

# ■ Access to Information and New Technologies

12th Central Asia Media Conference  
Dushanbe, Tajikistan 25-26 May 2010

**The views expressed by the contributing authors in this publication are their own and do not necessarily reflect the views of the OSCE Representative on Freedom of the Media.**

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Organisation for Security and Co-operation in Europe

Wallnerstrasse 6  
A-1010 Vienna  
Austria

Tel number +43-1-51436-6800  
Fax number +43-1-51436-6802  
e-mail [pm-fom@osce.org](mailto:pm-fom@osce.org)  
[www.osce.org/fom](http://www.osce.org/fom)

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## Foreword

**Ana Karlsreiter<sup>1</sup>, Adilia Daminova<sup>2</sup>**

Dear Readers,

The 12th Central Asia Media Conference on access to information and new technologies took place in Dushanbe, Tajikistan, on 25 and 26 May 2010. The topic of the Conference arose as a natural response to recent developments in area of media, not only in Central Asia, but around the globe. It is impossible to discuss the issues of access to information without touching upon access to information on the Internet. More and more information is becoming available on the Internet, and at the same time, more and more is done to prevent, limit or influence the ability of the user to access that information. The more restrictions that are being developed and imposed by state authorities, the greater effort is made by people to oppose those restrictions.

It is noticeable that these issues also have gained a greater audience and wider support from civil society and international organizations. The issues of Internet access attract the attention of high-level officials and wider audiences. Free expression online was chosen as a priority issue for UN Secretary-General Ban Ki-moon, who was re-elected in June 2011. He referred to people's ability to communicate with one another as a "basic human aspiration grounded in international law". The OSCE Representative on Freedom of the Media, Dunja Mijatovic, sees access to the Internet as a human right and believes that the Internet should remain free.

According to a survey conducted by the BBC World Service at the beginning of 2010, four out of five people around the globe see Internet access as a fundamental right. There are positive examples where access to the Internet is seen as a right that should be actually protected by the State. For example, in Finland and Estonia, people have a legal right to access to a high-speed Internet service. Examples from Central Asia are unfortunately not as positive. There is a widespread discussion on how access to the Internet can be governed, managed, controlled and curtailed if required. But so far the states are having difficulty, even at the very first stage of agreeing on terminology: what exactly determines hate speech, which content is illegal, adverse or harmful, let alone

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<sup>1</sup> Ana Karlsreiter, Senior Adviser to the OSCE Representative on Freedom of the Media responsible for the countries of the CIS  
<sup>2</sup> Adilia Daminova, Project Officer in the Office of the Representative on Freedom of the Media responsible for monitoring media developments in Central Asia and organizing regional Media Conferences

that technically restricting access can be a very difficult, costly and complicated exercise due to the Internet's technical characteristics.

Unfortunately, on the pretext of the protection of Internet users from obscene and insulting information, various mechanisms are used to restrict access to the Internet. For more about national legal provisions and practices related to Internet regulation in the OSCE area you can read the study commissioned by our office in 2010 at <http://www.osce.org/fom/80723> .

This book contains papers from both international and national experts who made presentations at the Conference, as well as all Conference materials, including the agenda and Conference Declaration.

Last, we would like to thank Lithuania, Sweden and the United States for their financial contributions, without which this conference and publication would not have been possible.

Enjoy reading!



the 1990s, the number of people in the world who are illiterate has increased from 400 million to 500 million.

It is not surprising that the United Nations has set a goal of halving the number of illiterate people in the world by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to electricity by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to clean water by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to health care by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to education by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to employment by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to housing by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to transportation by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to information by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to communication by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to culture by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to leisure by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to sports by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to art by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to science by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to technology by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to innovation by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to progress by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to development by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to growth by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to prosperity by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to well-being by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to happiness by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to peace by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to justice by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to freedom by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to equality by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to fairness by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to dignity by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to respect by the year 2015.

The United Nations has also set a goal of halving the number of people who do not have access to honor by the year 2015. The United Nations has also set a goal of halving the number of people who do not have access to glory by the year 2015.

## Dushanbe Declaration

The 12th Central Asia Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media in cooperation with the OSCE Office in Tajikistan, and with the assistance of the other four OSCE field operations, was held on 25-26 May 2010 in Dushanbe, Tajikistan.

Media professionals and governmental officials from all five Central Asian states - Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan - attended the conference to discuss the latest media developments in Central Asia with international experts. International experts and a journalist from Afghanistan also participated at the conference.

The specific focus of this year's conference was access to information and new technologies, including the international standards on access to information, Internet development and regulation, access to information in Central Asia and particularly the problems that societies in the region are facing in this regard.

The Conference:

1. Welcomes the fact that all Central Asian states sent participants, both civil society activists and government representatives, acknowledging the importance of regional cooperation in the field of media.
2. Reaffirms the importance of the right of all persons to request and receive information that is held by government agencies and calls on the authorities to respect that right. Media representatives exercise the same right as all persons. Collectively, they do so in the public interest.
3. Notes the importance of the right of access to information to ensure public participation in decision-making process and to promote public trust in authorities.
4. Calls on governments to facilitate the freer and wider dissemination of information, including through modern information and communication technologies, so as to ensure wide access of the public to government information.

5. Reiterates that access to government-held information should be the rule and limitations to this right the exception. Such limitations shall be clearly defined by law and only as needed to preserve legitimate vital interests such as national security and privacy. The application of restrictions should be on a case-by-case basis subject to both harm and public interest tests and explicitly stipulated in the law.
6. In this respect, urges Governments not to prosecute or imprison journalists for holding or publishing classified information when its publishing is of public interest.
7. Equally, public figures must be ready to be scrutinized by media. Therefore imprisonment for defamation can never be an adequate punishment for media professionals and civil damages should be proportionate. The conference urges Central Asia governments to free journalists currently held in prison on any charges related to their professional activities.
8. Encourages public agencies to make information available proactively and define minimum information that has to be made available by all public agencies on official websites and other means of public communication.
9. Points out that new technologies strengthen democracy by ensuring easy access to information and allowing members of the public actively to seek, access and impart information.
10. Calls upon state institutions with legislative competencies to refrain from adopting new legislation and /or amending legislation to restrict the free flow of information on the Internet.
11. Emphasizes that the Internet offers unique opportunities to foster the free flow of information, which is a basic OSCE commitment, and governments should use the Internet to facilitate wider access to information and promote government services on-line (e-government).

Dushanbe, 25-26 May 2010







## Opening Statement

### Dunja Mijatović<sup>1</sup>

Ladies, Gentlemen, and Colleagues,

I would like to welcome you all to the 12th Central Asia Media Conference. I am very glad to be with all of you today on this very special occasion.

First of all, I want to thank our host country, Tajikistan, for hosting the conference for the 3rd time.

I would also like to thank our generous donors: Lithuania, Sweden and the United States. Special thanks go to our colleagues and co-organisers -- the OSCE Office in Tajikistan and also to our partners -- the OSCE field operations in Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan.

I am very proud that media workers and government representatives from all five Central Asian States have joined us here today. This fact alone makes our event a unique forum for exchanging views on the latest media freedom developments in the Central Asian region.

In addition, I would like to extend a warm welcome to a colleague from Afghanistan.

The special topic of the conference this year is Access to Information and New Technologies, including developments related to the digital switchover and to the Internet.

I am sure we all agree that freedom of the media is a basic principle of democratic societies. In this regard, the digital revolution has many facets. The impact on society of "digitisation" technologies is a universal one, affecting everything. But how does this digitisation change our basic perception of society and media freedom?

The basic concepts such as value, culture, community, law, etc.: do these change under the impact of new information and communication technologies? If so, to what extent and what are these changes?

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<sup>1</sup> Dunja Mijatović, OSCE Representative on Freedom of the Media

New media have certainly changed the communications and education landscape in an even more dramatic manner than the electronic mass media did. In a world of new media, availability and diversity allow us to access and consume whatever media we want, wherever, whenever, and however we want.

The importance of free access for every citizen here in Tajikistan or anywhere in the world cannot be raised often enough in the public arena and cannot be discussed often enough among stakeholders: civil society, the media, and local and international authorities. Freedom of speech is more than choice of which media products to consume. Media freedom and freedom of speech in the digital age also mean giving everyone - not just a small number of people who own the dominant modes of mass communication, but ordinary people, too - an opportunity to use these new technologies to participate, to interact, to build, to route around, and to talk about whatever they wish, be it politics, public issues, or popular culture.

Participation in culture is important because it allows people to influence one another and change one another's minds. But it also has a performance value: when people make new things out of old ones, when they produce, when they are creative, they exercise their freedom through their participation in culture.

Ease of access to and dissemination of information leads to continuous learning; social collectivity and cooperation; a remix culture; and closing of the gap between user and producer. Traditional mass media, especially in transition countries, are undergoing a transformation. We are all aware that the transition to digital broadcasting transmission entails much greater diversity of media services, including interactive data transmission, high definition television, more targeted special interest programming, pay-as-you-view programming and electronic commerce facilities. The shortage of frequencies is much less a factor in limiting services than it used to be. This factor has important policy ramifications: in the context of a generally more liberal, market-orientated approach to media and telecommunications, spectrum scarcity can no longer provide the primary rationale for close government regulation of the electronic media.

The characteristics of the new media mean that, unlike traditional broadcast media, there are higher expectations of individual freedom and autonomy. Development of the Internet plays a crucial role. More information is available and easily accessible, but new legislation and restrictive measures, including blocking and filtering, are unfortunately encountered in many OSCE countries, impeding the free flow of information on the Internet. The digital age offers a promise of a

truly democratic culture of participation and interactivity. Realising that promise is the challenge of our times.

I have said many times and repeat once more here; it is a lost battle to try to restrict the free flow of information in this new age.

Our goal should be to maximise media freedom in a both structural (business) and a social (speech-related) sense. With new technologies and outlets radically reshaping the communications and mass media landscape, doubt has been cast on traditional regulatory assumptions and old rules have become counter-productive. In an age of rapid technological change and convergence, archaic government controls over the media are increasingly unjust, indefensible, and ultimately unsustainable. Despite progress, many challenges remain, including the lack or poor quality of national legislation relating to freedom of information, a low level of implementation in many OSCE member states and existing political resistance.

Global change is a challenge no society can ignore. How a society uses the new communications technologies and how it responds to economic, political and cultural globalisation will determine its future.

the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 12.5 million, and the number of people in the public sector who are employed in health care has increased from 2.5 million to 3.5 million (Department of Health 2000).

There are a number of reasons for this increase in the number of people employed in the public sector. One reason is that the public sector has become a more important part of the economy. Another reason is that the public sector has become a more attractive place to work. A third reason is that the public sector has become a more important part of society.

The public sector has become a more important part of the economy because it provides a number of essential services. These services include health care, education, and social care. The public sector has become a more attractive place to work because it offers a number of benefits, including a secure job, a good pension, and a good work-life balance. The public sector has become a more important part of society because it provides a number of essential services that are needed for a good quality of life.

The public sector has become a more important part of the economy, a more attractive place to work, and a more important part of society. This is why the number of people employed in the public sector has increased so much in the 1990s. The public sector is now a more important part of the economy, a more attractive place to work, and a more important part of society.

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## Welcoming Remarks

### Ivar Vikki<sup>1</sup>

Ms. Mijatović, Excellencies, Ladies and Gentlemen:

On behalf of the OSCE Office in Tajikistan, welcome to Dushanbe – and to this, the 12th Central Asia Media Conference, which is organized by the Office of the OSCE Representative on Freedom of the Media, in co-operation with our Office and with the assistance of the other OSCE field operations in the region.

This gathering of journalists and media professionals is always a special and much-anticipated event – but this year it is even more special: we welcome, to her first Central Asia Media Conference, the OSCE Representative on Freedom of the Media, Ms. Dunja Mijatović, who was appointed in March of this year. There are other distinguished participants at this year's gathering, however, we also welcome Ms. Mijatović's immediate predecessor, Mr. Miklós Haraszti, who served for the past six years as the OSCE Representative on Freedom of the Media.

The principle of access to information – the topic of this year's conference – has been the fundamental commitment of OSCE participating states since the inception of this organization. Some scholars have argued that it is the most fundamental commitment that characterizes the OSCE, that it lies at the core of what the Helsinki Final Act (1975) confirmed as "the right of the individual to know and act upon their rights and duties" in the field of human rights and fundamental freedom.

In order for the individual to know and to act in the exercise of his or her rights, information must be circulated, accessible and exchanged. This was so important to the Helsinki signatories that they set out special provisions for oral, printed, filmed and broadcast information, for co-operation in the field of information and for improving the working conditions of journalists (Section IV, Chapter II, A-C). The provisions were written before the Internet age, but the values are timeless.

Since 1975, the OSCE has deepened and broadened its commitments in the area of freedom of the media. It has also found practical ways – such as this conference – to help to strengthen freedom of expression, access to information,

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<sup>1</sup> Ivar Vikki, Ambassador, Head of OSCE Office in Tajikistan

accountability and transparency. It acknowledges that, in this Age of Information, the information sector is growing and changing literally every day. It includes public and private actors: the state, business, civil society and, particularly these days, a global audience that is a consumer and, in many places, increasingly a producer of information.

In that context, guaranteeing access to information takes many forms that will be discussed here today and tomorrow. The legal framework should safeguard freedom of expression and decriminalize libel and defamation. Public bodies should publish and disseminate key information about their activities, budgets and policies, including responding to requests from individuals. Journalists should define and apply professional standards and a code of ethics, including media self-regulation. And, in this challenging era of new technology, it is important to develop an understanding that information security does not equal information censorship.

Here in Tajikistan, the OSCE Office has assisted the media community in drawing up its code of ethics. We have supported independent newspapers to increase their print runs and profitability, including support to 27 newspapers to print an additional 1.5 million newsprint copies. This amounts to 10 percent of Tajikistan's total newsprint, with a market value return of approximately €150,000. We have also supported dialogue between government and media on licensing, access to information and defamation laws. The OSCE office has helped to train media professionals to produce debate programming, improve management, co-operation and distribution practices and to report on economics and human rights issues.

We do all these things for two main reasons:

First, we do this to ensure the broadest possible access to information and the free flow of ideas. We do this to support Tajikistan to honour its principled international commitments to respect freedom of expression.

Second, we support media development for a very practical reason: access to information and the free flow of ideas are essential to making choices every day, in all aspects of public or private life. Informed choice is the cornerstone of democratic development. Access to information and the free flow of ideas are equally important for economic development: they build confidence, ensure transparency and support stability.

Finally, the creation of a strong legal framework that safeguards freedom of expression, free media and access to information that is in the interest



of everyone gathered here today. It is also in the interest of the information consumer who relies on the media in Tajikistan and elsewhere in Central Asia to make informed and intelligent choices and decisions, big and small, in all aspects of everyday life. We look forward to continuing to assist in that process and in furthering dialogue on the rights, reach and resilience of media.

Thank you for your attention!

# International Standards on Access to Information





the 1990s, the number of people with a doctor's diagnosis of depression has increased in the United States (Kessler and Üstün 2004). In the Netherlands, the prevalence of depression has increased from 1.5% in 1975 to 5.8% in 2002 (Van Tilburg et al. 2005).

Depression is a complex disorder with multiple causes. It is often associated with physical illness, and it is often a symptom of a physical illness. Depression is also associated with social and psychological factors. The most common cause of depression is a change in the brain's chemistry. This change can be caused by a variety of factors, including stress, trauma, and loss.

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# International Standards of Freedom of Expression and their Implementation Practices in Central Asia

Andrei Richter<sup>1</sup>

## *Right to know*

The right to information is one of the new human and civil rights. It appeared only during the post-war period in the Western European countries, the U.S. and some other countries. However, Sweden is often cited as an example of a Western European country where that right was accrued for the first time (in 1766). But during the subsequent two hundred years not a single state had followed that example. Asian countries might use (as a model for information access regulation) the experience of the work of the wise men council during the Tang dynasty in China (618-907 B.C.). The council committed to writing all activities by the leaders of the country, including the Emperor, and it came within their duties to query and subject such actions and decisions to criticism.

In the modern sense of the term, the right to information (and its constituent part – the right of access to information) was conceived by Western philosophers and political scientists who explained its necessity by the following circumstances. First, the right to information arises out of the right to free elections, which is sacred in any democratic state. Citizens exercise their basic democratic right every two to three years by voting, following which the elected people's representatives run state affairs. In order to assure real, informed and democratic execution of the voting right a citizen shall form a certain range of vision (prior to the date of voting) helping him to elect a candidate which would be a right person for him and for the community on the whole. To ensure awareness of the choice, the voter needs true information on candidates, for instance, on the results of their previous work in governmental institutions. The right to information and information-exchange freedom are the key guarantors of enforcement of the citizen's right to participation in the public affairs regulation and of grassroots democracy.

The second argument is related to the following conclusion. It is customary to think that the highly classified mode of operation of government authorities and methods of taking a particular decision cause suspicion with respect to state bodies and governmental officials of all levels and violate the principle of

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<sup>1</sup> Andrei Richter, Professor at the Department of Journalism, Moscow State University, and Director of the Moscow Media Law and Policy Institute; Director of the Office of the OSCE Representative on Freedom of the Media (since July 2011)

publicity of the power which is important in the modern society. Lack of citizens' trust makes it difficult to implement decisions taken by the authorities and deprives the government of the possibility to count on people's consciousness. Consequently, it is in the interests of the government authorities themselves to be open to the public to the maximum extent possible.

The third message lies in the fact that the overwhelming amount of the information (the right of access to which is required) is state-owned information. In other words, this is the information collected and created by various governmental bodies, beginning with the offices for registration of birth, marriage, driving licenses, etc. and ending with the National Security Services. Such information has not only been created by these bodies, but it was produced by them at the taxpayers' expense. Governmental institutions are not involved in information or any other business, but only spend money received from the budget which, as is well known, comes primarily from taxpayers.. Thus, the information does not belong to the Ministry or Mayor's Office archives. It belongs to everybody, since neither minister nor mayor has paid for it from their own pocket. They have no right to privatize, appropriate, sell or exchange such information. Therefore, if in the final run, the citizens are paying for collection and generation of the information, they have the right to know how their money has been spent. Thus, the right to information is essential to democratic process and implementation of the government activities.

Adoption of Resolution No. 59 (I) by the General Assembly of the United Nations in 1946 is universally acknowledged as a starting point of modern attitude to the issues related to the right to information<sup>2</sup>. This document states that "freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated"<sup>3</sup>. However, under freedom of information, the UN supreme body implies (in this and all subsequent resolutions) not the obligation of governmental authorities to provide information to citizens, but "the right to gather, transmit and publish news anywhere and everywhere without fetters" to promote the peace and progress of the world. The key principle of the freedom of information from the point of view of the said resolution is "the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent".

2 *United Nations Organization*. Sixty-Fifth Plenary Session, 14 December 1946. Official text in Russian is published at the UN web-site: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>

3 The Resolution was taken in view of necessity to call a United Nations Conference on freedom of information. The conference was held in Geneva from 23 March to 21 April 1948. The conference adopted three draft conventions – on the international right of correction, on the freedom of information, on collection and international transmission of the news. Please see the following link for the text of the Resolution (in Russian language): <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/345/54/IMG/NR034554.pdf?OpenElement>

Social movement for freedom of information sought one victory after another: the right to get information was enshrined in the US legislation (in 1966), then - in Australia and New Zealand (1982), Canada (1983). The pace of national lawmaking with respect to the access to information is amazing. According to the data of the public organization Access Info (Spain), in 1990 only 14 countries of the world had laws on freedom of access to information, while in 2000 they amounted to 40 and by 2010 there were already 82 such countries. According to the data as of 2004, constitutions of approximately 40 countries of the world contained regulations on the right to information kept by the governmental authorities and conditions to access such information.

The right to freedom of information is associated with the freedom of expression which has been long recognized as one of the most important human rights. Freedom of expression has a fundamental meaning for a functioning democracy, is an indispensable condition for realization of other rights and, on its own terms, represents an integral component of human dignity. The Universal Declaration of Human Rights (UDHR), the basic document on human rights adopted by the United Nations General Assembly in 1948, defends this right by in Article 19:

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<sup>4</sup>.

The International Covenant on Civil and Political Rights (ICCPR) adopted by the General Assembly and universally binding on all UN member states<sup>5</sup> guarantees the right to obtain information by its Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The human rights shall not remain declarative. Article 2 of ICCPR vested the countries with responsibility "to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant." This

<sup>4</sup> Resolution 217A (II) adopted by the United Nations General Assembly on 10 December 1948. A/64, pages 39-42. See complete official text in English language at the UN web-site: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/043/88/IMG/NR004388.pdf?OpenElement>

<sup>5</sup> International Covenant on Civil and Political Rights. Adopted by the General Assembly Resolution 2200 A (XXI) on 16 December 1966. Became effective on 23 March 1976. See complete official text in English language at the UN web-site: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/005/03/IMG/NR000503.pdf?OpenElement>

means that the authorities shall not only refrain from violation of rights, but shall also undertake positive measures to assure respect for human rights, including the right to freedom of expression. For that matter, the authorities shall create conditions which satisfy the people's right to information.

It is important to note that the issues of public access to information refer not only to seeking and receiving of documents and other information, but also to participation in events and meetings of governmental bodies (such as judicial and legislative meetings).

Freedom of information is also guaranteed by various documents of Organization for Security and Co-operation in Europe (OSCE), consent to which has been expressed by the countries of Central Asia, such as the Final Act of the All-European Conference in Helsinki<sup>6</sup>, the Final Document of the Copenhagen Meeting of OSCE Conference on the Human Dimension<sup>7</sup>, the Charter of Paris approved in 1990<sup>8</sup>, the final document of the Budapest Heads of State Summit in 1994<sup>9</sup> and the Declaration of the OSCE Summit Meeting in Istanbul<sup>10</sup>. The following is stated in particular in Istanbul OSCE Charter for European Security:

We [the participating States] reaffirm the importance of ... the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for ... unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society<sup>11</sup>.

At the OSCE Ministerial Council in Maastricht (2003) on developing OSCE strategy on threats to security and stability in 21st century the following was declared<sup>12</sup>:

Transparency in public affairs is an essential condition for the accountability of States and for the active participation of civil society in economic processes.

The global recognition of significance of freedom of information and freedom of expression is reflected in three regional systems of human rights protection

6 Final Act of the Conference on Security and Co-operation in Europe, Helsinki, August 1, 1975. See complete official text in English in the OSCE website: [www.osce.org/mc/39501](http://www.osce.org/mc/39501).

7 Copenhagen Meeting of OSCE Conference on the Human Dimension, June 1990. See, in particular, i.i. 9.1 and 10.1.

8 Charter of Paris for a New Europe. OSCE Summit of Heads of State, November 1990.

9 Towards a Genuine Partnership in a New Era. OSCE Summit of Heads of State, Budapest, 1994, i.i. 36 through 38.

10 OSCE Summit of Heads of State in Istanbul, 1999, item 27. See also item 26 of the Charter for European Security adopted at the same summit.

11 Note 13, item 26.

12 Item 02/02/04.

– the American Convention on Human Rights<sup>13</sup>, the European Convention on Human Rights (ECHR)<sup>14</sup> and the African Charter on Human and Peoples' Rights<sup>15</sup>. Although neither the aforementioned documents nor court or tribunal decisions taken in connection with these documents have direct binding force for the countries of Central Asia, they set an important comparable pattern of meaningful content and enforcement of the right to freedom of expression and can be used to interpret Article 19 of the International Covenant on Civil and Political Rights which is legally binding on them. They also represent the generally accepted international norms and regulations at which the national constitutional legislation of the countries of Central Asia is aimed.

### ***Restrictions on the right to information***

Paragraph 3 of the above-cited Article 19 of ICCPR sets strict limitations within which the lawful restrictions on the right to information are permissible:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a. For respect of the rights or reputations of others;
- b. For the protection of national security or of public order, or of public health or morals.

These norms are being increasingly interpreted in international law as establishment of tripartite criterion demanding that any restriction should 1) be prescribed by law, 2) pursue a legitimate purpose and 3) be needed in a democratic society<sup>16</sup>.

This means that obscure or loosely phrased restrictions or restrictions leaving excessive freedom of action to executive authorities are incompatible with the right to freedom of expression. Interference shall pursue one of the objectives listed in Article 19 (para. 3). This list is of limiting character; consequently, any interference which is not related to one of the abovementioned objectives shall constitute violation of Article 19. Interference shall be required to achieve one the above objectives. As stated by the UN Human Right Committee "the

13 Adopted on 22 November 1969, became effective on 18 July 1978.

14 Adopted on 4 November 1950, became effective on 3 September 1953.

15 Adopted on 26 June 1981, became effective on 21 October 1986.

16 See, for example, decision taken by the United Nations Human Rights Committee on the case "Rafael Marques de Morais v. Angola, Communication No. 1128/2002, 18 April 2005, para. 6.8).

requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect<sup>17</sup>. According to the opinion of the European Court of Human Rights, the word "necessity" in this context has a special meaning. It implies that "a pressing social need" shall exist for interference<sup>18</sup>; that the reasons adduced by the national authorities in support of interference shall be "relevant and sufficient" and that the government shall prove that the interference is proportionate to the aims pursued.

Similarly, the right to seek, obtain and disseminate information of any kind is not absolute: in certain circumstances, which are few in number, it may be subject to restrictions. The statements that restrictions on freedom of expression and freedom of information are possible only when they are set down precisely in law and are necessary in a democratic society are included in OSCE documents<sup>19</sup>.

### ***Convention on Access to Official Documents***

Although the Council of Europe Convention on Access to Official Documents (CAOD) is not a document which is binding upon the countries of Central Asia, it is useful to have a look at this document as a sole document among the existing international acts and agreements regulating the general sphere of accessing the information.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 27 November 2008. It states the reasons for granting access to official documents in the countries of the region, namely:

- i. the access provides a source of information for the public;
- ii. it helps the public to form an opinion on the state of society and on public authorities;
- iii. the access to information also fosters the integrity, efficiency, effectiveness and accountability of public authorities, so helping affirm their legitimacy.

The Convention states (Article 4) that an applicant for an official document shall not be obliged to give **reasons** for having access to the official document. Parties to the Convention may give applicants the right to remain **anonymous** except when disclosure of identity is essential in order to process the request. **Formalities** for requests shall not exceed what is essential in order to process the request.

17 "Rafael Marques de Morais v. Angola, note 31, para. 6.8).

18 See, for example, ECHR case "Hrico v. Slovakia, 27 July 2004, Application No. 41498/99, para. 40).

19 Report of the Meeting of OSCE Experts on Democratic Institutions to OSCE Council (1991), paragraph (II) 26.



The document of the Council of Europe says that inspection of official documents on the premises of a public authority shall be free of charge. This provision does not prevent Parties from laying down charges for services in this respect provided by archives and museums. A fee may be charged for **a copy** of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Corresponding tariffs of charges shall be published. (Article 7 of CAOD).

The Convention establishes possible (but not mandatory!) **limitations**, which, as in the case of human rights according to European Convention on Human Rights and Fundamental Freedoms, shall be *set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting* the values indicated below:

- a. national security, defence and international relations;
- b. public safety;
- c. the prevention, investigation and prosecution of criminal activities;
- d. disciplinary investigations;
- e. inspection, control and supervision by public authorities;
- f. privacy and other legitimate private interests;
- g. commercial and other economic interests;
- h. the economic, monetary and exchange rate policies of the state;
- i. the equality of parties in court proceedings and the effective administration of justice;
- j. environment; *or*
- k. the deliberations within or between public authorities concerning the examination of a matter.

