



THE OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA

**THE MEDIA SITUATION IN
KAZAKHSTAN, KYRGYZSTAN,
TAJIKISTAN,
TURKMENISTAN AND UZBEKISTAN**

FIVE COUNTRY REPORTS

Vienna 2002

The cover is a drawing by the German author and Nobel prize laureate (1999), Günter Grass, *Des Schreibers Hand (The Writer's Hand)*.

He gave his kind permission for its use as the logo of the publications of the OSCE Representative on Freedom of the Media.

The drawing was created in the context of his novel *Das Treffen in Telgte*, dealing with the literary authors of the time of the Thirty Years War.

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FREIMUT DUVE

OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA

PREFACE

This publication is a first for my Office: we have put together five reports on the media situation in one of the OSCE's most volatile regions, Central Asia. As with our previous reports, in this endeavour we have been assisted by outside experts who live in these countries and who have focused on media freedom issues for years. Some of them we name, some, for security reasons, we don't.

These five country reports: on Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, provide a general overview of the current state of media affairs in the country concerned, focus on media legislation and cases of harassment of journalists and provide country-specific recommendations to the governments on what can be done to improve the situation.

Many of the remarks and opinions expressed are highly critical of the authorities, often concentrating on government-orchestrated campaigns against independent and opposition media. In some of these countries over the past decade journalists have fallen victim to the ultimate form of censorship: what I refer to as "censorship by killing."

Cases of "structural censorship," which include numerous forms of indirect pressure on media through state-controlled monopolies on printing facilities and distribution, misuse of tax inspections, and other mostly economic and financial forms of pressure, are abundant in the Central Asian countries.

Already my Office has initiated several projects in Central Asia, including the Central Asian Media Conference that brings together hundreds of media professionals who discuss not only the current difficult state of affairs in the media sector, but also what can be done to improve it in the future. We have met in 1999 in Bishkek, in 2000 in Dushanbe,

in 2001 in Almaty and this year we plan to have the Fourth Conference in Tashkent.

We are providing legal expertise, something that is especially needed in countries without any democratic traditions. My Office has helped individual reporters and writers who have run into trouble with the authorities. Some of them are now able to go back to their countries.

We have facilitated a dialogue with the governments, explaining our concerns, offering advice and assistance, however, stressing that our critical approach will not be undermined by the projects we help organise and fund. My mandate is very clear: the Office of the Representative on Freedom of the Media not only raises any infringements against the media by governments but also assists them in the areas where they feel such assistance is needed. I am looking forward to continuing the ongoing dialog with the Central Asian states.

The situation in these five participating States is very different, in some it is better and in some it is worse. Some of these governments talk to us, some talk at us. However, after the tragic events of 11 September 2001, dialogue is exceptionally important, especially on human rights matters. This publication is my Office's contribution to this dialogue.

Vienna, August 2002

**REPORT
ON THE MEDIA SITUATION
IN KAZAKHSTAN***

* This report was prepared by outside experts.

The OSCE Representative on Freedom of the Media would like to thank the International Foundation for Protection of Speech "*Adil Soz*" for substantially contributing to the report.

Introduction

Kazakhstan is the largest state in Central Asia, it is 2 724 9000 square kilometres with a population of 14, 952 million people (according to the 1999 census). There are approximately 120 nationalities and ethnic groups in Kazakhstan. The Kazakhs constitute 53,4 percent of the population, and the Russians 30 percent. Since the break up of the Soviet Union, Kazakhstan like some other post Soviet states, was not plagued by military, interethnic or civil conflict.

As of 1 December 2001 there are 991 newspapers, 366 magazines, 125 electronic media and 14 news agencies in Kazakhstan, according to the country's Ministry of Culture, Information and Public Accord. Among the print media 742 publications are standard information ones, 165 – advertising, 91 – scientific, 21 – women's, 19 – for young people, 35 – children's, 29 – religious, 254 – all others. Eighty percent of the media is non-state owned, 75 newspapers and magazines are published by public organisations and nine by political parties. Thirty one percent of the media can be described as national, 23 percent as regional, 20,9 percent as city, 17,9 percent as district, with 3,6 percent being inter-regional media and another 3,6 percent are of a mixed kind. There are media in a dozen languages, including Kazakh, Russian, Uygur, Uzbek, Ukrainian, Polish, English, German, Korean, Turkish, Dungan and some others.

These official statistics do not take into account all the developments because the number of publications that have closed down for different reasons is not monitored.

Political Situation in Kazakhstan

Kazakhstan today is a society where in a peculiar and often bizarre way the urge towards democracy and a free economy intertwines with the mentality and habits from the totalitarian era. Because of a weak, though striving, parliament the state is constitutionally and *de facto* governed by the President, and this has led to authoritarianism.

In 2001, Kazakhstan celebrated ten years of independence. President Nursultan Nazarbaev's urge to hear praises regarding the recent economic and democratic changes in the country (a tradition from the old Soviet past still echoed in the government media) provoked his discontent with the large number, in his opinion, of critical publications in the independent media. Starting in January 2001, he publicly stated on several occasions that such critical publications in the non-government media spoiled Kazakhstan's image abroad, did not coincide with the country's national interests and were a threat to its security. The President also uttered this now famous phrase: "The independent media is called independent because nothing depends on it."

In 2001, the International Foundation for Protection of Speech "*Adil Soz*" registered 13 public statements by leading officials who in very harsh terms demanded more strict legislation to deal with the media. These officials on 21 occasions last year took practical steps against the media.

The Prime Minister of Kazakhstan, Kasymzhomart Tokaev, stated many times that he forbids government ministers to voice their personal critical views in the media regarding the activities of the government and that those officials who do so would be fired. He initiated investigations into leaks in cases, when government documents that had public impact ended up in the press.

In December 2001, the head (akim) of the Atyrausk region Serikbek Daukaev noted publicly that he respects journalists and their work, but "if my own honour is infringed upon, be careful! Only my mother and my President can then stop me. I will break your face for my family name!"

In April 2001, the Department for State Secrets of the General Staff of the Armed Forces issued a directive, signed by its Chief General Alibek Kasymov, which forbid contacts with the press for all military personnel.

In November 2001, the political situation was rocked by disagreements among the country's elite that found their way into the media. Newspapers and TV channels that were owned by the leaders of the

newly established movement *Kazakhstan's Democratic Choice* started putting out numerous stories criticising the top leadership of the state, their actions and their style of governance. Back then, the head of state had to warn some leading businessmen that if such compromising articles continued to be published against individuals and government structures that incite public opinion, he will have to, as the head of state, take against these private media “draconian measures and explain to the people why it is being done.” The President also made it clear that he knows what “draconian measures” the oligarchs themselves take against journalists working in their media.

In December 2001, the Director of the Central Asian Agency for Political Research Erlan Karin stated in an interview with *Argumenti i Facti Kazakhstan* that according to experts, the scandals and the never-ending information wars in the media can undermine the political stability in the country and weaken the President’s powers. According to Karin, this situation was related to potential early presidential elections and that elements of a political conspiracy were present here, although it was not clear who this conspiracy was aimed against: the President or the people. The only correct move for the President would be to take over the initiative in the information field, stressed Karin. According to local experts, in this context one should view the proposal from the President to establish a journalist’s code of honour as well as his statements regarding “draconian measures” that he plans to take against out-of-hand private media.

The Ministry of Culture, Information and Public Accord, the Prosecutor and the police look at the media not as at equal players on the information market but as at potential violators whose views can be brushed aside and that they can be governed through intimidation and restrictions. In practice this leads to attempts to actually introduce censorship.

For example, the city newspaper *Baykonyr* received in May last year a directive from the deputy head of the city (akimat) Alexander Lazarev describing how press releases from local organisations and companies should be published. The directive in detail prescribed the relationship

between the newspaper, the city government and the local enterprises: all items set for publication in *Baykonyr* must be forwarded in written form and signed by respective officials to the city administration every Tuesday from 10 AM to 12 AM. By the end of business, the senior administration official has to prepare a summary to be sent to the newspaper itself, where the editor then discusses its publication.

On 24 January 2001, a senior police official in the South-Kazakhstan region demanded from Dina Nuralieva, the news director at the TV company *Otyrar*, written explanations regarding a report on potential personnel changes in the police. She was also invited to take part in the activities of the commission that was specifically established to investigate the leak. The police stressed that these personnel changes were even kept secret from the police officers themselves. Similar cases are reported regularly.

Legislative Issues

The basic law dealing with the media is the country's Constitution approved in 1995 during a national referendum. It guarantees freedom of expression, freedom to receive and disseminate information by any means that are not prohibited by law, except for information that constitutes a state secret. Censorship is forbidden.

In 1999 a new Law on Media was adopted, as it says in the preamble, to regulate in the sphere of the media and to establish state guarantees of its freedom. In July 1997, a new Criminal Code was passed which stipulates such offences as insulting the President (article 318), insulting a deputy (article 319), and insulting a government official (article 320). These offences were classified as "Crimes against Governance." Under the current law, libel of both ordinary citizens (article 129, 130) and officials is a criminal offence.

Although the law does not differentiate between such terms as "views, opinions, beliefs and information," article 143 of the Civil Code establishes civil liability only for publishing incorrect information, however, the burden of proof lies on the media and the journalist. The plaintiff only

has to establish that there was an infringement of his/hers rights. That is why the media and journalists, even when publishing articles on issues of public concern, are not on an equal footing with officials. In 2001 the tendency to adopt legal acts that undermined the media continued.

On 30 January 2001, without any prior public discussion, the Administrative Code was adopted. The Code for the first time established non-constitutional sanctions such as confiscation of print-runs and equipment, declared responsibility (basically a ban) on certain types of publications. Here are some examples: article 345 deals with “Infringing on the Right to Refute Information,” article 346: “Influencing a Court of Law Through the Media,” article 350: “Violation of the Publishing of the Publication Data.”

The Code proscribes approximately 40 administrative violations in the media field. For the first time in the history of independent Kazakhstan, the Code gives the right to prepare protocols for administrative violations to the Ministry of Culture, Information and Public Accord, turning it thus into an oversight and even into a repressive agency.

The Code also allows the Ministry to close down a media outlet for three days and to submit a legal suit to a court during this period. In practice this could cause, especially for the print media, financial and readership losses.

In March 2001, Parliament adopted changes to the Media Law, restricting as of 1 January 2002 re-transmission of foreign language broadcasts to no more than 50 percent of all broadcasting, the percentage going down to 20 as of 1 January 2003. The new provisions also classified web sites as media and changed the system of registering media outlets into one where approval is needed, which is directly against the Constitution. They provide for penalties for journalists for “influencing the courts,” as well as for quoting any official except for the senior officials. These proposed changes were published in November 2000 and received a negative response from the public and journalists: the first massive demonstration in defence of freedom of expression. The OSCE Representative on Freedom of the Media commissioned a legal

review criticising many of the changes; however, his recommendations were not taken into account by Parliament.

More than 300 journalists individually or on behalf of their publications signed an Appeal to Parliament Deputies urging them to vote against the proposed provisions. On 30 January, prior to the session of Parliament where these proposals were to be discussed, nine Kazakh TV stations held a protest: they stopped broadcasting. Instead, they broadcast the reasons for this action and the phone numbers of deputies who should be appealed to support the media, and many viewers did call their parliamentarians.

During the discussion, the majority of deputies declared that they would vote against the changes. However, after President Nazarbaev spoke on the state TV channel *Habar* stressing that these changes were needed and beneficial, almost all deputies, except for three, approved them.

Numerous other decrees issued by different ministries and agencies regulate the work of the media. Practically all of them are focused on restricting the public's right to receive information. For example, *Novaya Gazeta*, registered in the name of the editor of *SolDat* Ermurat Bapi (who was accused of insulting the President) was basically closed down without being able to even publish once. According to the Almaty office of the Ministry of Culture and Information, this happened because the newspaper missed the deadline for publication of the first issue stipulated in its licence. According to the Rules on Registering Media, approved by the Ministry, the deadline is six months, while the Media Law itself does not have a similar provision for registration or for the annulment of a licence.

In February, the Ministries of Transportation and Communications, Internal Affairs and the Committee for State Security issued a joint decree on Establishing Rules on Organising Joint Actions to Locate and Suspend the Illegal Use of Radio-Electronic Equipment on the Territory of the Republic of Kazakhstan. According to these new rules, the illegal use of radio frequencies will be determined through controlling the radio spectre based on information provided to the Committee by individuals

and organisations. This could be done by utilising the operational capabilities of the Committee for State Security. The police are under obligation to send a patrol to close down the station and arrest the perpetrators at the request of an officer of the Committee. In exceptional cases, if there is a perceived threat to state security or to the well-being of the population, such a station can be jammed.

On 24 May 2001, the government adopted a Decree on Covering the Work of the State Structures of the Republic of Kazakhstan. It provided for substantial funds from the republican and local budgets to be used in the media to advertise the work of government institutions. As a tender offer coming from the state to the media it now substitutes open financial support for government-controlled media.

The only positive example among the many laws and decrees is the new Decree #3 on Court Practice in Libel Cases passed by the Supreme Court on 21 June 2001. It reminds the judges that when deciding on compensation for libel they must take into account what is reasonable and fair. The Supreme Court also stated that libel can be fully rectified either through the publication of a correction OR through financial compensation. However, in practice these recommendations are rarely followed.

Kazakhstan is a signatory member to the Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1 August 1975), which also concerns the state's human rights obligations. The Final Act also clearly reads that the participating States "will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development." Apart from the Helsinki Final Act, Kazakhstan has subscribed to numerous other OSCE media commitments. However, Kazakhstan is not a signatory to the International Covenant on Civil and Political Rights which could provide journalists with an opportunity to bring cases of harassment to the attention of United Nations bodies.

Attacks Against the Media and Unlawful Detention of Journalists

In 2001 there were no cases of journalists being killed. However, attacks against them were on the increase, including beatings, unlawful detention, and other forms of harassment.

Last February the apartment of TV journalist Guldzan Ergaliyeva was broken into and she was ordered to pay 100,000 USD. Although she gave the assailants all the money she had, they still badly beat her husband and son. Both ended up in hospital, her husband in intensive care, and her son received wounds to the head and suffered a concussion. Viewers know Ergaliyeva because of her weekly programme *Public Agreement* on *Almaty Channel 31*. In this programme issues of concern to the public were often discussed. Both government and opposition representatives took part in it.

In July 2001 there were three attacks against journalists. In the first two weeks of December three reporters from the Almaty newspaper *Karavan* were badly beaten.

On 17 December, in Akoba the news editor of *Diapazon* newspaper and the radio station *Rifma* Marina Vasilyeva and its computer expert Alexei Mukhametov were robbed and beaten. It is believed that this attack was related to their professional duties. The two were assaulted by five people, they were badly beaten, their belongings, including money and documents, stolen.

The Director of *Rifma* Vladimir Mikhailov and the editor of *Diapazon* Elena Getmanova wrote an open letter to the Minister of Interior, the State Prosecutor and the Head of the President's Administration. They noted that this latest attack was part of a series of tragic events surrounding the two media outlets. A year earlier reporter Dulat Tulegenov from *Diapazon* died under unclear circumstances. Even earlier, the newspaper's deputy editor Eltai Davlenov was robbed and beaten, the assailants took his camera, tape recorder and notebook. All of these cases are unsolved.

Threats of violence are also on the rise. In January 2001, the editor of the independent newspaper *Respublika-2000* Lira Bayseitova wrote an

open letter to the Minister of Interior where she described the anonymous phone calls she received as well as the sight of suspicious individuals in the vicinity of her editorial office. She believed that this was connected to her professional activities.

