Civil Service;
- k) information about the whereabouts and health status of the country's top officials;
- l) information about budget allocations to agencies, other financial receipts and their uses.

All this information should be accessible at web sites and provided to any citizen of the Kyrgyz Republic on call without a written request.

- 2) **Information to be provided on urgent request or oral orders of the chief executive officer** of the agency or organization from which the information is sought. This includes:
- a) court decisions (except for decisions on adoption, guardianship, deprivation of parental rights, and on offences involving state, business, or medical secrecy);
 - b) any cases of denied registration of legal entities of any form of ownership or line of business;
 - c) information about specific incidents and offences (possibly, without names, if the case is being investigated);
 - d) verbatim reports of central and local government meetings (except for those containing secrets of any kind);
 - e) interpretation of Kyrgyz laws and regulations' application procedures;

- f) privatization programmes and bidding results, the reports of state-owned stock companies, joint-stock companies, joint ventures, and other businesses in which the State has equity interests;
- g) the results of audits performed by the Audit Chamber.

Answers to the requests for such information shall be provided within ten business days.

- 3) **Information which may take longer to provide.** This includes:
- a) court decisions rendered more than a year before the date of the request (except for decisions on adoption, guardianship, deprivation of parental rights and on offences involving state, business, or medical secrecy);
 - b) information about any decisions rendered more than a year before the date of the request to deny registration of legal entities of any form of ownership or line of business;
 - c) information about specific incidents and offences (possibly, without names, if the case is being investigated) that occurred more than a year before the date of the request;
 - d) verbatim reports of central and local government meetings (except for those containing any secrets permitted by law) held more than a year before the date of the request.

Answers to the requests for such information shall be provided within ninety business days.

Information requests may only be denied if the requested information contains any secrets permitted by law. The person submitting a request should have an opportunity to lodge a complaint about the denial in court.

Much attention was given to officials' liability for denying information to entities and individuals. Journalists believe that illegal denial should be punished by administrative fines equalling up to 1,000 minimum monthly wages. Multiple denials of information should be punished by deprivation of the right to hold office for at least three years.

There were many complaints about the press services of government bodies. Very often access to information is hampered by their incompetence or inefficiency. Information is often delayed because the press

services spend a long time trying to find it within their agencies, instead of organizing regular information flows from various divisions and units to the press service. As a rule, there is no contact between government ministries and agencies and their press services. The press services should be information servers accumulating information and having it available, rather than start looking for it after receiving requests from journalists or citizens.

Besides, the journalist community found that many government agencies have no press services or other such units at all, which is inconceivable in a civilized society. There are no press services at courts of law, most city and town administrations, prosecutor's offices, some national ministries and agencies. Therefore the conference decided that the requirement to have press services or public relations departments should be stipulated in the Law On Information Access Rights, with their functions and information publication responsibilities specified.

All the conference papers will soon be summarized by an Information Access Law Reform Team set up with the support of the Soros-Kyrgyzstan Foundation. Consensus on the path forward is yet to be reached. But all the stakeholders, including representatives of the top government bodies, agree that the law should be changed.

Rustam Koshmuratov**PROBLEMS WITH THE ALLOCATION OF RADIO
FREQUENCIES IN THE REPUBLIC OF KYRGYZSTAN**

The other side of freedom of information is the possibility of the people to access information: the possibility to get information through print and broadcast media. From the end of 2001, government agencies in the Republic of Kyrgyzstan actually stopped allocating radio frequencies to independent TV and radio companies, although there were no legal grounds for that. There is a document entitled “Regulations for Allotting Radio Frequency Bands to Electronic Facilities and High-Frequency Transmitters” which was formalized by the State Commission for Radio Frequencies on 21 October 1997 and approved by the Ministry of Justice on 28 October 1997. In accordance with that document, frequencies were to be assigned to all the existing TV and radio companies, and no problems arose in connection with that before.

However, in 2002 the State Communications Agency (SCA) advised everyone in writing that in keeping with Resolution No. 25/2 of the State Commission for Radio Frequencies dated 26 December 2001 frequencies would be allocated on a competitive basis. As it turned out later, that decision was not legally valid: it was merely part of inter-departmental correspondence. The same resolution instructed the SCA to work out regulations for the allocation of frequencies on a competitive basis. However, no effective document taking the interests of all parties concerned into account had been elaborated by the beginning of 2004. Thereupon the Mass Media Association, supported by the Soros Foundation, requested the SCA in a letter to convene a meeting to work out the appropriate regulations jointly with the independent media. Such a meeting took place last January and produced a document entitled “Regulations for the Allocation of Radio Frequencies”. It was forwarded to the government for approval, and for a long time

nothing was heard of it. Last summer, however, we learned that the State Commission for Radio Frequencies issued Instruction No. 37/1 concerning allocation of radio frequencies on an auction basis on 9 July 2004. Many things still remain unclear: it took three years to draft the previous regulations, but they were never adopted; what will be the auction procedure, how much will it cost? In Kazakhstan companies paid for a frequency tens of thousands of dollars. Will the Kyrgyz TV and radio companies be able to pay that much? Besides, there is no guarantee that after a few years any of the broadcasting stations will not be deprived of the frequency it has acquired, for there is no law regulating the acquisition of frequencies on an auction basis.

Another problem concerns the prolongation of licenses. In 1998, we obtained a broadcasting license for a five-year term which ended in 2003. After that our license was extended for two months, then for another three, and this was repeated many times over. The last license we received ended on 1 October 2004. Getting licenses for such short periods undermines our confidence in the future.

We applied to the SCA and received a letter saying that the issue of a license will be settled after the procedure for the allocation of frequencies is approved. As far as I can see, they have an auction in mind.

The actions of the powers that be did not go unnoticed. In the course of three years I applied to the newspapers, the parliament and the government. Jointly with the Journalists public association a letter was written and sent to the President of Kyrgyzstan, describing the difficulties involved in the acquisition of radio frequencies. At present, there are some 40 new stations which cannot obtain frequencies, and nobody can tell them clearly enough when they will be able to go on the air. In 2003, the Mass Media Association began acting in defence of the electronic media. The Association carries on correspondence with government agencies and international organizations, trying to unite all TV and radio companies into a single action group.

Today, certain government agencies want to introduce censorship in our country, although the Constitution forbids doing so. All their actions restricting the allocation of frequencies are aimed at that. Our task, there-

fore, is to foil their attempts to curb freedom of speech and trample down what we have achieved during the years of Independence.