The Convention envisages that access to information contained in an official document **may be** refused if its disclosure would or would be likely to harm any of the interests mentioned above, **unless there is an overriding public interest in disclosure**. The Parties to the Convention shall also consider **setting time limits** beyond which the abovementioned limitations would no longer apply.

Article 6 of CAOD envisages that if a public authority refuses access to an official document wholly or in part he shall give **the reasons** for the refusal. The applicant has the right to receive on request **a written justification** from this public authority for the refusal. If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to **the remainder** of the information it contains. Any omissions should be clearly **indicated**. However, if the partial version of the document is misleading or

meaningless, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused.

The Convention indicates that a request for access to an official document shall be dealt with **promptly**. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand. The applicant has the right to choose whether to inspect **the original or a copy**, or to receive a copy of it **in any available form or format** of his or her choice unless the preference expressed is unreasonable (Article 5 of CAOD).

The Convention describes the review procedure: An applicant whose request for an official document has been denied, expressly or implied, whether in part or in full, shall have access to a review procedure before a court **or** another independent and impartial body established by law. An applicant shall always have access to an expeditious and inexpensive review procedure, involving **either** reconsideration by a public authority [which has previously denied the request] **or** review in accordance with the regulation in the previous sentence (Article 8 of CAOD).

The Convention proposes not to limit ourselves by declaration of norms and principles, but also to ensure applicability of the rights of access in practice. In accordance with the document all participating countries shall:

1. **inform the public** about its right of access to official documents and how that right may be exercised;
2. **educate public authorities** in their duties and obligations with respect to the implementation of this right;
3. **provide information** on the matters or activities for which they are responsible;
4. **manage their documents efficiently** so that they are easily accessible;
5. apply clear and established rules **for the preservation and destruction of** their documents.

The first agreement in the world on the issues of access to information does not make a great impression. It provides lesser guarantees than the laws of the majority of European countries. For example, the agreement is applicable to a limited number of governmental authorities; it does not establish a maximum time period for giving a reply to a request for information and does not reflect the rights of applicants for an official document to appeal through the courts against the reply which is unsatisfactory to them.

### ***Situation in Central Asian states***

Let's consider the following issue: To what extent does the legal systems of Central Asian states correspond to the international standards described above. Table 1 shows which elements of the freedom of information are guaranteed to the citizens by constitutions of five countries – Kazakhstan (KZ), Kyrgyzstan (KG), Tajikistan (TJ), Turkmenistan (TM) and Uzbekistan (UZ). Comparative analysis shows that the most extended constitutional guarantees are provided to the citizens in Kyrgyzstan. Even the previous constitution, which had been in effect until adoption of a new constitution on 27 June 2010, guaranteed the rights of everybody to receive, keep, use and disseminate information, as well as freedom of the press. In the new constitution this freedom has been expanded and now it includes (a very rare right for the countries of the region) the right to seek information. Provisions of Article 33 of the Constitution of the Kyrgyz Republic are:

1. Everyone shall have the right to freely seek, receive, keep and use information and disseminate it orally, in writing or otherwise.
2. Everyone shall have the right to acquaint with the information on himself/herself in state authorities, local self governance bodies, institutions and organizations.
3. Everyone shall have the right to obtain information on the activity of state authorities, local self governance bodies as well as officials thereof, legal entities with the participation of state authorities and local self governance bodies as well as organizations financed from the republican and local budgets.
4. Everyone shall be guaranteed access to information in the possession of state authorities, local self governance bodies as well as officials thereof. The regulations of providing information shall be envisaged in the law.

As of now, this Article is the most comprehensive and adequate reflection of international standards on the freedom of information in the countries of Central Asia.

**Table 1. Constitutional guarantees for the freedom of information**

RIGHTS AND FREEDOMS	KZ	KG	TJ	TM	UZ
Right to seek information	-	+	-	-	+
Right to keep and use information	-	+	-	-	-
Right to receive information	+	+	-	+	+
Right to disseminate information	+	+	-	-	+
Freedom of mass media	-	+	+	-	+

In three Central Asian countries there are effective laws on access to information which describe (with various levels of detail) guarantees for citizens to seek and receive information from governmental authorities and institutions<sup>20</sup>. I am referring to the following documents:

- Law of the Kyrgyz Republic "On Access to Information Held by State Bodies and Local Self-Government Bodies of the Kyrgyz Republic" 2006,
- Law of the Republic of Tajikistan "On the Right of Access to Information" 2008,
- Law of the Republic of Uzbekistan "On Guarantees and Freedom of Access to Information" 1997.

Some of the laws on access to information represent general laws in the area of information policy, rather than legislation with clear regulations for the rights and procedures of access to information. In Kyrgyzstan, while a guarantee of citizens' access to information is formally provided, there is no a legitimate list of exceptions and the review procedure is not defined. In Uzbekistan, the Law "On Principles and Guarantees for the Freedom of Information" envisages such exceptions as protection of "moral values of the society, spiritual, cultural and scientific potential". There we can see prevalence of prohibitions rather than permissions to obtain information.

<sup>20</sup> Law of the Republic of Kazakhstan "On Access to Public Information" - as of the moment of writing this article the draft was in the stage of discussion.

It should be noted that in Kyrgyzstan, Tajikistan and Uzbekistan legislation on access to information was adopted after adoption of laws on mass media. As the result, different laws (on information and on mass media) contain regulations which are similar to a large extent in their content. Despite the fact that from the legal viewpoint the necessity to preserve privileges for the press after adoption of general laws on access to information seems doubtful, in our opinion, the exceptional position of mass media should be retained during the transition period until the mechanisms for all citizens to access information are in place.

As to special provisions and procedures governing the right of access to information, in some of the countries in question these provisions have been included only into the laws on mass media (in Kyrgyzstan and Uzbekistan – into the laws on protection of professional activities of journalists) along with general provisions on recognition of privileged rights of journalists to seek and receive information.

The basic pros and cons of the laws on the right to information are given in Table 2.

**Table 2. Basic provisions of the laws on information**

Provisions of the laws on the right to information	KG	TJ	UZ
Time period is defined during which the information shall be provided (number of days)	14	30	30
Restriction is imposed on seeking information only affecting the rights and interests of the applicant for information (yes -)	+	-	-
Obligation is set to keep registers of documents (yes +)	+	+	-
Information is provided free of charge or minimum nominal fee is set (yes +)	+	-	+

At the same time the **CIS Model Law "On right of access to Information"** (2004) establishes broader civil rights on many standpoints as compared to the mentioned national legislation. Among the norms recommended in the document are:

- the right of an applicant requesting information **not to justify** the necessity of obtaining the requested information;
- the right to demand a reply **in writing**;
- the right to appeal in the established procedure (review procedure) against authorities and organizations, as well as officials thereof, which have violated the right of access to information and the established procedure of its implementation; complaints on actions (failure to act) of authorities, organizations and officials thereof which have violated the right of access to information may be **submitted to the human rights commissioner**;
- reply on the request for receiving information shall be given as soon as possible, but **not later than thirty** calendar days after receipt of the request;
- a fee may be charged for provision of information, however, it **shall not exceed the cost of services** related to its provision<sup>21</sup>.

Speaking about freedom of information, one cannot avoid the issues of freedom of mass information and, first of all, the possibility of journalists and mass media editorial offices to obtain access to information. Comparison of legal safeguards of such journalists' rights is given in Table 3.

**Table 3. Rights of journalists to access information**

RIGHT TO	KZ	KG	TJ	TM	UZ
Request information	+	-	-	-	-
Seek information	+	-	+	+	+
Receive (gather) information	+	+	+	+	+
Disseminate information	+	+	+	+	+
Get accreditation	+	+	+	+	+

<sup>21</sup> The Model Law was adopted on the Twenty-Third Plenary Meeting of CIS Inter-Parliamentary Assembly (Resolution No. 23-14 of 17 April 2004). See complete text at the web-site of Media Law & Policy Institute: <http://medialaw.ru/exussrlaw/l/sng/34.htm>

We see that in terms of legislative provisions for that right the situation is the best in Kazakhstan. In this country (which is a sole country in this respect) the right to request information is guaranteed and supported by a procedure for obtaining information at request. In practice, however, the situation with acquiring information in Kazakhstan is far from ideal.

According to the annual report of Adil Soz, Foundation of Speech Freedom Protection, for the year 2008<sup>22</sup> (the latest available to us) denied and restricted access to information remains to be the most typical freedom of expression violation. In 2008, 481 such cases were registered (out of total number of 1087 violation reports). In 2003 there were 415 cases registered, in 2004 – 435 cases, in 2005 – 426 cases. However, the reports of this organization state that in fact violations were many times as large.

That happens because of the willingness of state officials to conceal negative information about their body, reluctance and fear to interact with the press, the lack of knowledge of the media legislation and reluctance of journalists to defend their professional rights.

Under Law of the Republic of Kazakhstan "On Mass Media", state bodies and other organizations are obliged to provide media outlets with information requested on equal basis within a three-day period or answer the request pointing out the term within which information would be provided or reason for rejection. Unjustified rejection or failure to provide information requested by a journalist within the time limits prescribed shall constitute an administrative offence and shall be punished by a fine of 50 monthly calculated indexes (MCI) imposed on state officials. In 2009 MCI was approximately equal to 1,300 tenge. The right to compile reports on administrative offences belongs to individuals authorized at the local akimats (oblast or city, cities of republican status). A number of attempts by journalists to defend their right to access information failed in 2007 and were not resumed later.

Violations take form of direct rejections, non-committal replies, referrals to incompetence, the need to co-ordinate it with the high-ups and are often followed by rudeness and insults.

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22 See the following website in Russian language: <http://www.adilsoz.kz/site.php?lan=russian&id=769>

Here are several typical situations from 2008 monitoring:

In April, "Novaya gazeta" reporter (Stepnogorsk city) Natalia Yukhno requested a head of children's department at the city polyclinic Natalia Gaponenko for information on nursing infants. The official closed the door in her face thus showing her reluctance to communicate with the journalist.

On 27 June, a storm raged in Kyzylorda. It ripped off roofs from dozens of houses, cut off electricity and uprooted trees. Yuri Lee, staff reporter of "Liter" newspaper for Kyzylorda region, tried to find out in the city akimat what measures had been taken to recover after the storm. However he was denied information. State officials sent the journalist to their colleagues for information or rejected to give an answer.

On 13 June, Alexandra Myskina, reporter of "Karavan" newspaper, contacted the Department of Passenger's Transport and Roads in Almaty with the question why they had cancelled transportation privileges to students and who had initiated the process. None of the experts of the Department were willing to answer the questions.

On 11 June, residents of Bolshealmatinskiy village in Almaty oblast gathered for the session. Mr. Tusupov, deputy akim of Karasai district, participated in the session. In response to a question by Yekaterina Belyayeva, reporter of "Vzglyad" newspaper, on whose fault it was that villages Baganashil-2 and Zvezdnyi are cut from the drinking water for two months, the state official responded saying that "the case is internal and there is not need for their interference" and asked the journalist to leave the room saying that otherwise he would leave the premises. The journalist had to obey.

On 12 October, a staff reporter for "Express K" newspaper in Pavlodar, Dauren Khaigeldin, requested a head of the regional Emergency Situations Department for information on cyanobacteria found in water of Irtysh river. The Emergency Situations Department refused to confirm or deny the information.

The same month, Yekaterina Karimova, chief editor of "Stabilnaya gazeta" was passing through Shchuchinsk and saw an announcement on planned meeting organized by residents of Energetikov village, involving the akim of the city. The agenda of the meeting included a discussion of a heating tariff increase. Karimova contacted the city acting akim Serik Mukhamedzhanov with a request to confirm the time of the meeting. Mukhamedzhanov replied that the meeting should not be covered by the press: "If we tell everybody now, media outlets would seek sensations and oblast would criticize the district and the city". As the result, the acting akim did not specify the time of the meeting.



In November, Nazira Baimagambetova, reviewer of TVK television company (Karaganda) contacted the District Department of Motor Roads and asked them to tell what measures were being taken to ensure road traffic safety under conditions of ice-covered ground. Not a single official agreed to give an answer to the journalist referring to their big workload as an excuse.

There are many grounds to deny information invented by the state officials. An anecdotal case took place in Akkayinsky region of North-Kazakhstan oblast. In 2007 the district newspaper "Kolos" sent requests twice to district police department, which were both returned. They were not accepted on the ground that the last name of its head Pert Martynyuk was mistyped. As it turned out, Martynyuk refused to accept incoming documents where his last name was used in different grammatical form (declension).

On 4 January 2008 the editorial office again sent a letter to the district police department with a request which was based on a letter from a newspaper reader. P. Martynyuk again refused to accept the request despite the fact that tutorials with the rules for declension of men's surnames in Russian language had been presented to him. In order to make sure that this is not a malice joke, the newspaper editor Alexander Lesikov personally called Martynyuk, and the head of the district police department confirmed that, according to his verbal refusal the documents where his last name was used in a different grammatical form were not accepted. According to Martynyuk, he knows better the grammatical form of his name. In reply to an indignant retort of the editor that the newspaper would be forced to contact a prosecutor's office, Martynyuk gave a laconic answer: "Whatever".

It is evident that situation with the freedom of information in the countries of Central Asia (both in legislation and in practice) is far from international standards. At the same time, signs of progress in this area are becoming clear. The new Constitution of Kyrgyzstan and the work on the draft law "On Access to Public Information" in the Kazakhstan exemplify such progress. An important role in improvement of the information freedom status shall be played by harmonization of national legislation in the spirit of recommendations by OSCE and Inter-Parliamentary Assembly of the Commonwealth of Independent States, as well as the documents of the Council of Europe and other international organizations.



## The Internet and the Free Flow of Information

### Miklós Haraszi<sup>1</sup>

First of all, I must dispense a great number of thanks. I am immensely grateful to Dunja Mijatović, my wonderful successor, for having me here and giving me the possibility to return. It is nice to be back as an expert. Serving as an expert provides a different type of responsibility, less diplomacy and more learning. Second, it is very nice to return to Tajikistan and I am very thankful for this. It is very nice to return to the OSCE community and thanks to Ambassador Vikki for this. It is wonderful to be back with civil society, journalists, experts and other people in Central Asia who in their daily work fight for freedom. This is a friendship that is very dear to me and I would not like to lose that contact. So, once again, I am very thankful to Dunja for having me here.

Dunja mentioned two words which could serve as a framework for my little introduction to the discussion on the free flow of information and Internet-related issues. She said: lost battle, and she referred with those words to the times we are living in, the times of total connectivity.

I would like to make a prediction that in ten years time throughout the world, and unavoidably, in Central Asia, absolutely all media will be on the Internet. Today the Internet, especially in the countries of Central Asia, is still a helping hand to the traditional media which is, of course, still quite power dependent. In ten years time all media will be online. If print press and television still exist, they will be dependent on the Internet.

So the question remains: what kinds of problems are caused by the free flow of information? First of all, for a journalist, the fact that with this little computer and with this Internet connection or even with a little telephone or smart phone you can be your own media outlet. You can collect information, you can write information, you can visualize information, you can edit information, you can mix it up and you can post it right away without any kind of writing time.

It is a lost battle a little bit for journalism because virtually everybody is becoming a journalist, everybody can fulfil the two basic functions of journalism: to produce

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<sup>1</sup> Miklós Haraszi, OSCE Representative on Freedom of the Media (March 2004 – March 2010); human rights advocate, writer, journalist, and university professor

important information of public interest, and second, to pass it on to the public. If these two functions are in the hands of the users, then virtually everybody is becoming a journalist. Therefore, any kind of centrally based regulations are a lost battle.

In the U.S. and in Western Europe, in countries where the print press is an old established business, print journalism is in trouble, because of the Internet and online media. The Internet has already given us a new freedom; with its universal right to connect. Obviously every one should have the right to information, the right to share information and to receive information in the era of total connectivity. But there will be two classes in society, those who have Internet access and those who do not. But of the right to information and the right to connect are absolutely basic freedoms. As it is stated in the article 19 of the Universal Declaration of Human Rights "Everyone has the right to [...] seek, receive and impart information and ideas through any media and regardless of frontiers".

What are the problems that arrive with the Internet in governments' eyes? There are some lost battles, unquestionably: journalism education, traditional print media and journalism ethics. What do I mean here? We are talking about anonymity – something that in traditional media did not exist. It is not only anonymity; it is almost the right to anonymity. With the help of the Internet you can enforce anonymity, and that is no friend to journalistic ethics. Many website owners do not have a dedicated, responsible editor. Because of specific business models, they have to allow unmoderated comment spaces after articles. You have good investigative articles, you have a good opinion article, you have factual articles always signed by wonderful journalists, and then you have to allow unmoderated comments.

Governments should not react to the new developments by adopting special Internet laws as is the case here in Tajikistan and Kazakhstan. Citing some good reasons the Governments reacted to the lost battles in a bad way by adopting specific Internet laws. They are trying to keep in place national content regulation, which gives governments power over the national information space through adoption of legislation that regulates the content in that national information space. But this is impossible today. This is the most revolutionary aspect of the free flow of information through the Internet, that national regulation of the content is not possible anymore.

There are many ways of Internet censorship, the most brutal is the great fire wall of China and I believe that kind of censorship is dependent on a dictatorial form of information governance. Even as life is developing and capitalism is

developing in China information regulation is still quite dictatorial. Economic advancement of the country can serve as one of the factors undermining government's monopoly on information. It is easy to filter and block, it is easy if you have one Internet provider in the country. But blocking is depriving much more information from the users than was intended. You can know about the kind of rule-of-law blocking and filtering, for example, it is happening in Turkey where there is Internet service provider pluralism, where an absolute free flow of information is the rule. But, because of some content, judges decided that YouTube will not be available, that Google search will be not available and that is punishing a lot of people.

The European Court of Human Rights has defined a triple-test to measure the correctness of media regulation. A regulation should be prescribed by law; in pursuit of a legitimate aim; and necessary in a democratic society. In addition, regulations should be proportionate and not over block and not over punish the users. I believe that to some extent the Internet is not an exception from the government's general role. It is indeed causing a lot of new problems but they have to be understood in the light of human rights and governments have to grow into understanding that we are in a new era where new human rights have merged with the right to connect.

As I have already said, information and the Internet will be the same in the future: the same business, the same battle, and the same issue. In countries where Internet penetration is low, and very few have an Internet connection, it is still a government business but not a citizen business.

So, let me not repeat this and let me say that the danger is that the countries of Central Asia will become second-class citizens in the world. If the Internet is not acknowledged as the natural guarantor of the free flow of information and if the free flow of information is not guaranteed for the Internet, legally speaking, it is condemning the citizens to a kind of second-rate status in the world, and so does low Internet penetration as well.

So good governance means to equally, aggressively, and equally radically develop Internet penetration so that every citizen has an Internet connection. It is important to allow Internet service provider pluralism, so that they compete for the users, not only one central Internet service provider per country, and that they facilitate free flow of information on the Internet.



# The Role of Civil Society and Media Organisations in Promoting the Right of Access to Information

Helen Darbshire<sup>1</sup>, Victoria Anderica Caffarena<sup>2</sup>

## Introduction

In many of the over 80 countries around the world which have access to information laws, civil society and media have played a prominent role in promoting the adoption and implementation of these laws. They have engaged in the policy-making process, pressing for these laws to meet the highest international standards, and have worked to promote respect for these norms in practice so that all citizens can enjoy their right to information.

Promotion of the right of access to information does not consist exclusively of promoting the adoption of an access to information law. Experience has shown that the existence of good access to information laws does not imply that the right is respected in practice. Promotion of the right of access to information therefore has to be continuous and long-term.

Promotion of the right to information usually passes through at least three stages in any country: the adoption of an access to information law, the implementation of that law, and the improvement of the law. The nature of the actions to be undertaken at each stage will be normally the same even though the specific objectives will differ.

This paper reviews the main strategies and tactics which can be employed by civil society to promote government transparency at each of these three stages. It is based on the direct experiences of Access Info and its staff in their work to promote the right of access to information, and is illustrated by real examples of previous and ongoing actions from Access Info and other civil society organizations from Europe and around the world.

The paper is also based on the strong presumption that it is the legitimate role of civil society and the media to engage in promoting and defending this key democratic right, which is essential for members of the public to participate fully in decision-making, to hold governments accountable, and to defend and promote other human rights.

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1 Helen Darbshire, Executive Director, Access Info Europe

2 Victoria Anderica Caffarena, Project Coordinator, Access Info Europe

The experiences of the countries reviewed here should serve as an inspiration and motivation for any civil society organization planning to engage more extensively in promoting the right to information.

## 1. Building a Coalition

A first step in the campaign is a core coalition of CSOs (Committees of Senior Officials) that will be active in carrying out the tasks needed to promote an access to information law. Next, ensure that this core coalition reaches out to a broader community of formal and informal civil society groups. Include grassroots organizations, representatives of minority and excluded groups (disabled, ethnic and linguistic minorities, women’s organizations, youth groups, etc.) and the business community. In countries where this has been done, implementation tends to move faster once the law comes into force.

The creation of a Coalition is essential to start creating awareness of the need for access to information. To create a coalition is to ensure the demand of the right and therefore a better and quicker implementation of the right of access to information.

### *Key tips for building a Coalition:*

- Be very clear in your goals and agree in advance what principles you are promoting;
- Don’t create an overly bureaucratic structure – keep the Coalition open and flexible;
- Agree in advance what type of actions you will take and how you will use the name of the Coalition;
- Agree a mechanism for consulting other members of the coalition (for example, by phone, by e-mail);
- Don’t be too ambitious with your activities – your members may not have much free time so it’s best to focus on core activities;
- Be transparent with Coalition partners and share information – and share the credit for any successes!

**EXAMPLE:** In Bulgaria a coalition of organisations was formed in 1995 to fight for an access to information law. The coalition arose out of the environmental movement and was also concerned about the corruption surrounding the financial crisis that occurred at the end of 1996. Members included activists, academics, and journalists. The campaigners developed a “manifesto” which was published to all media and formed a country-wide network of journalists



and lawyers to promote the right and to gather examples of denials of access to information which could be used during the campaign. After the adoption of the law, this network supported users and continued to raise awareness and gather data on the right to information.

**EXAMPLE:** In 2000, when the Slovak government proposed a poorly drafted access to information law, CSOs campaigned against the draft, wrote a new one, and promoted it with a widespread advocacy and outreach campaign that included video spots on the television. The CSOs distributed postcards around the country which members of the public could fill in and send to their member of parliament urging them to support the law. After the law was adopted, the CSOs developed guides for the public on how to use the law, and also a guide for public officials on how to implement the law.

**EXAMPLE:** In Spain, the *Coalición Pro Acceso* was created in 2006 to promote the adoption of an Access to Information law and so far 39 organizations are members. The activities of the Coalition have included meeting with the government and members of parliament, holding conferences on the right of access to information, issuing press releases and public statements calling for the government to adopt an access to information law, writing articles for publication in the media, and conducting monitoring campaigns by filing requests for information. In all of these activities the Coalition promotes its “9 Principles on the Right to Know” (see Point 4 below) and calls for these to be included in any future access to information law.

## 2. Raising awareness

As with the campaign for any other right, civil society will need to plan an awareness-raising strategy to promote the right of access to information. This strategy will involve communications materials, press releases, leaflets, posters, video-spots, Facebook pages, messages on Twitter, and so forth.

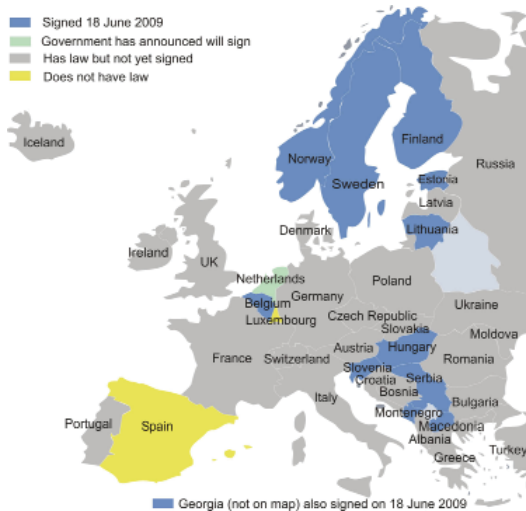
The development of a set of principles (see Point 4 below) is recommended in order to give the campaign focus. Activities such as monitoring (Point 5) and litigation (Point 6) can also be used to generate media interest and wider public awareness as well as being useful tools in discussions with government about the need to reform the current legal and practical framework for respecting the right to information.

Stories about how the right of access to information is useful on a day-to-day level for ordinary citizens can help to generate interest in the right.

Using comparative information to show how the right has worked in other countries is also recommended. Advocates can join and make use of networks such as the Freedom of Information Advocates Network ([www.foiadvocates.net](http://www.foiadvocates.net)) to gather comparative information. All civil society groups working to promote the right of access to information can become members of the FOI Advocates Network.

**EXAMPLE:** In early 2010, civil society groups in Montenegro wanted information about the answers that their government had given to the European Union about progress made towards meeting EU standards. The Montenegrin government refused to release the information even after a court ordered it to do so. Then campaigners, including Access Info, collected comparative data which showed that such information had been available in other countries such as Bulgaria, Croatia, Macedonia, and Romania. This was combined with filing requests for the same information to the European Union in Brussels. As a result of these initiatives, in April 2010, the Montenegrin government released the information.

**EXAMPLE:** In Spain activists are using a map which shows how Spain is one of the few countries in Europe not to have an access to information law. This map is having a strong impact and encouraging the government to adopt a law:



### 3. Getting the media involved

The media is an important ally in any access to information campaign. The support of the media is key to successful advocacy and to mobilizing wider public support for the campaign.

There are a number of ways in which the media can be involved in a campaign to promote an access to information law, both as individuals, from media organisations, and through associations of journalists and editors.

#### *Key tips for involving the media in the campaign:*

- journalists associations can become members of the coalition;
- involve individual journalists in the coalition and in your online campaigns;
- brief journalists about why access to information is important to their work;
- encourage journalists to ask questions at press conferences about what the government is doing to adopt/reform the law;
- get journalists to use their right to information by submitting formal requests;
- get journalists to write stories about both transparency and the lack of it – remember that positive stories can demonstrate the value of transparency and encourage support for the right.

**Why access to information is important for the media:** Sometimes journalists will be reluctant to join access to information campaigns out of fear that they will lose their privileged role as information providers and that they will suffer from delays in obtaining information caused by the new procedures. These are concerns that need to be addressed. [The Legal Leaks Toolkit](#) was produced by Access Info and n-ost (Network for Reporting on Eastern Europe) with support from the **OSCE Representative on Freedom of the Media** to show journalists that access to information laws is of value to them, and that it will not undermine the exclusive role of the media in delivering news and comment: in all countries with access to information laws, the media continues to flourish and reporters make use of the law for investigative journalism!

If journalists are concerned about timeframes: show them that some information will become automatically available without the need to file requests.

**EXAMPLE:** A Spanish documentary produced in 2008 was made using film footage released under the U.S. Freedom of Information Act. The 96-minute documentary, by journalists Ángel Miguel Roldán Molina and film director José Herrera Plaza, investigates the 1966 nuclear disaster which occurred on the beaches of Almeria, Spain.