In May 2001, the editor of *SolDat* Ermurat Bapi reported that he believed that he was being followed. He also received anonymous threatening phone calls at home. By sheer chance, a listening device was found in his office. In all these cases no criminal investigations were ever initiated.

In November the publisher of the *Who is Who in Kazakhstan* Daniyar Ashimbayev was arrested for allegedly carrying drugs. Several experts in Russia and Kazakhstan believed that his arrest was connected to the web site *Aziopa* which published compromising material on the country's political elite. He was freed ten days later, however, he refused to talk to the media.

From 2000 there were several cases reported of criminal attacks against opposition media. In March 2001 the offices of *SolDat* were burglarised, its two computers stolen. Previously, through a court order the newspaper's publication was stopped for three months, while its editor Ermurat Bapi and reporter Karishal Asanov were charged under article 318 of the Criminal Code: insulting the President. In April, the newspaper's data-base was broken into and files with its new issue destroyed.

No perpetrators were found in all these cases. The authorities, police, the State Prosecutor and the State Security Committee, always underline that none of these events are connected with the professional activities of the journalists or with the political affiliation of the media concerned.

Criminal Cases against Journalists

In 2001, *Adil Soz* monitored 12 criminal cases: four related to article 318 (insulting the President), one case based on article 320 (insulting a representative of the state), six libel cases (articles 129, 130), one case related to article 200 (unlawfully receiving and disseminating information which constitutes a commercial or bank secret).

In January 2001, charges of insulting the President were filed against the editor of the opposition newspaper *XXI Vek* Bigeld Gabdullin. The reason was the publication of articles related to corruption among the country's elite and downloaded mostly from the Internet. In the end, Gabdullin was forced to immigrate to the USA and his newspaper ceased to exist.

SolDat's Ermurat Bapi received a one-year prison term for insulting the President after he reprinted a story from the web site *Eurasia* that was critical towards the President. He was amnestied in commemoration of the tenth anniversary of the independence of Kazakhstan.

A journalist in Aktubinsk Oleg Adorov was sentenced to 180 hours of public works for insulting a local judge in the newspaper *Evrika*. He wrote that judge Ishanov was delaying court proceedings against a local criminal chieftain. The judge wanted the journalist prosecuted under two articles of the Criminal Code dealing with "libel" and "defamation in written form." A higher court struck down the sentence.

It should, however, be stressed that although the number of criminal cases against journalists is on the rise every year, more sophisticated and less visible methods are used to restrict freedom of expression.

Civil Cases Against Media

Most of the civil cases against the media deal with infringing on certain rights of individuals and enterprises, including their honour, their commercial reputation, and the right to privacy. In 2001, *Adil Soz* registered 97 civil cases, among them 91 related to article 143 of the Civil Code (protection of honour). Here are those who filed charges against the media: 44 officials, seven businessmen, 30 ordinary citizens and 16 law suits filed by enterprises.

An analysis of court decisions in these cases shows that often the media and journalists are punished for publishing their views and opinions, while the Constitution guarantees freedom of opinion and the right to disseminate one's views freely. Sometimes the court defends even the honour of a group of people, of a company, state structure or that of the

nation as a whole. Practically none of the court decisions refer to the constitutional guarantee of freedom of expression. Rarely does the plaintiff have to provide facts showing that his rights were actually violated.

In libel cases there are no statute of limitations or restrictions on the amount of compensation. There is no precedent referring to a journalist working for the public good and thus provided, as in American and European court practice, with restricted immunity.

For undermining its commercial reputation, the Ministry of Defence sued the newspaper *Vremya* for 250 million Tenge (1USD is approx. 150 Tenge) for a series of publications related to the ministry's unlawful commercial transactions. The newspaper *Vremya Po* was ordered to pay 3 million Tenge in damages for publishing a series of articles on the Deputy Chairman of Committee for State Security Rakhat Aliyev (the President's son-in-law). In other cases, *Ak Zhaiuk* was ordered to pay 2 million Tenge, another newspaper *Express K* hundreds of thousands of Tenge.

These libel cases are a real factor in restricting freedom of expression and in developing self-censorship. What is even more dangerous is the fact that these cases are a pseudo-legal way of punishing opposition leaders and media.

One of the examples concerns an unprecedented court case against the famous political scientist Nurbulat Masanov. In 2000, an unidentified individual wrote a text that could be considered insulting to Kazakhs and published it as an interview with Masanov on an anonymous web site. Later it was printed by the newspaper *Karavan* and in addition several individuals distributed an audio-tape that allegedly had on it a part of a private conversation held by Masanov. The prosecution was never able to determine who eavesdropped and recorded this conversation, who wrote the false interview and put it on the Internet, and who distributed the audio cassette. However, the court did not take into account the fact that the interview was falsified, that an illegally recorded private conversation could not be used as evidence, and that Masanov himself did not make the tape or disseminate it. In 2001 the court decided that Masanov was guilty of distributing false and libellous information and sentenced

him to pay 10,000 Tenge in damages and to apologise to one of the individuals mentioned in this pseudo interview.

On 29 November 2001, an Aktubinsk court issued a decision regarding the case of Dzhasaral Kuanyshalin vs. the newspaper *Diapazon* filed on 30 March 1999. The plaintiff charged that information published in this newspaper in 1997-99 were insulting to him as a representative of the Kazakh nation. As moral compensation he asked for 30 million Tenge.

One should add, that Kuanyshalin, a former parliamentarian and one of the leaders of the national patriotic movement, published in early 1999 an article in the government newspaper *Kazakhstanskaya Pravda* accusing *Diapazon* of spreading inter-ethnic strife. In response, the Aktubinsk Office of the Prosecutor filed criminal charges and the regional court closed down the newspaper for two months. This happened in the summer of 1999 and in November 1999 experts from the Centre of Legal Expertise of the Justice Ministry stated that in the *Diapazon* publications there were no facts mentioned that concerned Kuanyshalin personally. The experts also underlined that these publications did not spread speech that could be considered insulting to the national dignity of the Kazakhs. However, the experts' analysis was not provided to *Diapazon* in 1999 and only surfaced during the trial in November 2001.

In its decision the Aktubinsk court stated that it would not take into account the views of the experts and agreed with the plaintiff (who at this time was the Regional Office Head of the Ministry of Culture and Information), ordering the newspaper to publish an apology and to pay 100,000 Tenge in damages as well as to pay for the services of the experts whose advise was ignored.

By autumn, when the opposition became more active, article 350 of the Administrative Code started being used against opposition-leaning media. This article deals with the printing of publication data in the media concerned and foresees several penalties for violating the prescribed rules. During the court hearing regarding civil libel charges filed by Deputy State Security Chairman Aliyev towards the newspaper *Vremya Po* (related to its article *The Muth of Rakhat Aliyev*), the plain-

tiff requested the temporary closure of the newspaper because it did not print in full its publication data. The court agreed with the plaintiff.

According to *Adil Soz*, in 2001 alone the overall amount of compensation demanded in civil libel cases was close to 800 million Tenge (appr. 5,3 million USD). The threat of legal action and potential bankruptcy hangs over almost all media only increasing self-censorship.

On several occasions judicial experts and journalists have asked this question: why, with the Constitution guaranteeing freedom of expression, any official who is a public figure and whose level of tolerance should be much higher, is more protected dignity-wise than an average citizen? Why, when all individuals are declared equal before the law, is a prosecutor not held responsible for disseminating false and libellous information and is basically immune and a journalist working in the interests of the public is not? These questions were not voiced either in Parliament or in those agencies that can try to change this situation.

Structural Censorship and Harassment Outside the Legal System

In 2001 several measures were taken to restrict or close down media that were not in line with the government. They included legal harassment, tax and prosecutor's inspections, unlawful suits, increases in related tariffs. In several cases this was a reaction to the demands of top officials. In other cases: these attacks were organised by competitors. Nobody has any doubts regarding the process of monopolisation of the media. However, even in the later cases one can see the hand of a senior official.

For example, here is the case of *NS-Radio*, which initially could not be accused of being disloyal to the authorities and which received certain debt privileges on its payments to the budget. Nevertheless, it went through several tax inspections, an increase in the payment for the use of the transmitter, its transmission facilities were turned off, it was banned from using its own transmitter, financial documentation was confiscated and two criminal cases started against its management, one for tax eva-

sion and another for possession of firearms (both cases quietly “died”).

The treatment of both *NS-Radio* and also of *Argumenti i Facti Kazakshstan* by the tax and financial police is typical and often concerns most of the media that for different reasons are considered hostile by the state. Searches are conducted, documentation seized, offices sealed off without any legal charges filed. Police officers, sometimes just referring to an oral order from above, basically paralyse the functioning of the media with the State Prosecutor keeping silent.

There are numerous facts concerning harassment of media, and unwarranted threats of closure coming from the Ministry of Culture and Information. This mostly concerns the few opposition publications. For example, for six months the opposition newspaper *SolDat* was not published because it could not find a printing facility that would agree to do so. In October the newspaper resumed publication and after its second issue the local branch of the Ministry of Culture and Information filed an administrative suit in court claiming that the newspaper did not publish correctly the address of the printing house.

According to the Media Law, a newspaper that did not publish for six months loses its registration. This deadline passed for *SolDat* on 6 October 2001 and Ministry officials, oblivious to the fact that the newspaper resumed publication two days earlier, tried to pull its licence. They explained to the editor Bapi that the Ministry has one designated official monitoring only this provision of the Law.

Although most of the media in the country is not state-controlled, the reality of being affiliated with different power structures pushes them into lobbying for the political and financial interests of their owners who may also be connected to the country’s leadership. The ownership structures of media are secretive and do not provide a clear picture of who actually controls what media.

In October, for example, the head (akim) of the Pavlodar region Galumzhan Zhakiyanov sued for libel a local TV correspondent Valdimir Muss. The reason was a TV programme called *Portrait of the Week* that reported on the threat of an ecological disaster on the territory of the chemical factory *Chimprom*. The plaintiff and the defendant agreed on

an settlement when the journalist provided the court with audio tapes of his conversations with the editor Inna Rufakova who requested him to collect compromising material on the Head of the Region.

The newspaper *Vremya Po*, after publishing several articles against the President's son-in-law Rahat Alyev, could not find a printing facility in Almaty: it was turned away by government and private publishing houses and had to print in Pavlodar. Only after Alyev's resignation as Deputy Head for State Security did the owners of the print houses agree to publish *Vremya Po*.

According to unofficial information, Alyev "looked after" several media outlets, including the largest non-government newspaper *Karavan* and the TV channel *KTK* (through a request by one parliamentarian it has been made clear that 49 percent of the stock in *KTK* belongs to Alyev's sister). These media ended up being sucked into the November 2001 power struggle when General Alyev fell out of favour. Back then *KNK* had to cease broadcasting and *Karavan* stopped publishing for the first time in ten years.

Several instances have been reported when officials from State Security gather information on journalists. Usually, 2-3 such officials come to the editorial office and under the pretext of checking personnel data for the security service of the President demand personal information regarding certain reporters. In "exchange" these officials offer their "information services."

Restrictions on Access to Information

Article 20 of the Constitution guarantees a journalist, or any citizen, the right to free access and dissemination of information except for information that constitutes a state secret. According to the country's Media Law, journalists not only should be provided with information, but also have access to relevant documents except those that can be deemed as state secrets.

However, restriction on access to information is the most widespread violation of freedom of expression. According to *Adil Soz* in 2001, 130

cases have been recorded in Kazakhstan dealing with restrictions on information. In reality, the number is much higher. Journalists often explain that information is so often denied that they no longer consider this as a violation of their professional rights.

There are different ways to restrict access to information: unexplained denial of an accreditation, direct refusal to provide relevant information, setting up priority lists of who receives what information, unlawful closures of government meetings and court sessions to the public. The motives for these actions are very different, and include: lack of interest in dealing with the opposition media, focus on state media as well as just differentiating between journalists: some we like and some we don't; lack of knowledge of the rights of journalists or just trying to prevent access to information that might characterise the work of an agency in a negative way. For example, the TV channel *Tan* is on a regular basis refused access to official press conferences.

In Semipalatinsk, a crew from the TV channel *KTK* showed up at a local prison to report on a riot. The warden did not allow the crew to film and stated that the Minister of Interior had prohibited contacts with the media in such circumstances.

In Petropavlovsk, a local TV reporter Alina Morozova tried to interview the head doctor of a drug rehabilitation clinic Boris Sanin regarding its new facility dealing with teenage drug users. She was denied information and was told by the doctor: "What, you have nothing better to do?"

On 17 April 2001, there was an accident on an oilrig in the Caspian Sea that resulted in a massive oil spill. The authorities only found out about the accident later that day while the local media in Atyrau were informed of the spill two days later. This led to the public learning about the events one week after it happened since the only newspapers in the region are weeklies and because of the two day delay on access to this vital information deadlines were missed.

It is difficult to imagine that judges are not aware of article 19 of the Procedural Code which declares all court proceedings open. This means that any citizen can sit in on any court hearing and take notes. Court ses-

sions are closed only when dealing with cases that involve access to state secrets or when opening the proceedings can jeopardise the case. The court has to explain in detail why a hearing is closed, however, unlawful closures of court proceedings to journalists are reported on a regular basis.

Many state institutions develop their own instructions that restrict access to information and which classify certain information (without any explanation) as a commercial secret. Sometimes, journalists are basically directly prevented from fulfilling their professional obligations. On 11 August a cameraman for the TV channel *Yuzhnaya Stolitsa* Yuri Sedin was filming a prison riot from a nearby house. A group of military officers chased him and he was only saved from an eminent attack by the mother of one of the rioters.

Language Policy

The state language in Kazakhstan is Kazakh. In state institutions and in local administration Russian is also used. However, this is not always the cause when government and parliament meetings are concerned. For example, on 13 March 2001, during a government session seats designated for journalists were not provided with translation equipment. The speech by the Head of the South Kazakhstan region Berdibek Saparbaev was not translated into Russian. Press releases with his speech were also not distributed in Russian. On 23 May journalists covering a parliamentary session were not provided with translation equipment, as a result, the speech by the Head of the Audit Chamber was not understood by Russian-speaking journalists. On 25 May during the intergovernmental session of the Kazakhstan-Qatar joint commission translation was only provided into Kazakh and Arabic, with no translation into Russian available. *Adil Soz* has monitored numerous such cases.

The Language Law as well as the new changes to the Media Law stipulate that 50 percent of all broadcasting has to be done in the state language. The state itself is tasked with developing language policies in Kazakhstan. This is based on the fact that during the Soviet times the Kazakh language did not have the needed support. As a result, there are

very few quality TV and radio programmes in Kazakh. Non-government media does not have the needed resources to produce the required amount of programming in Kazakh, however, the government is doing absolutely nothing to help the media in fulfilling the provisions of the law. As a result, language requirements are used as another form of pressure on non-state media.

Conclusions and Observations

In analysing the media situation in 2000, *Adil Soz* in its annual report stressed that “one can hardly call the state of freedom of expression in Kazakhstan as satisfactory. As a tendency it is deteriorating.” The same could be said for 2001 and early 2002. This January, the President demanded more strict control over how the Media Law was being implemented. As a result a massive campaign was instigated to check how the media were following all the language requirements. Although the Ministry of Culture and Information does not have precise criteria and resources to enforce these provisions, many TV and radio stations were nevertheless fined. The Ministry is also trying to pull the licences of ten TV and radio companies.

