

**I.**

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

**Sophie Redmond**

RECENT DEVELOPMENTS IN LIBEL LAW: PRESSING  
AHEAD FOR CHANGE

**David Banisar**

FREEDOM OF INFORMATION IN CENTRAL ASIA 2005:  
PROBLEMS AND PROMISES

**Sayora Ruzikulova, Nadezhda Stepanova**

MEDIA IN UZBEKISTAN: TODAY'S REALITIES

**Igor Shestakov**

PROBLEMS OF MEDIA DE-NATIONALISATION  
IN KYRGYZSTAN

**Khurshed Atovullo**

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

**Serik Nugmanov**

MEDIA LEGISLATION – A WAY FORWARD FOR KAZAKHSTAN

**Tamara Kaleyeva**

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

**Kanat Sakhariyanov**

MEDIA LEGISLATION IN KAZAKHSTAN:  
HISTORY, TRENDS, OUTLOOK



## Sophie Redmond

### RECENT DEVELOPMENTS IN LIBEL LAW: PRESSING AHEAD FOR CHANGE

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

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

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

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

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

out counsel or witnesses, sentenced and imprisoned, all on 26 August 2005.<sup>1</sup>

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

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

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

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

### *The ICCPR and the United Nations Human Rights Committee*

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

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

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

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

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

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

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

(i) *Marques de Morais v Angola*

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

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

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

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

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

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

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

The Human Rights Committee held that:

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

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

*(ii) Victor Ivan Majuwana Kankanamge v Sri Lanka*

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

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

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

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

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

The Human Rights Committee held:

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

Following the lodging of Mr. Ivan's complaint to the Human Rights Committee, the Sri Lankan government repealed the Criminal Defamation Law in 2002.<sup>5</sup>

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

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

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

### ***Conclusion***

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

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

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

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

## David Banisar

### FREEDOM OF INFORMATION IN CENTRAL ASIA 2005: PROBLEMS AND PROMISES

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

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

#### *FOI Globally and Nationally*

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

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

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

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

### ***International and Regional Standards***

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

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

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

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

Article 13 on “Participation of society “ states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

such information to these bodies without sufficient grounds.<sup>3</sup>

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

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

### *FOI in the OSCE*

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

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

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

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

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

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

<sup>4</sup> Tajikistan: Monitoring Report, February 2005.

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

### *FOI in Central Asia*

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

#### *FOI Laws*

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

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

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

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

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

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

*Secrets Laws*

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

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

*OSCE Recommendations*

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

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

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

the national security or territorial integrity of a nation.

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

### *Conclusion*

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

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<sup>9</sup> OSCE, Dushanbe Declaration on Libel and Freedom of Information, 24 September 2004.  
[http://www.osce.org/documents/rfm/2004/09/3645\\_en.pdf](http://www.osce.org/documents/rfm/2004/09/3645_en.pdf)

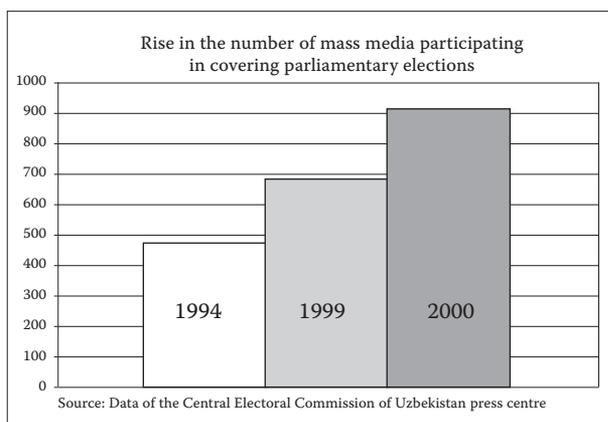
## Sayora Ruzikulova, Nadezhda Stepanova