Film footage, photographs, and documents were used reconstruct the accidental release, following a mid-air plane crash, of four nuclear missiles from a U.S. B52 bomber on the Spanish coast. At the time, the accident was shrouded in the secrecy of the U.S. Cold War military regime and the silence of the Spanish dictatorship, and was quickly covered up by authorities.

The information used to reconstruct this story was obtained using the right of access to information. Information was obtained from a number of countries including the UK, France, Denmark, and the United States.

#### 4. Defining the core principles

For a successful civil society campaign, it is important to build consensus on the core principles that underpin the right of access to information. This is much easier to do now that the right of access to information is clearly established by international standards and that the core principles have been agreed upon worldwide.

The “Nine Principles on the Right to Know” from Spain are included in Box A. In addition you are recommended to look at the following:

- Justice Initiative Ten Principles on the Right to Know
- Article 19 Article 19, Public’s Right to Know, Principles on Freedom of Information Legislation

Once the principles have been agreed among the CSO coalition, they can be used to explain the campaign to other organisations, to the media, to allies in government, and the legislature.

An online or paper campaign that allows ordinary citizens to sign up to these principles can also be a useful tool for demonstrating popular support for the initiative.

**EXAMPLE:** The first action of the *Coalición Pro Acceso* in Spain was to approve the principles that this Coalition is requesting to be included in a future access to information law in order to achieve the proper protection of the right of access to information in Spain. These principles have been widely disseminated and members of the public can sign online to say that they support the principles. Analysis of the existing legal framework and discussions with the government will be conducted based on these principles.

*Box A: Spain's Coalicion Pro Acceso**Nine Principles for the Right to Know*

1. Everyone has the right of access to information.
2. The right to information applies to all public bodies.
3. Making requests for information should be simple, speedy and free.
4. Public Officials have an obligation to help requestors.
5. Principle of Publicity: Secrecy is the exception, access is the rule.
6. Denials should be limited and properly justified.
7. Everyone has the right to appeal against refusals or lack of responses to requests (silence).
8. Public bodies should, at their own initiative, make public basic and essential information without the need for a request to be presented.
9. The right to information should be guaranteed by an independent oversight body.

## 5. Monitoring

Monitoring the right of access to information is done in two ways:

- i. Checking what information is and is not already available on websites
- ii. Submitting requests for information to different public bodies

These two types of monitoring are important because they look at both the proactive and the reactive dimensions of the right of access to information. They test the government obligation to “push out” information of public interest (“proactive obligation”) as well as to respond to requests (“reactive obligation”).

There are a variety of ways in which the results of monitoring can be used:

**Monitoring for advocacy:** Monitoring is an effective way to show what is working and what is not working. It is recommended that when presenting the monitoring results, you focus on the positive as well as the negative, although, of course, the problems and inconsistencies will help to mobilize support for introducing a new law.

**EXAMPLE:** In Spain, two main transparency surveys were conducted in 2005 and 2008 which have been essential for the campaign as they revealed a dramatic lack of transparency. The first study, conducted by Sustentia and the Open Justice Initiative, revealed in their report, “Transparency in Silence”, that around 60 percent of the access to information requests were not answered. In

2008 Access Info published “When public information isn’t public”, which found that as many as 78 percent of requests did not receive the information that was requested: including 35 percent administrative silence and 43% answers containing no information. In this report the reader can see how the right of access to information is being systematically undermined. The monitoring studies generated media coverage and have been used in discussions with the government about the need to reform the legislative framework.

The situation in Spain contrasts with more positive results in countries which do have access to information laws, such as Romania and Bulgaria, where the Transparency and Silence survey found around 56 percent and 53 percent positive answers to requests respectively.

**Comparative Monitoring:** Filing requests for information in more than one country will help to show that there is a need to improve transparency in a particular country.

A good example of the combination of testing the access to information and gathering information for other purposes is the Six Question Campaign: An international project coordinated by Access Info, and the Centre for Law and Democracy and International Budget Partnership involving more than 85 countries to conduct research into budget spending in three fields: maternal health, environment and development cooperation. The research findings will be used for an analysis into comparative spending on these issues in different countries and for an analysis of the levels of transparency of the budget in all the project countries.

**EXAMPLE:** The Open Society Justice Initiative in 2006 published the results of a comparative monitoring in 14 countries worldwide, “Transparency and Silence”. The very poor performance of Chile, the results showed 69 percent administrative silence, was used to argue that the government should adopt a law. The findings from Chile were also included as evidence in litigation which reached the Inter-American Court of Human Rights (case of Claude Reyes against Chile, 2006) and resulted in the court ordering Chile to adopt an access to information law. That law was adopted in 2008; Chile also changed its constitution to recognize the right of access to information.

**Monitoring for Participation:** The monitoring process can also be used to gather information on different topics in order to use it for purposes other than the access to information campaign. So, for example, you can find information through monitoring about how your local school or hospital is functioning, and increase the amount of members of the community in a discussion about how to

improve these institutions. This is a good way to use information obtained during the monitoring process to improve public participation.

**Monitoring for Information Management:** It is also important to use the monitoring process to try to identify why information is not being released. Often the problem is not so much a lack of political will as inefficient information management, especially at the local level of government. You can sometimes find this out by conducting interviews with public bodies following your requests to find out what happened to them. If you can demonstrate that information management would solve part of the transparency problem, then you can present the access to information law as a tool for more efficient and effective governance that is likely to increase public trust in administration.

**EXAMPLE:** The “Transparency and Silence” comparative monitoring study revealed that the poor performance of South Africa was related to poor systems for the management of information requests, and was used by civil society to argue for more resources and energy to be put into the implementation of the existing law (the Promotion of Access to Information Act, 2000).

## 6. Litigation

Using litigation is an important way of defending the right of access to information. If there is no law, then litigation could be based on a constitutional right of access to information; if there is a law, then litigation can use that law. Often an initial appeal, to an Ombudsman or other oversight body is sufficient to secure the release of the information. In other cases, it might be needed to take the litigation to a higher court.

If a constitutional provision is available to support the right to information, make use of it with litigation to challenge a refusal to release information. Repeated litigation using the constitution can provide a strong framework for access to information. In addition, make use of other provisions such as administrative law to secure access to information through legal appeals; file complaints with Ombudsman or similar bodies if information is not released. Other creative litigation might include challenging secrecy laws or going to a regional human rights tribunal.

Even while the litigation is in process, it can be used by civil society to support the argument for a stronger access to information law or for better implementation of the existing law. Cases to international courts or bodies such as the UN Human Rights Committee can take years, and even though it is well worth taking such cases, it is important to think about how the litigation will be used politically in the meantime to advance support for the right to know.

**Case A: Access to Environmental Information: Claude Reyes vs. Chile**

The case of *Claude Reyes et al vs. Chile* began on 6 May 1998 when three environmental activists, working with the NGO Terram Foundation, presented an access to information request to the Chilean government for copies of the background and environmental checks that should have been carried out on the U.S.-based company Trillium Corporation, which had been given permission to start a major logging project in the native forest of the Rio Condor valley.

Environmental activists, including a member of the Chilean parliament, an academic, and Marcel Claude Reyes, who was at the time executive director of the Terram Foundation, had a simple question: had the Chilean government, particularly Chile's Foreign Investment Committee, done a proper review of the possible environmental impact of the Rio Condor Project, and had they checked out Trillium Corporation's track record of sustainable logging? The only information they ever received from the Foreign Investment Committee was the total value of Trillium's investment in the project.

Additional requests went unanswered and so the litigation started, to try to gain access to this information, which was clearly of high public importance: whether or not the Chilean government had carried out the checks that, by law, it was obliged to run before giving permission to the Trillium Corporation to cut down swathes of native forest and destroy irreplaceable ecosystems.

The Chilean courts rejected the claim that the right to information had been violated. They even failed to recognize that the right existed. All appeals were summarily dismissed as "manifestly ill-founded", including by the Chilean Supreme Court on 31 July 1998. The Rio Condor project was halted from time to time, including once as a result of a Supreme Court order, and eventually abandoned. But the question of the behaviour of the Chilean government and its lack of transparency remained and was appealed to the Inter-American Court of Human Rights.

After a public hearing in Buenos Aires in April 2006, in which the Chilean government tried to avoid answering the question of whether or not it had actually carried out the relevant checks and therefore whether or not it held the requested information, the Inter-American Court of Human Rights issued a clear and strong decision on 19 September 2006: it found that the Chilean government had violated the right of access to information which the Court asserted was protected by the protection of freedom of expression and information under Article 13 of the American Convention on Human Rights.



Thus, they issued the first ruling by an international human rights tribunal that freedom of expression and information also guarantees a general right of access to State-held information.<sup>3</sup> The decision in the case of *Claude Reyes et al vs. Chile* states in its key paragraph 77:

*... the Court finds that, by expressly stipulating the right to “seek” and “receive” “information”, Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case.*

The court also made clear that no particular interest needed to be proved by the requestor of the information: public interest in access and dissemination was sufficient:

*The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied. The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State.*

This decision, which also ordered the Chilean government to take the necessary measures to ensure respect for the right, including the thorough training of public officials, had a significant impact in Chile, which in 2008 incorporated the right into its Constitution at Article 8. It also adopted a law that entered into force in April 2009, and beyond, which is used by right to information campaigners to argue for the adoption of access to information laws.

<sup>3</sup> Case of *Claude Reyes and others v. Chile*, see <http://www.corteidh.or.cr/casos.cfm?idCaso=245> (Spanish original) and <http://www.corteidh.or.cr/casos.cfm?idCaso=245&CFID=525202&CFTOKEN=97319768> (English).

## Case B: Civil Society and the Right to Know: TASZ (Hungarian Civil Liberties Union) vs. Hungary

The Leading European access to information case was taken by the Hungarian Civil Liberties Union, which had submitted a request to Hungary's Constitutional Court for access to a parliamentarian's complaint questioning the constitutionality of criminal legislation concerning drug-related offences. The Constitutional Court refused to release the information arguing, somewhat bizarrely, that it was the personal data of the parliamentarian, and with no higher instance to turn to, the applicants appealed to Strasbourg.

As the right of access to information was already well established in Hungary, the Hungarian government did not dispute the existence of a right but rather argued that in this particular case the refusal was appropriate. In its ruling on 14 April 2009<sup>4</sup>, the European Court of Human Rights disagreed, noting that it seemed *"quite implausible that any reference to the private life of the MP, hence to a protected private sphere, could be discerned from his constitutional complaint."*

The Court underlined that it would be *"fatal for freedom of expression in the sphere of politics if public figures could censor the press and public debate in the name of their personal rights"* and that such arguments could not be called upon to justify a restriction on access to information and its consequent interference with freedom of expression as protected by Article 10 of the European Convention on Human Rights.

The Court argued that when a public body holds information which is essential either for the media to play their role as "public watchdogs" or for civil society to play a "social watchdog" function, then to withhold that information is an interference with freedom of expression. The judges achieved this paradigm shift by arguing that when a public body holds information and refuses to release it, it is exercising the "censorial power of an information monopoly" and hence should have supplied the information to those requesting it.

The existence of the right to information protected by Article 10 of the Convention was confirmed on 26 May 2009 by second ruling of the European Court of Human Rights, once again in a case against Hungary. This second case was brought by an historian, János Kenedi, who had applied for access to historical documents about the functioning of the Hungarian State Security

<sup>4</sup> Társaság a Szabadságjogokért v. Hungary (App no 37374/05), ECHR, 14 April 2009, paragraph 36, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

Service, had been granted access by the Hungarian Courts, but not provided with the documents by the Ministry of Interior.

In its ruling, the European Court of Human Rights noted that the Hungarian Government accepted that there had been an interference with the applicant's Article 10 rights and confirmed that "access to original documentary sources for legitimate historical research was an essential element of the exercise of the applicant's right to freedom of expression."<sup>5</sup>

## 7. Getting support of parliamentarians and governmental officials

Identify key allies in government and across all political parties, and ensure that they are informed about the international standards and, as far as possible, share ownership of the principles of the proposed law so they cannot easily renege on them later. Sometimes the most effective strategy is to ensure that prior to an election all candidates/parties promise to adopt a law once elected. After the elections, don't allow them to forget their campaign promises.

### *How to involve members of parliament and government:*

- Hold meetings with political party representatives;
- Hold meetings with individual parliamentarians;
- Ask for a hearing or meeting with a relevant parliamentary committee;
- Invite parliamentarians as speakers at your conferences on access to information;
- Ask parliamentarians to submit requests for information via parliamentary mechanisms;
- Hold a meeting with the staff of the relevant government department;
- Invite relevant ministers and other key public officials as speakers or participants;
- Meet with independent bodies, such as the Ombudsman, to discuss the objectives of your campaign.

**EXAMPLE:** In a number of countries, working with public officials has been a key part of the campaign for the adoption and implementation of the access to information law. In countries such as Armenia, Bulgaria, Georgia, Montenegro, Slovakia, and Serbia, parliamentarians and representatives of ministries participated in discussions on the right of access to information before the law was adopted.

<sup>5</sup> *Kenedi v. Hungary* (Appl. no. 31475/05)

For example, in Bulgaria, a parliamentary committee held its first public hearing with civil society on the subject of the access to information law in 1999. In Georgia, a number of members of parliament participated in the first discussions on the law held in 1996. In Serbia, representatives of various ministries and parliamentarians from all parties participated in round-table discussions on the law held in July 2004 in a meeting room in the parliament building.

## **8. Involve the International Community**

Support from inter-governmental organisations can make a huge difference to communication with government officials during the process of adopting or implementing an access to information law. Additionally, inter-governmental organisations and national embassies often have the resources to bring expert speakers to review and comment on a draft law, or to provide guidance on implementation.

One of the main organisations in the Central Asian region is the Organization for Security and Cooperation in Europe which has broad experience of supporting the right of access to information in a number of countries around Europe. The OSCE organizes events and invites expert speakers; it can also get specialists in different areas of access to information to analyse the legal framework and help develop recommendations.

International NGOs such as Access Info and Article 19 also have broad comparative experience which can be useful in identifying the strengths and weaknesses of your national access to information system and in making suggestions on how to reform both law and practice. There are a number of international NGOs which are able to provide technical assistance to public bodies. More information can be found by contacting the Freedom of Information Advocates Network ([www.foiadvocates.net](http://www.foiadvocates.net)).

## **9. Offer technical assistance**

Civil society groups often believe that it is not their role to help government to implement an access to information law. Nevertheless, in many countries, training by civil society organisations has been an essential part of the success of the implementation phase.

There are two main ways in which civil society can provide technical assistance. One is to train public officials on the right, providing examples of how access to information works in other countries. The other is to help public bodies to

prepare their internal information and management systems so that requests for information are handled correctly and within the timeframes established by law.

**EXAMPLE:** In Bulgaria, after the adoption of the law, the Access to Information Programme published guides on how to use the access to information law and conducted training for public officials around the country. In total, several hundred public officials were trained by AIP. This activity does not prevent AIP from criticizing public bodies for failing to respond to requests for information and for taking them to court when they deny information which AIP's lawyers believe should be in the public domain. AIP also makes annual awards for the most open and most closed public bodies, thereby encouraging good practices.

**EXAMPLE:** In Albania and Peru the civil society organisation *Sustentia* worked with Access Info staff to help local NGOs to provide technical assistance to the government. This activity consisted of meeting with public officials, completing a diagnostic questionnaire about internal processes, and then implementing a series of recommendations for reform, conducting training, and working with staff within the public body to implement the reforms. This process was time-consuming but resulted in significant changes: a local government body in Albania increased the volume of information published proactively on its website, including the previously unpublished budget; in Peru a regional government increased the level and time for responding to requests from the public.

## **10. Celebrate International Right to Know Day!**

International Right to Know Day was established by access to information advocates from around the globe. It was first celebrated on 28 September 2003, so 2010 will be the 8th International Right to Know Day.

The aim of Right to Know Day is to raise awareness of every individual's right of access to government-held information: the right to know how elected officials are exercising power and how the tax-payers' money is being spent.

### **Activities around the globe!**

Every year the 180 members of the FOIANet as well as information commissions/commissioners and media outlets around the world mark Right to Know Day. Typical activities include:

- Conferences on the right of access to information;
- The release of reports by NGOs on different aspects of open government including secrecy policies, the transparency of political finance contributions, and the results of monitoring studies.

- A public debate on openness between government officials and journalists/ NGOs.
- Publishing compilations of interesting news stories over the past year that were based on information released under the FOI law – use stories from your country and check LegalLeaks.info for stories from other countries.
- Publishing a selection of the most strange, stupid and/or funny responses to requests and refusals to provide information.
- Publishing the most shining examples of attempts by public officials to help the public with their search for information.
- Making posters, banners, cards, brochures, and pamphlets with "Right to Know" slogans.

## Awards

- Presentation of Awards. Typical awards include:
  - Awards for the institution with the best system for providing information.
  - Awards for best website from the perspective of the access to information law.
  - Awards for a media outlet making the best use of information requests in the preparation of its publications and/or broadcasts.
  - Awards for the best article/broadcast prepared on the basis of information received using an FOI law.
  - Awards for NGOs that have contributed most to the promotion and protection of the right to information.
  - Awards for a citizen who has exercised their right of access to information for the benefit of the community.
  - Negative awards for institutions not fulfilling their obligations under the FOI Law.
  - Negative awards for “the most ridiculous answer to an access to information request”.

## What You Can Do ...

*If you are an NGO / civil society organization ... hold an event, a debate, an awards ceremony .... write a press release ... hold a discussion with a local community group or in the local school ... print up posters and t-shirts and hand them out in the streets ... get people involved and, best of all, get them exercising their rights by filing requests for information!*

*If you are an individual ... file a request for information, write a letter to your local newspaper, ask your local town hall to put up notices telling people about the right to information, or ask them to put more information on their website ...*

write to your local council or to your member of parliament and ask them what they are doing to promote government transparency!

*If you are a teacher or pupil ...* have a discussion in class about the right to know and why open government is important ... think of some requests that you can file with your local authority or with a government body such as the Ministry of Education ... find a local issue that you would like to know more about such as the quality of the drinking water or the budget for the sports centre, and file requests for more information!

*If you are a librarian or write an Internet blog ...* you already understand the value of information, so make sure that you inform your members/readers about Right to Know Day!

*If you are a journalist ...* write an article about Right to Know Day around the world and/or about local transparency issues ... if you have never filed a request before using your national access to information law, now is the time to start, and then make a story out of what happens!

*If you are an Information Commissioner ...* join in the publicity for the day by holding an event or issuing a press release ... hold a competition that will encourage openness such as the best government website or the department with the fastest average response time for answering requests ... publicize examples of information disclosure that have helped to strengthen the relationship between the public and the government ... send a memo to government departments reminding them that 28 September is International Right to Know Day and emphasizing that transparency is nothing to be afraid of because everyone is doing it!

*If you are a public servant or elected member of government ...* ask yourself what you are doing to help promote open government ... find out what the department you work in is doing to be more open ... think about how you can manage information better so that it's easier to provide to members of the public ... put some more information on your website so that the public has a better idea about what you are doing ... and if your country has an access to information law, talk to the people in your department who are responsible for giving out information and find out what you can do help them respond to requests within the timeframes established by law!



AIP Bulgaria's Award for the Most  
Secretive Public Institution



## ACTIVITIES AND PHASES IN THE PROMOTION OF THE RIGHT OF ACCESS TO INFORMATION

ACTIVITIES	ADOPTION	IMPLEMENTATION	IMPROVEMENT
Coalition	Campaigning, Principles, dissemination of the message, monitoring	Evaluation and monitoring, training, public awareness raising	Campaigning, proposal of reforms, awareness raising.
Raising awareness	Communications materials, press releases, leaflets, posters, video-spots, Facebook pages, messages on twitter...	Communications materials, press releases, leaflets, posters, video-spots, Facebook pages, messages on twitter...	Communications materials, press releases, leaflets, posters, video-spots, Facebook pages, messages on twitter...
Media	Articles calling for adoption of a law, give publicity to the results of the monitoring and the status of litigation, ask questions of government about plans to reform legal framework	Promote use of the access to information law by Journalists (see Legal Leaks)	Reflect in the media the need to improve the law, publicize information on monitoring and evaluations, articles about value of transparency and need to increase it
Principles	Define the essential principles to be contained in an access to information law	Evaluate whether principles are respected in practice	Define the principles to be included in the law reform/amendments
Monitoring	Transparency monitoring to demonstrate the need to adopt a law	Transparency monitoring to support the need for proper implementation of the law	International comparative analysis to support change
Litigation	Based on constitutional provision	Appeal unmotivated refusals and administrative silence	Use need for litigation in arguments for reform of law
Parliamentarian and governmental support	Secure governmental and parliamentarian support.	Meet with the government to ask for a proper implementation of the law	Secure governmental and parliamentarian support for amendments.
Technical assistance		Train public officials on the right and help public bodies prepare their internal information and management systems	
Celebrate International Right to Know Day			
			At any point in the campaign to promote the right of access to information, you can make use of 28 September each year to carry out activities to remind government, public bodies and citizens that they have a right to know and that this should be fully respected in both law and practice!

the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 13.5 million, and the number of people in the public sector who are employed in health care has increased from 2.5 million to 3.5 million (Department of Health 2000).

There are a number of reasons for this increase in the number of people employed in the public sector. One reason is that the public sector has become a more important part of the economy. Another reason is that the public sector has become a more attractive place to work. A third reason is that the public sector has become a more important part of society.

The public sector has become a more important part of the economy because it provides a number of essential services. These services include health care, education, and social care. The public sector has become a more attractive place to work because it offers a number of benefits, including a secure job, a good pension, and a good work-life balance.

The public sector has become a more important part of society because it provides a number of essential services. These services include health care, education, and social care. The public sector has become a more attractive place to work because it offers a number of benefits, including a secure job, a good pension, and a good work-life balance.

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# Every Coin Has Two Sides - Perspectives on Access to Information of a Government Press Officer and a Journalist

**Dainius Radzevičius<sup>1</sup>**

A broad public sphere is an integral part of the modern society. And it is not even important which political system has been established in a specific country – democracy or autocracy. Everybody needs openness; after all, it's the only way to communicate the news. At the moment the issue of the content is secondary and we are not going to consider it; but we should remember one thing: Openness is powerful.

Today, Internet and new technologies cease to surprise people and have become of fact of everyday life for the majority of people. one of most serious challenges is the following: what shall be done in this sphere for each society? A question arises not to how regulate everything, but how to offer the required content.

German philosopher Jürgen Habermas in his book "The Structural Transformation of the Public Sphere" has created a foundation of the theory of structural transformation of the public sphere which helps to historically characterize relations of the mass media with the government and democracy. "Publicity" is participation of citizens in a large-scale marketplace of ideas which encompasses the whole society or a large part and the results of which exert an influence on the policies of the government. Not a single society or country has managed to achieve ideal publicity. The concept of ideal publicity presented by Habermas possesses three main features. First, the maximum amount of publicity: maximum public participation and debate over the key issues; second, the efficiency of publicity, i.e. effect of decisions and dominating ideas of the discussion forum upon the real policy of the government shall be evident; and, third, the constructive character of publicity: discussions in the forum shall be conducted in the most rational way.

Other thinkers created a term "free-market censorship" which is used to describe the situation when mass media (striving only to sell themselves successfully) refuse to publish opinions which may hinder that sole objective. After all, the

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<sup>1</sup> Dainius Radzevičius, Chairman, the Union of Journalists of the Republic of Lithuania

mouths which are being constantly silenced by the free-market censorship are those that are too nonconformist or commercially unattractive, or express too profound thoughts for interpretation, which mass media cannot not spend their expensive time and provide an expensive platform.

Each country has its own laws and other legal instruments. They are being changed from time to time. Thus, there are drafts of such documents, analyzes of their effect and opinions of politicians and experts with respect to necessity of such drafts. There are countries where such information is easily accessible and countries where it is practically impossible to obtain such information. However, my experience in working with subdivisions of governmental institutions in the area of relations with mass media and the public indicates the following very simple fact: If information is public it should also be easy-to-get.

It is a known fact that any authority is bad for the people. This is a somewhat controversial statement, but in all nations ordinary people blame their government for small salaries, high taxes, high prices and the like. Interpretations and myths on all such misfortunes are, by far, more than the authorities would like us to have. Representatives on relations with mass media and other public relations experts, as well as the mass media well-disposed to them, frequently lean over backwards trying to explain and convince the people that the government is doing everything in the interests of the ordinary people. Representatives of the opposition and mass media with a critical disposition toward the authorities are even more active trying to dispel all the myths created by the powers.

Usually, both sides suffer losses in such an "information war". Why? The answer is very simple: While speaking about the things you want to believe in and what you want to love, or vice versa, one has to rely on certain facts and arguments. Very frequently we have to listen to arguments of two types. The authorities say: "We are doing our best, look at our progress in this or that area". The opposition will always say that everything could have been done better and the authorities are bad in principle since they always "hold back information on the real situation and other details from the public".

Such public dialogue has one big disadvantage. Frequently, it is of poor quality. The discussion concerns minor things – whether the information has been released or not, that the authorities favour or ignore somebody, etc. Meanwhile, when we are talking about the public life and its regulation we have to remember that the society needs also a third source of information – a certain more objective source. This source may be the Internet and domains where a person can easily and conveniently find everything of interest on specific issues: legal

regulations, their comparison, explanation and even criticism. That is why the least each government can do is to create generally accessible and convenient registers of legal regulations with the same convenient information retrieval systems.

And what about other registers where the public may get acquainted directly with private deals, declarations of private interest, etc., of politicians or governmental officials? Such generally accessible information has two big advantages: Any power which is doing this does not only acts in good faith with respect to its public, but also eliminates any possibility for unprincipled critics and manipulators to speculate and sell, under-the-counter, allegedly compromising information. A democratic society also wins – it is capable to know directly who is who without any interpretation and "legends".

Authorities fear that they could win or lose something by working too much in the open. Such fears are understandable. However, perhaps one of the greatest achievements possible for any working political power is the ability to succeed in making the work of medium- and lower-level bureaucrats to be of higher quality and more transparent. As a matter of fact, powers are blamed for the faults which have not been committed directly by that power. Above all, the people are disgruntled by corruption and unfair practices which they encounter at every step – in medicine, the educational system, the protection of rights and self-government. And when such bodies are working in a non-transparent and non-public way it is unclear to whom, when and why the bribes should be paid, the political power cannot work successfully in principle since confidence in it is being undermined at the most basic level.

When the "one stop" principle is successfully implemented (i.e. when the majority of services are available to a person in electronic form and the official has to give a reply to everything promptly in writing), it becomes possible to register the work of officials – whether of high and poor quality. Usually, the journalists are happy with it – the work becomes easier for them; even a journalism investigation can be done quite easily. But the people themselves may rejoice since now they have a feeling that the authorities are working for them and not that they are working for the government.

Nevertheless, when the possibilities and challenges of the Internet are discussed at any large-scale conference today, more problems than opportunities are usually found. Is it inherent to human nature? It seems so. When we are talking about publicity of the political power and all public sector we need to keep in mind really open access to information to various sources rather than vehicles for propaganda. And here a considerable dilemma occurs: more limitations or

more freedom? I have always been a supporter of the second option. The fear in relation to private personal data and their protection is understandable. The authorities shall take care of that. But when we are talking about public life and its participants we should make use of opportunities and not frighten each other with our fears and phobias.