In the first months of 2002 through different means, some of them can only be described as criminal, practically all opposition print media were closed down: *Nachnem s Ponedelnika*, *Vremya Po*, *Delovoye Obozrenie Respublika*, *Respublika 2000*.

Early these year after not being able to secure printing arrangements the newspapers *Vremya Po* and *Delovoye Obozrenie Respublika* had to stop publishing. Instead they started distributing their articles on leaflets. At the same time their editorial offices had to withstand several tax and financial inspections. The printing plant that published *Delovoye Obozrenie Respublika* immediately ran into trouble: its electricity at times would be cut off and numerous inspectors showed up on its premises. The editor-in-chief of *Delovoye Obozrenie Respublika* Irina Petrushova is charged with conducting illegal business activities (a criminal offence under article 190 of the Criminal Code). The reason for the

charge was the fact that Petrukhova, a Russian citizen, was editing a newspaper without a licence allowing the hiring of foreign workers. In the end, in March 2002 the Economic Court in Almaty suspended the publication of *Delovoye Obozrenie Respublika* for two months. The newspaper was accused of providing false publication data last August (it was already previously fined for the same “offence”).

On 19 May the reporters at *Delovoye Obozrenie Respublika* found a mutilated dog hanging outside their window with a sign attached saying “there will be no next time.” On 20 March its editor Petrukhova received at home and in the office flower wreaths that said “To Irina Albertovna from Her Colleagues.” It is not clear who came up with this “joke.” On the night of 21-22 May Molotov cocktails were thrown into the offices of this newspaper, as a result its editorial premises were completely destroyed.

The Ministry of Culture and Information initiated a massive campaign against the media for basically a very minor violation: the printing of publication data (which includes the name of the publisher, where the media outlet is registered, where it is printed, its print-run, etc.) Under article 350 of the Administrative Code this violation carries penalties from minor fines to suspension of publication for six months. Courts use this article selectively. Some media, like in Karaganda, received minor fines of approximately 3 USD. Others like opposition newspapers *Delovoye Obozrenie Respublika* and *Vremya Po* had their publication suspended for several months. Two newspapers in Semipalatinsk, *Ush Anyk* and *Golos Naroda*, are currently under the same threat of suspension.

In February this year, the State Security Committee, the Office of the Prosecutor and the Ministry of Culture and Information started a massive inspection of all registration documents of media in Astana at the request of the State Prosecutor. Officials looked through old articles and checked the editors for “political correctness.”

In February, the opposition TV channel in Pavlodar *Irbis* was suspended for three months for allegedly broadcasting a pornographic movie. In early April, experts from the Centre for Legal Expertise stated at a press conference that they did not review the movie as was reported

by the Minister of Information. After the press conference, the Centre's top expert Oleg Boretskiy was fired during a downsizing campaign. The channel should re-start broadcasting soon but it is again under threat: this time for allegedly having some technical deficiencies.

In February 2002, the TV channel *Tan* was visited by seven inspections from the tax police, the culture ministry, the medical inspector, etc. On 4 March the Ministry of Communications suspended its licence and stopped *Tan* from broadcasting for allegedly finding several technical problems. According to the President's Press Secretary, Nazarbaev personally asked the Ministry to allow *Tan* to resume broadcasting and on 9 March it was back on air. However, on 29 March unidentified perpetrators damaged the connecting cable between the transmitter and the antenna. The cable was again damaged on 15 May.

On 21 May the offices of *SolDat*, located in a private apartment, were attacked, and journalist Bahitgul Makinbay and technical editor Kenzhe Aitpakiev were beaten. According to editor Ermurat Bapi, the attackers stole equipment worth 19,000 USD that may result in the suspension of the publication for a whole month.

On 3 May Molotov cocktails were thrown into the premises of the printing company *Ak Zhayik* in Atyrau. As a result new printing equipment was damaged, as well as newsprint and the building itself. The Director of the company Abdilda Mukashev believes that this attack was connected to the publication at this printing plant of press statements issued by the movement *Kazakhstan's Democratic Choice* dealing with the fate of one of its leaders Galumzhan Zhakiyanov who was arrested.

In April 2001, when the situation in Almaty became tense because of the threat of arrest of Zhakiyanov (who at that time was in the French Embassy), unidentified assailants attacked the *Tan* cameraman Ruslan Tairov who was filming outside the embassy. He was hospitalised after suffering a concussion. An employee of the *Irbis* TV company Kanat Tusupbekov was beaten in Pavlodar on 20 April. At the request of the head of the local highway police in Almaty, a TV crew from *Irbis* had to stop filming the confiscation of a car from the wife of Zhakiyanov in early April. The senior police officer Rogachev forcefully confiscated

the already taped material from cameraman Valeriy Pavlov and the journalists were then beaten by a group of up to 30 policemen.

On 24 May in Astana the TV and radio broadcasting tender commission discussed the work of 17 TV and radio companies (the commission is chaired by Vice-Premier Baurzhan Muhamedzhanov). The commission recommended to the Ministry of Communications that the following companies should have their licences suspended: *Era* and *Teletek* in Ust-Kamenogorsk, *TV 6x6* and *Irbis* in Pavlodar and the *Ekibastys City TV Company*. The decision was made because the aforementioned enterprises were in “violation of their tender obligations.”

Currently legislation is being drafted dealing with a state of emergency and military censorship which will include restrictions on reporting. A new Law on Advertising classifies practically all paid announcements as advertising. A new Law on Radio and Television Broadcasting is also being drafted. Again there are debates about introducing additional changes to the Media Law and the President is initiating the establishment of a so-called National Committee on the Media under his own auspices.

Looking at the dynamics of the changes in the field of freedom of expression in Kazakhstan for the past 2-3 years and when looking into the future one can clearly conclude that the democratic developments that characterised the first half of the 90s are being curtailed. The OSCE and other international organisations will continue to follow and report on developments concerning the media situation.

Recommendations

- Independent mass media play a vital role in a democratic society and a healthy market economy. Controls and restrictions should not be imposed on the media to the extent as to seriously threaten their ability to provide information and to foster democratic debate.
- Technical restrictions or excessive financial burdens should not be imposed on critical media by Ministries, state security organs, fiscal police, courts and other administrations, thus obstructing their work and inducing them to practice self-censorship.

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- The transparency of the ownership structures of all media should be ensured. The public should be aware of which political or economic group owns what media.
 - The limits for acceptable criticism are wider as regards politicians and other public figures than they are for a private individual. Public figures inevitably and knowingly lay themselves open to scrutiny of their actions by the journalists and the public at large and must consequently display a greater degree of tolerance. Rather than turning to courts demanding compensation for “libel,” a public debate on facts or opinions should be encouraged.
 - The amount of damages in a libel case should be proportionate so as not to have a chilling effect on critical reporting. Decree #3 passed by the Supreme Court in 2001 allows the courts to take into account what is reasonable and fair.
 - The Constitutional right of access to information should be enforced and any current restrictions on information should be reviewed and, where necessary, changed to be fully in line with OSCE commitments.
 - All cases of physical harassment of journalists should be thoroughly investigated and the perpetrators brought to justice.
 - Although the Constitution of Kazakhstan guarantees freedom of expression and prohibits censorship, new legal provisions, like limitations on the retransmission of foreign electronic mass media or blocking access to opposition Internet web sites, are aimed at restricting the work of journalists, often under the pretext of safeguarding national security. Relevant bodies should take into account financial conditions of independent media when implementing proposed regulations.
 - National security arguments should not be used to limit freedom of the media. In particular, the new situation after 11 September 2001 is not a justification for repressive steps against opposition media. On the contrary, the current situation could become a catalyst for further steps towards creating a free media landscape in society.

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- The Government of Kazakhstan should take advantage of legal assistance and expertise by the OSCE and other international bodies when drafting and reviewing media-related legislation.
 - Local NGOs that monitor the media situation, do advocacy work and provide legal support to journalists should be strengthened.

**REPORT
ON THE MEDIA SITUATION
IN KYRGYZSTAN***

* This report was prepared by outside experts.
The OSCE Representative on Freedom of the Media would like to thank
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Overview

The population of the Republic of Kyrgyzstan is 4.832.000 and comprises more than 80 nationalities, including ethnic Kyrgyz (58.6%), ethnic Russians (17.1%), ethnic Uzbeks (13.8%), ethnic Ukrainians (1.9%) and others.

Freedom of the press became a reality in the beginning of the 1990s with the independence of Kyrgyzstan after the fall of the Soviet Union. The first independent media outlets were registered during that period. Today more than 800 media outlets are registered with the Ministry of Justice of the Kyrgyz Republic, 689 are print media while 126 are TV and radio stations.

According to local legislation media includes newspapers, magazines, almanacs, books, bulletins, one-time editions for mass distribution, TV and radio stations, cinema and video studios, audiovisual records and programs, produced by the state, information agencies, political, public and other organizations as well as private entities. Both state and privately owned media exist in the country. Owners of private media are usually physical entities. The State TV & Radio Corporation and several print media were founded by the government.

The State TV & Radio Corporation covers most of the country; it is based in Bishkek and has bureaus in all the regions (oblast) of the country. The Corporation is mainly funded from the state budget and is currently going through a process of restructuring. A special commission, the Public Observation Council, was formed in order to develop a restructuring concept to make the Corporation more efficient. The Council consists of representatives from the government, parliament, media, etc.

More than ten private TV stations provide alternative coverage – each region has at least one TV station. Radio stations, there are about twenty, also cover all regions. Most of them are based in Bishkek, however they broadcast outside the capital, e.g. *Europa+* (<http://www.europa.kg>), *Russkoe radio* (<http://rusradio.europa.kg>), *Piramida* (<http://www.pyramid.elcat.kg>), etc. cover, Issyk-Kul, Osh and other areas. All private elec-

tronic media re-broadcast foreign programs, most of them Russian, as well as produce their own, mainly news. A cable TV station in Bishkek *AlaTV* has attracted more than 6,000 viewers by providing Russian, European and other programming.

The State TV & Radio Corporation and private stations do not reach some of the remote villages. The Uzbek television signal is stronger and can be viewed in certain areas in the Osh, Batken and Djalal-Abad regions. *OshTV* in the south of the country broadcasts in Uzbek as well as in Kyrgyz and Russian. There are also local newspapers in the south, where the main language is Uzbek: *Djalal-Abad Tangi*, *Demos Times*, *DDD* and *Dostlik*. Their circulation varies from 1,000 to 5,000. *Osh Sadosi* (circulation 3,000) is a state newspaper, which also publishes in Uzbek, while the other two state newspapers in the south, *Echo Osha* and *Osh Zhanyrygi*, are published in Russian and Kyrgyz accordingly.

The electronic media in Kyrgyzstan is not involved in politics as much as the print media. One of the reasons is their dependence on state structures like the State Agency for Communications and the State Commission on Radio Frequencies, which issue broadcast licenses. Print media is dependant on the publishing houses, the most advanced being *Uchkun*, a state owned facility that sometimes uses preventive measures to put pressure on the independent media. Most of the publications in Bishkek use its services.

The two largest newspapers *Slovo Kyrgyzstana* and *Kyrgyz Tuusu* serve as state publications in Kyrgyzstan. Their circulation is 5-6,000. There are more than 70 print media published in the regions in Russian and Kyrgyz, and in the south in Uzbek.

The best known independent newspapers are *Moya Stolitsa* (<http://www.city.org.kg>) established less than a year ago after the daily newspaper *Vecherni Bishkek* (<http://www.vb.kg>) became more or less pro-government. *Moya Stolitsa* published five days a week with a daily circulation of 5,000 and 12,000 on Fridays; *Delo No* (<http://delo.to.kg>), circulation 40,000; *Agym*, circulation 12-17000; *ResPublika* (<http://www.respublica.elcat.kg>), circulation 5,000, and several others.

Delo No and *ResPublika* have been in business since the 90s, at the same time another popular newspaper *Asaba* was also founded, but it later fell victim to numerous libel suits by state officials.

Print media face distribution problems as well: private media have their own distribution networks, which undermine the state network *Kyrgyz BasmaSoz*. Nevertheless, local authorities often block distribution, especially during recent elections.

The state media structures include print media in Russian and Kyrgyz, and the State TV & Radio Corporation. However, state support for these media companies is significantly less than it was during the Soviet days. Also state media have a right to conduct commercial activities, which provides them with a relative level of freedom. The authorities have ways of controlling private media through the provision of printing services, newsprint and through the allocation of frequencies for the electronic media, usually issued in a non-transparent way. Some of the more “traditional” forms of pressure on the media are also not frowned upon by the authorities and may include criminal libel charges, tax inspections, different fines, etc.

The media representatives themselves stress that the economic instability of outlets is a major problem and that with financial independence they would be able to produce more independent coverage of current events.

The Current Political Situation in Kyrgyzstan and How it Affects the Media

The political situation in the country became more complicated in the spring of 2002 with economic conditions worsening, growing unemployment and political instability. A disputed land deal between Kyrgyzstan and China and the persecution of opposition politicians caused serious unrest in the South where protesters marched towards Osh, the second biggest city in the country. The conflict was somewhat resolved after the resignation of the government and a court decision to free one of the opposition leaders.

The President of Kyrgyzstan suggested new ways to further develop human rights in the country. He has also proposed the establishment of a Democratic Code of the Kyrgyz Republic and of a Democratic Security Council.

The crisis started in the beginning of March after the fatal events in Aksy when security forces opened fire on protesters heading to support Azimbek Beknazarov, then an imprisoned parliamentarian. Beknazarov was convicted of concealing a serious crime while working as an investigator seven years ago. Five protesters died during these violent clashes, with dozens injured. Protesters in Aksy had also voiced other demands like the provision of additional funds for the South of the country and the re-establishment of freedom of speech.

After the Aksy events, a special commission was formed that concluded that “tendentious programming on State TV & Radio exacerbated a complicated social and political situation in the country.” State TV, as a monopoly covering more than 90% of the territory, reported on the recent events in a biased way and this had a negative influence on the population. The government later admitted that they had lost the “information war.”

On 27 May 2002, the Public Observation Council was formed in accordance with the Decree of the President of Kyrgyzstan. The Council is supposed to develop a concept for the restructuring of State TV & Radio within three months. It included not only state officials but also members of the opposition, e.g. Adaham Madumarov, a legislator who left the Council when President Askar Akaev appointed a new Head of the State TV & Radio Corporation. At the time of writing, the Council had two more months to present its ideas on the reform of State-controlled TV and Radio.

Media Legislation

One of the main laws providing the basis for media activity in the Kyrgyz Republic is the Constitution adopted in 1993. It guarantees freedom of speech, and confirms that every citizen has the right “to free

expression and the dissemination of ideas and opinions, to freely create in the literary, artistic, scientific and technical field, to freedom of press and dissemination of information.” The Constitution proclaims that the media are free and that the State takes responsibility for the facilitation and creation of all necessary conditions for the development of media. Kyrgyzstan has furthermore ratified several international treaties, the most relevant of which in relation to freedom of expression is the International Covenant on Civil and Political Rights. Kyrgyzstan, as a participating State of the OSCE, has also subscribed to all the media commitments of the organization.

An amendment to the Constitution was approved in 1998 through a national referendum that states: “No laws shall be approved that limit freedom of speech and press.” The amendment is considered to be a substantial achievement in the strengthening of the country’s democratic principles.