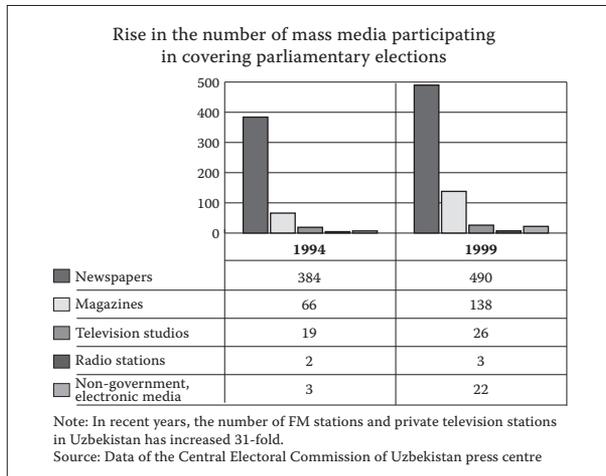
### MEDIA IN UZBEKISTAN: TODAY'S REALITIES

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

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

**Table 1.**



**Table 2.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

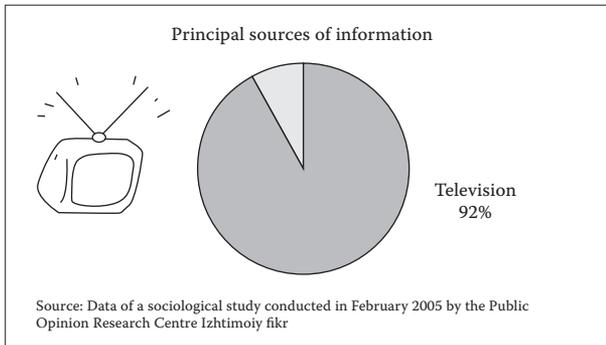
There is also a whole series of taboos: the opposition and its leaders, the shadow economy and corruption, the head of state and his family, government “secrets” and much more. In addition, there are so-called unofficial censors to whom media bosses themselves turn for assistance (as a rule, former censors),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

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

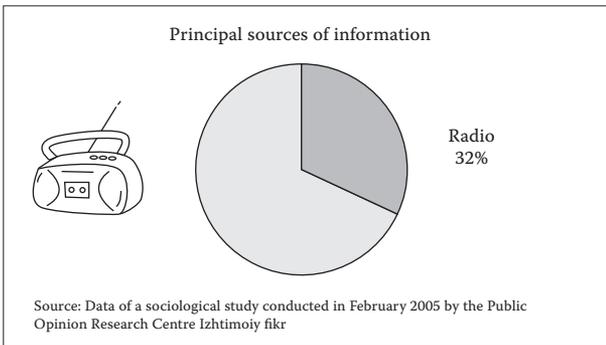
Moreover, a large proportion of the mass media in Uzbekistan, especially in the regions, lack sufficient financial support from the founders, on the one hand, and, on the other hand, are unable to attract advertisers, since the country’s advertising market is fairly narrow and they are not in a position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