If too little content is being created in the national language and at the national level, the Internet allows people to find alternatives abroad and that may not necessarily be the optimal solution. Thus, any power shall not only learn how to control the public sphere, but also, which is more important, how to say (in this public sphere) what it really wants to say.

In the meantime, traditional journalists and mass media have already faced a serious challenge: What will their journalist brothers and sisters do if the authorities will bravely release all information on their actions in the public sphere? Lithuania of today and the majority of other European countries have already witnessed the decreased circulation and credibility of traditional mass media. Society has become familiar with using original sources. And in this respect, public relations officials of governmental bodies and journalists of traditional mass media are really competing with each other to attract public attention and to use the opportunity to communicate the news first. Frequently, the former are on the winning side since they use advantages of Facebook or other services of social networks and new technologies to reach directly all those interested in the activities of the authorities.

As far back as 2005, Romas Sakadolskis, a lecturer at Vilnius University, an American journalist of Lithuanian origin told the Lithuanian daily newspaper "Kauno diena" about relations between business, politics and mass media established in Lithuania. Answering the main question "Do the established relations pose a threat to democracy?" Sakadolskis said:

*"There were cases of such threat occurring in the countries of Asia and Africa. It is difficult to say whether Lithuania is approaching this situation, but if it really is approaching it, then a threat to democracy is great. It is manifested primarily by the deformation of the market of ideas. When the number of media sources is decreasing, the sphere for public discussion is inevitable narrowing and this happens only when politics, business and media are merging together. The public discussion becomes silent as soon as it starts to be determined by someone's interests.*

*There are also other threats existing. The biggest threat to the state exists when an ordinary person trusts information from a source which is biased A large*

*opportunity for corruption appears, which would not be as strong should the business, politics and mass media were not merged.*

*Lithuania, as a small country, is especially sensitive in this respect. In the U.S., France or Poland it is much more difficult to steer the public sphere. In the U.S. for almost 10 years mass media are being acquired, and many suspect that some political interests are behind such transactions. However, it is impossible to buy all US mass media. While in Lithuania the information sources are few, and we have to be restricted with that small number. Changes in mass media of Lithuania exert much more influence on the image of reality presented by them than, for example, in the United States of America."*

Meanwhile, the journalist who was talking to Sakadolskis, political analyst and journalist Vladimiras Lauchius, had raised a serious question about a grave threat to democracy in view of back-alley relations between politicians and mass media. In democratic countries (and not only in them) business and politics are always interacting in one way or another. Business even comes into politics. In Lithuania we call it an "oligarchy". However, according to Sakadolskis, such a situation (although a dangerous one) can be rectified and the abusive practice and violations can be revealed if the mass media exercise appropriate control over the existing situation.

A real threat appears when business and mass media are acting together, when they establish (without knowledge) what we should discuss and speak about. If such issues as who comes to the public discussions sphere, what issues are to be raised and what subjects are to be discussed in this sphere, then we will be deprived of possibility to select what we would like to know and discuss and how to do it.

Meanwhile the merging of business and mass media (when several large owners who are interested not in mass media but in profits brought by them are buying up the mass media) may harm the public sphere. However, in Lithuania this problem has not reached the scale which may cause concerns.

Thus, no matter how paradoxical it seems, the use of new technologies and openness in the Internet has become the most serious challenge and problem not for the authorities but for mass media. Any political power which is ready to communicate with the public has one more instrument. In this case the mass media has another competitor. Who will win? I would like all of us, the common people, to win.

Arunas Augustinaitis, a professor at Mykolas Romeris University, published in 2002, an interesting article on the criteria of information society professionalism. Almost a decade ago the professor provided a striking definition that "the modern society is called the: society of knowledge (news) or competence". According to him, this is an evidence of the fact that the issue of professionalism, i.e. formation of the knowledge, possibility to use the knowledge structure, the use of knowledge, is **the basic practical question of the given society**.

According to the professor, "entreaties for a new professional discourse might be several features characteristic in general for the information society itself: **competence to manage, complexity, complaisance and publicity**". I am not going to describe in detail the majority of these elements, but I would like to give special attention to the fact which kindled the professor's interest: information society is not only capable of public administration, but it must also be "compulsorily controlled". An interesting detail: the professor admits that the phrase "information society management" looks like nonsense if approached using traditional standards. This is clear: it seems that the society cannot be managed, one can only rule in it.

However, the basics of the information society management are growing diversity, tension, universal distribution of networks and complex relations which leave no space for autonomy of specialized spheres. This is globalization. It is the scale of expansion of communicative interactions of the modern world that provides for talking about such phenomenon as the information society management. And it considerably changes the concept of professionalism itself.

However, the ability to manage, complaisance and complexity could not exist without development of social interaction and its communication types. It is stated that all of them are expanding like the explosive diversity of publicity. And since the modern professionalism is oriented to invasion of public relations into previously "closed" spheres of activities, we have a new reality, a new virtual reality, a new world. Openness, communication mechanisms and technologies for their management are the most important features of an information society which also determines a change in qualification criteria.

The problem of publicity: it becomes an arena which the spheres of practical activities are expanded to. Watching TV programs (in recent years) in even democratic countries we clearly see that the majority of the news is creatively processed. It originates from press releases, organized press-conferences or created events. Sometimes very important ones. But wittily processed. A journalist as an observer of life frequently narrows his/her activity to such



information and observation of the created events, often even without going outdoors. Professionals of a new type are competing on who will create the best and high-profile event, the others - who will communicate the event to the public in a quicker and more scandalous way. One summer day I was attentively watching TV news programs. Almost all coverage on all news programs were the same. Even "the raid of law enforcement agents on lawbreakers" was done in the company of journalists from several TV companies and newspapers. This is the way how wars and conflicts are also "covered" nowadays – all of them have their own mass media service. The war between Georgia and Russia was a very illustrative example in the respect.

An infinite number of aspects fall into the problematic field of publicity. In the first instance, they shall be attributed to technological aspects of communication and development of digital forms of social interaction. They are data compression and digitization, special information channels, "play-TV" or "video on demand", accession of radio oligopoly, communication issues of religion and ethics in establishment of the system of values. Scientists and other analysts have even more questions on new communications discourses of politics – democracy online, interactive and public participation in the affairs of the society and the country, priorities of non-governmental organizations (NGO), the so-called sub-politics personalities, e-government and even e-Europe, and other.

The subject matter of openness also enters into the framework of the so-called new, or informational, economics and includes influences of electronic media: advertisement, commerce, business, politics ("electronic power"). Legal and ethical issues are of special importance: elections, self-government, media spheres of information usage (e.g. recording of a conversation, family discretion and protection). The publicity notion includes attitude to exhibitionism of violence, ecological problems, disclosure of private issues. Eventually, the following realities and universal spheres of modern life shall be related to publicity: public administration, public policy, social marketing, social services sector, and other.

On the basis of the aforesaid: you may not like selfish politicians, you may be disgusted with cynical journalists, you may humiliate citizens who are not capable to organize themselves into a strong society. However, regardless of the attitude to participants of publicity, to publicity conditions and its efficiency, one shall not exclude the publicity itself as the only way available for the society to find the truth acceptable for everybody.

That is why it is not possible to give up the publicity and participation in public discussions by saying that "bad mass media" are always spoiling everything. Such an attitude gives a specific rise to a threat to publicity and extremely damages democracy.



# Access to Information in Central Asia





## Access to Information in Kazakhstan

### Nuray Urazov<sup>1</sup>

Guaranteeing access to information is one of Kazakhstan's top state priorities. An important confirmation of this fact is the creation, as part of the government's structure, of a new Ministry of Communications and Information<sup>2</sup>.

Legislative acts which regulate the issues of dissemination and access to information are based on provisions of the Constitution of Kazakhstan. According to Article 20 of this main law, everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. According to Article 18 of the Constitution, state bodies, public associations, officials and the mass media must provide every citizen with the possibility to obtain access to documents, decisions and other sources of information concerning his/her rights and interests.

This provision is further elaborated in Kazakhstan's legislation. Thus, under the Law "On the Procedure for Handling Applications of Physical and Juridical Entities" state bodies have an obligation to give replies to applications of citizens within 15 days. For the mass media, the Law reduces that time period to three days.

According to the existing legislation, a refusal to release the requested information may be appealed in court by a mass media representative.

Restrictions on access to information may be established only in cases directly envisaged by the law. These are the laws on state secrets, and on banking, medical, commercial and other secrets protected by law. The list of information which constitutes state secrets shall be determined by law and shall be exhaustive. In addition, the Law "On State Secrets" states that **state bodies shall be held responsible for the excessive security classification of information.**

The operative enforcement of the right of access to information became possible thanks to the mandatory reviewing of citizens' applications and requests on the websites of state bodies and the personal blogs of the heads of state bodies. Every head of institution or local government body has such a blog.

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<sup>1</sup> Nuray Urazov, Vice-Minister, Ministry of Communication and Information of Kazakhstan

<sup>2</sup> In May 2010 (editor's note)

In the first quarter of 2010 over 8,000 questions were sent to the blog platform of the government.

One of the most promising and effective developments in terms of access to information is the electronic government system.

A lot of work has been done in this respect in recent years, including within the framework of the Program on the Development of Electronic Government for The Years 2008-2010. The main objective of this program is to expand the electronic services of state bodies with a view to providing state services to the population and the business community.

The electronic government's ideology is based on two things, which are: the **building of an infrastructure to offer services** and the **services themselves**. The e-government infrastructure includes state databases ("physical entities", "juridical entities", "address registry", and "real estate registry"); an e-government web portal and gateway, a single system of electronic document circulation (SSEDC), certifying centres (open key infrastructures); and a single transport environment (STE).

The development of "electronic government" in Kazakhstan is being implemented in three steps – an information phase, an interactive phase and a transaction phase. **The first stage of the establishment of the electronic government** envisages the publication and dissemination of information. **The second stage** envisages the provision of interactive services by direct and feedback interaction between a state body and a citizen. **The third stage** envisages the transactional interaction by way of executing financial and juridical operations via the governmental portal.

The basic infrastructure was created during the first stage. The second stage began with the launching of the "electronic government" web portal. The interactive stage, which envisages the receiving of state services in an electronic format, is now under way. Some elements of the transactional stage are already being implemented. In view of the transition to the transactional phase of the "electronic government" a payment gateway has been implemented. It provides for making payments by vouchers and running bank accounts. At the moment the portal is integrated with four commercial banks via electronic gateway.

The creation of an "Electronic State Purchases" information system has marked a "breakthrough" during the transactional phase. Since 1 January 2010 all state purchases performed by requesting a quotation are performed only in



electronic format on the web portal of state purchases. An entrepreneur can now participate in tenders without leaving his office. About 44,000 participants are currently registered at the portal of electronic state purchases. More than a half of them are registered as potential suppliers. In addition to an increased openness of state purchases and the creation of equal conditions for competition, this system has already led to a noticeable reduction in budget spending on for the purchase of goods and services. Since the beginning of 2010, the implementation of this system has allowed to save more than 4,215,000 tenge (€20,400) in budget funds.

As of today the e-government portal already offers 59 electronic services, which, to be true, require further automation. It is planned that by the end of 2010 another 15 services of central executive bodies and 20 regional "electronic services" will be implemented.

In addition, it will be possible to receive such services both via the web portal and public service centres (PSC) working on a "single window" principle. The time needed to obtain certificates in PSCs will be drastically reduced. These certificates will be issued within a few minutes, compared to 10 days previously. It will be enough to produce an identification document; all remaining information will be automatically collected by the system.

It shall be noted that implementing electronic state services requires not only that we should be technologically prepared; a prerequisite to transiting to a qualitatively new phase of development is the creation of a regulatory basis to implement the "electronic government" and propagate electronic state services. It is necessary to enshrine in law the status of electronic state services and to adopt legal acts aimed at regulating how these services should be provided.

To fulfil this task a draft Law "On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Development of Electronic Government" has been set out. This draft has already been adopted in a first reading by the lower chamber of Parliament.

The basic principles of this draft bill are that the quality and efficiency of state management procedures should be increased; that obtaining state services should be made practical both to the population and the business community; that state services should be transparent, and that duplication of information processing by state bodies should be avoided.

The draft bill envisages introducing amendments and addenda to the codes of civil and criminal procedure and to 11 other laws.

In particular, the code of civil procedure has been complemented with a norm saying that in addition to the already existing ways of establishing a court protocol (handwriting, typing and computer), electronic methods (including digital and audio recording) should also be allowed. A similar addendum has been introduced to the code of criminal procedure, requesting a court to provide parties in a case or their representatives with a protocol in the form of an electronic document certified with the electronic digital signatures of its chairman and its secretary.

The Law "On Notary Activities" now contains a new concept of "unified notary information system," which enables notaries to perform document checks and determine the status of citizens and organizations in real time with the help of state databases. It is envisaged that electronic digital signatures shall be mandatory for notaries. Also, registers of notary actions shall be replaced with the electronic register of the unified notary information system.

The draft bill envisages the inclusion into the Law "On Licensing" of norms that would give individual and juridical entities when receiving state services and licenses the right to not produce certificates and notarized copies of documents confirming the information contained in the state electronic resources. State bodies shall individually collect the data from the state information systems and information resources.

The electronic government system is being perfected and developed and the work done to eliminate information inequality has greatly contributed to this process.

Adoption a law regulating relations in the field of access to information would be the next logical step. The concept of a draft Law "On Information and the Protection of Information" has already been approved. The draft has been included into the government's legislative plans for 2011. The Ministry of Communications and Information will develop this draft bill. Regulating issues related to the obtaining of information will make the activities of state bodies more transparent and will put their representatives under an obligation to provide the required information promptly and in full.





## Access to Information in Kyrgyzstan

### Begaim Usenova<sup>1</sup>

The legislation of Kyrgyzstan entitles citizens to the right of access to information and, according to declarations, Kyrgyzstan is a country striving for openness. Thus, the Constitution of the Kyrgyz Republic guarantees everybody, including mass media representatives, "the right to seek and receive information". Also, Law of the Kyrgyz Republic "On Access to Information Held by State Bodies and Local Self-Government Bodies of the Kyrgyz Republic" has been in effect since 2007. This Law is considered to be "a breakthrough" in assuring access of the public to information because of the availability of procedures which provide for the citizens' access to information by defined ways. However, in practice, citizens frequently encounter various obstacles on the way to enforce this right.

#### Laws of the Kyrgyz Republic regulating access to information:

- Constitution of the Kyrgyz Republic of 05.05.1993 as amended by the Law of the Kyrgyz Republic "On the New Edition of the Constitution of the Kyrgyz Republic" dated 23.10.2007 No.157.
- Decree of the President of the Kyrgyz Republic "On Implementation of the Law of the Kyrgyz Republic "On Access to Information Held by State Bodies and Local Self-Government Bodies of the Kyrgyz Republic" dated 08.05.2007 No.240.
- Law of the Kyrgyz Republic "On Protection of State Secrets of the Kyrgyz Republic" dated 14.04.1994 No.1476-XII.
- Law of the Kyrgyz Republic "On Guarantees and Free Access to Information" dated 05.12.1997 No.89.
- Law of the Kyrgyz Republic "On Informational Support" dated 08.10.1999 No.107.
- Law of the Kyrgyz Republic "On Access to Information Held by State Bodies and Local Self-Government Bodies of the Kyrgyz Republic" dated 28.12.2006 No.213.
- Law of the Kyrgyz Republic "On the Procedure for Review of Complaints from Citizens" dated 04.05.2007 No.67.
- Temporary Provision "On the Procedure of Information Dissemination in the State Internet Portal (Internet)" approved by Decree of the President of the Kyrgyz Republic dated 15.01.2004 No.10.

<sup>1</sup> Begaim Usenova, Executive Director, Media Policy Institute

Advantages of the Law on access to information of 2006 are as follows:  
An attempt has been made for the first time to define what information shall be considered as confidential by state bodies and local self-government bodies.

The applicant who sends a request for information shall not need to justify the reason for such request nor prove the relevancy of any information for him personally.

A list of information which the state bodies shall be obliged to communicate to the public has been approved.

The procedure for the public disclosure of information materials and access to them in the global Internet is established.

The possibility to attend state bodies meetings has been guaranteed.

Specific times for receiving information have been established.

Procedures have been defined for reviewing and accepting oral and written requests.

The possibility to lodge appeals against refusals in providing information has been provided.

The responsibility of officials for violation of provisions of law has been established.

According to the Law of the Kyrgyz Republic "On Access to Information..." five ways of obtaining information have been defined:

1. publishing and dissemination of corresponding information on activities of the state bodies and local self-government bodies;
2. disclosure of official information;
3. assurance of direct access to documents and materials;
4. assurance of direct access to open meetings; and
5. provision of information to individuals and legal entities on the basis of their written and oral requests.

## **Timeframe for preparing replies to written requests**

A reply to a written request shall be communicated within a two-week period.

The calculation of time period for preparing a reply to a request shall start from the date of the request receipt by a state body or a local self-government body and end on the date of the reply hand-over to a post office, delivery to the applicant personally or its courier or representative, or registration of sending the reply by electronic communication lines.

If, in accordance with the provisions of the Law, the request shall be re-sent to other state bodies and local self-government bodies, calculation of time period for a reply to a request shall start from the date of the request receipt by another state body or a local self-government body responsible to provide information under the Law.

If a reply cannot be prepared within two-week period, the corresponding information shall be communicated to an applicant stating the reasons for the delay.

The delay period shall not exceed two weeks.

## **Reply to a request**

According to the Law of the Kyrgyz Republic "On Access to Information..." a reply to a request shall be comprehensive and the source shall be indicated. A refusal shall contain justified reasons for rejection and specific references on legislative regulations, as well as the ways and procedure to lodge a complaint against the refusal to provide information. Failure to provide information within the specified time period or absence of notification on prolongation of the term for replying to the request shall be considered as a refusal to provide a reply to the request.

## **Access limitation**

By information with limited access we understand information which is defined as either a state secret or confidential. The following is considered to be a state secret: national security information, military secrets and official secrets.

The following information is defined as confidential:

- *information on official secrets of the state bodies and local self-government bodies:*
  - a. information which is related exclusively to organizational and technical rules to assure safety of operation of a state body and a local self-government body;
  - b. content of closed hearings and sessions;
  - c. individual opinions of an official expressed during a closed meeting or voting.
- *information available with state bodies and local self-government bodies containing secrets of other persons which are protected by law:*
  - a. private life secrets;
  - b. commercial secrets;
  - c. professional and other secrets.

State secrets belong to one of the main types of limitation. This type of information is regulated by the Law of the Kyrgyz Republic "On Protection of State Secrets of the Kyrgyz Republic" dated 14 April 1994. By state secrets we understand information (kept and transferred by using any type of carriers) which concerns defence capacity, security, economic and political interests of the Kyrgyz Republic. This information is under the control of the government and is limited by special lists and regulations developed on the basis and in execution of the Kyrgyz Republic Constitution. The procedure for information security classification shall be determined by the Government. It is not allowed to assign secrecy labels which are not envisaged by law.

A rather broad range of information (which relates to practically all areas of public and state life) may be classified as state secrets. However, at taking a decision on classifying particular information as a state secret, authorized officials shall take into account that certain information cannot be a state secret.

This is the information on:

- natural disasters and emergency situations endangering the citizens' health;
- disasters and their consequences;
- state of things in ecology and use of natural resources;
- public health service, sanitation, culture, agriculture, education, trade and assurance of law and order;
- facts of offences against law by state bodies and officials thereof;
- facts of infringement on rights and legitimate interests of citizens, as well as of endangerment to their personal safety.



In accordance with the Law "On Protection of State Secrets," the feasibility of making the information secret in the public interests shall be justified by an expert judgment. In practice, security classification of many categories of information is evidently unjustified. At that, frequently the courts which review cases on requests for information either make decisions on the basis of subordinate laws on secrecy without taking into account feasibility of such security classification, or (by ignoring legal effect of "public interest") deny the citizens their demands by giving the following statement of motivation: "the requested information does not affect personal interests of the applicant"<sup>2</sup>.

*Example<sup>3</sup>. The whole budget of the Main Directorate of Administrating Punishment (MDAP) is a state secret, including the information on expenses for meals, material, welfare and health service support of the convicts. In the course of the judicial proceedings on request for such information the Ministry of Justice failed to explain how information on expenses on food, soap and medicine for convicts might endanger security interests of the society.*

On the whole, it should be noted that the level of civil legal consciousness at litigation on officials' and state bodies' refusals to provide access to information of public importance leaves much to be desired.

## **Refusal to provide information**

Refusal to release information, as well as other actions and decisions of responsibility persons, violating the requirements of the Law, may be (at discretion of the applicant requesting for information) appealed to the superior officer, the Ombudsman (Akyikatchy) of the Kyrgyz Republic or in the court in accordance with legislation.

Persons who are guilty in default or improper execution of responsibilities (refusal, partial refusal, violation of timeframes for a reply or absence of notification on prolongation of such time period) shall be brought to liability:

- criminal,
- administrative,
- civil,
- disciplinary,
- or material.

<sup>2</sup> Taken from the materials of the case of Kyrgyz human rights activist Nurbek Toktakunov

<sup>3</sup> Taken from the materials of the case of Kyrgyz human rights activist Nurbek Toktakunov

*In 2007-2008 lawsuits were brought against the Ministry of Education and Science of the Kyrgyz Republic, the Ministry of Justice of the Kyrgyz Republic, the Office of Jogorky Kenesh of the Kyrgyz Republic and 8 heads of Aiyl Okmotu of Chuysk district. The Chuysk regional court gave a note of warning to six heads of Aiyl Okmotu, while two officials had to pay a fine for violation of the time period for provision of information and refusal to provide it. According to monitoring conducted by the Public Association "Journalists", in 2010 the Inter-regional court of Issyk-Kul district, having tried a claim by a regional correspondent of Internet site [www.vof.kg](http://www.vof.kg) and human rights activist of "Voice of Freedom" network, issued an order to the Region Internal Affairs Directorate and regional representation of Ombudsman (Akyikatchy) to release full and accurate information in reply to the submitted requests.<sup>4</sup>*

## Mass media and journalists

In 2009, the Institute for Media Policy (IMP) received appeals from mass media and journalists with respect to (1) unjustified refusals to release the requested information by the state bodies and local self-government bodies; (2) the quality of the replies provided by the state bodies on requests which, in the majority of cases, ask the applicant to communicate with another office; and (3) gross violations of time for replying.

It is correctly supposed that journalists and mass media (the role of which is to provide information of importance to the public) are more active in ensuring the right of access to information, including opportunities to talk directly to the authorities. However, there are also a number of problems and obstacles:

- partial releases of information;
- formation of an unofficial "pool of journalists" (where non-governmental mass media, as a rule, "have gone overboard");
- exclusive release of information to "trusted" mass media.

## Popular answers of officials

1st place. No comment or Yes, I promised to give you a comment, but.

2nd place. No, is it really a subject worth discussion?

3rd place. It is off-the-record.

<sup>4</sup> Monitoring of freedom of speech violations in Kyrgyzstan in February 2010, Bulletin issued by Public Association "Journalists", Bishkek, 2010.

4th place. We'll edit the article prior to its publication.

5th place. Later we will publish an official press release.

6th place. Information shall not be disclosed in the interests of.

7th place. I am not going to give you any information (unmotivated refusal).

## Recommendations

- √ It shall be necessary to exercise monitoring of violations of citizens' right of access to information and communicate the results to representatives of corresponding state authorities, as well as to civil society organizations, mass media and international organizations;
- √ It shall be necessary to regularly hold and participate in joint public events and discussions in order to expand citizens' opportunities to access information which is important to the public, as well as to increase awareness of representatives of the state bodies and local self-government bodies on necessity to assure open access to information of public interest within the limits of existing legislation;
- √ It shall be necessary to create citizen's watch organizations in order to find out problems with access to information and development of recommendations.
- √ It shall be necessary to develop the judicial practice on reviewing in the court of refusals of officials and state bodies to provide access to information of importance to the public.
- √ It shall be necessary to hold information campaigns on increasing citizens' awareness on information access issues (social video clips, booklets, brochures, etc.).



# Legal Aspects of Access to Information in the Republic of Tajikistan

## Sergey Romanov<sup>1</sup>

The right of access to information is one of the fundamental conditions for development of democratic processes in the country.

The right of access to information is a component of the right to freedom. According to Article 30 of the Constitution of the Republic of Tajikistan *"each person is guaranteed the freedoms of speech and the press, as well as the right to use information media"*.

According to Article 19 of International Covenant on Civil and Political Rights *"the right to freedom of expression shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"*.

### National standards on access to information

National legislation regulating the citizens' right of access to information shall be based on the principle of maximum transparency and accessibility. This means that executive governmental authorities, which are primary objects of information activities, shall be sufficiently open to provide information to the citizens.

The Constitution guarantees the right to the citizens to appeal to governmental organs personally or in association with others (Article 31). Besides, the Supreme Law of the country obliges the governmental organs, social associations, political parties and officials to provide each person with the possibility of receiving and becoming acquainted with documents that affect her or his rights and interests (Article 25).

It is necessary to point out that according to the Law "On Information," one of the main directions of the governmental information policy is *assurance of timely access of the citizens to information* (Article 7). The Law guarantees to everyone *free access to information in the context of enforcement by the citizens of their right to information which includes the possibility to freely receive, keep, use and disseminate information which is necessary for enforcement of their rights, freedoms and legitimate interests* (Article 8).

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<sup>1</sup> Sergey Romanov, Lawyer of the Republican Bureau of Human Rights and Rule of Law

In order to create legal conditions for enforcement of the each citizen's right to freely seek and receive information, as well as to assure information openness of the governmental authorities, Law "On the Right of Access to Information" went into effect on 20 March 2008.

Adoption of the Law (despite its certain material weaknesses) is another step forward to development of an open society. Obviously, extensive discussion of the law draft by different layers of civil society would have been more beneficial and would have solved the main problem of today – the people's awareness of existence of such a law. Moreover, it could have served as a good example for subsequent practice of public involvement into the law-making process.

At first sight, the national legislation has all necessary conditions for implementation of the generally recognized principle of maximum openness of governmental authorities to provide information. However, in practice the citizens are facing more and more difficulties in getting access to certain information.

The legislation would (for the first time) require citizens to pay expenses for the provision of information. The Law stipulates exemption of vulnerable layers of population from payment of expenses for the provision of information. Decree No. 610 of 31 October 2009 issued by the Government establishes the procedure of compensation to agencies and organizations of expenses related to provision of information by them. It sets the provisions for compensation to governmental agencies and organizations, other bodies and organizations authorized by the government with the appropriate powers and local government bodies of the expenses related to the provision of information to the concerned individuals and legal entities who requested such information.

The major part of the expenses consists of the cost of making copies and postage. The expenses shall be calculated by corresponding financial departments of the governmental bodies and organizations on the basis of a specific cost of each group or type of information in co-ordination with the state anti-monopoly authority.

The governmental bodies and organizations may also determine the cost of information provided in accordance with the established regulations of the Law "On Valuation Activities".

Payment for providing information shall not be unreasonably high in order not to put obstacles in the way of applicants. Nevertheless, judging from experience of some countries, paying for access to information is not an effective means of compensation of expenses incurred.