But after this constitutional amendment, the Code on Elections in the Kyrgyz Republic was approved in 1999, which limits freedom of speech during the pre-election period. It prohibits the publication in the media of the results of public opinion polls or prognosis of election results from the moment when candidates are registered (article 31.3). In reality the constitutional norms do not work in this situation.

The Laws on Protection of the Professional Activity of Journalists and On Guarantees on Freedom of Access to Information are not that effective. The Law on Protection of the Professional Activity of Journalists deals with only access to information for journalists while the Law on Guarantees and Freedom of Access to Information provides for access to information for every citizen (Article 4). State institutions at different levels are obliged to provide citizens with documents, related to his or her rights and legal interests.

However, this Law does not envisage any responsibility of appropriate state officials for not ensuring the constitutional rights of citizens. In accordance with Article 9 of the said Law officials shall not provide information containing state secrets and any other classified information. The following information cannot be disseminated: state and commercial secrets; appeals for the forceful overthrow or change of the exist-

ing constitutional structure; propaganda of war, violence and cruelty; intolerance towards other nations; insult of religious feelings of believers; pornography; information, encroaching on the honor and dignity of a person; and that offending state symbols.

In accordance with the Law on Protection of State Secrets in the Kyrgyz Republic, state secrets encompass information covering defense, security, economic and political interests of the Kyrgyz Republic, that is controlled by the state and classified through special lists and rules, developed on the basis of the Constitution. The law lists information, which should not be classified as secret: for instance, facts regarding violations of law by state institutions and officials; disasters and their aftermath, etc.

Criminal punishment (Article 300 of the Criminal Code of the Kyrgyz Republic) is envisaged for the divulgence of state secrets, and if a journalist violates a law on commercial secrets then criminal and administrative responsibility is envisaged. Civil legislation protects information that is a commercial or official secret. In accordance with the Law on Commercial Secrets an entity that received such information can use it without the right of disclosure to a third party.

The Law on Media is the main one that regulates media activity in the Kyrgyz Republic. This Law defines the general legal, economic and social framework for media and regulates relations between media outlets and state authorities, public organizations and citizens. Adopted in 1992, this Law was considered to be one of the most liberal in the post-Soviet countries.

However, this Law still has some disadvantages and limitations. One of them is the requirement for mandatory registration of all media as legal entities with the Ministry of Justice. Employees of the Ministry claim that registration is of a declarative nature aimed at collecting data on the number of existing media in the country, however, in reality it is of a permissive nature.

While print media in the Kyrgyz Republic do not require a license, electronic media are obligated to receive one. This procedure is regulated by the Law of the Kyrgyz Republic on Licensing (1997) and by the

Regulations on Licensing in the Sphere of Communications (1998). The Law on Electronic and Postal Communications envisages more than six types of licenses in the area of communications and also mentions that “there are other types of licenses for existing and future networks and services.” This definition provides the State Agency for Communications, that issues licenses, with a right to create new types of licenses, which could affect the activity of electronic media.

An electronic media outlet should provide a package of documents in order to obtain a license. According to the Law on Licensing, a one-month period is established for the consideration of the documents but in practice this process may last for more than six months. This is connected with the prerequisite that the owner must obtain a number of permissions: among them for the allocation of a frequency, for the use of a transmitter/s, etc.

Other laws, regulating the media, include: On Protection of the Professional Activity of Journalists, On Guarantees and Freedom of Access to Information, On Protection of State Secrets, On Advertisement, On Information Technologies, On Licensing, On Copyright, On Electronic and Postal Communications, On Commercial Secrets. The Civil and Criminal Code, the Tax Code and the Election Code as well as the Code on Administrative Responsibility and Remedial Legislation contain norms also related to media activity in the Kyrgyz Republic. These laws were approved from 1992 until the present time.

The Law on Protection of the Professional Activity of a Journalist broadens journalists’ rights. According to this Law, journalists have a right to conduct investigations, receive access to information, concerning the rights, freedoms and interests of citizens, i.e. to all documents except those containing state secrets, and also the right to attend open court hearings. This Law makes the journalist responsible for his professional activities and provides for the responsibility of officials for the illegal confiscation from journalists of their professional materials or technical equipment as well as for pressure on a journalist and for providing false information (Article 13). The professional rights, honor and dignity of a journalist are protected by this Law.

With the adoption of the Law on Copyright, Kyrgyz journalists obtained the right to protect their intellectual property. A new agency was formed, the State Agency on Intellectual Property (*Kyrgyzpatent*), that regulates relevant issues. These legal matters are still new and certain problems arise in the field.

However, in assessing local media legislation, Kyrgyz journalists, experts, representatives from public organizations and parliament believe that during the years of independence quite adequate laws have been adopted.

Rina Prizhivoit, co-founder of the *Glasnost Defense Foundation* in the Kyrgyz Republic and a senior editor at *Moya Stolitsa-Novosti* noted that: “Kyrgyzstan has a sufficient legislative framework that guarantees the free and independent work of journalists. These laws allow them to work freely, of course, and in line with journalistic ethics.” Kabai Karabekov, Chairman of the Committee on Public Unions and Information Policy of the Legislative Assembly *Jogorku Kenesh* (Parliament), who used to be a journalist himself, also noted: “The existing media laws are some of the best on the territory of the CIS. All the rights and responsibilities of journalists are envisaged.”

However, a good legal basis does not necessarily provide for the full and competent implementation of these said laws. Yrysbek Omurzakov, editor of the newspaper *Tribuna* is very skeptical: “We do have a legal framework but it is not utilized. The laws are violated, first of all, by those who approved them and who in the performance of their duties have to control their application...”

There are a number of laws in the Kyrgyz Republic which have become a burden on the work of journalists and which are successfully used by officials against them. For example, Article 127 of the Criminal Code that envisages criminal punishment for slander (up to three years imprisonment). Officials also exploit the law on State Tariffs.

Kabai Karabekov, Chairman of the Parliament Committee on Public Unions and Information Policy, says: “In the Law on State Tariffs, in libel cases a plaintiff taking legal action against a newspaper, TV station or a journalist pays a state tax of 10 Soms (0,2 USD)! There is an evi-

dent imbalance between the rights of a plaintiff and a defendant. The existing norms are anti-constitutional and violate not only the rights of journalists but also those of all citizens.” Karabekov thinks that if this state tariff was increased, then, as a direct result, the amount of compensation demanded would decrease.

Temporary Regulations on Publishing Activity and Decree on Radio Frequencies

Another issue that made the news this year concerns a legal document, which violated not only the rights of the media but also the principles of a fair market. The Government approved the Temporary Regulations on Publishing Activity in the Kyrgyz Republic on 14 January 2002, around the same when it prohibited the printing of the newspaper *Moya Stolitsa-Novosti*. This Decree gave an additional political flavor to the situation around the media.

The aim of this Decree as stated in its preamble was the prevention of subversive activities by various extremist and religious groups that distribute their publications among the population. This was stated in a message issued by the Presidential Press-Service: “the adoption of this temporary document was dictated only by the struggle against the ideas of extremist organizations like *Hizb-ut-Tahrir*. It resulted from the obligations of Kyrgyzstan towards the anti-terrorist coalition and the international community.”

According to this Decree, the Ministry of Internal Affairs (MIA) was supposed to proceed with an inventory and registration of all printing equipment on the territory of the Kyrgyz Republic within one month. This meant that all physical and legal entities were supposed to register all existing copying and printing equipment (including copying machines, scanners, computers, printers, printing presses, etc.) with the MIA. The MIA and the State Customs Inspection were also tasked with ensuring strict control over the import of such equipment. The document essentially established state control over all publishing activities by making it necessary for printing houses to obtain a certificate from the Ministry of Justice.

The Decree defined as publishing the preparation, publication and distribution of printed materials. As printed materials it defined newspapers, books, magazines, leaflets, albums, bulletins, posters, postcards and any other print product notwithstanding its circulation and periodicity. Therefore, even the publication of one single poster should have been registered with the Ministry of Justice.

The Decree also made it clear that only printing facilities owned or co-owned by the state had the right to provide printing services. This was seen as an attempt by the government to fully control all print media. The Decree coincided with a debate among many journalists that the establishment of an independent printing facility under the auspices of international organizations could be the answer to their problems with state-owned publishing companies.

The Decree also limited competition in the publishing sphere and was about to remove several existing legal entities from the market. In addition to that, it violated Constitutional norms and was in contradiction with the Civil Code of the Kyrgyz Republic, which proclaims a diversity of forms of ownership and their equal legal protection. The Decree also violated the Law on Limitation of Monopolistic Activity, on the Development and Protection of Competition, according to which executive bodies do not have the right to establish exclusive or discriminating conditions for separate entities.

Although Kyrgyzstan has ratified a number of international treaties that require the country to observe human rights and freedoms, this governmental Decree seriously violated relevant commitments. The Decree caused a storm of indignation among the media and other organizations. One of the first round-tables dedicated to the new Decree was hosted in the *Internews* offices in Bishkek on 31 January 2002 by the Public Association “Journalists,” *Press Club*, *CIMERA* and *Internews*. Representatives from the Government, the Ministry of Justice, the State Commission on Anti-monopoly Policy, Parliament, media and public and international organizations took part in the round-table. The participants signed an appeal addressed to the President, the Government and Parliament. Journalists from the south-

ern region also signed a similar appeal during a round-table meeting conducted by the *Osh Media Resource Center*.

A number of round-tables and conferences were held during that period by various organizations, which resulted in appeals to the authorities not to violate the constitutional rights of citizens. By 15 February more than 15 NGOs had expressed their concerns over the situation, saying that “according to our charters we publish newsletters but the new Decree will stop that. We think that the new Decree absolutely violates such human rights as freedom of speech and religion.” (Leaders of 15 local NGOs in their protest letter of 6 February 2002).

Editors of seven independent newspapers (*Agim, Advokat, Delo No, Litsa, Moya Stolitsa, ResPublika* and *Tribuna*) also expressed their discontent. Their opinion: the Decree was issued in order to block the establishment of an international printing press in Bishkek; the Decree contradicted all relevant laws in the country, and not only media ones.

The Decree was never implemented and survived until the end of May. On 27 May, President Askar Akaev abolished Decree #20 and replaced it with a different one. The new Decree also raises certain questions, it states that within three months the Government was supposed to “undertake measures to effectively regulate publishing activity” and work out suggestions on the establishment of an oversight state agency in this field.

Four days later, Askar Akaev met with representatives from all Kyrgyz media outlets. The meeting was broadcast live on State TV. Answering one of the questions, he assured the public that this new Decree would not influence media activity in the country. Since then, no further changes have been made in this regard.

Electronic media outlets protested against a Decree of the State Commission on Radio Frequencies (SCRF), according to it all UHF frequencies would be issued on a tender basis, which would influence the launching of new media outlets. The SCRF is a body established by Presidential Decree and consists of nine ministers and is tasked with issuing frequencies.

There is only one legal act (Presidential Decree # 25 of 18 January 2000) that establishes the procedure for frequency tenders. At present, the Commission is regulating the electronic media through this Decree, which would be yet another obstacle in the development of independent media.

Cases against Media

The following overview provides information on several cases, it is by no means exhaustive but does outline a certain tendency.

In 2002, courts in the Kyrgyz Republic dealt with more than twenty media-related cases. It should be mentioned that there are media outlets that initiate investigations themselves and win cases. One of the best examples concerns the first independent TV station in Central Asia, *OshTV*. For several years, the State Agency for Communications (SAC) had demanded from *OshTV* to change its frequency. But its Director Khalildzhan Khudaiberdiev refused, saying that a frequency change would decrease the number of viewers and that the transition to a new frequency would cost more than 42,000 USD, a sum that *OshTV* could not afford. There was fear that the station would be shut down. Under these circumstances, the Director of *OshTV* filed a lawsuit in November 2000 against the State Agency for Communications. According to the Law on Electronic and Postal Communications, a broadcasting license and the right to use a frequency should be issued for the same period of time. In 1999, the SAC issued a license to *OshTV* for five years while the frequency was issued for nine months only. The TV station challenged this decision in what was the first case in the Kyrgyz Republic when a TV station brought civil action against a governmental agency, the SAC. The lawsuit lasted for more than a year and on 10 January the Chui Arbitration Court ruled in *OshTV*'s favor.

Later, the director of this TV station filed another lawsuit against the Southern Office of the SAC. This Office conducted nine inspections without appropriate permissions and when the SAC officials visited the station for the tenth time, the TV station did not allow them to conduct

any inspections as these officials violated a number of legislative norms. In accordance with the Presidential Decree of 16 February 2000, any appropriate inspections of legal entities by supervisory bodies (except dealing with law enforcement and fiscal matters) can only be done with the official permission of the State Commission on Business Development. The SAC office filed an administrative report and fined Mr. Khudaiberdiev, the Director of *OshTV*. He was supposed to pay 1500 Kyrgyz Soms (35 USD).

However, on 28 January the Osh Municipal Court revoked the decision by the SAC. In April, the Osh Municipal Court held another hearing and agreed with the arguments of the *Internews* lawyers representing *OshTV* and upheld the previous decision, which was a victory for the TV station and a defeat for SAC.

Early this year, S. Kalkanov, Chairman of the Kadamzhai District Court in the Batken region, accused the regional newspaper *Batken Tany* and its reporter K. Tashbolotov with insulting his honor and dignity because of an article which said that judge S. Kalkanov made a court decision after being bribed. The judge demanded 100,000 Soms in compensation. Later the two sides finally reached an out-of-court agreement.

This was the second case in which a judge appeared as a plaintiff against a media outlet. The first case was against the journalist Moldosalı Ibraimov from the newspaper *Akyikat*. The judge and the reporter also came to an agreement after months of court hearings.

The Jalal-Abad Municipal Court in the Nooken district fined the newspaper *Kyrgyz Rukhu* 110,000 Soms and the journalist Akybai Sooronbaev for the same amount of money. Akybai Sooronbaev was charged with libeling the Jalal-Abad region prosecutor's assistant. The offending remarks were attributed to Akybai Sooronbaev and printed in *Kyrgyz Rukhu* back in 1997. *Kyrgyz Rukhu* was never even informed of the ongoing trial and the newspaper's editors only learned of the hearing after the court had issued a decision. In this case, the Law on Media was violated as it clearly states that claims can only be filed in the area where the newspaper's editorial office were located. *Kyrgyz Rukhu* is in Bishkek. This fact proves once again that court officials do not work in accordance with current laws.

Upon receiving the news of the trial against *Kyrgyz Rukhu*, Nookan region residents blocked the Osh-Bishkek road in a protest action in defense of freedom of speech and as a warning to government officials. On the same day, representatives of the local administration including the region's Governor, D. Sharipov, arrived at the scene and promised to immediately resolve this issue. On 15 May, the Jalal-Abad Municipal Court cancelled its own decision against *Kyrgyz Rukhu* and its reporter.

In the same region in June, the Jalal-Abad Regional Court had to hold hearings concerning an article published in a bulletin by a Jalal-Abad-based organization *Pravo dlya vseh*. A teacher A. Rahimjanova filed a libel suit and demanded compensation for moral damage. The defendants were the article's author and the Editor of the *Pravo dlya vseh* bulletin. In an early decision, the Jalal-Abad Municipal Court fined 10,000 Soms both the journalist and the editor. That decision, however, was overturned by the Regional Court and the case was sent back to the Municipal Court. The Municipal Court then decided that the fines should be reduced to 5,000 Soms each, but the defendants did not agree with the new decision and asked *Internews* lawyer Ernek Baisekeev to provide legal assistance. On 10 June, the Jalal-Abad Regional Court closed this case and the fines were annulled.