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

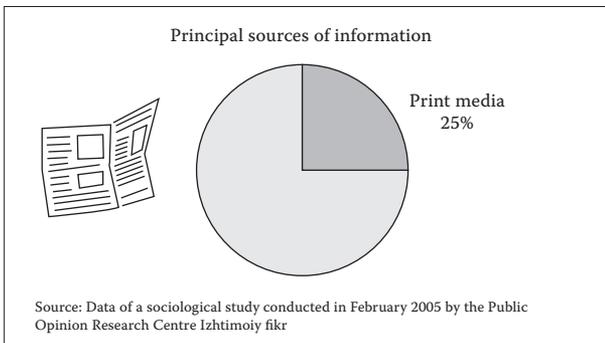
**Chart 3.**



**Chart 4.**



**Chart 5.**



### *Public organizations in the media sphere*

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

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

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

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

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

### *Mass media legislation*

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

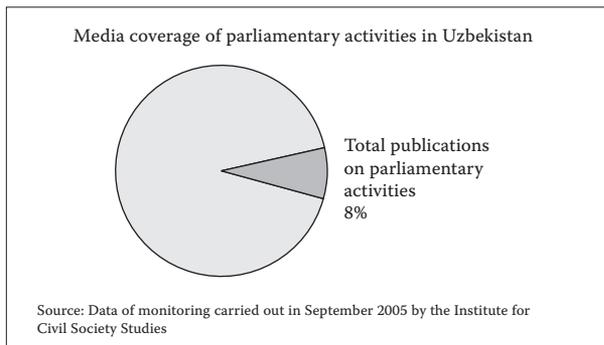
According to one of the experts involved in the work in the Legislative Chamber, Marat Khodjimukhamedov, Deputy Director of the Public Opinion Research Centre *Izhtimoiy fikr* (Public Opinion), the new version of the Law On Mass Media envisages a rule securing the obligation of a highly-placed official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

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

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

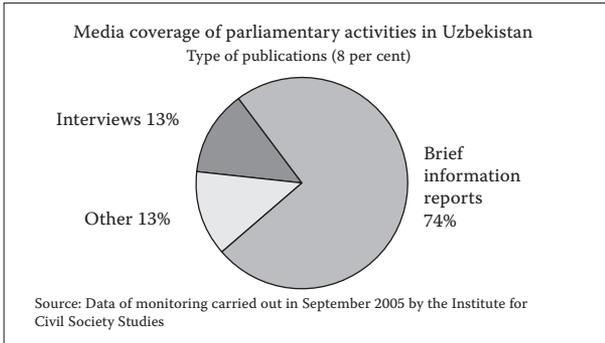
**Chart 6.**

*Media coverage of parliamentary activities in Uzbekistan:  
Total publications*

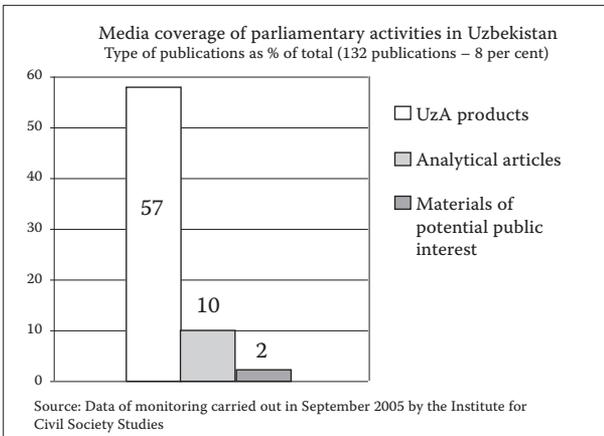


**Chart 7.**

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



**Chart 8.**



### *Suppressing dissent in the media*

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

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

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

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

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

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

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

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

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

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

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

## Igor Shestakov

### PROBLEMS OF MEDIA DE-NATIONALISATION IN KYRGYZSTAN

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

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

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

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

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

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

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

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

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

tions that need commercial advertisements rather than serious articles.

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

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

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



## Khurshed Atovullo

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

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

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

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

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

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

houses in the capital.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Continuation of the theme: The trial of Mukhtor Bokizoda***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Serik Nugmanov

### MEDIA LEGISLATION – A WAY FORWARD FOR KAZAKHSTAN

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

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

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

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

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

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

The current media law was adopted in 1999.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Tamara Kaleyeva

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Kanat Sakhariyanov**

### **MEDIA LEGISLATION IN KAZAKHSTAN: HISTORY, TRENDS, OUTLOOK**

#### ***Introduction***

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

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

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

#### ***History***

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

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

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

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

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

in April 2004 and was not signed by the President.

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

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

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

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

### ***Our Law***

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

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

ten by professionals engaged directly in the media industry.

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

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

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

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

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

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

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

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

tions for the operation of all mass media.

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

### ***The Government and the Media***

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

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

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

### ***The OSCE's Assessment***

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

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

As one OSCE expert noted,

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

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

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

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

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

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

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

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

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

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

*“The draft decriminalizes:*

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

## *Elections*

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

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

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

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

## *Recommendations for Strengthening Freedom of Expression*

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

## Appendix 1

### *The Advantages of the Draft Laws*

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

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

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

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

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

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

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

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