## Requests handling and acceptance procedure

In my opinion, a material weakness of the Law is the request handling (reviewing) and acceptance procedure. Thus, the lawmaker sets the period (for the governmental bodies) of 30 days, and in some cases of 45 days, for preparing a reply on the citizens' requests. This provision contradicts the fundamental principle of promptness in provision of information which is established by Article 6 of the Law "On the Right of Access to Information" and Article 7 of the Law "On Information". The promptness principle means setting a tight timeframe for reviewing and acceptance of the requests. Promptness and good faith in reviewing the requests by the governmental bodies is an important criterion to assure openness.

## Refusal to provide information

Another considerable weakness of the Law is lack of clear and transparent mechanism for refusing to provide information. Article 14 of the Law provides a list of data which cannot be provided upon the request of citizens. However, the Law does not envisage a regulation which imposes an obligation upon the governmental body or official to provide a justified response in writing in the case of a refusal to provide information.

According to international standards, refusing to provide information may be justified only if a governmental body is able to prove that the information meets three necessary conditions taken together:

- The information relates to a legitimate interest recognized by the law;
- Release of information would cause harm to this purpose;
- This harm would be greater than the harm of non-disclosure of such information to the public.

A comprehensive list of legitimate purposes is essentially contained in the Laws "On State Secrets" and "On List of Data Comprising the State Secrets". In order to determine whether a document is classified it shall be necessary to proceed from the information contained in it, rather than from the type of document.

No governmental bodies shall be completely excluded from the scope of the Law, even if the most information on activities of such body is confidential and is included into the list of information to which access is limited. Each case of refusal to disclose information shall be justified.

In practice, in the case of unjustified refusal both citizens and mass media representatives, for example, journalists, do not lodge complaints and do not use judicial review procedure mechanisms to appeal the decisions.

### **Obligation to publish**

Assurance of the citizens' right of access to information means that the government bodies shall provide information upon requests and also shall publish and broadcast information which is of interest to the public.

According to Article 7 of the Law, access to information is also assured by mandatory communication of information to the general public. The Law obliges the governmental bodies and organizations to promptly communicate (by using all means available) information (!) to the general public. However, the definition (given by the Law) of the information which shall be promptly communicated to the public is narrow and limited. By implication, only information *on facts and circumstances endangering public security, life and health of the people* must be communicated by the governmental bodies and organizations to population promptly.

In conclusion, the legislation envisages also protection of information in accordance with RT Law "On Information Protection" of 15 May 2002 which has the following purpose:

prevention of information leakage, theft, loss, distortion, corruption;  
prevention of unauthorized actions on information destruction,  
modification, distortion, copying, blocking; and  
prevention of authorized and unauthorized actions which may cause  
intentional or unintentional destruction, blocking, distortion (corruption),  
theft, copying, leakage, modification and transformation of information.

### **General guidelines**

- √ It shall be necessary to develop a standard statute of a structural subdivision of a governmental body and a job description for an official in charge of organization of citizens' access to information;
- √ Events shall be organized to educate the public on the issues of legislation regulating the access to information, as well as mechanisms for making requests and reviewing refusals to provide information;



- √ A recommendation shall be made to the Institute of Public Officers Advanced Training to include (into their training programs) workshops on organization of the public access to information;
- √ Principle of promptness shall be assured at reviewing and acceptance of the requests. It shall be necessary to revise the timeframes (envisaged by law) for reviewing the citizens' requests on receiving information;
- √ An addendum shall be made in the Law which will obligate a governmental body or official to give a justified reply in writing in the case of refusal to provide information to citizens;
- √ It shall be necessary to expand categories of information which represent public interest and are mandatory for publication by the governmental bodies and communication to the public;

### **Mass media shall**

- √ Jointly, with the lawyers, make use of a review (appeal) mechanism in judicial institutions against decisions, actions (failure to act) of governmental authorities, local government bodies, officials and employees thereof in connection with refusal to provide information.

the 1990s, the number of people who have been infected with HIV has increased in almost every country in the world. In 1990, there were 1.5 million people living with HIV, and by 2000, this number had risen to 39 million (UNAIDS 2001).

There are a number of reasons why the number of people living with HIV has increased so rapidly. One of the main reasons is that the virus is highly contagious and can be transmitted through a variety of routes, including sexual contact, sharing of needles, and mother-to-child transmission. Another reason is that the virus is often asymptomatic for many years, allowing it to spread undetected.

Despite the fact that HIV is a deadly virus, there are a number of ways in which it can be prevented. One of the most effective ways is through the use of condoms. Another way is through the use of sterile needles and syringes. A third way is through the use of antiretroviral drugs, which can help to reduce the amount of virus in the blood and thus reduce the risk of transmission.

It is important to note that while there are ways to prevent HIV, there is no cure for the virus. People who are living with HIV must take antiretroviral drugs for the rest of their lives in order to keep the virus under control and to prevent it from damaging their immune system. Without treatment, HIV can lead to AIDS, which is a life-threatening condition.

There are a number of things that people who are living with HIV can do to help to keep their health as good as possible. One of the most important things is to take their antiretroviral drugs as prescribed. Another important thing is to get regular check-ups from their doctor. It is also important to avoid risky behaviors, such as sharing needles and having unprotected sex.

While there is no cure for HIV, there are a number of ways in which the virus can be managed. With the right treatment, people who are living with HIV can live long and healthy lives. It is important to remember that HIV is a chronic condition, and it requires ongoing medical care and support. However, with the right care, people who are living with HIV can lead full and productive lives.

There are a number of organizations that provide support and resources for people who are living with HIV. These organizations can help with a variety of things, including finding a doctor, getting medication, and accessing other services. It is important to reach out to these organizations if you are living with HIV and need help. There is no shame in asking for help, and there are many people who are willing to provide support and resources to those who need it.

While there is no cure for HIV, there are a number of ways in which the virus can be managed. With the right treatment, people who are living with HIV can live long and healthy lives. It is important to remember that HIV is a chronic condition, and it requires ongoing medical care and support. However, with the right care, people who are living with HIV can lead full and productive lives.

## Access to Information in Uzbekistan: legal, organisational, and technical prerequisites

**Bobir Alikhanov<sup>1</sup>**

Dear Ladies and Gentlemen,  
Dear Colleagues,

I am glad to welcome representatives of Central Asia's media community to this traditional and representative forum of journalists, media experts and information specialists. I would also like to extend my appreciation to the staff of the OSCE Office of the Representative on Freedom of the Media who have been diligently and constructively preparing this meeting for many years now. Most importantly, the topics of these conferences reflect the systematic and consistent approach of the organizers in their search for ways to solve the global problems and pressing tasks which the world mass media are facing. By examining the situation in individual regions and taking into account the specificities, conditions and mentality of each region it will be possible to bring together the various pieces of the whole picture. I think that the topic of the exchange of opinions we are having now is no exception.

When talking about access of the media to information, I think about how the human body works with its kilometers of vessels pumping blood to provide all organs with the nutrients that actually ensure our existence. In more simple words, if our vital organs have access to blood via the circulatory system they operate normally. Notwithstanding the simplicity of this comparison, I believe it gives a fair idea of how important access of the media to information is. To put this reflection further, that its is possible to access information is essential not only for the mass media in the sense that it gives them the opportunity to come up with a brand new media product. When examining this problem we should keep the interests of mankind in mind. At the same time we should not forget that access to information is a direct manifestation of freedom and the other advantages of democracy and liberalization.

In Uzbekistan, where the government has initiated large-scale reforms in all spheres of public life, liberalization is, in essence, the backbone and connecting link of all transformations that take place in the country, including in the media field. The policy of the state in this field aims at granting the media the place

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<sup>1</sup> Bobir Alikhanov, Media Project Coordinator, Institute for Studies of the Civil Society

that is theirs in the political and spiritual life of society, the guarantees of social and legal protection to the activities of journalists, an appropriate training for journalists, the development of a media market and the creation of a fair competitive environment.

It is worth noting that a lot has been done in this respect since Uzbekistan became independent, but a lot, lot more remains to be done. A significant legal framework has been created with a view to implementing freedom of speech and freedom of the media, and ensuring a dynamic and consistent development of the information sphere. The inadmissibility of censorship has been enshrined in law and the necessary conditions for the establishment and development of public, non-governmental institutions in the information sphere have been created.

When one analyzes how national media have developed, how international legal norms and democratic standards have been put into practice in the activity of domestic media and in the other aspects of the liberalization of the information sphere, it appears that these norms and standards have a priority value in the process of creating a democratic society based on law.

Over 10 laws, more than 20 subordinate acts and, other regulatory documents regulating media activities have been adopted in Uzbekistan.

It is worth noting that after being adopted almost every law underwent more than one change or addition; some were even entirely rewritten. This shows that as society and the media were developing these laws were being perfected as new tendencies and circumstances were appearing. And this process is continuing.

As for the legal basis for access to information, these aspects are regulated by the following documents:

- Articles 29 and 30 of the Constitution of the Republic of Uzbekistan;
- Law of the Republic of Uzbekistan "On Guarantees and Freedom of Access to Information" adopted in 1997. The Law guarantees the right to access information and the obligation of the state to protect the right of every individual to seek, receive, study, pass on and impart information. The main principles of freedom of access to information are the following: publicity, accessibility, openness and reliability of information. State bodies, self-government bodies, public unions, enterprises, establishments, organizations and officials are obliged to ensure that every individual has an opportunity to familiarize himself with legislative acts, as well as with documents, resolutions and other materials that deal with his or her rights and rightful interests.

Access to information is provided through the publication and dissemination of legislative acts and corresponding materials. The action or inaction of state bodies, self-government bodies, public organizations, enterprises, establishments and officials which violates the citizens' right to receive information can be appealed in courts.

- The Law "On the Protection of the Professional Activities of Journalists," which was also adopted by the Parliament in 1997, details the rights of journalists when fulfilling their professional duties: the right to collect, analyze and impart information; the right to apply to state bodies, self-government bodies, public organizations, enterprises, establishments and officials to obtain information; the right to get access to documents, materials, and information except those which contain state secrets or other secrets protected by law; the right to perform a journalistic investigation; the right to disseminate through the mass media dispatches and articles signed under their real or an assumed name; the right to express their opinions in these materials; the right to meet with officials in relation to their work; the right to take notes and make recordings with the help of the necessary technical means according to established regulations; the right to attend open court sessions, to be in areas of military operations and natural disasters, to attend public events; the right to contact specialists to verify information ready for publication. Information obtained confidentially, as well as facts and events voluntarily reported by citizens or other sources of information constitute a journalistic secret. Journalists are forbidden to disclose information constituting a journalistic secret without the permission of the source of information. They are also forbidden to use this information for mercantile motives or in the interests of a third party.
- Article 5 of the Law "On the Mass Media" that was adopted in its last version in 2007, is dedicated to the freedom of the mass media. It states that "the mass media have, in accordance with the law, the right to search for, receive and impart information, and they are responsible for the objectivity and reliability of the distributed information in accordance with the legislation". Article 33 of the Law provides for the right of the mass media to not identify the source of an information when the editorial board has no right to identify either the source of information, news or evidence provided under the condition that the identity of this source will not be disclosed, or the name of the author who signed under a pen name without their written permission. The editorial board may, upon the demand of the source of information or of the author who signed under a pen name, represent their interests in court.
- When defining freedom of information, article 4 of the Law "On the Principles and Guarantees of the Freedom of Information" that was adopted in 2002, states that access to information can be limited only in accordance with the law and for the purpose of protecting human rights and freedoms; the

foundations of the constitutional system; the moral values of society; the spiritual, cultural and scientific potential of the country; and its security. Other articles of the Law define the procedures for obtaining information, for refusing to release information, and the principles of the accessibility and authenticity of the information.

The basic principles of the state policy in the field of informatization are enshrined in the Law "On Informatization," which was adopted in 2003. The Law also says that the constitutional rights of every individual to freely receive and impart information should be enforced, that access to information resources should be guaranteed; that a unified information space of the Republic of Uzbekistan based on the information systems of state bodies, on sector-based and territorial information systems, as well as on the information systems of juridical and natural persons should be created; that the conditions for access to international information networks and the Internet global information network should be created; that state information resources should be formed, that information systems should be created and developed, that their compatibility and interaction should be guaranteed; that the production of modern means of information technologies should be organized; and that the creation of a market of information resources, services and technologies should be encouraged.

In parallel to this legal basis, organizational and technical conditions have been created in the country for the purpose of expanding access to information. Now, when more than 1,100 electronic and printed mass media operate in the national media field, we are naturally facing the task of filling them with quality content through the provision of a huge amount of information. If one takes into account the fact that more than half of these mass media outlets represent the private sector, one can easily imagine how it is difficult for them to fill their publications with content.

In view of this it is necessary to create a complex interaction mechanism between the mass media, state bodies, public organizations and other civil society institutions. The information services created in late 2005 at ministries, institutions and commercial entities by a special government decision have begun fulfilling this task. These information services have been given the mission to strengthen public relations and interaction with the mass media, to form an objective public opinion on how transformations in all spheres of the country's public and political life are taking place, to systematic fill up the information sphere by providing a "first-hand" media product. A fundamental difference between these newly created units and previous press services and public relations centers is that from now on informational services – which have more

prerogatives and a higher status (the head of an information service is at the same time press secretary of the administration and reports directly to the chief executive of this administration) – can, without delay and without needing to seek approvals, assist representatives of the mass media in their quest for information. Of course, problems cannot always be avoided. It so happens that sometimes the much heard-of administration interests come into action. Furthermore, the fact that many employees of these information services are neither professional journalists nor experts in public relations sometimes creates certain difficulties in their relations with the mass media. By the way, a solution to the latter problem is gradually being found. Competent specialists for these information services have begun receiving a two year-training at the Higher Training Courses for Journalism of the Mirzo Ulugbek National University of Uzbekistan.

Be it as it may, today we have an efficient enough horizontal-vertical network of suppliers of diverse and reliable information which are based both in Tashkent and in the regions and which are vitally interested in timely and objectively disseminating this information. The co-operation between the media structures of these administrations and the mass media is exercised by various means and through different communication channels.

This task, which is already taking an organizational and technical character, is directly linked to the implementation into the everyday life of society of the achievements made in information and communication technologies (ICT). In particular, it is necessary to further implement these ICT in the activities of ministries and departments and local self-government bodies. It is also necessary to expand the information resources of the Internet; to increase the number and quality of state interactive services and to develop modern services in the field of information and communication technologies; to ensure openness and transparency when strengthening relations with the public and to expand access to information.

As a result, as of 1 May 2010 the number of domain names in the national domain zone .UZ totaled 10,300 (a 9 percent increase since the beginning of the year). The number of websites registered in the national domain .UZ reached 7,300. Domain registration in the .UZ zone is provided by seven official registrars. The number of users who have a digital signature has increased almost threefold; the level of digitizing in Uzbekistan has reached 92.7 percent. The number of business units rendering services on access to the Internet totaled 977. The estimate number of Internet users has increased to 2.8 million people – i.e. about 100 users per 1,000 people.

At the same time, a large-scale work is being carried out to implement advanced information and communication technologies in the media field and to develop online mass media. The number of the online mass media is increasing intensively through the creation of electronic versions of newspapers and magazines. An electronic version of a printed publication is first and foremost a modern image, has wider access to and a real expansion of the readership with a comparatively small circulation of the printed publications, access to a large market, the possibility to attract advertisement and to conduct interactive actions in the form of voting, discussions and forums. This is precisely the reason why the printed mass media take an additional financial burden and create electronic analogues.

Within the framework of the implementation of the National Program for the Reconstruction and Development of Uzbekistan's Telecommunications Network a national telecommunications network is now being created on the basis of digital data transmission systems and digital communications equipment. Digital television broadcasting offers the opportunity to transmit high-definition videos, to render multi-program television services and to open access to additional interactive services.

Transmission of a 12 television program-package in digital format from Tashkent to Bukhara has started. This transmission is made through a digital flow of 34 Mb/s. In the first half of 2010, work on installing three more digital TV transmitters in Tashkent and setting up about 40 television channels and one television transmitter in Samarkand will be completed.

Uzbekistan has been spearheading the application of the MPEG-4 video compression standard in Central Asia. The development of a fiber optic network contributes to the increase in the number of television and radio broadcasting channels, both state- and private-owned (independent). This in turn helps increase the number of information resources and expand access to them, provide various opinions to the population about events taking place both inside the country and abroad and ensure pluralism of opinions in society.

A satellite network for television and radio broadcasting has been organized. Today both state and non-governmental television can organize television and radio broadcasting by using satellite communications networks. Residents of remote rural areas located in regions that are not easily accessible now receive a high-quality television and radio signal from the "O'zbekiston" state television and radio channel and the "NTT" non-governmental television network.



In conclusion, I would like to say that Uzbekistan today has both the legal and moral conditions and the organizational and technical possibilities to have a broad access to information. However, a lot remains to be done in order to reach that stage when the universal accessibility of the information will develop into a rational usage, an optimal implementation and a competent positioning both in the activities of the mass media and the public conscience.

# Developments in the field of media freedom in Central Asia





## Freedom of Speech in Kazakhstan: legislation and practice

### Tamara Kaleyeva<sup>1</sup>

Two significant events took place in Kazakhstan since the previous OSCE Conference on freedom of speech in Central Asia: The country has become the OSCE Chair, and its unchallenged president has become the official leader of the nation by a decision of the Parliament. New facts from life of our mass media are falling well into the socio-political context of these events.

I would like to begin by discussing legislation in Kazakhstan. The Internet Law, adopted in July last year, did not result (contrary to our fears) in mass blocking of Internet sites through court decisions. Moreover, according to our data, no such developments have been registered at all. According to Esekėev, the former Chairman of the Agency on Informational Support and Communications, about 5 domains are being closed every month. However, this is being done not by means of court decision, but by decisions of law-enforcement authorities. We do not know which websites have been closed by the authorities, despite the fact that we have requested this information from them. This year, the portal of opposition newspaper "Respublika" as well as its Internet publications were blocked by unknown authorities for reasons unknown to us. Newspaper journalists have made various assessments to ensure that their websites are not exclusively accessible through Kazakhtelecom. As a result, it has become evident that illegitimate blocking continues as before.

At the end of last year a new law was hastily adopted, strengthening criminal responsibility for violation of privacy. It established an unprecedented punishment of up to five years imprisonment for dissemination in mass media of illegitimately received information on a person's private life. The journalists' community of the country campaigned against the adoption of the law. We made statements and addressed deputies and the president raising concern on the issue by referring to relevant UN documents, such as the International Covenant on Civil and Political Rights. Furthermore, we explained that a person's private life is an incontestable criterion of his/her office-related honesty; all misdemeanors that occur in office are vividly embodied in the lifestyle, habits and preferences of a corrupt official. The authorities' reaction to the voices and concerns of civil society were as usual: no reaction. While the former Criminal

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1 Tamara Kaleyeva, President of the International foundation for protection of freedom of speech "Adil Soz"

Code contained six provisions that could be used to imprison journalists for their professional activities, this year, during its one-year-long chairmanship at the OSCE, the number of such provisions increased to seven.

Drafts of amended Criminal, Civil and Administrative Codes have been submitted to the Kazakhstan Parliament. All sanctions envisaged by these draft documents (in relation to mass media and journalists) remain unchanged or have been made more severe. Let me draw your attention to the Criminal Code; it was drafted by the General Prosecutor's Office which had removed article 129 "Defamation" from the draft. However, the final draft that was sent from the government to the Parliament had restored this article on defamation.

Dozens of investigations into defamation complaints filed against journalists under article 129 of the Criminal Code last year did not consider the inalienable element of the crime of libel: malicious intent. Criminal defamation cases are launched upon a private complaint, however articles 129 and 130 of the Criminal Code were used exclusively by public officials. They challenged the right of the society to scrutinize their activities as government employees. This is probably the main reason as to why the criminal prosecution for defamation, which has been repeatedly criticized by the OSCE, remains in effect in our country.

A very important criterion for measuring the level of freedom of speech in a country is the number of people who have been imprisoned for publicly expressing their opinion. In Kazakhstan, the year 2009 began seeing two journalists put behind bars for thought crimes; by the end of the year, however, this number had been raised to six.

Vadim Kuramshin, a freelance journalist, who had been sentenced to 3 years and 10 months imprisonment on defamation charges, was released on parole in October after spending three years in prison.

Tokbergen Abiev, senior editor of "Law and Justice" newspaper, continues to serve his prison sentence. He was sentenced in 2008 for 3 years imprisonment for "attempting to buy information describing the activities of some judges in a negative light".

Ramazan Esergepov, senior editor of "Alma-Ata Info" newspaper, became another prisoner of freedom of speech, last year. He was sentenced to 3 years of imprisonment for "illegitimate gathering and divulgence of State secrets". Additionally, writer Alpamys Bekturganov was sentenced to 1 year imprisonment in August 2009 for public criticism of the Akim (the head of the local government) of the Western Kazakhstan district.

In September, Kamalitdin Dulatov, President of the Public Foundation "Kazakh Khanate", was sentenced to one year suspended imprisonment for public criticism of the Akim of the city of Shymkent; in December, Muhtar Muhambetzhon, head of another public foundation, was sentenced (for the same crime in relation to the Shymkent Akim) to a suspended imprisonment of one and a half years. A 300 percent rise in convictions is too much even for the OSCE chairman.

Overall, the number of criminal complaints against journalists has more than doubled in 2009 alone. This year, only six such complaints have been recorded. However, it should be noted that, apart from four judicial proceedings last year which resulted in imprisonment, the majority of court hearings ended with the acquittal of journalists and mass media. Nonetheless, such observations unequivocally confirm the OSCE experts concerns, that the threat of enforcing harsh criminal sanctions, particularly imprisonment, has the effect of "a cold shower on freedom of speech" and encourages self-censorship.

Due to the specific character of national legislation, civil disputes on the protection of honour and dignity result in equally disturbing consequences in Kazakhstan. There are no ceilings on fines for moral damages and no limitation on the time period after publication. As a result, the leading opposition newspapers of our country "Taszhargan" and "Respublika Delovoye obozrenie" were led to bankruptcy and forced to shut down last year. The first one was led to bankruptcy following the suit of Majlis deputy Romin Madinov; the second occurred after the lawsuit of BTA Bank. Deputies and bankers of our countries are keen on litigation with newspapers. Currently, deputy of the lower chamber, Nurtai Sabilyanov, is in litigation with authors of "Zhas Alash" newspaper and is requesting for 500 thousand Tenge in compensation from each of the eight villagers, who are also his voters. Last year, the Development Bank of Kazakhstan claimed one billion Tenge from "Vremya" newspaper, and now is requesting a compensation claim of 325 million from "Central Asia Monitor" newspaper.

The problem lies not with the Parliamentarians' and bankers' requests, but with the intolerant attitude to criticism of officials of all levels and all branches in power. This can be clearly demonstrated by the situation of the "Respublika" newspaper. After a court had made a decision to collect 60 million Tenge in favour of the bank, the editorial board offered a large number of ways to satisfy payment obligations in their attempt to preserve the newspaper. It was proposed to make a payment of 60 million in Eurobonds of the bank itself. The proposal was refused by the bankers. The editorial board asked for the payment in

installments from debt as well as giving all revenues from newspaper sales to the bank. I would like to point out: the court did not put a ban on the printing of the newspaper. It acted in a more creative way - first, it prohibited its sales, then obligated all printing offices of the country to transfer all funds received for printing the "Respublika Delovoye obozrenie" to the account of the Almaty court's administrator. From the logic of these proceedings, the printing house could only print the newspaper free of charge, and it was prohibited to sell "Respublika" at all.

Having understood the futility of their attempts, the editorial board submitted documents for the re-registration of another publication "Moya Respublika - facts, issues, people" from a monthly to a weekly issue. This occurred in October 2009, and according to the law, the procedure should take 15 days; however, these documents were lost in the Ministry of Culture and Information (MCI). During the following three months, the mass medium sent the documents to the MCI several times, but without any result. Finally, in December 2009 the mass medium filed a complaint with the court against the Committee of Information and Archives of the Ministry of Culture and Information in relation to its illegitimate failure to re-register the mass medium.

The court of primary jurisdiction declared the Ministry's failure to respond illegitimate. Moreover, the court of appeals obliged the Committee of Information and Archives to consider the application of the owner of "Moya Respublika - facts, issues, people" newspaper for re-registration of the publication. In May, this year, the public prosecutor of the capital took action in favour of the Ministry. He lodged a protest against the court decisions and demanded that the newspaper to restore the certificate on the publication registration by itself. If the court satisfies the prosecutor's appeal and obliges the newspaper to restore the certificate lost by a ministerial official, a decision on the re-registration of the opposition newspaper will be delayed for many more months.

I am not going to give a detailed description of the situation of freedom of expression. It recent developments that I will describe will speak for themselves.

For those who are not aware of the dynamics in Kazakhstan; last year the main persona-non-grata in Kazakhstan was the former president's son-in-law Rahat Aliiev; this year Mukhtar Ablyazov took over this role. Some time ago he was one of the opposition leaders. He quickly appeared behind bars, not for his political activities, of course, but for economic crimes. Shortly after, he was forgiven and pardoned. He became head of the BTA bank, but did not abandon the opposition movement. Once again, he fell into disgrace, but this time he did not wait to be arrested, and instead emigrated from the country.



Now Abylazov disseminates information from abroad, on economic crimes which have been allegedly committed by Timur Kulibaev, Deputy Chairman of the Board of "Samruk-Kazyna" Foundation, Chairman of the Board of Directors of national company "KazMunaiGaz", owner of billions of U.S. dollars (according to Forbes magazine) and at the same time the son-in-law of the president of the country. Some mass media publish such information; naturally, Mr. Kulibaev does not really approve. So he filed a legal complaint with the court to claiming that the information disseminated by Abylazov in the media was untrue.

Dana Makhmetova, a judge of Medeus regional court of Almaty, not only confirmed Mr. Kulibaev's allegations, but also gave an order to collect all "Respublika", "Golos Respubliki", "Vzglyad", "Kursiv" and "other information-carrying media in hardcopy or electronic form which contain information discrediting the honour and dignity of Kulibaev Timur Askarovich". The decision also prohibited "other mass media and persons to publish and disseminate" any such information. Besides, the court ordered to suspend sales of already "printed but not sold products containing scandalous information".

As a result of the court order, "Svoboda slova", "Golos Respubliki", "Vzglyad" and other newspapers were seized and confiscated all over the country. Law enforcement officers retracted the publications which contained Kulibaev's name (from sales) on the grounds of the order of enforcement issued by Medeus court of Almaty. Elena Burmistrova, director of the "Vremya-Print" printing office, was brought to trial for the fact that her printing office, in accordance with the agreement, had printed an issue of "Svoboda slova" newspaper where the name and surname of Kulibaev had been mentioned, even though it was in a totally different context.

The journalism community, of course, made a row demanding cancellation of the dishonest court order. We were also supported by our colleagues from abroad in the matter. I would like to express a special gratitude toward Miklos Haraszti whose words, as the former OSCE Representative on Freedom of the Media, were of particular value. At the end, this shameful decision was cancelled rather quickly. Nonetheless, as the saying goes, journalists will always have "something to remember" after the incident.

Taking into account the general theme of this Conference, I would like to pay particular attention to the right to receive and disseminate information. This right is enshrined in paragraph 2 of Article 20 of the Constitution of Kazakhstan, stating, "Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law".