In March, the opposition newspaper *ResPublika* was fined 10,000 Soms by the Pervomaiskii District Court in Bishkek because of a libel case by C. Botaliev, who had previously already won in a different trial against *ResPublika*. Two more lawsuits were filed against the newspaper.

The authorities are often reluctant to provide information about important events in the country, like in the cases of F. Kulov, an opposition leader, and during the events in the south in March 2002. An armed conflict took place in the Aksy area between law enforcement officers and the inhabitants of the Jalal-Abad region, who were heading to take part in a protest in defense of A. Beknazarov, an imprisoned parliamentarian. This event was first covered by radio *Azattyk (RFE/RL)*, while other media outlets had no chance to travel to the place due to financial problems but did cover these events later by sending their correspondents. Southern media were late in their cover-

age because there are no daily newspapers in the region. However, regional officials were reluctant to provide information on these events and, as a result, contradictory statements were issued by the state and non-state media.

On 25 June, the Supreme Court did not satisfy the appeal of journalist S. Orozaliev. This journalist and his driver were convicted by the Jalal-Abad municipal court for extortion and sentenced to nine and eight years imprisonment respectively. The journalist did a TV report on parliamentarian E. Torobaev, which the latter didn't like. The parliamentarian's son, a well-known businessman, came to see Orozaliev and allegedly handed him a bribe. However, according to the journalist, the money found in his pocket during a search by officials from the Prosecutor's Office had been secretly put into the pocket by the parliamentarian's son.

The preliminary investigation was conducted by the Jalal-Abad regional Prosecutor's Office. The investigating officer proposed to Orozaliev's relatives to convince him so as to reach an agreement with the plaintiff in exchange for freedom or a suspended sentence. However, the journalist who considered himself not guilty, did not reach a compromise and demanded a court hearing, believing that the truth would emerge, and that the real slanderers would be punished.

The defendant and his lawyers hoped for an objective verdict from the highest judicial authority, the Supreme Court, but due to unclear reasons the details of this case were not even discussed by the Court. According to the law, a decision by the Supreme Court can not be appealed.

As was already noted, in practice, registration of print media is of a permissive character as it provides the Ministry of Justice with the power to annul the registration of "disagreeable media." This happened in April 2001 when the Ministry of Justice first registered 16 new media outlets and then cancelled its own decision declaring the issued registration documents to be invalid. This example vividly shows that in some cases declarative procedures for registration can be used in order to prevent the activity of some media outlets, which may become dangerous or undesirable for the authorities.

On 5 April 2001, the Ministry of Justice issued a Decree that stated that all media and political parties should be re-registered with the Ministry. After this announcement, the Ministry still registered 16 new media outlets and then suddenly announced that a second Decree was issued on the same day with the same number, specifying that “all media outlets registered after 5 April shall be abolished.”

After the cancellation of the 16 media registration certificates, the Ministry of Justice sent a letter to the printing house *Uchkun* telling them to stop printing those newspapers whose registration had been revoked. The printing house, an industry monopoly since the Soviet times, stopped printing the newspapers. The owners of the newspapers *Moya Stolitsa*, *Agim*, *Zholtiken* and *Techenie* then went to court.

Using its monopolistic position, *Uchkun* imposes harsh terms on media for the utilization of its services, violating freedom of speech and the rights of journalists. On 19 January 2002, *Uchkun* refused to print the relatively new newspaper *Moya Stolitsa-Novosti*, claiming that the newspaper had not prolonged an agreement with the printing house for 2002. Moreover, the governing body of *Uchkun* brought up a lawsuit for the protection of its honor and dignity against *Moya Stolitsa-Novosti* for allegedly publishing reports, detrimental to *Uchkun*'s reputation. On its part, the newspaper sued *Uchkun* for misconduct at the Municipal Arbitrary Court.

On 29 January, a court stated that *Uchkun* is obliged to print the newspaper at least until the court case is completed and the court had made a final decision in the trial. However, on 4 February the same court cancelled its previous decision and stated that the newspaper would not be printed until the contract between *Uchkun* and the newspaper was renewed for 2002. The case was postponed several times, judges were replaced and in May the parties finally signed an agreement. On 22 May 2002, after a four months break, the first edition of the independent daily newspaper *Moya Stolitsa-Novosti* was printed by *Uchkun*.

The first newspaper that provided its pages for the publication of *Moya Stolitsa-Novosti* stories was the independent newspaper *ResPublika*, but *Uchkun* stopped publishing it as well because of a

Regional Court decision. The authorities consider this conflict to be an economic one (“the temporary inactivity of the newspaper *Moya Stolitsa* due to an economic dispute between the editor and the head of *Uchkun* is regrettable,” said a statement issued by the President’s Press Service), but the independent media see this conflict as one that is political.

Another case concerning *Moya Stolitsa-Novosti*: On 11 March, the Leninskii District Court in Bishkek held hearings on the case Imanaliev vs. *Moya Stolitsa-Novosti*. Imanaliev, who claims that the newspaper insulted his honor and dignity in an article, demanded compensation for moral damages amounting to 1,000,000 Soms (approximately 21,000 USD) plus an additional 30,000 Soms from the author of the article, Rina Prijivoit. The newspaper and Prijivoit also filed counter-claims. *Moya Stolitsa-Novosti* is the record-holder in court cases over the last six months, against this newspaper alone nine claims were filed, resulting in a total demand of over 23.650.000 Soms in compensation. The highest claim is that by the Uchkun publishing company’s president, Imanaliev.

Earlier this year, the independent journalist, Ulugbek Babagulov from the newspaper *Tribuna* and a correspondent for the *Institute for War and Peace Reporting* was severely beaten up in Jalal-Abad. The editor of *Tribuna*, Yrysbek Omursakov, believes that: “Babakulov recognized among his attackers B. Torobayev, the son of [Parliament] Deputy Torobayev, and two businessmen whose financial misdeeds he uncovered in his reports.”

On 21 March the Turkish journalist Ala Atyf, Director of the Information Department at the Kyrgyz-Turkish newspaper *Zaman-Kyrgyzstan* in Bishkek and the representative of the Turkish information agency *Jikhan* in Kyrgyzstan, was beaten up. Several individuals had followed Atyf and attacked him during the evening hours. The case is under investigation by the Sverdlovskii police office. (*Zaman-Kyrgyzstan* is a weekly that has been in existence since November 1992. The newspaper is published not only in Bishkek but also in the regions and comprises 16 pages, two of them in Turkish and the rest in Kyrgyz. The circulation is around 5,000-6,000.)

On 28 April around 9 p.m., the Editor of the Internet newspaper *Gazeta.kg*, Leonid Rempel, was attacked by unknown assailants. This was already the second attack on Rempel. The first time he was attacked was in December 2000. In both cases, the journalist suffered head injuries. When asked whether this happened in connection with his professional activity, Rempel answered that that might be the reason. Police examined the scene of the attack and at this moment the Leninskoye police precinct in Bishkek is investigating the case.

On 27 May 2002, the offices of *Tribuna* in Bishkek were robbed. Security forces investigated the case and found out that the burglars had entered through an iron-plated door on the second floor. The office was not equipped with an alarm system. Three computers and some documents were stolen. The founder and editor of this newspaper is Yrysbek Omurzakov who had been arrested and imprisoned in the mid 1990s for articles on corruption among the governmental bodies. He was later proclaimed a “Prisoner of Conscience” by *Amnesty International*.

Conclusion and Recommendations

- The libel legislation has to be reviewed as to its compatibility with international standards and commitments. The limits for acceptable criticism is wider as regards politicians and other public figures than they are for a private individual. Public figures inevitably and knowingly lay themselves open to scrutiny of their actions by the journalists and the public at large and must consequently display a greater degree of tolerance.
- Recently, a number of media outlets in the capital have changed their ownership structures, thus strengthening media that are close to the government. *KOORT*, *Vecherni Bishkek* and *Radio Maximum* have established a media union. Another TV station, *NBT* has been bought by individuals close to the President, this is already reflected in the coverage of events by the station.
- The poor state of the economy and financial instability of media outlets has led to the phenomena of media corruption and to so-called

commissioned articles, which in turn has resulted in the general distrust among the population towards the media as an institution. Long-term projects that support the further sustainability of media institutions would be very useful at this present stage.

- Strengthening of media associations: one of the weaknesses of all existing media unions in Kyrgyzstan is that after they are formed they stop working as soon as their first aim is achieved. Long-term planning is a necessity for the unions. One of the latest attempts in this direction is underway by the *Public Association "Journalists,"* which is trying to establish a trade union.
- TV and radio stations in the country depend on decisions made by the State Commission on Radio Frequencies, which includes various ministers. The decision-making process on issuing licenses has to be more transparent. This also concerns the work of the State Agency for Communications.
- In order to support independent print media, an alternative printing press-publishing house should be established to undermine the monopoly of state-controlled Uchkun. This printing facility could provide new opportunities for the print media. There are also small private printing presses in Bishkek but they do not have the capacity to print newspapers. One of the options could be the establishment of small printing presses in the regions starting with Osh, which is one of the of the most media saturated.
- Special attention should be paid to the exchange of information between existing media outlets. TV Programs *Door* and *Open Asia* produced by *Internews* (<http://www.internews.kg>) are bringing together TV stations while a UNICEF project on health programming is connecting several independent regional radio stations. *Aki-Press news agency* (<http://www.akipress.org>), co-funded by the Democracy Commission of the US Embassy and the *Eurasia Foundation*, is an alternative network providing information and analytical reports via the Internet. Information networks established between different media will help them to strengthen their relations and improve coverage of events throughout the country. Bishkek-

based media should try to follow more closely events in the regions by re-establishing their correspondents network.

- Technical assistance to existing media outlets is one of the ways to increase the quality of coverage; most of the TV stations are still using outdated SVHS technology, thus decreasing the efficiency and quality of news programs; while regional print media do not have decent access to Internet and to computer technology in general.

**REPORT
ON MEDIA SITUATION
IN TAJIKISTAN***

* This report was prepared by outside experts.

The OSCE Representative on Freedom of the Media would like to thank Mr. Kinrohshoh Sharifzoda, Mr. Djunaid Ibodov and M. Abdullo for substantially contributing to the report.

Tajikistan is located in Central Asia, and shares its borders with Uzbekistan, Kyrgyzstan, Afghanistan, and China. It is a Presidential Republic, with President Emomali Rakhmonov as the Head of State.

Tajikistan occupies 143,1 thousand square kilometres, with a population of 6,066,400 (according to the 2002 Census), composed of the following nationalities: Tajiks (circa 75 percent), Uzbeks (circa 20 percent), Russians (circa 3 percent), and others (2 percent). About 97 percent of the population practice Islam. The national currency is known as the somoni, with the average exchange rate of 2,9 somoni to 1 USD. Mountains, primarily the Tien Shan and Pamir (known as “the Roof of the World”), occupy 93 percent of the territory of Tajikistan.

Tajikistan gained its independence on 9 September 1991. However, the difficulties of the transition period were quite conducive to the growing instability. The spirit of independence and freedom were greatly overshadowed by the war, which inflicted deep wounds on both people and national morale. The General Agreement on the Establishment of Peace and National Accord in Tajikistan was reached with the assistance of the UN on 27 June 1997.

Print Media

As of 1 February 2002, 278 publications and seven information agencies are registered in Tajikistan.

According to the Register of the Tajik Ministry of Culture, there are 217 newspapers in the country. Out of those, 25 belong to political parties and movements, 73 are industry-specific, 23 are private, three are independent, one is an advertising newspaper, four belong to the government, and the other 67 are affiliated with the respective regional and city administrations, as well as with the Ministry of Culture. Additionally, 61 magazines are published in Tajikistan: eight are national, two belong to the government authorities, 45 are state industry-specific, and six are private.

There are currently no daily newspapers, and only 60 percent of all print media are published regularly.

The national press is published in the Tajik, Russian, Uzbek, and English languages, while the regional newspapers are published in Tajik, Uzbek, and Russian. District papers are published in Tajik, Uzbek, Russian, and Kyrgyz. So far there have been no newspapers or magazines created as a result of foreign investment; however, a number of weekly newspapers, such as *Asia Plus*, *Ozodi va Inkishof* (“Freedom and Development”), *Varorud*, and *Sugd*, have been established through grants from international organisations.

One should not disregard the active Tajik print media published outside of the country. Its existence is indicative of the Tajik media development in the post-conflict period. Today, two newspapers and a magazine are published on the territory of the Russian Federation and Germany. While the weekly *Payom* and the private magazine *Daryo* are more loyal to the government, *Charogi Ruz* (D. Atovulloev’s “newspaper-in-exile”), published first in Moscow, and currently in Germany, deserves attention as a “newspaper of opposition” to the power structures in Dushanbe.

Thus, over a half of all print media in Tajikistan is funded from state sources: four are government newspapers, two belong to parliament, and 138 receive financing from other state structures. In principle, such an approach to media financing establishes unequal conditions for the media. The unequal status of state and non-state print media is clearly visible not only in the way financing and material/technical resources are provided, but also in the government’s approach to publishing, printing, and postal services.

Publishing in Tajikistan

The state of publishing in Tajikistan is of major concern to the newspaper business. There are a total of 73 printing-houses in Tajikistan, with four of them located in the capital. The absolute majority of newspapers in the city of Dushanbe use the services of the *Sharhi Ozod* publishing house. The latter exists under the jurisdiction of the Executive Office of the President of the Republic of Tajikistan, and serves as the only com-

pany providing quality offset printing.

A printing monopoly, *Sharki Ozod* dictates its own conditions regarding pricing and services, and thus is a reliable economic tool of pressure on the non-state media. The costs for newsprint, ink, and plates, as well as for the printing services themselves, are constantly increased. However, state publications often get concessions from *Sharki Ozod* (for example, agreements to differ payment for later).

In addition to *Sharki Ozod*, other state printing-houses located in the capital (the *Dushanbe Publishing Centre*, *Matbuot* (Printing House N°1), *Sanadvora*, fearing persecution, refuse to print such “objectionable” newspapers as *Nadjot* and *Ozodi va Inkishof*.

Broadcast Media

State Television

Radio broadcasting in Tajikistan commenced in 1932, while television broadcasting made its debut on 7 November 1959. That was the extent of the official national electronic media until the late 1980s, when the policies of *Perestroika* were implemented in the USSR, and first independent media outlets started to appear.

The State Television of Tajikistan is represented by a single station with a 12-hour broadcasting span, covering only 80 percent of the country’s territory. The audience is estimated at roughly six million people. However, in certain parts of the Sogdi Region, more specifically, in the Asht, Istarvshan, Nau, and Ganch districts, the airwaves of Tajik Television are overpowered by the high-capacity Uzbek stations, and as a result the local population watches Uzbek Television. As in the past, the population receives reliable information regarding the events in the country from foreign radio stations, such as *Ozodi* (“Liberty”) and *BBC*. The Russian television stations *ORT* and *RTR* also serve as important sources of information. In fact, *Ozodi*, *BBC*, *ORT* and *RTR* are the only outlets connecting millions of Tajik people to the world.

However, on 11 October 2001, *ORT* ceased its broadcasting in Tajikistan while air time provided for *RTR* decreased by three hours. According to Deputy Minister of Communications, Shavkat Nadjmuddinov, “the Russian television stations are not complying with the conditions set forth in their contracts, and currently owe a large amount of money (*ORT* – 5,5 million roubles; *RTR* – 5 million) for using their respective broadcasting signals in Tajikistan.” However, in the opinion of many local experts, the decision to curtail the presence of Russian television is due to the war in Afghanistan and the desire on the part of Tajik government to limit the distribution of potentially objectionable information.

In November 2001, it was announced that *RTR* and the Tajik Ministry of Communications would soon begin negotiations regarding payments for the station’s use of broadcasting time. However, these negotiations still have not had any effect, and *RTR* broadcasts remain curtailed.

In June 2002, due to the World Soccer Cup, the Russian channel 201 started re-broadcasting *ORT*, instead of *REN-TV*. Those who have a special receiver for channel 201 now receive *ORT* programming.

Non-State Television

National independence had brought about an outburst of television activity. The first private television companies appeared in Northern Tajikistan, in the Leninabad (currently Sogdi) Region. At this time, 20 different television stations broadcast in Tajikistan, with the majority of them private.

The Law on Television and Radio Broadcasting, adopted in December 1996, became effective in November 1997. Some television companies went from being barely organised in 1995 to becoming relatively professional stations that currently are in serious competition with state television.

Non-state television in Tajikistan is a largely regional phenomenon. In Dushanbe, the situation remains complicated. Two radio stations that received a grant from UNESCO (*Radio NIC*, founded by Konstantin Parshin and Andrei Sidorin; and *Radio Asia Plus*, founded by the *Asia*

Plus information agency), still have not been able to obtain broadcasting licenses due to the Committee for Television and Radio Broadcasting that acted in direct violation of existing television and radio legislation. On the other hand, it is evident that the Tajik government have placed unofficial restrictions on the licensing of non-state television and radio stations in the capital, perhaps due to the fear of their potentially increasing influence. Thus, in addition to the single state television station, the Dushanbe area is serviced by *Poitaht*, which in fact belongs to the city administration. In April 2002, *TV Somoniyon* (with Ikrom Mirzoyev as Director) started broadcasting; however, it does not cover the entire city area and requires a special antenna to view its programming.

Currently, twenty non-state television stations exist in Tajikistan. Of these, 11 are located in the Sogdi Region. The same region hosts the country's only independent FM radio station, *Tiroz*, which commenced broadcasting on 1 March 2001.

Over the past two years, the number of independent television stations in Southern Tajikistan has also grown. The *Regar* and *TadAz* stations are located in the Tursunzade District; *Kurgonteppa* is in the city of Kurgant'yube, *Somoniyon* is in Dushanbe. The *Mavdji Vakhsh* station is currently preparing to start its broadcasting in the Vakhsh District of the Khatlon Region.

The increase in the number of independent television stations has not gone unnoticed by the Tajik business community. Several entrepreneurs have expressed their interest in investing in a number of stations. At the same time, the more professional stations are still outnumbered by those at the first stages of their development.

Over the next few years, only those stations that are constantly innovating will be able to survive. Basic entrepreneurial skills gained by managers will aid them greatly. To move to the next step in their development, these stations will need to improve their technical capacity.

Those stations that broadcast on the decimetre frequency will have to consider expansion to cover a larger audience, improve the technical aspects of their broadcasting, check the suitability of receivers used by their potential viewers, and develop marketing.

The majority of non-state stations' employees have no specialised education, and thus are not exactly experts in the field of television. This issue is quite pressing in regard to state television as well. The primary underlying cause is a lack of specialised educational institutions. Because of this, non-state television programmes often appear rather unprofessional, with the presenters, reporters, cameramen, and at times the technical personnel all learning their trade by "trial and error." The only educational centre for non-state television journalists is a non-governmental, non-profit organisation *Internews Tajikistan*, which has been in operation for the past seven years. It is funded by *Open Society Institute* and *USAID*.

Regarding a station's audience, TV managers usually cite the figures on potential audiences, derived from the general population data of a town or district in question. In reality, it is often difficult to determine the actual audience through technical means. Furthermore, no audience research has been done in Tajikistan. In this context one should stress that regional viewers primarily watch local stations, since, as mentioned above, only the latter provide any information on local events.

Sources of Financing

The current market conditions and the economic situation make it nearly impossible to conduct advertising campaigns in the regions, which is where most of the stations are located. Tajikistan's non-state television stations are thus struggling to resolve their financial issues. Advertisers are rare, and hard to find.

This situation causes the stations to seek funding from potential local sponsors. If any are to be found at all, then in the best case scenario they turn out to be local businessmen (of which there are not many), or, in the worst case, local government structures. In either case, such financial arrangements make the broadcasters to a certain degree dependent upon the sponsors.

In many cases, financial difficulties of the stations are severe. They are struggling to remain afloat, and have virtually no reserves for further

development, including programming and technical support. One must also point out that the stations broadcast freely, without encoding their signals. This means that airtime fees are not a source of revenue. While in rare cases some stations implement certain viewing charges, the latter are of a largely symbolic nature and do not constitute serious revenue.

Nevertheless, the advertising business is growing more active in Tajikistan. Airtime is gradually becoming a tangible concept, with a price tag attached. At this time, the pricing amounts to merely several dozen dollars per minute; however, in the future the prices are bound to go up, even in the context of a small market.

Regional television stations have played a particularly important role during elections, especially local ones. However, unlike their counterparts in Russia, Ukraine, and Belarus, Tajik stations have not earned substantial financial dividends. This is again due to market conditions, as well as due to the passiveness and insolvency (or refusal to pay for services) on the part of many political forces.

Technical Conditions

Technical conditions at the stations is one of the most serious and painful issues faced by non-state television. Stations utilise primarily the unprofessional VHS video format, or at best use SVHS.

Equipment usually consists of two video cassette recorders for editing, one or two for use on air, a control panel, and one or two video cameras. Stations have no means of upgrading their technical resources, even though the demand for such upgrade is enormous.

At the same time, over the past two years (2001-2002), the technical conditions of several independent television stations have slightly improved. Such stations as the *SM-1* (city of Khudjan), *Gulakandoz* (Djabborasul District), *Mavdji Ozod* (with support from Internews), and *Kurgontepa* (with support from the OSCE) have received the equipment necessary for non-linear editing, and currently use computers to edit their programmes.

Programming Policy

The issue of programming is becoming an increasingly serious one. The times when one was able to survive on rented cassettes are gradually passing, and the stations are forced to consider the concept of broadcasting and, most importantly, of airtime production licensing. The stations' own productions take up 30 minutes – 2 hours per day. Overall airtime, on the other hand, is anywhere from 5 to 12 hours per day. Consequently, the unfilled time slots must be filled with programmes produced elsewhere. Several sources of programming consist of independent Russian networks and stations, contractually providing informational products.

Despite attempts at legalisation, the stations often use non-licensed, “pirated” television programming. This state of affairs will persist until, on the one hand, copyright legislation becomes effective, and on the other, stations become capable of purchasing licensed television products (films, series, concerts and documentary programmes, etc.) suitable for their respective broadcasting concepts and demands of the audiences.

The language of broadcasting may be described as mixed – as a rule, most stations prepare their own programming in Tajik while filling the rest of the airtime primarily with programmes in Russian. Translation services are not provided, however, not because of a disinclination to adhere to the Language Law, but rather due to the same limited financial and technical capacity of the stations, as translation of 3 to 8 hours of airtime is incredibly expensive, and may easily lead the station into bankruptcy.

Radio

There are four national radio stations. In addition, *Radio Dushanbe* is also very active. Every regional centre has radio stations of its own; structurally, the latter are under the jurisdiction of the Committee for Television and Radio Broadcasting.

The country's only independent FM radio station is known as *Tiroz*. It began broadcasting on 1 March 2001. *Tiroz* was established by the

Khurshed Productions advertising group, created in 1998. Khurshed Almasov serves as the Director, with a total of ten staff members. The station covers the entire Northern part of the Sogdi Region, with the exception of the Zarafshan Valley. It broadcasts twenty-one hours per day. Potential audience is 1,5 million of the Sogdi Region's population. The station was incorporated on 23 February 2001, and began broadcasting on 1 March of the same year. Musical programming comprises 70 percent, the rest is allocated for advertisement. The station also produces four daily news reports.

The Cases of Asia Plus and NIC Radio Stations

The *NIC* and *Asia Plus* radio stations applied to the Committee for Television and Broadcasting for their licenses on two occasions: in July 1998 and December 2000. In both cases, their applications remained unacknowledged. The Committee was thus violating both the existing legislation and its own Statute on the Procedure of Licensing in the Area of Television and Radio Broadcasting. According to the provisions set forth in the legislation, the Committee is required to respond to a license application within 30 days of its receipt. In July 2002 the license for *Asia Plus* was denied. The reasoning by the State Committee on Radio and TV was that it was "unnecessary" to have another radio station in Dushanbe.¹

In this respect, one can only point out the political causes underlying this issue: there exists an unofficial government ban on independent broadcasting in the capital.

Violations of the Rights of Journalists

In an environment of credible threats of violence and an atmosphere of fear, the media and journalists in Tajikistan, even despite the built-in risks of the profession, may not rely upon due protection on the part of the state structures. This becomes a major factor in self-censorship,

¹ *Asia Plus* was granted a license on 13 August 2002 together with two other radio stations, *Radio Vatan* and *Asia-FM*.

which considerably restricts media activity in the country. Journalists, especially those working in Dushanbe, continue to become victims of violence, although the number of cases of extrajudicial punishment of journalists has markedly decreased in the past several years. Nevertheless, in 1999 **Djumakhon Khotami**, the head of the press centre of the Ministry of Internal Affairs, and **Merikhaim Gavriellov**, a journalist, were murdered (according to official reports, the latter committed suicide), while another journalist, **Maksujon Khuseinov**, repeatedly became a victim of assault. The total number of losses sustained by the journalistic corps over the period of civil war (1992-1997) and the years that followed is estimated at over 70 people, although in certain cases it is difficult to determine whether violence against a journalist was connected with his/her professional activity.

Over the past 3-4 years, political newspapers *Djunbish* and *Mizon*, known for their sharp reports, ceased publication because of government pressure. The government continued to impede the printing and free distribution of the *Nadjod* newspaper, the official publication of the Party for Islamic Rebirth of Tajikistan. In 2000, a *Nadjod* correspondent, **M. Bokizoda**, was called to the Prosecutor's Office for questioning regarding an article concerning problems in the public health-care system. In 2001, **D. Atovulloyev**, the editor of *Charogi Ruz* newspaper, was detained in Moscow at the official request of the Tajik authorities and his extradition to Dushanbe was requested. He was accused of libel and insult against a number of Tajik officials. However, Atovulloyev was released by an order of a Moscow court on the basis of *corpus delicti*, and subsequently emigrated to Germany. In an encouraging development, criminal charges against Atovulloyev were dropped on 21 June 2002 enabling him to return to Tajikistan in the future.

The government insists on the necessity of placing certain limits on freedom of expression in the interests of national security and stability. This point of view is supported by some Tajik journalists as well. Periodically, the government criticises the Russian media for their allegedly biased coverage of events and for providing misinformation: as a result, several Russian journalists lost their accreditations.

In some cases, government offices of various levels threatened journalists in order to silence either them personally or their respective newspapers. For example, in one case a private information agency, focusing on an international audience, has been approached by an influential general, a man of considerable means and the owner of several Dushanbe-based enterprises. The general made an “offer” to purchase the agency, and while he has not succeeded so far, his actions certainly have had an effect on the activities of the agency. At the start of the 1999 Presidential campaign, *Djumbish* (“The Movement”), the only newspaper in relative opposition to the government, was closed, because of publishing the opinions of the Advisory Council of the Political Parties of Tajikistan regarding the changes and amendments to the Constitution (their view differed from that of the government), and other reports inconsistent with official propaganda. The newspaper was not only denied printing services by the state printer, but also had to cease its activity altogether, while its editor, K. Mukhabbatov, was interrogated by the Prosecutor General’s Office.

State printers also refuse to provide services to *Nadjot* (“Salvation”) newspaper, the publication of the officially registered Party for Islamic Rebirth of Tajikistan. Due to threats and intimidation, street vendors do not dare to openly sell this newspaper, even though it is not known for its criticism of state policies. Apparently, the government nevertheless continues to consider it an “opposition” newspaper.

Here one must point out another peculiarity typical for the media in Tajikistan. It concerns a relative openness, democratic (insofar as that is possible under current conditions) attitude, and boldness on the part of the Russian-language non-state press. These periodicals are notably different from those published in Tajik. For instance, the detention of several officials of the Embassy and Trade Mission of Tajikistan in Almaty for possession of narcotics valued at hundreds of US dollars was reported only by the Dushanbe Russian-language newspapers. Meanwhile, the Tajik-language media simply “did not notice” this quite extraordinary event. Considering the relentless war on drugs widely publicised by the government (as drug-related crime has climbed to unprecedented levels),

such conduct on the part of the state media has caused not just natural bewilderment, but also annoyance and irritation among the public.

In describing the state of media and violations of journalists' rights in Tajikistan, one must emphasise that a clear and profound difference exists between the capital and the provinces. Even with freedom of speech being as limited as it is, with restrictions and self-censorship widespread in the Dushanbe media, it would be impossible to imagine critical stories similar in content published by the regional and district press. Any criticism of the government, a smallest display of dissent in the media is viewed by the local authorities as malicious insubordination, and even as an attempt on the very foundations of the state. In January 1999, the Prosecutor's Office of the Vose Region brought a lawsuit against two journalists, **A. Vokhidov** and **S. Dostiev**, former editors of the independent newspapers *Istiklol* and *Samar*, respectively. The two were accused of libel, detained in Dushanbe, forcefully escorted back to the regional centre for questioning, and released only the following day. The grounds for the lawsuit and detention were articles published in the aforementioned newspapers as far back as November 1997. They dealt with the dubious business and leadership qualities of the Chairman of the Vose Region, K. Mirzoaliev. The fact that Mirzoaliev demanded that the lawsuit be brought was confirmed by the deputy prosecutor of the Region in his conversation with a representative of the *Foundation for Remembrance and Protection of Journalists*. The authors of the articles in question, **U. Faizullaev**, **K. Sadikov**, and **A. Andullaev**, faced in 1997 a suit from Mirzoaliev, who was citing libel against his honour and dignity. The authors successfully won the case. At that time, the issue of the editors' responsibility was not discussed. On 25 January 1999, four days prior to the arrest of the editors, all three authors were once again brought to trial, this time accused of libel in accordance with Article 138 of the Criminal Code of Tajikistan, and sentenced to two years of imprisonment each. However, due to pressure by local and international human rights organisations, they were soon released.

Direct and preliminary censorship in the form of systematic approval of articles by the government prior to publication is generally not present

in Tajikistan. However, in certain cases mid-level bureaucrats impede the publication of certain articles, or printing of certain periodicals. Usually, journalists receive a telephone warning in the form of “recommendations”; in other cases, the authorities issue directives for the printers not to print the whole newspaper or a particular article. Self-censorship has become very common. The influence of this factor is so strong in and of itself that certain information regarding state officials or government policies, as well as regarding opposition figures, influential field commanders, or drug Mafia bosses almost never reaches the Tajik readers.

Media Legislation and Practice

Introduction

The Constitution of the Republic of Tajikistan (adopted on 6 November 1994, with subsequent changes and amendments made on 26 September 1999) recognizes as “unshakeable” “personal freedom and human rights” (as stated in the Preamble). The Constitution guarantees freedom of speech, media, as well as the right to utilize sources of mass media; it also bans state censorship and persecution based on criticism (Article 30). It proclaims that “in Tajikistan, society is developed based on political and ideological pluralism” and that “no ideology, including that of a religious nature, may be adopted as official” (Article 8). The Constitution is rarely referred to by the courts. Independent experts claim that the Constitution’s overly declarative nature causes its *de facto* effectiveness to be influenced by current legislation, and even by Presidential decrees.