The Constitution of Kazakhstan, as well as national legislation on the whole, does not establish the right to freedom of speech regardless of state borders. There is no provision that demands the law on secret information regulation shall be required for protection of public interests. In practice this results in the limitation of receiving and imparting information, through subordinate laws in the interests of individual government agencies or private business organizations. According to the law "on languages," re-transmission of television and radio programs of foreign mass media shall not exceed 20 percent of the total broadcasting capacity.

In accordance with the law "on mass media"; mass media shall not carry responsibility for dissemination of data that does not comply with reality only in the following cases:

1. If official messages and documents are contained this data;
2. If the data was received from advertisement and information agencies or press services at government agencies;
3. If the data is an exact quotation of official statements made by deputies from representative agencies, government officials, organizations and citizens;
4. If the data was in an authors speech that was broadcasted with no preliminary recording or in texts that are not subject to editing in accordance with the present law;
5. If the data was in a mandatory message".

Thus, dissemination of any information (which is received not from governmental structures and in the case when it does not comply with reality) is fraught with grave consequences for mass media and journalists (both civil and criminal responsibility).

The Constitution also states that the right to receive and disseminate information may be limited by law, but there is no further provision on what law shall be necessary for the protection of public interests.

The right of citizens to obtain information related to private rights is incorporated in paragraph 3 of Article 18 of the Constitution of Kazakhstan stating that, "State bodies, public associations, officials, and the mass media must provide every citizen with the possibility to obtain access to documents, decisions and other sources of information concerning their rights and interests". However, this regulation, which is included in paragraph 2 of Article 2 of the Law "On Mass Media" comes into conflict with Article 20 of the same Law which envisages the right of every journalist to keep the secret of copyright and information sources

except for events when these secrets are published by the request of a court. International law in relation to freedom of access to information acknowledges that governmental bodies shall provide the available information to the public with certain limitations. However, this constraint, with respect to mass media, exerts an influence on the editorial independence and is a violation of the right to freedom of speech.

There are no specific acts of law which regulate the freedom to receive and disseminate information or the conditions and limitations for such dissemination in Kazakhstan. Although this right is declared in the Constitution, it is limited by Laws "On State Secrets", "On National Security", and Civil Code regulations with respect to bank secrets, privacy of personal life and others.

Concepts of bank and commercial secrets are very vague in the legislation. These have often been used as grounds for numerous rejections to share information of public importance with journalists.

A list of state secrets is given in detail in the corresponding law. Nevertheless, in law-enforcement and judicial practice these concepts are interpreted in an arbitrary fashion. The conviction of Ramazan Esergepov, senior editor of "Alma-Ata Info" newspaper, is a demonstrative example of such predicaments.

Legislation of Kazakhstan lacks the notions of "information important for the public" and "public person". This is used as grounds for unjustified limitation in the sharing of information that is vital public interest. As an example of such limitations, there is the attribution of information on health and personal life of the President of the Republic of Kazakhstan and his family members to the State secrets by the Law of 2009 "On Introducing amendments and addenda to some legislative acts of the Republic of Kazakhstan on issues of protection of the citizen's right to immunity of private life", which provides for up to five years imprisonment for dissemination of illegitimately obtained information on the private life of a person in mass media.

Unjustifiable limitations on the dissemination of information are contained in the Decree of the President of the Republic of Kazakhstan "Regarding the Code of honour of civil servants of the Republic of Kazakhstan". The document prescribes, in particular, that "Civil servants should not publicly express their views on public policy and performance if it does not correspond to the main directions of state policy. In the case of public accusations of civil servant to be in charge of corruption, he should take steps to refute those accusations, including a court order".

According to a statement made by the Vice-Minister Urazov, a draft law "On Access to Information" is being prepared at the moment. Truth be told, nobody has seen the draft, or its concept. Let's hope that representatives of civil society will be involved in the process, and it will be a real participation and not participation for show. There is still much work to be done in this area, as well as in many others.





## Freedom of the Media in Kyrgyzstan

### Marat Tokoev<sup>1</sup>

For a better understanding of the situation regarding freedom of speech in Kyrgyzstan at the moment let's have a look at what it was before the well-known events in April of this year, literally one and a half to 2 months ago. Since the April events became a turning point in the history of Kyrgyzstan, I divided my report into three conventional periods: before, during and after the April events, and describe each period in the light of mass media and freedom of speech status.

#### **I. Before April 2010: Security of journalists as the main threat to freedom of mass media and speech**

Attacks on and threats to journalists had become an everyday occurrence. Since the start of 2010 until April of this year, the public association "Journalists" had registered 13 such cases. (This figure does not include incidents with journalists during the 6 to 8 April events – we'll discuss them later).

Although the law-enforcement agencies found the offenders in 5 of such cases, this could not rectify the situation – self-censorship among journalists and mass media continued to grow, especially because the journalism community never got clear answers on assassins and their paymasters in the killings of their colleagues Alisher Saipov in December 2007 and Gennadi Pavlyuk at the end of 2009. At the same time, at a hearing in the case of the murder of Almaz Tashiev the district court pronounced (in opinion of the media community) "a very lenient" sentence to two police officers who had killed the journalist – five-year imprisonment with two-year probation period.

This year in the spring we witnessed unprecedented pressure upon mass media and journalists on the part of the authorities. Since 10 March, several independent news websites have been blocked in Kyrgyzstan: "Fergana.RU", "Centrasia", the blog of Edil Baisalov, the web newspaper "Belyi Parus" and the website of "Azattyk" radio (Kyrgyz branch of Radio "Freedom") also faced certain difficulties. It shall be noted that it was the first case of such massive blocking of web resources in Kyrgyzstan.

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1 Marat Tokoev, Chairman of the Board, Public Union "Journalists"

At the same time radio "Azattyk" started to lose its audience in the regions -- representatives of the authorities made threats to regional radio stations who were partners of radio "Azattyk" saying that they would face various difficulties if they continue to rebroadcast "Azattyk" programmes. Whereas, the attitude of authorities to "Azattyk" radio has always been a kind of litmus test indicating the status of freedom of speech in the country.

The authorities also confiscated a print run of opposition publication "Forum" and closed the newspapers "Nazar", "Achyk Sayasat". The "Forum" print run (about 7 thousand copies) was recalled without a judicial decision or sanction of a procurator and no protocol was drawn up. Newspapers "Nazar" and "Achyk Sayasat" were closed following the General Prosecutor Office's suit to defend honour, dignity and business reputation of the president of the country.

## **II. During the April events: Information blockade and attacks on journalists at the place of events**

Each aggravation of political situation in Kyrgyzstan is affecting the work of mass media. Thus, on 6 April and in the first half of 7 April we witnessed the information blockade of mass media and online information sources. In particular, Kyrgyzstan was cut off from the external Internet channel from 6 April (evening) until 7 April (morning). On 7 April around 4.20 p.m. protesters seized the building of Kyrgyz TV and radio broadcasting company. After ravaging everything inside they left the building. Almost at the same time broadcasts of other Bishkek TV channels were interrupted including Fifth Channel, Piramida, NBT.

And during the night of 8 to 9 April at around 3.00 a.m. unknown persons fired at the editorial office of "Diydor" newspaper in Jalal-Abad.

There were also cases of assaults on journalists:

- On 7 April, Alisher Toksonbaev, "Azattyk" staff correspondent, and Aibek Abdylidaev, BBC radio correspondent, were beaten in Osh district.
- During night photography in the capital, Tallin uulu Kanybek, operator of Bishkek TV company NBT, suffered a gun shot wound in an arm.
- Sergei Medvedev, photographer of "Vecherniy Bishkek" newspaper, was wounded with a rubber bullet into an eyebrow.
- Shamil Zhumatov, photographer of Information Agency Reuters for Central Asia, was sent to the national hospital with a concussion and multiple bruises.
- On the night of April 7 April, Irina Bairamukova, correspondent of newspaper "Times of Central Asia" was beaten by unknown young people.



- During the night of 7 to 8 April, looters in Bishkek attacked a camera crew of the "Fifth Channel" from St. Petersburg. Equipment, including a camera, and some personal belongings were taken from correspondent Vitaly Vtulkin and operator Alexander Kotchurov.

Events which happened in the period from 6 to 8 April showed that journalists often consciously neglect elementary safety rules in their aspiration to find a "hot story", although no sensation is worth journalist's life and health.

This is also caused by the fact that in mass media there are no clear-cut regulations on journalists' work during hazardous political situations and protests. I believe that there is much work to do in this area both for media organization of the country and for the media community on the whole.

### **III. After the April events: Positive changes and alarming signs**

The events of 6 and 7 April could not but affect the situation with the freedom of speech and the status of mass media. There are both positive and negative or alarming changes. Let's start with the positive ones.

#### ***Positive changes***

As has been mentioned by international organizations on protection of freedom of speech, the following can be attributed to positive changes:

1. Resumption of "Azattyk" broadcasting on the state and regional radio stations. This is an important event, since (as it was mentioned above) the attitude of authorities to "Azattyk" has always been a barometer of the status of freedom of speech in the Republic;
2. Appointment of journalists who are known for their high skills and independence to the management of the State TV and Radio Company NTRK (KTR). Kubat Otorbaev, previously holding a position of the head of Kyrgyz branch of "Freedom" Radio - "Azattyk", was appointed Acting General Director;
3. Serious prosecution of the inquiry on an attempt to seize IA "24.kg" and public admission of illegitimacy of this attempt.
4. Cancellation of warrants to arrest newspapers which were closed in March of this year on the charge of defamation of the former president. These are "Nazar" and "Achyk Sayasat" newspapers.

5. And, certainly, the most positive step taken is a Decree of the Provisional Government of the Kyrgyz Republic on creation of the Public Service Broadcasting on the basis of KTR. Attempts to create Public Service Broadcasting have been made in Kyrgyzstan several times. But every time the process was artificially slowed down by the authorities. Meanwhile the necessity of such mass media is essential. As practice has shown, in the days of keen social and political confrontations in the Republic we feel the lack of mass media which provide balanced and fact-based information.

The last attempt to create Public Service TV was undertaken in the years 2006-2007. A corresponding law was adopted and the Supervisory Board was formed. However, at that time the authorities did not give a chance to the Supervisory Board to start its work, since referendum and parliamentary elections were to be held in the near future, and for the authorities it was inexpedient to lose control over such powerful tool of the ideological and information struggle such as the State channel, the only TV channel of the Republic which broadcasts to the whole country.

At the moment the process is underway to collect proposals from non-commercial organizations on candidates to KTR Supervisory Board. It shall be noted that according to the Decree (in view of the current force majeure situation) the right of proposal of candidates to SB members was given to non-governmental organizations (in the future the process will be exercised as envisaged by the law: 5 persons from the President of the Kyrgyz Republic, 5 persons from the Parliament and 5 persons from the public sector).

It is planned that the Public Service Broadcasting will commence its operation by the coming presidential elections. We hope that equal access of everybody to KTR air time, unbiased and balanced coverage of all participants of the election process will contribute to holding of transparent and fair elections.

6. Another positive moment worth mentioning is the project "Return of Democracy" which was initiated by the Provisional Government, in particular by Omurbek Tekebaev, Chairman of the Provisional Government of the Kyrgyz Republic. It is proposed to non-commercial organizations to develop a kind of a matrix on democracy development in Kyrgyzstan. Media of the republican non-governmental organizations are also actively participating in the project. They propose a number of steps (short-term and mid-term projects) aimed at development of the freedom of speech and properly

developed and unbiased mass media. For example, improvement of the legislation on media, decriminalization of the Articles on "defamation" and "insult" and creation of equal opportunities to enable competitive development of mass media.

Unfortunately, this completes the positive aspects in the field of the freedom of speech and mass media. Although, it must be confessed, this is much more than we could have said six months ago.

### ***Alarming signs***

1. The work of mass media and journalists during the April events and afterwards showed that our journalists are still not able to work in critical situations. Although, it should seem, under conditions when such critical situations have become almost an ordinary thing in political life of the country, the journalists should have learned to deal with it a long time ago.

Mass media, both TV and printed publications, sometimes gave unverified facts in their broadcasts and publications; at times the information was contradictory and frequently based on rumour and speculation; the tone of many pieces of information was clearly subjective; and, what is most disturbing, a number of materials were of clearly provocative character aimed at incitement of ethnic and regional hatred and interfering with stabilization of the situation in the Republic.

In this respect, the so-called "No Comment" video reports shall be especially reproached – these reports contained declarations of individuals which were of no constructive value and which sometimes aggravated the situation.

Negligence of news coverage standards and ethical principles is more often observed in mass media in the Kyrgyz language.

Apart from the fact that such work of Kyrgyz mass media had an adverse effect on stabilization of the situation; it also gave the authorities a motive to impose limitations on mass media and freedom of speech.

2. Thus, in the first days after the April events we witnessed an attempt to take some mass media outlets under control. In particular, on 15 April armed representatives of the National Security Service (NSS) tried to gain control over the information agency "24.kg". However, after interference by human rights and media organizations and O.Tekebaev, personally, NSS employees retreated. Later, Azimbek Beknazarov, Deputy Chairman of the Provisional

Government, in his interview on 19 April apologized to "24.kg" for illegitimate actions of the security services agents.

3. Strange is the situation around mass media which are suspected in involvement with the Bakiev family. This concerns the "5th Channel" and "Piramida" TV channels. In an interview on 16 April Edil Baisalov, Chief of Office of the Provisional Government, declared that the Provisional Government took those two channels under control and that all companies belonging to family members of the former president would be nationalized.

The situation is unusual since it is not clear how the nationalization will be performed. According to the Kyrgyz legislation, this may happen only in two cases: if an owner of mass media voluntarily transfers the ownership to the state, or such decision is taken by a court.

However, on 20 May the Provisional Government after all made a decision on nationalization of 99 percent of ZAO "Twenty-Fifth Frame" in the registered capital of OsOO "Global Media" which a founder of ZAO "Twenty-Fifth Frame". In another document a decision was made to nationalize 51 percent of the share of ZAO "Media Image" and 49 percent of the limited liability partnership TV and Radio Company "Piramida". External management will be introduced for those two channels.

Despite the fact that relevance of the Provisional Government actions is questionable, there is no way back. Today the media organizations are concerned about how the nationalization will take place, what will be the procedure, whether there will be an external management and whether it will interfere with the mass media operation. There is a danger that these channels might be used by the new authorities to increase their influence in the information realm. It's all the more important on the eve of forthcoming referendum and parliamentary elections.

4. During the first days of the new power an attempt to introduce censorship in some regions was registered. Thus, the document ordering not to broadcast certain materials without approval of the Coordination Council of the Provisional Government for the city of Osh and Osh district was sent to a number of TV companies and newspapers of the Southern capital. This step was perceived by media organizations and journalists themselves as an attempt to introduce censorship.

Then the local authorities admitted a mistake and promised to reverse the decision.

However, the subsequent escalating tensions in the Southern region after 13 May and complaints of the residents regarding the work of two local channels resulted in a decision (taken in Osh) to create a Supervisory Board on compliance with law on mass media activities. Up to now there are many questions: how will the board operate, what will be its powers, is it possible that this board will become a censorship body?

5. Frequent personnel changes cause problems in state mass media as well. Forcible appointment of managers without taking into account opinions of the team in regional state TV companies caused a protest of the team. Almost from the start of May ZhTR cannot operate at full swing as a considerable part of the team is against a new manager. Discontent with the managers has been also expressed by teams of Issyk-Kul and Batken state TV companies.
6. And what is most alarming, journalists are still being attacked and beaten and the threats continue. According to the monitoring of violations of rights of journalists and mass media which is conducted by the public association "Journalists" (with the assistance of Foundation "Soros-Kyrgyzstan"), 5 cases of assaults on journalists and 2 cases of threats were registered in the period from 9 April to 17 May. It shall be noted that the majority of assaults happened during journalists' work on coverage of events. One can guess that there are much more cases, but journalists see no need to inform about that. If even during the peacetime the law enforcement agencies were not always able to find guilty persons, then what can be said about now when the situation in the Republic is unstable.

For this particular reason, we have no hope that names of assassins and their paymasters in killing of Alisher Saipov and Gennadi Pavlyuk will be made public.

7. Journalists are also facing great difficulties in access to information. Frequent personnel changes and problems with enforcement of laws have their effect.
8. Freezing of the economic life in the Republic gives rise to concern. Investors withdraw their capitals and many enterprises and companies have been closed or weaken their activity. Advertising volume and, consequently, mass media profits have considerably decreased.

In the near future, all that may have an adverse effect on mass media, since with decreased advertising revenue mass media will be more dependent on

sponsorship money of their owners or other persons having specific political interests. Taking into account that elections are expected in autumn, one can assume that by that time we will be under the conditions of escalation of information wars which will be waged without any rules.

#### ***IV Looking to the future***

At the moment Kyrgyzstan is experiencing difficult times. Mass media and journalists are hostages of the situation. For this reason we cannot say anything definite on the future of the freedom of speech and mass media. At the same time we have an historic chance to exert all strength for the purpose of development of the freedom of speech while the new power still has a wish to assist before they become dragons themselves.

#### ***In my opinion, our immediate objectives shall be:***

1. Further advancement of the idea to create Public Service Broadcasting in order to make it actually created and operative.
2. Advancement of ethical principles among journalists.
3. Creation of favourable conditions for mass media development.
4. Creation of the journalists' trade union and implementation of collective agreements and editorial policy in mass media.
5. Creation and advancement of the Foundation for assistance to journalists who got into trouble.



the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million, and the number of people aged 75 and over has increased from 4.5 million to 6.5 million (Office for National Statistics 2000).

There is a growing awareness of the need to address the needs of older people, and the need to ensure that the health care system is able to meet the needs of older people. The Department of Health (2000) has set out a strategy for the health care system to meet the needs of older people, and the Health Service Research Unit (2000) has set out a research agenda for the health care system to meet the needs of older people.

The Health Service Research Unit (2000) has identified a number of research priorities for the health care system to meet the needs of older people. These include: (1) the need to improve the quality of care for older people; (2) the need to improve the access to health care for older people; (3) the need to improve the health of older people; and (4) the need to improve the lives of older people.

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## The Situation of Media in Tajikistan - status quo and perspectives

Nuriddin Qarshiboev<sup>1</sup>

The situation with regard to mass media in Tajikistan has not improved much during the last year. Moreover, the global financial crisis has also negatively affected the activities of the mass media in the country. A decrease of circulation of periodicals, reduction of profits from advertising, notorious cases of legal prosecutions of publishers, limitations on journalists' right to access information, as well as self-censorship remain to be the most typical problems faced within the information sphere of Tajikistan. In our opinion, the country's economy is passing through a new stage of redistribution of property and spheres of influence. As a result, we witness increasing efforts to take control, among other things, of mass media activities by various branches of government, financial, industrial and other powerful groups. The mass media (particularly independent publishers) not only have to learn lessons of survival in this severe environment, but also have to fight against the aforementioned negative events in order to preserve their independence.

I would like to start by sharing with you some facts. There is no exact statistical data on the amount, type, periodicity, number of copies (coverage area), volume and content of broadcasting, i.e. regarding mass media content in Tajikistan. This is due to the fact that there is no unified record of registrations (cadastre) of mass media in the Republic.

According to the data of the Ministry of Culture of the Republic of Tajikistan, 228 newspapers have been registered as of 10 March 2010:

- 49 state-owned,
- 115 private,
- 27 public,
- 37 industrial

Also, 118 magazines have been registered:

- 12 state-owned,
- 44 private,
- 20 public,
- 42 industrial

<sup>1</sup> Nuriddin Qarshiboev, Chairman of the National Association of Independent Mass Media in Tajikistan (NANSMIT)

8 information agencies operate in Tajikistan: one state-owned – NIAT "Khovar" – and 7 private ones. 5 state TV channels, 3 state radio companies which cover 100% of the country's territory, as well as 16 local TV stations, 7 independent and 2 local FM-radio stations are broadcasting their programs in the country.

### **Factors affecting mass media development**

In recent years new mass media have appeared in the country; the ranks of journalists are expanding as new specialists are joining in. Still, unfortunately, the majority of information programs and journalistic materials do not meet international standards. We can also observe a misbalance between principles of the freedom of speech and social responsibility of mass media and journalists. It is paradoxical, but true: in the activities of Tajik mass media one can trace distinctive features of journalism inherent in authoritarian theory, libertarian theory, theory of social responsibility and Soviet totalitarian theory. The work of the national media outlets is based on authoritarian and Soviet totalitarian theory, while independent media outlets mostly adhere to the principles of libertarian theory and social responsibility. Probably, a lack of understanding of the essence of these theories as well as of mass media mission in a democratic society is the main cause of lack (in Tajikistan) of inter-sector exchange of information and cooperation for the purpose of development of all mass media.

### **Lawsuits and defamation problems**

During the last year, according to data from NANSMIT Monitoring Service, 8 lawsuits against publishers of printed materials were registered ("Asia Plus", "Krim-Info", "Millat", "Ozodagon", "Paikon", "Sugd", "Faraj"). The most well-known case is consists of three judges of the Supreme Court of the Republic and the court of Dushanbe prosecuting three Tajik publications – "Asia Plus", "Ozodagon" and "Faraj" – in connection with the so-called "Isfara case" which drew much attention in society.

According to international principles on freedom of expression and protection of reputation, defamation laws shall not be considered as justified if the purpose or consequence of their application is, in particular, prohibition of legitimate criticism of state officials or disclosure of their violations or corruption. In our opinion, in the case mentioned above, these media outlets are experiencing just that.

## Access to information

Analysis of NANSMIT Monitoring Service data shows that during the last five years the number of cases limiting media outlets and journalists from access to information has decreased. If in 2005 the monitoring service registered 115 cases of access restriction, then in 2009 there were 26 such cases. This means that law infringements of this kind have decreased fourfold. Signing of the corresponding Regulation by the President of the Republic of Tajikistan on 4 March 2005 contributed to the improvement of access to official information. Nonetheless, access to information remains topical for mass media and journalists. It is noteworthy that in recent years there were no registered cases of judicial recourse with respect to limitations on access to information.

## On social responsibility

Violating the balance between principles of freedom of speech and social responsibility of journalists leads to an environment of distrust of society against the media, and poor quality journalistic materials; as a consequence, it also leads to lawsuits against publications. The Declaration on social responsibility of journalists adopted on 3 May 2010 is aimed at assurance of consensus on issues of inadmissibility of violations by journalists and editorial boards of law provisions regulating the mass media activities, ethical and professional standards, and moral obligations. Revitalization of Tajikistan's Mass Media Council activities, as the body for self-regulation in the media sphere, will, hopefully, further contribute to an increased presence and prestige of the mass media in Tajik society.

## Online journalism

While online journalism becomes increasingly one of the most influential mass mediums in the West, in Tajikistan it is only in its developing stages, sometimes encountering serious economic and legal obstacles along the way. Online journalism in our country is mostly limited to work of local journalists for foreign online publications, since popular Tajik resources just do not exist. Several information and analytical portals are working in the country, which are incorporated into media groups (such as "Asia Plus", "Varorud", "Avesta", "Tojnews" and others). According to available information, only five to six newspapers share their printed news on the Internet. In this respect, independent newspapers display more interest and initiative compared to state publications.

## **Access to Internet as a main condition for development of online journalism**

According to statistics of the Public Fund "Civil Initiative on Policy of Internet", around 10 percent to 15 percent of the population in Tajikistan has access to Internet. According to other data, only 5 percent of the nation's population has constant access to the Internet.

There are two major obstacles in the development of online journalism. First, there is a shortage of manpower with the necessary knowledge and initiative for such activity. Second, there is a lack of required equipment which can be used for creation online media. Besides, local experts think that proper development of on-line journalism is hampered by poor standards of living, and the occasional energy crises in the Republic.

## **Problems in the development of online journalism**

Another factor that leads to the insufficient development of our online journalism is the small scope of information on the Internet in Tajik language. This makes the work of Tajik journalists more difficult. Additionally, the most active Internet users are young people who are interested mostly in information of entertaining character. In view of this, the most developed resources in the Tajik segment of Internet are infotainment portals and information touching upon social issues. As a result, low demand and small readership do not really stimulate development of national online journalism.

## **ICT and online journalism**

Online journalism in Tajikistan is a new facet in the information sphere of the Republic. In view of this, educational programs are necessary; these would provide systematization and increased professional knowledge of journalists, enabling them to independently master skills required in the specific domain of on-line journalism. It will be necessary to teach journalists how to work with online resources in a more efficient way and increase their professional activities.

## **Prospects of online journalism**

Widespread use of mobile communications in the country opens good prospects for development of mass media focused on mobile phone users. In Tajikistan there are 10 mobile network operators, including "Babilon-M", "Indigo Tajikistan" (Tcell), "MLT" (now - "Megafon"), "Beeline" and others. According to our data, two of them have more than 1 million subscribers. According to the data of the

Public Fund "Civil initiative on Policy of Internet", 60 percent of the population have subscribed to mobile network operators and 20 percent are using mobile Internet. The activity of these 10 Internet providers opens good prospects for popularization of Internet mass media and online resources.

Experts are also of the opinion that online journalism will likely be given a renewed momentum in the coming years due to increased penetration of Internet in Tajikistan, as well as the growth of its popularity not only among young people, but also among the middle-aged population.

### **Transition to digital broadcasting: status, challenges and prospects**

By 2015, according to international commitments, Tajikistan shall switch-over to digital broadcasting. Transition to digital broadcasting is linked to problems of enforcement of the people's right to information. Digital broadcasting opens extensive opportunities. However, this process in our country is under way only in ministries and departments. Unfortunately, non-governmental TV and radio companies, as well as various civil society organizations, are not involved in the process. People also have no information on the complexities and prosperities of the transition to digital broadcasting, which also may cause social and economic difficulties in the future.

### **Recommendations:**

In our opinion, the following should be done for the purpose of further supporting mass media in Tajikistan:

- Create a unified record of all mass media ("media profile") of Tajikistan;
- Establish inter-sector exchange of information and cooperation for the purpose of mass media development;
- Reform the existing system of regional and city newspapers;
- Develop a strategy of support to independent and pluralistic mass media in Tajikistan;
- Perform an expert analysis of laws and subordinate acts regulating activities of mass media and bring them into correspondence with the norms of national and international law;
- Strengthen legal support to mass media and journalists;
- develop mechanisms of self-regulation;
- Increase social responsibility of the media and journalists;
- Develop a national plan for the transition to digital broadcasting with participation of all concerned parties.



## Ensuring Access to Information: political and legal aspects

### Abdulaziz Abdullaev<sup>1</sup>

During the years of independence an enormous amount of work has been done in Uzbekistan on democratization and liberalization of activities of national mass media and assurance of their broad participation in the process of extension of democratic reforms aimed at formation of a strong civil society. Consistent and phrased work is being done to solve tasks of increasing social and political activity of the population, assuring the right to freedom of information and transforming the media into the arena where people could freely express their thoughts, ideas, standings and attitude with respect to current events.

During the recent years about 10 legislative acts have been approved which were directly aimed at further democratization and liberalization of mass media, increasing their activity in assurance of publicity and openness of socio-political and socio-economical reforms being carried-out, implementing advanced informational and communication technologies into the media sphere and assuring dynamic and free development of the information sphere. The required regulatory framework has been formed for the purpose of implementation of freedom of speech and freedom of mass media, inadmissibility of censorship, as well as the regulations that would suspend the activity of a mass media outlet only through judicial procedures have been enshrined in a law. These regulations create conditions to create and develop public, non-governmental institutions and structures in the information sphere. A complete retreat from domination of one ideology in mass media, from total government control over mass media was assured. Market mechanisms are being implemented consistently and on a phrased basis into informational sphere; we see development of the network of non-governmental press, television and radio mass media, agencies and foundations supporting printing and audiovisual facilities.

Today our country has 1,172 active printed and electronic mass media. A periodical press system has been actually created anew. New Republican general policy newspapers have been created and a large number of newspapers and magazines focused on various population groups and layers

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1 Abdulaziz Abdullaev, Director, Public fund for support and development of independent print media and news agencies

have appeared. During the last 16 years the total number of non-governmental mass media has increased tenfold. Today 687 newspapers, 242 magazines and four informational agencies operate in the country. Television and radio broadcasting is represented today by 61 TV studios and 20 radio stations. The share of non-governmental television and, especially, radio constitute a considerable part of electronic mass media. Fifty three percent of all TV channels and 90 percent of radio broadcasting channels are non-governmental. A powerful modern base of production and technical facilities has been created for the state and non-governmental television and radio broadcasting. Modern digital equipment and media technologies are being implemented into the process of production and creation of TV and radio programs.

1. Mechanisms for protection of political rights and freedoms of citizens have been created and are being effectively implemented in Uzbekistan. We see development of independent mass media and other civil society institutes which have become a powerful factor for increasing political and social activity of the population, democratic renovation and modernization of the country. Independent printed publications are being actively created now. Censorship of press has been completely cancelled; monopolization of information is not allowed.

Assurance of mass media liberalization and accelerated development of the information sphere are considered as the most important component of the processes to create the foundation for a civil society. We are working actively in legislative and practical areas on assurance of supremacy of law and primacy of protection of human rights and freedoms, strengthening of liberalization and humanity of the legal system, making the judicial system more independent, etc.

The national legislation has incorporated provisions of international regulations with respect to access to information, which the Republic of Uzbekistan has joined. There is the Law of the Republic of Uzbekistan dated 12.12.2002 (No. 439-II) "On Principles and Guarantees of the Freedom of Information", Article 8 of which provides direct guarantees of the freedom of information. According to the Law, the State protects the right of everybody to search, receive, investigate, disseminate, use and keep information. Restrictions on the right to information depending on sex, race, nationality, language, religion, social background, convictions, personal and social standing are not allowed.

The State bodies, public self-government authorities and other non-governmental non-commercial organizations and officials shall assure to everybody (in accordance with the procedure established by legislation) the possibility to get acquainted with the information affecting his/her rights,



freedoms and legitimate interests, create accessible informational resources, carry out mass information support on issues of citizens' rights, freedoms and obligations, their security and other aspects of public interest.

2. The necessary procedural, institutional and technical conditions have been created in Uzbekistan for the purpose of organization and development of information services in public, non-governmental organizations and institutions; they are effectively carrying on their activities.

The most important direction in assurance of citizens' broad access to official information resources of ministries, committees, enterprises and institutions is opening of information centres at state and public organizations, as well as opening of own websites. Starting from 2005, opening of official websites of the state bodies in the Internet has become a common practice in Uzbekistan. The governmental decision sets the basic requirements for such web-sites with clear definition of international standards with respect to the list of necessary information to be placed on the website, its content and other necessary conditions for the purpose of assurance of full-fledged performance, access and update of the site.

Special attention is paid to such issues as further implementation of information and communication technologies into the work of ministries and departments, local government bodies, assurance of an increase of information resources in the Internet, extensive adjustment of electronic documentation circulation.

The work on copyright and intellectual property protection, strengthening of regulatory and legal framework in this area and the assurance of the existing legislation performance is being carried out.

3. In 2007, for the purpose of further advancement of openness and accessibility of the state authorities, the government adopted Regulations on interactive public services by using advanced standards of information and communication technologies. Rendering of such services is exercised in the form of publications, multilateral interaction and information exchange. Transition to new mechanisms of information exchange envisages also achievement of the following goals and tasks:

- strengthening of control over processing of requests and performance of governmental functions on reviewing the applications;
- implementing and developing of interactive state services on assurance of interaction between electronic document circulation systems;
- reducing expenses on interaction of the departments with legal entities and

- individuals, as well as with other state bodies;
- increasing the level of efficiency and promptness in performance of the state functions through growth of operative exchange and dissemination of information with active participation of population in state administration.

4. In Uzbekistan special attention is paid to the issues of further advancement of information and communication technologies in ministries and departments, local government bodies, increase of the number of information resources in the Internet and extensive adjustment of electronic documentation circulation. The work gains momentum on copyright and intellectual property protection, strengthening of the regulatory and legal framework in this area and assurance of the existing legislation performance.

As the result of the measures undertaken on development of information and communication technologies, as of 1 May 2010, the number of economic entities rendering services on data transmission, including the Internet access, exceeds 950, and total number of the Internet users reached 2.8 million people. This information is confirmed by the data of International Organization "Internet World Stats". It released new data on the number of the Internet users according to which their number in the countries of Central Asia exceeded 5 million people. Uzbekistan is at the top of the list. As of the end of September 2009, the number of the Internet users reached 2.5 million people. (as of the end of September that year, the registered number of the Internet users in Kazakhstan amounted to 2.3 million, and, as of now, Kyrgyzstan has registered 850,000 constant Internet users. In Tajikistan the number of users reached 600,000 people. The list ends with Turkmenistan where the number of the Internet users amounts to 75,000 people).

5. Within the framework of the administrative reform the country performs phased modernization and increase of efficiency of the state management system on the basis of implementation of progressive information and communication technologies, reduction of accounting and circulation of documents in hard copy. Within the framework of expansion of access to information the country pursues the policy of increasing awareness of governmental officials on various directions and world trends in application of information and communication technologies in the state management and society. The officials are being trained to get practical skills within the framework of real projects in order to create an electronic government in Uzbekistan, as well as for exchange of information and experience.

6. Mass media play an important role in communicating to the public the information on important directions of building a new society in Uzbekistan. In particular, it concerns directly the goals and tasks of civil society institutions, increase of their number and enhancement of their role in the life of the country. Co-operation of public organizations with mass media is being strengthened for the purpose of more extensive coverage of their activities, increase of professional awareness of information services employees and public access to information on their activity.

7. Access to educational information, assurance of human rights in the sphere of legal education is a priority direction in the educational policy of the Government of Uzbekistan. Building a democratic law-based society depends to a great extent on the organizational level of education in the area of human rights. The formula expressed by the UN that education is the basis for democracy speaks in favour of a special role played by a school, university and teacher in solving this task.

Education in the field of human rights is one of the fundamental rights of a human being and plays an important role in, firstly, observance, support and protection of human rights; secondly, decreasing the number of violation of human rights; thirdly, creation of effective system of prevention and monitoring of violations of human rights; fourthly, formation of universal human rights culture.

Teaching of human rights is the most important component of school education. It is important to form among the citizens' new values and guidelines in the context of observance of human rights and, in the final run, to create the culture aimed at development of respect for human rights and their observance at the national level. Awareness of a person on his rights and obligations shall be an indispensable condition for implementation of constitutional guarantees of human rights.

8. Access of mass media of independent Uzbekistan to the world information resources is also growing steadily. After Uzbekistan was recognized as an independent country its international status increased considerably. Mass media of the country started to integrate into the world information society. This also has an effect upon international relations of the Republic in the sphere of mass media. The Information Agency "Jahon" of the Ministry of Foreign Affairs of the Republic of Uzbekistan, as well as such international newspapers and magazines as "Uzbekistan Business Partner", "Uzbekistan Today", "Jamiyat" and others have been established. The independent information agency "Turkiston-press", the electronic agency "Press-Uz. Infor" and others also actively carry out their activities.

9. Consistent work is being done in Uzbekistan on adjustment of optimal interaction between the state bodies and mass media. Thus, in 2006 the Government adopted a Regulation in this respect on improvement of the accreditation procedure for mass media representatives. This action has considerably eased the procedure for formalization of accreditation of journalists and at the same time has established an effective system for enforcement of rights and obligations of the parties. It shall be necessary to point out that the subject document has equal effect both to national and foreign mass media representatives.

However, there is still much to do in order to make mass media an effective means both to express and to form the public opinion. Mass media shall play a decisive role in solving the task of strengthening democratic values in the consciousness of people which is a necessary condition for further development of democratic processes in the country. The aforementioned requires further renovation and democratization of activity of the mass media themselves.

First, the development of market relations, healthy competition in the information sphere guarantee media freedom. It shall be necessary to continue to undertake measures on development of the market of television and radio industry, formation of work conditions for commercial and regional non-governmental TV and radio broadcasting studios, creative competition of ideas, programs and projects in this sphere which would provide for an increase in quality and competitiveness of products of national mass media.

The activity of the National association of electronic mass media and Public foundation for support and development of independent printed means in mass information and information agencies shall assist in achieving these goals.

Second, the increase in quality of printed materials and materials of radio and television, their influence upon public conscience requires also an increase in the number of critical and analytical materials, serious political, economic and international comments and surveys. The civil standing and recognizable image of each mass periodic publication shall be manifested more clearly. In their disclosure of negative developments which are happening in our life and in their fight against them the journalists shall display determination and irreconcilability.

It shall be necessary to be more active and consistent in our work on increasing the legal knowledge of citizens, in explaining to them the essence, goals and tasks of the reforms being carried out in our country. Under these conditions requirements to professional qualifications, as well as to spiritual and political maturity of journalists are considerable increased.

Third, the modernization and strengthening of mass media material and technical base which meets the highest modern requirements, training and advanced training of highly skilled journalists and technical personnel remain the priority direction in national mass media development. In this connection it shall be necessary to explore the question on placement of graduates of journalistic faculties of universities to the most important mass media branches - regional, city and district.

Fourth, it is important to assure close interaction of the state bodies of all levels with mass media for the purpose of extensive provision of information on their activity to the public, transparency of such information and adjustment of a feedback process with the population.

Fifth, it shall be necessary to involve the party press into social and political activity of their parties in a more active way – the provision of information on programs of the parties, participation in the work with electorate to make a party's standing stronger among voters, discussion of burning socioeconomic problems and discussions and debates on how to solve them.

# Annexes







**LegalLeaks**



**SHORT VERSION OF  
GUIDE FOR JOURNALISTS  
ON HOW TO ACCESS  
GOVERNMENT INFORMATION**



The **Legal Leaks Toolkit** was prepared by Access Info Europe and the Network for Reporting on Eastern Europe n-ost.

The project was supported by the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe.



Access Info Europe is an international human rights organisation, based in Madrid, which works to promote a strong and functioning right of access to information in Europe and globally.

Access Info's goal is for the right of access to information to serve as a tool for defending civil liberties and human rights, for facilitating public participation in decision-making, and for holding governments accountable.



The **Network for Reporting on Eastern Europe n-ost** ([www.n-ost.de](http://www.n-ost.de)) links 250 journalists and media initiatives from more than twenty European countries and is based in Berlin. Members of n-ost are against any restrictions that limit journalistic endeavour. The focus of n-ost is on detailed reports from and about Eastern Europe and on organizing Europe-wide journalistic projects on the promotion of media freedom and a European public sphere.



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## THE LEGAL LEAKS TOOLKIT – SHORT VERSION

This toolkit is designed for **journalists** working in any media – newspapers, radio, and television – as well as bloggers and other information professionals who need to get access to information held by public bodies for their stories.

The toolkit is for journalists making requests in their **own country** or considering submitting a request in **another country**. It is based on a comparative analysis of the access to information laws in the region covered by the Organization for Security and Co-operation in Europe, which has 56 participating states in Europe, Central Asia and North America; of these 45 have legal provisions on the right of access to information held by public bodies which are reviewed in this analysis.

**Isn't this only for investigative journalists?** No, all journalists can make use of the tool of access to information. Investigative journalists can make regular use of access to information laws and this toolkit will help anyone working on in-depth stories. At the same time, everyday stories such as a story about modernization of a local hospital or plans for the village school can be written with information obtained under access to information laws. Often these stories are as interesting to your readers, listeners, and viewers as a story about high level political intrigue or the fight against transnational organised crime.

**Can I submit requests in another country?** Yes, most countries allow anyone to submit an access to information request, and it can be a useful way of getting comparative data on levels of transparency to press your government to answer.

**I want to submit a request in another country but don't speak the language.** In this case you should turn to the Legal Leaks network (you can find details at [www.LegalLeaks.info](http://www.LegalLeaks.info)) which will help you find a journalist in the relevant country who can translate your request or even submit it for you.

**I am concerned about the security of my data:** If you are collecting data from many sources, including public institutions and other research, the combination of the information can become highly sensitive. Requests to public bodies that are involved in corruption can trigger aggressive and illegal behaviour from officials. Journalists may have their phones tapped, computers hacked, may be followed, or subject to other forms of harassment. Part of this is the risk of being an investigative journalist and the risks should be considered carefully in each country and in each case. Good data security techniques help reduce risks.

## TWENTY TOP TIPS

A Quick Guide to the Legal Leaks Toolkit for Busy Journalists

- 1. Plan ahead to save time:** Think about submitting a formal access request whenever you set out to look for information. It's better not to wait until you have exhausted all other possibilities. You will save time by submitting a request at the beginning of your research and carrying out other investigations in parallel.
- 2. Start out simple:** In all countries, it is better to start with a simple request for information and then to add more questions once you get the initial information. That way you don't run the risk of the public institution applying an extension because it is a "complex request".
- 3. Submit multiple requests:** If you are unsure where to submit your request, there is nothing to stop you submitting the request with two, three or more bodies at the same time. In some cases, the various bodies will give you different answers, but this can actually be helpful in giving you a fuller picture of the information available on the subject you are investigating.
- 4. Mention your right to information:** Usually the law does not require that you mention the access to information law or freedom of information act, but this is recommended because it shows you know your legal rights and is likely to encourage correct processing of the requests according to the law. We note that for requests to the EU it's important to mention that it's an access to documents request and it's best to make a specific mention of Regulation 1049/2001. It is also recommended that you use language and etiquette appropriate to any other professional communication in your country.  
**Remember:** There is also no need to say why you want the information, nor to answer questions about the reason for asking or what you will do with the information.
- 5. Tell them you are a journalist ...** If the law says only individuals can request information but you want to let the public institution know that you are a journalist, you could always write your request on your media organisation's letterhead. BUT before you do this you should be sure that this is acceptable with the organisation. Another option is to mention in the letter or e-mail that you are a journalist and/or who you work for.

6. **... or don't tell them that you are a journalist!** If you send an e-mail from your work address, it will often be obvious that you are a journalist, e.g.: jsmith@dailytimes.com. If you don't want to give the game away, it might be worth using a different address, such as a gmail/hotmail/yahoo account.
7. **Hide your request in a more general one:** If you decide to hide your real request in a more general one, then you should make your request broad enough so that it captures the information you want but not so broad as to be unclear or discourage a response. Specific and clear requests tend to get faster and better answers.
8. **Anticipate the exceptions:** If you think that exceptions might be applied to your request, then, when preparing your questions, separate the question about the potentially sensitive information from the other information that common sense would say should not fall under an exception. Then split your question in two and submit the two requests separately.
9. **Check the rules about fees:** Before you start submitting a request, check the rules about fees for either submitting requests or receiving information. That way, if a public official suddenly asks you for money, you will know what your rights are.
10. **Ask for electronic documents to avoid copying costs:** To avoid costs for copying and posting information, mention in your request that you would prefer the information in electronic format. That way you will avoid paying a fee, unless of course the information is not available electronically, although these days it's usually possible to scan documents which are not already digitalised and then to send them as an attachment by e-mail.
11. **Ask for access to the files:** If you live near where the information is held (for example you live in the capital where the documents are kept), you can also ask to inspect original documents. This can be helpful when researching information that might be held in a large number of documents that you'd like to have a look through. Such inspection should be free of charge and should be arranged at a time that is reasonable and convenient for you.
12. **Keep a record!** We advise you to make your request in writing and to save a copy or a record of it so that in the future you are able to demonstrate that your request was sent, in case you need to make an appeal against failure to answer, for example. This also gives you some evidence of

submitting the request if you are planning to do a story on it.

- 13. Speed up answers by making it public that you submitted a request:** If you write or broadcast a story that the request has been submitted, it can put pressure on the public institution to process and respond to the request. You can update the information as and when you get a response to the request – or if the deadline passes and there is no response you can make this into a news story as well. Doing this has the additional benefit of educating members of the public about the right of access to information and how it works in practice.
- 14. Prepare to appeal against refusals and silence:** Find out about appeals in advance, including the time-frame for presenting an appeal. If you are not sure what to do for the first stage of appeal, contact the office of your Information Commission/Commissioner or Ombudsman and they will be able to help you. If you don't have such a body, try phoning the institution which issued the refusal and asking them. If you still are having problems, then let Access Info know about it and we will try to help you, for example, by giving you the contact of an NGO or lawyer in the country.
- 15. Make a story out of refusals:** The refusal to release information following a request is often a story in itself. Be creative and constructive with the fact that the information was refused, get examples from other countries, ask experts what they already know, discuss the public interest in the information and try to use the story to press for greater transparency.
- 16. Appeal based on the public interest:** If you have been refused information that you wanted for a story you are working on, it might help to state in your internal administrative appeal that the information is needed for a media story and to state that there is a public interest in knowing that information. It's also important at this point to refer to your rights under the access to information law and/or constitution. (Of course, if you don't want the public authority to know you are working on a story, then don't mention it).
- 17. Make a standard template for appeals:** Once you have drafted the first internal administrative appeal with references to the law and your rights, just keep the letter in your computer and you'll find that you have a template for future appeals. That will save you time as it should only need a little bit of changing depending on the content of the other requests.

- 18. Get help to address problems with spokespersons:** If you are finding that official spokespersons are angry at you for using the access to information law, then talk to the Legal Leaks team and/or your local access to information organisation or journalists' union. These NGOs might be able to raise your concerns and perhaps organise a training session for spokespersons to explain journalist's rights under the law. They should also be able to support you in your discussions with government about giving proper treatment to formal access to information requests submitted by journalists.
- 19. Involve your colleagues in using access to information:** If your colleagues are sceptical about the value of access to information requests, one of the best ways to convince them is to write a story based on information you obtained using an access to information law. Mentioning in the final article or broadcast piece that you used the law is also recommended as a way of enforcing its value and raising public awareness of the right.
- 20. Submit international requests:** Increasingly requests can be submitted electronically, so it doesn't matter where you live. Alternatively, if you do not live in the country where you want to submit the request, you can sometimes send the request to the embassy and they should transfer it to the competent public body. You will need to check with the relevant embassy first if they are ready to do this – sometimes the embassy staff will not have been trained in the right to information and if this seems to be the case, it's safer to submit the request directly to the relevant public body.

## I. RIGHT TO INFORMATION & JOURNALISTIC RESEARCH

In this section we guide you through submitting a request step by step, taking into consideration some strategic and tactical approaches relevant to journalists who want to integrate use of access to information laws into their information-gathering work.

### 1. When is the right time to submit a request?

For many journalists, the first time they submit an information request it is only as a last resort once other methods have failed. There are however occasions when you might not want to waste time with the other ways of getting information and you will go straight to submitting an information request:

- you are asking for information which is a bit sensitive and you want to be able to prove that you got it via legal channels using the law, in case the government later claims that the information was leaked or that it is incorrect or incomplete;
- you suspect that you won't get the information unless you use the formal legal mechanism of the access to information law;
- you suspect that you will be refused the information and you want to make sure that refusal is formal and in writing;
- you are submitting a request in a foreign country and you want to make sure that you are not discriminated against as a foreigner, so you show that you know your rights by submitting a formal request;
- you think access to information is a really good thing and you want to defend the right by using your access to information law as much as possible!

**TIP! Plan ahead to save time:** Think about submitting a formal access request whenever you set out to look for information. It's better not to wait until you have exhausted all other possibilities. You will save time by submitting a request at the beginning of your research and then carrying out other investigations in parallel.

### 2. Information Requests and Spokespersons

If you are planning to submit an access to information request to a particular public institution for the first time, you might want to consider your relationship with the spokesperson of that organisation. The job of the spokesperson is to put a spin on information and to maintain good relationships with journalists; they may see the submission of an access to information request as an aggressive move which undermines their authority. So, depending on your relationship with



the spokesperson, you might want to let them know that you plan to submit a formal request, explaining that it's your legal right under the law, and that it's a different process from getting a comment and opinion via the spokesperson. Another problem that can arise is that if it is obvious that the request comes from a journalist, it is passed to the spokesperson rather than being processed as an access to information request. This should not happen and if it does you should complain to the public institution and make clear that you would like your request to be treated on an equal basis with other requests.

### 3. Where should I submit my request?

Once you know what you want to ask for you need to identify the relevant public institution. In most cases this will be obvious, but in some cases you might have a slight doubt, in which case it's worth checking on the websites of the relevant bodies to see which seems to be responsible for that area of activity. A quick phone call to each institution might clarify further.

**Remember:** when you phone you don't have to mention that you are a journalist nor why you want the information, especially if you think that this might set some alarm bells ringing inside the institution.

**TIP! Submit multiple requests:** If you are unsure where to submit your request, there is nothing to stop you submitting the request with two, three or more bodies at the same time. In some cases, the various bodies will give you different answers, but this can actually be helpful in giving you a fuller picture of the information available on the subject you are researching about what you are looking for.

**TIP! For international requests, use the embassy:** If you do not live in the country where you want to submit the request, you can sometimes send the request to the embassy and they should transfer it to the competent public body. You will need to check with the relevant embassy first if they are ready to do this – sometimes the embassy staff will not have been trained in the right to information and it's safer to submit the request directly to the relevant public body.

### 4. Shall I let them know that I am a journalist?

There are pros and cons to letting the authorities know that you are submitting the request as a journalist.

PROS	CONS
<p><b>More info:</b> In some countries, journalists tend to get faster answers and more information than individuals – this is not how it should be, but it's a reality in practice and you could try to take advantage of this positive discrimination.</p>	<p><b>Refusals:</b> Signalling that you are a journalist might increase resistance to providing an answer out of fear that the information will be used in a critical story.</p>
<p><b>Cheaper:</b> In some countries journalists are entitled to information free of charge. This is the case in the USA, where search fees will be waived, and in Serbia, where journalists don't have to pay photocopying fees.</p>	<p><b>Data Destruction:</b> Signalling that you are a journalist might encourage public officials to hide or even destroy information in order to cover up corruption or other wrongdoing.</p>
<p><b>Faster:</b> In some countries journalists have a right to preferential treatment and to be provided with information in a shorter timeframe than other requestors.</p>	<p><b>Losing the story:</b> If the records of requests submitted are public in your country (in some countries they are posted on line), then asking requests as journalist might tip off other journalists that you are on to a story.</p>

## 5. What should I say in my request?

We recommend a written request which is clear and specific about the information or documents you are looking for. In most cases it is not required by law to identify a specific document by any formal reference (Italy is an exception to this rule). Try to have in mind the job of the public official who has to answer your request: the clarity of your request will help him or her identify the information you need. A well-formulated request also gives public authorities fewer reasons to reject your request for not being clear (although in most laws public officials have a duty to clarify the request).

In the first requests you send, it's a good idea to keep the requests relatively simple and not ask for huge volumes of information nor include multiple requests in the same letter. That way you have a better chance of getting a quick answer and you can always make follow-up requests if necessary. If you have a lot of requests, you might want to submit a series of requests broken down by subject: this also helps the public institution forward the requests internally to the relevant departments so that they can prepare the response.

**TIP! Mention your right to information:** Usually the law does not require that you mention the access to information law or freedom of information act, but this is recommended because it shows you know your legal rights and is likely to encourage correct processing of the requests according to the law. We note that

for requests to the EU it's important to mention that it's an access to documents request and it's best to make a specific mention of Regulation 1049/2001.

It is also recommended that you use language and etiquette appropriate to any other professional communication in your country.

Here is an example of a typical **access to documents** request:

Dear Sir/Madam

I am writing to request the following information under the Law on Access to Administrative Documents (1996):

- Copies of the minutes of the meeting at which the decision was taken to grant planning permission for the construction of a new hotel on the site of the old park.

I would prefer to have this information electronically sent to my e-mail address which is given below.

If you have any questions or need to clarify this request, please do not hesitate to contact me.

Yours faithfully,

Jane Smith  
15 Old Town Street, Capital City  
e-mail: jane@janesmith.com

Here is an example of an **access to information** request:

Dear Sir/Madam

I am writing to request the following information under the Law on Access to Information (2004):

- The total spent by the Ministry on the purchase of new colour printers in the financial years 2007 and 2008.

I would prefer to have this information electronically sent to my e-mail address which is given below.

If you have any questions or need to clarify this request, please do not hesitate to contact me.

Yours faithfully,  
Jane Smith  
15 Old Town Street, Capital City  
e-mail: jane@janesmith.com

**Remember:** There is also no need to say why you want the information, nor to answer questions about the reason for asking or what you will do with the information.

## 6. Anticipate possible exceptions

Ask yourself if any of the information you are looking for might fall under one of those exceptions permitted by the access to information law. Sometimes exceptions will be invoked because the information you are asking for is politically sensitive. Ask yourself: Could the public body try to restrict access to that information by applying one of the exceptions?

**TIP! Anticipate the exceptions:** If you think that exceptions might be applied to your request, then when preparing your questions, separate the question about the potentially sensitive information from the other information that common sense would say should not fall under an exception. Then split your question in two and submit the two requests separately.

For example: you want to ask about spending on new equipment for helicopters. You can split this into one question on how much was spent, and a separate request about what it was spent on (e.g.: which types of missiles were purchased).

**TIP! Make it public that you have submitted the request:** Another strategy which journalists can use to avoid refusals is to write or broadcast a story that the request has been submitted. This can put pressure on the public institution to process and respond to the request. For example: if your radio station is following a controversial story about a shortage of medicines in a local hospital, when you submit the request for information about the spending on medicines, you might want to announce this on air and also post news about the request on your website. You can update the information as and when you get a response to the request – or if the deadline passes and there is no response you can make this into a news story as well. Doing this has the additional benefit of educating members of the public about the right of access to information and how it works in practice.

## 7. Fees for receipt of information

You should not have to pay a fee to file the request in most countries, but it is quite usual that national access to information laws allow public institutions to charge requestors for charges for the photocopying and postage costs related

to answering requests. In many cases, if the answer is just a few pages, there will be no charge. In Estonia the law provides that the first 20 pages shall be free of charge. Electronic delivery of information is normally free of charge.

In some cases you will be asked to pay for receiving information in another format (like copies, DVDs, etc.) and in these cases the authority should only charge you the official cost of copying or of reproduction of the information into any given format, as well as the cost of the material (DVD, CD).

**Note:** The fee charged for photocopying, postage or for materials such as a CD or DVD should be in accordance with already published official rates. If you suspect you are being charged too much, raise a concern with the public body and/or with the Ombudsman or Information Commissioner.

## 8. When will I receive the information?

Around Europe there is a huge range of timeframes for answering requests and for providing information, and for notifications of extensions or for the issuing of refusals. The average is about 15 working days, or about 3 weeks.

The European Union Regulation 1049/2001 establishes 15 working days for responding to requests; an extension of up to 15 additional working days may be applied in “exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents.”