Tajikistan has ratified several international treaties, the most relevant of which in relation to freedom of expression is the International Covenant on Civil and Political Rights. Furthermore, Tajikistan, as a participating State of the OSCE, has subscribed to all the media commitments of the organization.

An analysis of the constitutional norms regarding freedom of speech, information, and media in general, and their comparison to the corre-

sponding provisions set forth by international human rights treaties ratified by Tajikistan point out a certain “scantiness” and “abridgement” of said norms in comparison to the provisions of international documents in this area. For instance, the text of the Constitution of Tajikistan is missing some substantial norms of Article 19 of the International Declaration of Human Rights and the International Covenant on Civil and Political Rights, namely the right of every person to freely seek, procure, and distribute all kinds of information and ideas by any means, regardless of state borders. Furthermore, Article 10 of the Constitution establishes that international treaties shall prevail when in conflict with Tajik laws. However, there is no norm that would resolve a legal conflict where there is inconsistency between the Constitution itself and international treaties.

Unlike the Constitutions of some other CIS states, the Principal Law of Tajikistan does not contain as a constitutional guarantee of freedom of media any provision that would ban the monopolisation of media itself, publishing, and means of distribution. It is true that in this regard, Article 8 of the country’s Law on Press and Other Sources of Mass Media (hereinafter referred to as the Law on Press) adopted as far back as 14 December 1990, prohibit “the monopolisation of any mass media sector” (“press, radio, television, or any other”). However, the current state of affairs serves as evidence of the establishment of a state monopoly over the media, which is not conducive to the truly free functioning of the latter. In Tajikistan, all newspapers are dependent on a single state-run publishing house, while the Government Committee for Television and Radio Broadcasting has (as of 30 June 1999) official control over the implementation of the Law on Television and Radio Broadcasting (adopted on 14 December 1996, hereinafter referred to as the Law on Television).

Independent experts maintain that changes and amendments made to the Constitution through a national referendum (however, without due process or enough time for public debate) on 26 September 1999 have resulted in an unrestricted broadening of the already considerable presidential powers, to the detriment of the legislative and judicial bodies.

Experts also point out the unprecedented in constitutional history fact that changes and amendments were simultaneously made to 27 different articles of the Constitution, which together comprise almost a third of the entire text. The Presidential term was thus increased from five to seven years, a two-house parliament was introduced, with 75 per cent of the upper house elected indirectly by local representative authorities, which, in turn, are already controlled by presidential appointees. The other 25 per cent are appointed by the President.

This and other amendments clearly violate the constitutional principle of the organisation of state government, and that of division of power. The amendments benefit the executive branch while being detrimental to the legislative and judicial ones. This circumstance may certainly have a negative effect (as it already does) over the degree of media freedom. The new amendments also establish as legal the activities of political parties “of a religious nature,” and allow for the existence of **their** own press. This served as a sort of compromise between the government and the United Tajik Opposition, and was worked out during the signing of the 1997 Peace Treaty.

Law on Press and Other Sources of Mass Media

Amendments directed at the further toughening of state media policy were implemented to the once relatively democratic Law on Press. We shall only remark on a few of them. On 11 December 1999, the Law on Amendments and Changes was adopted. According to its provisions, Part 1 of Article 6 of the Law on Press is set forth in the following form: “Printing of information containing state or otherwise legally protected secrets, appeals to forcibly overthrow or change the constitutional order, libel against the honour and dignity of the state³ and President, propaganda of war, violence, cruelty, racial, ethnic, or religious exclusiveness

³ Tajik legislation is conflicting on this issue. Articles 5 and 42 of the Constitution; Articles 135 (libel) and 136 (insult) of the Criminal Code; Article 174 of the State Code (protection of honour, dignity, and business reputation) contain norms whereby the notions of honour, dignity, libel, and insult are strictly attached to an individual, a human being. In addition, Paragraph 8 of Article 174 of the State Code (adopted on 30 June 1999) states that legal entities may only act to protect their business reputation.

or intolerance, pornography, appeals to other criminally punishable deeds are prohibited in the media.” A similar norm was also introduced in Part 2 of Article 22 and Part 1 of Article 34 of the Law on Press. The legislator leaves no doubt that the grounds for prosecution of a particular media and journalist are not only the publication of libellous facts and information, but also subjective analysis, as well as political and ideological opinions and judgements. However, it does not stop there. From this point on, media legislation in Tajikistan makes absolutely no legal distinction whatsoever on whether the distributed information represents the facts, or is deliberately false. A journalist’s liability is established regardless of the objectiveness and truthfulness or falsity of the information published.

As far back as May 1998, the Parliament of Tajikistan unanimously passed the Law on the Protection of the Honour and Dignity of the President. This Law contained provisions which considerably toughened the media’s liability for libel and/or insult against the President of the country. However, E. Rakhmonov vetoed the Law, referring to the “adequacy of provisions contained in the Criminal Code.” Still, it appears that this reasonable act on the part of the President could not stop the legislative impulse of Parliament members in this area.

Violations of Article 6 and 22 allow for the closure of a media outlet by a court through the new (adopted on 11 December 1999) version of Article 14 of the Law on Press. According to Article 14, not only the prosecutor, but also the Ministry of Culture of Tajikistan has the official right to warn a media outlet that it is breaking the law, and take the case to a court, seeking to stop media activity. This circumstance is not subject to any reasonable explanation, for due to an amendment made to the Law as far back as 1997, the authority over media registration was transferred from the Ministry of Culture to the notary offices of the Ministry of Justice of Tajikistan.

The practice of changing and amending the Law on Press continued over the years that followed, with the most recent ones made on 10 May 2002. It is notable that since its inception on 14 December 1990, the Law has undergone over 30 changes and amendments. Nevertheless, it has

long ceased to correspond to the realities of today's Tajikistan, failing to keep up with the fundamental social, political, legal, economic, informational, technological and structural changes of the past 12 years. Nor does the Law correspond to Tajikistan's new status as a member of the UN and OSCE, and related international media obligations and commitments.

The most noticeable amendments to the Law made by Parliament in May 2002 contain provisions regarding the inadmissibility of monopolisation of the press and other media (Part 2 of Article 8), as well as regarding prohibition for foreign citizens and individuals without citizenship, and also outlawed political parties and movements, to serve as media founders (Part 3 of Article 8).

Also of interest is the new Chapter (VI) of the Law, in particular Article 39, entitled "Activity of Foreign Media in the Republic of Tajikistan." According to Part 3 of this Article, the Ministry of Foreign Affairs of Tajikistan is responsible for accreditation of foreign journalists. Part 4 of the new Article 39 establishes that the Ministry of Foreign Affairs may annul its consent for the opening of foreign sources of mass media and accreditation of foreign correspondents in the event of an inconsistency between their activities and Tajikistan's Constitution and legislation, as well as the country's national interests. In this regard, the point is not just that the notion of "national interests" may be applied to virtually anything, providing the officials with a weapon against any disagreeable actions on the part of foreigners. The point, however, is that Article 39 delegates to the Ministry of Foreign Affairs to independently determine if there were violations of Constitutional and legislative norms, and of national interests on the part of foreign journalists.

Access to Information

Despite the fact that Article 5 of the Law on Press directly obliges the state, political, and social organisations, movements and officials to provide the media with the necessary information – and the fact that Article 27 of the Law even provides for legal liability for unlawfully refusing to

furnish information – in reality, it is not so easy for journalists to receive information. The officials often refer to the impossibility of providing information classified as a state or otherwise legally protected secret, once again according to the provisions of the aforementioned Law. These provisions, along with another legal document, the Law on State Secrets, as well as numerous directives and instructions, which contain a rather lengthy list of issues not to be made public, nullify any desire on the part of journalists to solicit the necessary information. Therefore, officials quite often refer to these instructions in refusing the journalists' requests for information, citing secrecy or the absence of a superior officer whose permission is needed in order to disclose information to a journalist.

Furthermore, alarming is the unequal treatment of state and non-state media by the authorities. Officials deal with government newspapers in a much better fashion, but are rather reluctant to communicate with independent publications. If a reporter chooses not to depart from the principles of the profession, and procures information “by any means possible,” and makes it public, the consequences of such “disobedience” may differ, depending on which periodical employs the reporter in question. For those representing the state media, the process takes a “softer” form, and the unwanted consequences may be limited to a phone call to the editor, demanding to “put the dreary journalist in his/her place.” However, for a journalist representing a non-state, let alone an independent publication, the consequences may turn out to be much heavier, especially if the information he/she received was made public⁴. While direct threats to the lives of journalists displaying alternative thinking are gradually decreasing, other no less criminal methods, such as assault, blackmail, infliction of material damage on these journalists, is still a reality.

³ To avoid such consequences, newspapers often employ all sorts of contrivances. For instance, the *Business and Politics* newspaper has recently published an article entitled “Tajikistan’s Image Is Ruined by Our Own, Or What The “German Wave” Is Carrying” (*B&P*, 31 May 2002), with white spots instead of several cut out paragraphs on the first page. The newspaper explained such an “original approach” by the strive to smooth over those points that may have caused dissatisfaction on the part of the government. However, it was easy enough to guess that the unpublished cuts contained quotations from D. Atovulloyev’s article entitled “The Islamic Bomb.” It remains unclear whether this was the result of direct censorship or another case of self-censorship on the part of the editorial board.

A reasonable question thus surfaces: why does the legal system lack any examples of trials concerning the unlawful refusal of information to media representatives? Part 4 of Article 27 of the Law on Press clearly states that “a refusal to provide the requested information may be appealed by a representative of the mass media to a higher body or official, and subsequently to a court of law, according to the procedure established by the Law on Appealing the Unlawful Actions of the Bodies of State Governance and Officials Infringing Upon Citizens’ Rights.”

Why do Tajik journalists not exercise their rights in such situations? Perhaps because, first, not all media employees are well informed on legal matters. Second, many journalists, due to common stereotypical thinking (“why sue, better to make up”), do not appeal to legal authorities. Third, opinions prevail that it is impossible to receive any justice through the courts that are basically dependent on the executive power.

Today, it is more difficult to receive important, so-called “hot” information from officials, than to publish it. This situation persists despite the fact that almost every ministry or department has its own press centre. One is left with the impression that such centres are being created not for the promulgation of the latest news and important information, but rather for finding ways of not disclosing information, according to the old principle of “not washing ones dirty laundry in public.” Meanwhile, such information, even when procured, does not always make it to the pages or on air. Such information is always carefully studied by the employees and managers responsible for content, with “sharp edges” smoothed over. In other words, self-censorship is activated.

The Activities of the Committee for Television and Radio Broadcasting

On 30 June 1999, the Parliament acted to implement changes and amendments to the Law on Television. In accordance with the changes made, Article 5.1 authorises the Committee for Television and Radio Broadcasting to “control the implementation of the exigencies of the present Law by other television and radio organisations,” including, natu-

rally, the non-state ones. The amended Law not only legalises a state monopoly over the media, but also identifies the Committee as responsible for issuing or declining licenses to independent television and radio stations, as well as establishing the grounds sufficient for a licence suspension or annulment. Furthermore, the article contains a provision identifying the Committee as responsible for the “control over the broadcasting of television and radio programmes and information.” In other words, the amendment in question manifests the resurrection of censorship in the electronic media, despite the proscriptions contained in Article 30 of the Constitution. This paradox becomes all the more evident if one considers Article 6 of the Law on Television, which forbids “censorship as a means of control over the ideological content of television and radio programmes, as well as interference on the part of the state bodies into the creative activities of television and radio organisations.” Another amendment to the Law on Television contains a requirement for all Internet television and radio broadcasting to have special licences, issued by the same Committee for Television and Radio Broadcasting (Article 2).

On 25 May 2001, the Committee for Television and Radio Broadcasting approved a new Statute on the Procedure for Licensing in the Area of Television and Radio Broadcasting, as well as a Precept on the Procedure for Excise Payments Collection and Use of Tariff Charges for Issuing Licenses for Production and Distribution of Television and Radio Programming. First of all, these acts essentially represent a “recoil” from the democratisation of the licensing procedures and the simplification of the rules and regulations of obtaining a license from the state authorities. Even a quick comparison of the above acts with the previous (adopted in 1997) of the Licensing Procedure Statute demonstrates that the new legislation carries a series of additional restrictive clauses, groundlessly impeding and constraining the right of non-state television and radio stations to obtain and use a license.

The Statute on the Procedure for Licensing reserves in Article 7 a right for the Committee for Television and Radio Broadcasting to not limit itself in time while considering licence requests by television and

radio stations. The provision regarding the one-month maximum waiting period, present in the earlier Statute, is no longer in existence in the current one.

In Paragraph 9, the new Statute provides for additional “grounds and reasons” for refusal of a license application. Some of them do not follow the nature and provisions set forth in the Law on Television, and are of a subjective and volitional nature, and contradict not only the democratic norms of freedom of speech and media guaranteed in Article 30 of the Constitution, but also international treaties on freedom of media to which Tajikistan is a signatory. This concerns such “grounds and reasons” for refusal as “in cases that establish a lack of need for the given broadcasting programme,” or “when the programme does not meet the national interests of the country,” or “when there is no demand for such a programme.” In addition, it is evident that these dubious and forcible grounds for refusal designate the Committee for Television and Radio as the lone arbitrator on television and radio in the country. It is likewise evident that, based on the general sense of the Law on Television, the Statute must also contain an exhaustive list of specific, objective, and material reasons for refusal of license applications, one that would not be subject to wide interpretation, nor dependent on the will (or rather, arbitrariness) of officials. However, even the present choice of “grounds and reasons” must have seemed insufficient: in the next sub-paragraph, the creators of the Statute provided for the instance whereby “the Committee may decline an application for license on other grounds, which shall be reflected in the written statement provided to the applicant.” This signifies that the Committee for Television and Radio Broadcasting has authorised itself to make any decision whatsoever regarding license applications. The case of *Asia Plus* in Dushanbe, described earlier, is an example of problems encountered by media outlets in the field of licensing.

One of the points in Paragraph 9 of the Statute on the Procedure for Licensing provides for the possibility of establishing, in co-ordination with higher authorities, of a commission comprised of representatives of Parliament and Government, as well as of Ministries of Justice and Communications, and the Committee for Television and Radio

Broadcasting, “for resolving disputed issues regarding denials of license applications.” Here, symptomatic is not only the reference to the “co-ordination with the higher authorities,” nor even the fact that the said commission does not include the concerned party itself. The point is that the laws of the Republic of Tajikistan regarding Parliament, Government, communications, etc. do not authorise representatives of these structures to participate in resolving disputed cases of license application denial. These processes are not necessary as the Constitution of Tajikistan and the media laws guarantee a legal option through court procedures in cases of conflict.

The legal validity of the Statute on the Procedure for Licensing is also in question, as such legal acts become effective after their publication. As of July 2002, after over a year following its adoption, the Statute is yet to be published in an open official source for further analysis.

As mentioned above, another strong tendency among the authorities is to assume a regulative role in the activities of independent electronic media. This disturbing tendency is especially evident in the work of the Committee for Television and Radio Broadcasting itself. In a directive issued by the Committee on 19 February 2002, and forwarded to every non-state television and radio company in the country, the Committee informs the recipients of a ban on the use by independent stations of audio-visual programmes produced by organisations and private individuals that do not carry a Committee license.