**Extensions in case of complex requests:** Most countries permit public bodies to extend the timeframes for a few days or even up to a month if the request is particularly complex. In all cases the requestor should be notified of the delay and the reasons should be given.

**TIP! Start out simple.** In all countries, it is better to start with a simple request for information and then to add more questions once you get the initial information. That way you don't run the risk of the public institution applying an extension because it is a “complex request”.

15. What happens if I don't get the information I asked for?

There are a number of ways in which you can be disappointed with an information request:

- You only get part of the information you asked for (but no formal refusal) - this is called an “incomplete answer”;

- You are told that the information “is not held” by that government department;
- You are granted partial access but some information is withheld on the basis of exceptions;
- You are refused access to all the information or documents that you asked for;
- You don’t get any reply at all (“administrative silence” or a “mute refusal”).

In all these cases you have a right to appeal. Before appealing an incomplete answer check that your question was in fact clear enough or whether it was possibly open to misinterpretation. If you think that it was not clear, then you might want to go back to the public body informally and try to clarify.

In the case of information not held you need to check if you think the answer is credible. If you think that the public body does hold the information but maybe does not want to answer your request (or maybe just that the public official was badly informed themselves) then you could decide between an informal or formal appeal. It might be worth trying an informal clarification about what you wanted before launching a formal appeal. If, however, you think that there was deliberate obstruction going on, a formal appeal is recommended.

In the case of partial access, full refusal or administrative silence, the best option is often to appeal. The first stage is to appeal to the body which refused to give you the information or which failed to answer you. You should check what your national access to information law says, but normally the appeal letter can be sent to the head of the institution. In countries which have good access to information laws, there will be a simple and clear system for submitting appeals. The second stage of appeal is either to the courts or – if your country has one – the Information Commission or Commissioner, or the Ombudsman.

**TIP! Find out about appeals in advance.** If you are not sure what to do for the first stage of appeal, contact the office of your Information Commission/ Commissioner or Ombudsman and they will be able to help you. If you don’t have such a body, try phoning the institution which issued the refusal and asking them. If you still are having problems, then let Access Info know about it and we will try to help you, for example, by giving you the contact of an NGO or lawyer in the country.

**Making a story out of refusals.** The refusal to release information following a request is often a story in itself. In the UK, the government’s refusal to release legal advice relating to the Iraq War was a story that ran and ran. The reluctance of the UK Parliament to release MPs expenses in spite of court rulings to do so

was also an ongoing story – and when the information was eventually leaked it was a major scandal which caused quite a few members of parliament to resign, resulted in an order to MPs to pay back a total of as much as €1.5 m ... and sold a lot of newspapers in the meantime!

### **Check list before writing a story about incomplete answers and refusals:**

Look carefully at the request to see whether it was clearly worded and whether the public authority might have misunderstood what you were asking for: you don't want to criticise a public body for failing to answer a request that was badly written or confusing. If you are not sure, ask a couple of your colleagues.

Check carefully which information you were given (if any) as well as what you were refused. That way you can make a clearer story focusing on what the government is actually refusing to provide.

Be very clear if you are planning to appeal or not: it's not clever to state in an article or on the air that you are planning to appeal against a decision and then to do nothing – public authorities will get used to the empty threats and may be even less inclined to grant information in future if they think that they can get away with it. You may need to discuss with your media organisation's lawyers before you take a decision on whether or not to appeal, or talk to a specialist access to information organisation.

**TIP! Appeal based on the public interest:** If you have been refused information that you wanted for a story you are working on, it might help to state in your internal administrative appeal that the information is needed for a media story and to state that there is a public interest in knowing that information. It's also important at this point to refer to your rights under the access to information law and/or constitution. (Of course, if you don't want the public authority to know you are working on a story, then don't mention it).

**TIP! Make a standard template for appeals:** Once you have drafted the first internal administrative appeal with references to the law and your rights, just keep the letter in your computer and you'll find that you have a template for future appeals. That will save you time as it should only need a little bit of changing depending on the content of the other requests.

**Legal Leaks Help Desk:** If you have submitted a request for information and it has been ignored or denied, we'd like to hear about it. We will try to find a way to help you, for example by giving you advice on how to appeal or finding an access to information expert or lawyer in your country.

## 10. Appeals against silence and refusals

If your request is not answered (“administrative silence”), or if the public institution refuses to provide you with the information, or if the answer doesn’t really answer your question, you may want to appeal.

The rules for appealing vary from country to country. It is advisable to check the rules and timeframes for appealing in your country before you submit a request or as soon as you have submitted it. That way you will know when to expect a response and you will be ready to present the relevant appeal.

There are four main appeals mechanisms:

- **Internal or Administrative Appeal:** this is an appeal to the same body which issued the denial or to the immediately superior administrative body. It may seem strange to appeal to the same body, but it signals to them that you are serious about defending your right and can often result in a change of mind. In any case, in most countries the request for internal review is required before submitting an appeal to the Information Commissioner, Ombudsman, or Courts. Sometimes however, an appeal may be made directly to the Information Commissioner or Ombudsman. Box D lists these options.
- **Administrative Court Appeal:** in many countries, particularly those without an Information Commission or Ombudsman responsible for overseeing the access to information law, the next step is an appeal to the courts. Normally access to information appeals are regulated by administrative law, and so appeals should be made to the regional or national administrative court, with a further appeal to a higher court usually possible. In 11 Council of Europe countries court appeals are the only option.
- **Information Commission/er:** these are specialised bodies whose role is to defend the public’s right to know. Often the body is combined with that of a data protection oversight body. 13 Council of Europe countries have a specialised oversight body. Some can issue binding decisions, others can only make recommendations. In some countries, the decisions of the Information Commissioners can be appealed to the courts.
- **Ombudsman:** In many countries the Ombudsman plays the role of protecting the rights of citizens and residents in their interactions with public bodies. In 13 of these countries, the Ombudsman also has the role of receiving complaints related to the access to information requests. Often the Ombudsman’s Office can only issue recommendations although their power to criticise means that in many countries the public authorities will



comply with these recommendations. At the EU level as well, the European Ombudsman will process complaints related to access to documents requests.

A good place to find out more about the law on access to information and your legal rights is a national access to information organisation. The Freedom of Information Advocates Network, has 160 members worldwide.



## Agenda

Day 1, Tuesday, 25 May 2010

**9.00 – 9.30 Registration in front of the Ballroom 1**

**9.30 – 10.00 Opening Session**

Moderator: Roland Bless, Director, Office of the OSCE Representative on Freedom of the Media

### Welcoming remarks

Ivar Vikki, Ambassador, Head of OSCE Office in Tajikistan

### Keynote speaker

Dunja Mijatović, OSCE Representative on Freedom of the Media

**10.00 – 13.00 First Session. International standards in access to information**

**11.30 – 12.00 Coffee break**

Moderator: Alexander Boldyrev, Senior Adviser, Office of the OSCE Representative on Freedom of the Media

### Keynote speakers:

Andrei Richter, Director, Moscow Media Law and Policy Institute; Professor, Journalism Department, Moscow State University

### International standards of freedom of information and their implementation practices in Central Asia

The presentation will provide an overview of:

- International standards in regards to the right of access to information.
- New legal developments, existing and being developed, which reflect the changes in access to information brought by advancement of the Internet.
- National legislation in the Central Asian states related to the freedom of information - constitutional provisions, access to information laws, informatization laws, state secrets laws, classification rules.
- Requirement of the public bodies to respond to information requests, as well as proactively make information about them widely available.

Miklós Haraszti, OSCE Representative on Freedom of the Media (March 2004 – March 2010); human rights advocate, writer, journalist and university professor

**The Internet and the free flow of information**

The presentation will provide an overview of:

- International provisions related to Internet regulation
- Debates on Internet law and policy
- On-line media and networks, e-journalism and users
- Effects of restrictive measures (e.g. blocking, filtering, registration ) on the free flow of information

Victoria Anderica Caffarena, Project Coordinator, Access Info Europe

**The role of civil society and media organizations in promoting the right of access to information**

The presentation will provide an overview of:

- Experience of Access Info Europe, the leading NGO in Europe, promoting access to information.
- Availability of information on web-sites of public bodies in Central Asia and Europe.
- The information presented in the developed guide for journalists on how to file access to information requests to public bodies.

Dainius Radzevičius, Chairman of Lithuanian Journalists Union

**Every coin has two sides – perspectives on access to information of a government press officer and a journalist.**

The presentation will provide an overview of:

- Requirement for public bodies – if information is public, it should be available (on the Internet, and other).
- Publicity of the work of government: who wins and who loses.
- New technologies for the legal regulation and human rights: which rights the most important?
- Necessity for the media and the government to speak publicly - same and different.

**13.00            Group photo**

**13.30 – 14.30   Lunch**

**14.30 – 17.30 Second Session. Access to information in Central Asia. Presentations of representatives from each Central Asian state**

**16:15 – 16:30 Coffee break**

Moderator: Adilia Daminova, Project Officer, Office of the OSCE Representative on Freedom of the Media

Introductory remarks: Andrei Richter and Victoria Anderica Caffarena will set the stage by providing key points and framework to facilitate discussion among key experts and the audience.

Key experts from Central Asian states will present reports on their respective countries covering the following issues:

- Freedom of information laws existing in their respective countries.
- Implementation practice of the national legislation and international standards on access to information.
- Already available information from public bodies.
- Newly developed legislation that affects access to information and access to information in the Internet in particular.
- Personal experience of requesting information from a public body. Examples of how access to information laws have been used by the journalists.
- Information on the access to information timeframes, i.e. within how many days the body is required to provide requested information.
- Statistics on frequency of requesting information from public bodies and how those requests are handled. Appeal mechanisms in case of denial of information or “administrative silence”.

Key experts:

## **TAJIKISTAN**

### **Legal aspects of access to information in the Republic of Tajikistan**

Sergey Romanov, Lawyer of the Republican Bureau of Human Rights and Rule of Law

## **KAZAKHSTAN**

### **Access to information in Kazakhstan**

Nuray Urazov, Vice-Minister, Ministry of Communication and Information of Kazakhstan

## KYRGYZSTAN

### Access to information in Kyrgyzstan

Begaim Usenova, Executive Director, Media Policy Institute

## TURKMENISTAN

### Current legislation in Turkmenistan and its impact on access to information

Igor Sasin, correspondent, Agence France Presse in Turkmenistan

## UZBEKISTAN

### Access to information in Uzbekistan: legal, organizational, and technical prerequisites

Bobir Alikhanov, Media Project Coordinator, Institute for studies of the civil society

**19.00 Reception**

Day 2, Wednesday, 26 May 2010

**9.00 – 13.00 Third Session. Developments in the field of media freedom in Central Asia.**

**11.00 – 11.30 Coffee break**

Moderator: Ana Karlsreiter, Senior Adviser, Office of the OSCE Representative on Freedom of the Media

Key experts from Central Asian states will present reports on media developments, which took place since last conference in their respective countries. Media developments can include current cases, legislative initiatives, issues and challenges. Proposals for cooperation among OSCE field missions and RFOM will be discussed as well.

Key experts:

## KAZAKHSTAN

### Freedom of speech in Kazakhstan: legislation and practice

Tamara Kalejeva, President of the International Foundation for protection of freedom of speech "Adil Soz"

## KYRGYZSTAN

### Freedom of media in Kyrgyzstan

Marat Tokoev, Chairman of the Board, Public Union Journalists

## TAJIKISTAN

### The situation of media in Tajikistan - status quo and perspectives

Nuriddin Qarshiboev, Chairman of the National Association of Independent Mass Media in Tajikistan (NANSMIT)

## TURKMENISTAN

### Media in Turkmenistan

Marat Kurdov, Correspondent, Reuters in Turkmenistan and Igor Sasin, Correspondent, Agence France Presse in Turkmenistan

## UZBEKISTAN

### Ensuring access to information: political and legal aspects

Abdulaziz Abdullaev, Director, Public fund for support and development of independent print media and news agencies

### 13.00 – 14.30 Lunch

### 14.30 – 16.30 Fourth and Closing Session. Discussion and adoption of the Conference Declaration

Moderator: Roland Bless, Director, Office of the OSCE Representative on Freedom of the Media

The session will provide an opportunity to:

- Discuss the draft of the Conference Declaration.
- Provide feedback and additional recommendations to be included in the Declaration.
- Adopt Conference Declaration.
- Highlight the main messages of the Conference.
- Discuss potential follow-up activities.

### Closing remarks

Dunja Mijatović, OSCE Representative on Freedom of the Media

### Departure





## Participants List

### KAZAKHSTAN

Vyacheslav Abramov	Director, International Journalism Centre MediaNet
Tatyana Bredikhina	Deputy Editor of Legal Unit, “Respublikanskaya Gazeta “Kazakhstanskaya Pravda” Corporation
Viktor Burdin	Journalist, “Vremya” newspaper
Tamara Eslyamova	Editor-in-chief, Uralskaya Nedelya newspaper
Tamara Kaleyeva	President, International Foundation of Protection of Speech Adil Soz
Adilbek Kumargazhin	Editor-in-Chief, “Nadezhda” Magazine
Mirbulat Kunbayev	President, Club of Editors-in-Chief
Almas Kusherbayev	Movement Coordinator, Kaznet Freedom
Gulmira Kuzhukeyeva	Lawyer, Internews Network
Yuliya Kuznetsova	Project Coordinator, Public Foundation “Media Alliance of Kazakhstan”
Shavkat Sabirov	President, OVL (International Association of RK)
Meiram Zhumabekov	Vice-Minister of Communication and Information
Olga Volkova	President, Public Foundation "Medialife"
Kenzhebulat Zholdybay	Head, Journalism Department, Karaganda State University named after Buketov
Nuray Urazov	Vice-Minister, Ministry of Communication and Information of Kazakhstan
Oleg Katsiev	Internews Kazakhstan

**KYRGYZSTAN**

Ulanbek Abdrahmanov	Correspondent, Radio Azattyk
Yrysabay Abdyraimov	Correspondent Jalal-Abbad, Radio Azattyk
Sultan Kanazarov	Deputy of General Director, NTRK
Kubat Otorbaev	General Director, NTRK
Marat Tokoev	Chairman of Board, PA “Journalists”
Alisher Toksonbaev	Correspondent, Radio Azattyk
Begaim Usenova	Executive Director. Media Policy Institute
Turdubek Osonov	Deputy Head, State Information Agency Kabar
Maria Rasner	Internews Kyrgyzstan

**TAJIKISTAN**

Zafar Abdulloev	General Secretary, MAT
Shahlo Akobirova	Executive Director, “Khoma” Public Organization
Qurbon Alamshoev	Chairperson, “Pamirmassmediacentre”
Olimjon Boboev	Minister of Transport and Communication of Tajikistan
Buribek Buribekov	Editor-in-Chief, “Impuls” newspaper
Mahmudjon Dadoboev	Editor-in-Chief, “Sughd” newspaper
Asliddin Dostiev	Chairperson, “Khatlon-Press” Information Agency
Saymuddin Dustov	Chairperson, “Indem” Foundation
Saymurod Fattoev	State Adviser of the President of Tajikistan on social development and public relation

Oleg Galyautdinov	Programme Director, Internews Network Inc. in Tajikistan
Zuhro Halimova	Executive Director, OSI AF - Tajikistan
Sharif Hamdampur	General Director, "Oila" Co Ltd.
Orzu Hamidov	Founder of «Pazhvok» newspaper
Zafar Hotamov	Head of Secretariat of the Consultative Council for Investment under the President of Tajikistan
Zinatullo Ismoilov	Director, SMT
Ilhom Jamoliyon	Director, Information Agency of «Varorud»
Rustami Joni	General Director, "Oriyono-Media"
Umar Kamolov	Director, TV "Qurghonteppa"
Marat Mamadshoev	Editor-in-Chief, "Asia-plus" newspaper
Habib Maqbulov	Director, TV "Regar"
Nematullo Mirsaidov	Editor-in-Chief, "Varorud" newspaper
Adolati Mirzo	Chairperson, "Afruz" Association
Sayofi Mizrob	Editor-in-Chief, "SSSR" newspaper
Davlatali Nazriev	Chief, Information Department, MFA
Khurshed Niyozov	Chairperson, Center for journalistic investigation
Nuriddin Qarshiboev	Chairperson, NANSMIT
Luqmonjon Qurbonov	Editor-in-Chief, "Zarafshon" Newspaper
Sahbon Qurbonov	Director, TV «Isfara»

Juma Quvvat	Editor-in-Chief, “Nuri Nurobod” newspaper
Asadullo Rahmonov	Chairperson, Committee on TV and Radio Broadcasting under the Government of Tajikistan
Sergey Romanov	Lawyer, NGO «Bureau on Human Rights and Rule of Law».
Daler Safarov	Editor-in –Chief, “Kara-Tegin” newspaper, Jirgital
Davlatali Saidov	Chairman of State Committee in Investment
Izzatmand Salomov	Director, Internews Network Inc. in Tajikistan
Olim Salimzoda	Chairman, Parliament Committee on International Affairs, Public Associations and Information
Abdusamad Samiev	Chief, Information and Analytical Department of Security Council of Tajikistan
Akbarali Sattorov	Chairperson, Tajik Union of Journalists
Qironsho Sharifzoda	Director, “Journalist” Public Organization
Saidali Sidiqov	Chief of analytical and information department of Presidential Apparatus
Murod Sotiev	Professor, Chairperson of the Tajik Media Council Chairperson, “Payom”, Information Agency
Zafari Sufi	Editor-in-Chief, “Ozodagon” newspaper
Ibrohim Usmonov	Editor-in-Chief, “Paykon” newspaper
Jumaboy Tolibov	Chief of analytical and information department of Presidential Apparatus

**TURKMENISTAN**

Marat Kurdov Correspondent, Reuters, Turkmenistan

Igor Sasin Correspondent, Agence France-Presse,  
Turkmenistan

**UZBEKISTAN**

Abdulaziz Abdullaev Head, Public Fund for Support and Development  
of Independent Print Media and News Agencies of  
Uzbekistan

Bobir Alikhanov Deputy Head, Institute for Studies of the Civil Society

**OSCE CENTRE IN ASTANA**

Aidar Botagarov National Political and Media Officer

Assel Karatayeva Project Assistant

**OSCE CENTRE IN BISHKEK**

Burul Usmanalieva National Media Officer

**OSCE OFFICE IN TAJIKISTAN**

Ivar Vikki Ambassador, Head of OSCE Office in Tajikistan

Barbara Davis Head of Human Dimension Department

Michael Unland Media Officer

Lutfiya Odinaeva Programme Assistant

Farrukhsho Dzhunaydov Senior Programme Assistant

**INTERNATIONAL EXPERTS**

Victoria Anderica Caffarena	Project Co-ordinator, Access Info Europe, Madrid, Spain
Miklós Haraszti	OSCE Representative on Freedom of the Media (March 2004 – March 2010); Human Rights Advocate, Writer, Journalist and University Professor
Dainius Radzevičius	Chairman, the Union of Journalists of the Republic of Lithuania
Andrei Richter	Director, Moscow Media Law and Policy Institute, Journalism Department, Moscow State University

**INTERNATIONAL ORGANIZATIONS**

Abaceen Nasimi	Project Manager, Journalist, Institute for War and Peace Reporting, Kabul, Afghanistan
Maxim Ryabkov	Director, OSCE Academy Bishkek
Gaidar Uteshev	Law Reform Program Coordinator, Soros Foundation, Kazakhstan
Mathis Winkler	Project Manager, Deutsche Welle, DW-AKADEMIE, Europe/Central Asia Division

**OFFICE OF THE OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA**

Dunja Mijatović	Representative on Freedom of the Media
Roland Bless	Director
Alexander Boldyrev	Senior Adviser
Ana Karlsreiter	Senior Adviser
Adilia Daminova	Project Officer

Joanna Jinks

Executive Assistant

Anja Schwabedal

Senior Project Assistant

the 1990s, the number of people in the world who are undernourished has increased from 600 million to 800 million. The number of people who are malnourished has increased from 1.2 billion to 1.5 billion. The number of people who are obese has increased from 100 million to 300 million.

There are a number of reasons for this increase in malnutrition and obesity.

Firstly, the world population has increased from 5 billion in 1980 to 6 billion in 2000. This increase in population has led to an increase in the number of people who are undernourished and malnourished.

Secondly, the world population has become more urban. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in cities, where there is a high density of people and a high level of consumption.

Thirdly, the world population has become more affluent. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in affluent societies, where there is a high level of consumption.

Fourthly, the world population has become more sedentary. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in societies where there is a high level of sedentary activity.

Fifthly, the world population has become more dependent on processed food. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in societies where there is a high level of dependence on processed food.

Sixthly, the world population has become more dependent on fast food. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in societies where there is a high level of dependence on fast food.

Seventhly, the world population has become more dependent on high-calorie food. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in societies where there is a high level of dependence on high-calorie food.

Eighthly, the world population has become more dependent on high-fat food. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in societies where there is a high level of dependence on high-fat food.

Ninthly, the world population has become more dependent on high-sugar food. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in societies where there is a high level of dependence on high-sugar food.

Tenthly, the world population has become more dependent on high-salt food. This has led to an increase in the number of people who are obese. This is because of the increase in the number of people who are living in societies where there is a high level of dependence on high-salt food.



## Press Release

### **OSCE media freedom representative calls for improved access to information at conference in Dushanbe**

DUSHANBE, 26 May 2010 - The OSCE Representative on Freedom of the Media, Dunja Mijatović, called for more transparency and easier access to government-held information in a speech delivered at the 12th OSCE Central Asia Media Conference, which ended in Dushanbe today.

Speaking to participants from the five Central Asian states: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan as well as from Afghanistan, Mijatović called on Central Asian governments to improve access to information.

"Governments are not compiling data just for the sake of keeping it. They do it for the benefit of the public, which elected them as their representatives. The culture of confidentiality is outdated, especially with the widespread use of the Internet," Mijatović said. "What we need now is a new culture of transparency that takes full advantage of the easy distribution methods new media can offer. Such an approach will increase trust between the authorities, civil society and citizens."

The two-day event was organized by the office of the Representative on Freedom of the Media, in co-operation with the OSCE Office in Tajikistan and supported by OSCE field operations in the region.

"New technologies offer quicker access to information, which enables citizens to make informed choices. This is the basis for democratic development", said Ambassador Ivar Vikki, Head of the OSCE Office in Tajikistan. "In Tajikistan, which is building up its capacity for new technologies, the OSCE Office has helped increase newspaper print runs by approximately 10 percent."

Conference participants adopted a declaration on access to information and new technologies in Central Asia, which will be available soon in English and Russian at [www.osce.org/fom](http://www.osce.org/fom).

Sweden, the United States and Lithuania financed the conference.

Preceding the conference, Mijatović spoke at an expert meeting on broadcast media policy development for representatives of the Tajik government and civil society that was organized by the OSCE Office in Tajikistan.





## Media Advisory

### **OSCE to host media conference in Dushanbe on access to information and new technologies**

DUSHANBE, 24 May 2010 - The 12th Annual Central Asia Media Conference hosted by the OSCE Representative on Freedom of the Media, Dunja Mijatović, and the OSCE Office in Tajikistan will start tomorrow in Dushanbe.

The two-day event will provide a forum for discussion on media developments and challenges that journalists face in the region, with a focus on issues related to access to information and new technologies, including the Internet. Agenda topics include international standards on access to information, Internet development and regulation and access to information in Central Asia.

International and regional experts, civil society representatives and academics will take part in the event. Journalists and representatives of governments and civil society from all five Central Asian republics and a journalist from Afghanistan are expected to attend.

The conference provides an opportunity to co-ordinate efforts to promote fulfillment of media-freedom commitments made by the 56 participating States of the OSCE, which include all five Central Asia countries.

Conference participants are expected to draft and adopt recommendations in a Conference Declaration, which will be used as a base for follow-up activities. Mijatović will address the conference on Tuesday morning.

Journalists are invited to the conference, which starts at 9.00 a.m. on 25 May at the Hyatt Regency Dushanbe, Prospekt Ismoili Somoni 26/1.

the 1990s, the number of people in the world who are illiterate has increased from 1.2 billion to 1.5 billion (UNEP 2000).

There are many reasons for the increase in illiteracy. One of the main reasons is the rapid population growth in the developing countries. Another reason is the lack of investment in education. In many developing countries, the government spends very little on education, and the private sector is not interested in investing in education either.

There are also many social and cultural factors that contribute to illiteracy. For example, in many developing countries, there is a strong tradition of oral communication, and people do not value reading and writing. In addition, many people in these countries are poor and do not have the time or resources to go to school.

There are many ways to reduce illiteracy. One of the most important ways is to invest in education. Governments should spend more on education, and the private sector should be encouraged to invest in education as well.

Another way to reduce illiteracy is to improve the quality of education. This can be done by training teachers, improving the curriculum, and providing better learning materials. It is also important to make education more relevant to the needs of the community.

There are also many social and cultural factors that can be addressed to reduce illiteracy. For example, it is important to promote the value of reading and writing in the community. This can be done through various activities, such as book clubs and literacy campaigns.

Another way to address these factors is to provide more opportunities for people to learn. This can be done through community-based learning centers and adult education programs. It is also important to provide support for people who are struggling to learn.

There are many other ways to reduce illiteracy, and it is important to find a combination of approaches that works for each community. The goal is to create a society where everyone has the opportunity to learn and improve their lives.

There are many challenges to reducing illiteracy, but it is not impossible. With the right investment and support, we can create a world where everyone is literate and has the opportunity to succeed.

There are many ways to measure illiteracy, and it is important to use a variety of methods to get a complete picture. One of the most common methods is to test people's ability to read and write. This can be done through various tests, such as the Functional Literacy Test.

Another method is to ask people how often they read and write. This can be done through surveys and interviews. It is also important to consider the quality of reading and writing, not just the quantity.

There are many other methods to measure illiteracy, and it is important to choose the ones that are most appropriate for each community. The goal is to get a clear picture of the illiteracy problem and to find ways to address it.

There are many reasons why people are illiterate, and it is important to understand these reasons in order to find effective solutions. For example, if the main reason is a lack of access to education, then the solution is to provide more opportunities for people to go to school.



Miklós Harasti, OSCE Media Freedom Representative (March 2004 – March 2010); human rights activist, writer, journalist, professor and Andrei Richter, Director of the Media Law and Policy Institute (Moscow), Professor at the School of Journalism, Moscow State University, discuss international standards on freedom of information (left to right).



Tamara Kaleeva, President of the International Foundation for Protection of Freedom of Speech "Adil Soz" and Ana Karlsreiter, Senior Adviser at the Office of the OSCE Representative on Freedom of the Media, discuss the media situation in Central Asia (left to right).



At the Second Session on Access to Information in Central Asia.



Dainius Radzevičius, Chairman, Association of Journalists of Lithuania, Andrei Richter, Director, Moscow Media Law and Policy Institute, Journalism Department, Moscow State University, Alexander Boldyrev, Senior Adviser at the Office of the OSCE Representative on Freedom of the Media, and Victoria Anderica Caffarena, Project Co-ordinator, Access Info Europe, Madrid, Spain at panel discussion on international standards on access to information (left to right).





Marat Tokoev, Chairman of the Board, Public Association "Journalists", and Maria Rasner, Internews Kyrgyzstan.



Photo of the participants.