In reality, the Law on Television and Radio Broadcasting prohibits not the “use of materials produced by organisations and individuals that do not hold a valid license,” but rather the “transfer of the broadcasting channel to other entities.” Thus the Committee for Television and Radio Broadcasting, delegated to implement “control over the adherence to the provisions of the present Law” (Article 51), is in fact acting in violation and misinterpretation of the Law.

According to the Law, a television station holding a broadcasting license has a full right to purchase any feature, documentary, musical and entertainment, or any other programmes from producers, as well as the right to air the aforementioned programmes with the producers’ per-

mission. Thus, the broadcasting of properly purchased programmes by a licensed television station may not be interpreted as a “transfer of the broadcasting channel.” Worldwide practice attests to that as well.

As for audio-visual producers, Tajik legislation has no provision obliging them to hold a license of any sort. Article 1 of the Law on Television and Radio Broadcasting provides the following definition of a license: “A license constitutes written permission by a competent authority, granting the holder the right to utilise channels of broadcasting.” Thus, the claims presented by the Committee regarding licenses for production of audio-visual content exceed the legal limits of the aforementioned Law.

Conclusions

Tajikistan’s legislation on freedom of speech and media has in recent years displayed a tendency for toughening state policy towards the media. At this time, there is no practical support for the popular view that, with the end of the civil war and beginning of military and political stabilisation, the country is witnessing a period of real democratisation of the press and other media on the basis of international human rights standards. Instead, rigid restrictions are placed on freedom of expression in Tajikistan. Facts of intimidation of journalists and editors by means of threats and “recommendations” are known. State printing-houses, as monopolies, often refuse services to certain “inconvenient” newspapers. The licensing procedure for independent electronic media remains cumbersome and very expensive. The issue of journalists’ access to information is a “stumbling block.” The profession of a journalist remains dangerous, and this leads to self-censorship. The constant downfall of Tajikistan’s economy affects the media as well. A lack of daily periodicals, underdevelopment of local newspapers and subscription services are also explained by high costs and a newsprint deficit.

At the same time, the government does not impede the registration of new periodicals, or the holding of international media conferences in the country, or Tajik media representatives travelling abroad. Some particu-

larly encouraging signs have also been seen lately, including criminal charges dropped against Mr. Atovulloyev.

The realities and interests of media freedom in Tajikistan dictate the necessity for the development and adoption of new laws concerning the media, television and radio broadcasting, access to official information, freedom and guarantees of journalists' professional activity, etc. The Achilles' heel of contemporary Tajik media is the low level of professional and legal training among most media employees. In this regard, one must emphasise the positive and continuous efforts on the part of international organisations promoting journalistic activity in the country and educating journalists in the new forms and methods of work under market conditions and the democratisation of the entire society. However, the major problem concerning media activity in Tajikistan is the enormous divide between media rights recorded in Law and other legislation, and the ability to exercise these rights in practice.

Recommendations

- Media legislation should be reviewed for its compliance with OSCE and other international media commitments. The Government of Tajikistan should take advantage of legal assistance and expertise provided by the OSCE and other international bodies when drafting and reviewing media-related legislation.
- The existing processes with regard to licensing broadcast media should be reviewed. Non-state media should be encouraged rather than hampered through unclear licensing processes and other limitations.
- The right of access to information should be enforced and any current restrictions on information should be reviewed and, where necessary, changed to be fully in line with OSCE commitments.
- The legislation with regard to libel has to be reviewed to bring it in line with international standards, especially with regard to distinguishing true and false statements as well as facts and opinions. It also follows that the limits for acceptable criticism are wider as regards politicians and other public figures than they are for a private

individual. Public figures inevitably and knowingly lay themselves open to scrutiny of their actions by the journalists and the public at large and must consequently display a greater degree of tolerance.

- The state monopoly on printing should be abolished and opportunities for private printing houses encouraged.
- The training of journalists should be enhanced through the establishment of specialised educational institutions and other professional, technical and legal training opportunities.
- Possibilities for further supporting non-state media should be explored. Financial support of media is needed, for example, in the form of easier access to credit, moderate taxation, to the extent of exempting the non-state media outlets from the ad valorem tax.

**REPORT
ON THE MEDIA SITUATION
IN TURKMENISTAN**

PREFACE

As the OSCE Representative on Freedom of the Media, I would like to introduce the sixth country report, this one on the media situation in Turkmenistan. My Office has previously published country reports on the Federal Republic of Yugoslavia, Croatia, Kyrgyzstan, Ukraine and Georgia. The usual practice of this Institution is to have outside experts write the reports. In this particular case we were asked not to mention them.

I would also like to thank the *Centre for Journalism in Extreme Situations* of the *Russian Union of Journalists* that helped prepare this report.

Freimut Duve
16 May 2002

Introduction

The primary purpose of this report is to analyse the Turkmen government's concept of freedom of speech, which on the one hand carries a presentable front of national legislation and adherence to international laws, and on the other the practice of sharply curbing all civil rights and liberties, including that of freedom of speech.

General Freedom of the Media Issues

An absolute monopoly of the state over all media exists in Turkmenistan. The rules that govern the work of the media in that country are completely different from other OSCE participating States.

The Turkmen media does not have to deal with any funding matters, since their whole existence is based on catering to one or another ideological campaign. Furthermore, in one of his speeches, the President of Turkmenistan has reprimanded the media for increasing space provided for advertising. He has subsequently prohibited the media from doing so, and issued a directive that all state-supported advertisements are published free-of-charge.

The Turkmen media does not get involved in internal political battles, nor the battles of oligarchs (amongst themselves or with the government). The issue of information access for journalists is also absent, as all public information is regulated and filtered by the government.

In his programme speech dedicated to the announcement of the country's development strategy, entitled "10 Years of Prosperity" (changed in 1994 to "10 Years of Stability"), President Niyazov essentially pronounced the limitations placed on the media: *"We have chosen the path of a democratic state. We intend to reach that goal through a phased implementation of democracy. What is a phased transition to democracy? It means that in the current period of transition, the democratic principles in Turkmenistan will be implemented not in a revolutionary, but rather in an evolutionary way, one step after another. At this point, a large role will be played by the state, in*

all spheres of public life. Control over the press, the mass media, will be established.”¹

In this respect, it is important to turn to the most flagrant discrepancies between Turkmen legislation, the country’s international obligations, and the realities on the ground. One of the indicators of the state’s regard for journalism is the closing down of the Department of Journalism at the State University, so journalism is no longer taught in a separate faculty.

Media Registration

The registration of new media is an exclusive prerogative of the President of Turkmenistan, and is regulated not by law, but by the President’s directives.

Editorial Policy

The uniform editorial policy of all Turkmen media has ideological catering to the regime as its purpose. This is dictated by the state monopoly over the media. Every editor of every media outlet is appointed by the President, with specific directions pertaining to the editorial policy. Such directives usually contain the following paragraph: “(Name) is to be confirmed as the editor-in-chief of (publication) for a trial period of 6 months. Failure to carry out the professional duties will result in dismissal, without an offer of an alternative position.” This practice of a probation period is the same as for any government official, underscoring the fact that they all are government employees. In his speeches, the President has more than once provided specific directions for the media, reducing its activity to being a “solid bridge between the state, domestic and foreign policy carried out by its government, and the people.”²

¹ President Niyazov’s speech at the December 14, 1992 Halk Maslahaty [the Turkmen People’s Council – transl.] Session.

² From President Niyazov’s interview to the Turkish *Teze Yuz Yil* (“The New Century”).

Censorship

In light of the state's exclusive monopoly of the media, censorship in Turkmenistan is total. It is exercised at the level of the editors, as well as by a specially commissioned agency, the Committee for Preservation of State Secrets, and other state offices, if the subject matter concerns their respective fields of activity. As a direct result of the above, the most widespread kind is self-censorship on the part of the journalists. Under these conditions the threat of losing a job at one media outlet can lead to a situation when a journalist will not be able to work anymore.

Media Financing

All media sources in Turkmenistan are funded from the state budget. The single exception to that is an edition of a strictly advertising nature, owned by a city government.

Access to Information

The regime of secrecy in Turkmenistan is becoming a state-wide phenomenon. All official correspondence is done on letterhead forms containing a copying prohibition clause. Several accessory laws have made information distribution a prerogative of specially commissioned offices, such as the Press Office of the President of Turkmenistan, and the state information agency *Turkmen Dowlet Habarlar Gullugy (TDH)*. No other government office in Turkmenistan possesses an information service, a press office, or a press secretary.

Monopoly on Publishing Facilities

An absolute monopoly on all publishing facilities has been established in Turkmenistan. All printing houses have been consolidated into a state printing enterprise, known as *Turkmenmetbugat*. Exceptions to this are small private enterprises offering document

copying services; however, in each case all copying equipment must be registered with the government.

Acts of Violence and Restrictions on the Rights of Journalists³

Many cases of physical and psychological violence against journalists have not become public due to the extreme isolation of the state and total control over the private lives of those members of society found to be disloyal to the regime. Many journalists who continue to be persecuted choose to conceal conflicts with the government, fearing for their own lives and well-being, or those of their loved ones. Many others have had to flee Turkmenistan because of continuous threats, or abandon their careers in journalism. Even after emigration from Turkmenistan, however, journalists still appear on lists of unreliable people, and are prohibited from obtaining entry visas into Turkmenistan, even for the purpose of visiting their relatives. Thus, in the spring of 2001, **Alexander Bushev**, a former correspondent of *Komsomolskaya Pravda* in Turkmenistan, attempted to enter the country on private business. He was detained and subsequently deported from Turkmenistan.

Human rights organisations have repeatedly noted instances of pressure being put on journalists; furthermore, in a number of cases, the journalists in question were Turkmen citizens employed by foreign agencies and companies. By threatening, among other things, to annul their press credentials, the government created a mechanism for editing the contents of information given to the journalists, thus reducing their activity to an elementary retelling of events and citing of official documents. These people cannot be named because of security concerns.

Especially alarming are the criminal indictments and convictions of journalists. For example, a case that causes much anxiety is that of **Nikolai Gerasimov**, staff member of *Neutral Turkmenistan*, and a correspondent for one of the Azeri information agencies. He was convicted in 2000 on a five-year-old charge of “fraud and extortion.” Two general amnesties announced

³ Because of a credible threat to the lives and well-being of former and current journalists and their families, this report deliberately does not cite the names of many of the people that figure in it.

since Gerasimov's conviction have not had any impact on his situation, even though those pardoned had been convicted of more serious crimes.

A group of journalists that had once attended a media seminar in Sweden has been banned from working for any Turkmen media. Often the pressure from the editors had been so strong that journalists had no other option but to leave.

Currently, only one journalist is still missing. **Natalia Sosnina**, the senior correspondent for *Turkmenkaya Iskra*⁴, disappeared in 1993 under obscure circumstances. Prior to her disappearance, she had received several verbal and written threats because of her publications regarding corruption at the highest levels of state power. For over a year after her disappearance, Sosnina's relatives continued to receive threats and demands to hand over the remaining unpublished materials. Following the death of one of Sosnina's relatives, all of her archives disappeared as well. No criminal proceedings had been initiated, and no investigation held in Sosnina's case.

Foreign Journalists

The best known incident involving foreign journalists was the arrest and subsequent deportation of two Russian reporters and human rights activists, Vitaliy Ponomaryov and Nikolai Mitrokhin. Prior to the introduction of a visa regime between Turkmenistan and the CIS countries in 1999, the two journalists had been refused the right to remain in Turkmenistan. The Turkmen border guards, acting on government orders and referring to the existence of "special lists," have detained and deported Ponomaryov and Mitrokhin twice.

Tax and Other Legal Inspections

The financial control of the state media does not in any way differ from similar procedures at any other state institutions, and cannot serve as a pressure mechanism on the activities and editorial policy of the media.

⁴ Currently known as the *Neutral Turkmenistan*.

Court Cases and Verdicts

Over the past 10 years, there have been no court cases involving the media in Turkmenistan. This is also because of complete and total state control over the media. Individual incidents have been settled outside court proceedings, with considerable involvement by the Committee for National Security and the Ministry of Internal Affairs. The single media-related court case dates back to 1990-91, and involves the *Dayanch* magazine. However, in this case extra-judicial pressure also prevailed, causing the publisher to cease his activity.

Closure of Newspapers Without Legal Involvement

This particular kind of influence over the media had been the most widespread, causing the closure of several relatively independent newspapers in 1991-93. The social and political *Dayanch* magazine was published in Russia by a Turkmen publisher, and subsequently delivered to Turkmenistan.

The *Kontakt* newspaper was closed due to direct pressure on its sponsors, a banking group, which had to cease funding. The *Subbota* newspaper was refused access to publishing facilities. All these acts were undertaken by the Committee for National Security and by officials from the President's ideological apparatus. Since many individuals directly involved in these events still reside in Turkmenistan, their names are not mentioned.

Discontinuance of Broadcasting

Immediately following the disintegration of the USSR, the Soviet structure of television broadcasting had been temporarily preserved in Turkmenistan. In 1994, following the broadcasts of several Russian RTR programmes contrasting with the views of the Turkmen government, RTR broadcasts were discontinued. Broadcasts of ORT have been cut

down to a minimum, currently amounting to 6 hours a day. Moreover, all programmes are broadcast only after being heavily censored, and are essentially apolitical children's and entertainment shows, and one daily news programme.

A phenomena rather indicative of the current situation in Turkmenistan is the growing number of satellite antennas installed by individuals in their homes. The antennas allow the owners to receive anywhere from 4 to 200 television programmes, broadcast by different companies. A relatively low price (USD 70-100 per receiver) has made this type of broadcasting very popular. The major broadcasting companies include the following: NTV, TV6 Moscow, TV Centre, RTR (all from Russia). The less popular ones include Turkish and Indian television stations, as well as CNN, MTV, and others.

Foreign Broadcasts

At this moment, the only specialised media source broadcasting in Turkmenistan and in the Turkmen language is the Turkmen *Radio Liberty* Service, *Azatlyk*. As recent polls demonstrate, the station's broadcasts are quite popular. However, the small scale of broadcasting, the lack of a correspondents network in Turkmenistan, as well as an evident political bias in certain programmes, have placed limitations on the station's popularity.

Control Over Print Media Imports

Turkmen customs officials tightly control the import of any print media. Numerous cases of newspapers and magazines being confiscated are reported. Criteria for confiscation remains vague at best.

Subscription to foreign newspapers and magazines is done within a limited circle of people, determined by competent government structures. The subscription fees are charged in a foreign currency, thereby reducing the number of subscribers even further. Cases of mass confis-

cation of foreign periodicals upon delivery are known as well. As a rule, those newspapers contain critical articles regarding the government of Turkmenistan. Currently, all foreign newspapers and magazines are delivered to the subscribers much later, and only after being screened for articles critical of the regime.

Control Over the Internet

In 2000, every single independent Internet provider in Turkmenistan had its license revoked. At this moment, the Internet and electronic mail services are offered by the state-owned TurkmenTelecom, which has made the services largely unavailable to the general public by setting unreasonably high prices. Cases of electronic mail tampering and subsequent persecution have also been reported.

Regional Situation

Regional media have virtually no independence, are forced to repeat material published by the media in the capital, and implement state information policies at the regional level.

Print Media

Quantitative Characteristics

Currently, there are 13 state print media sources in Turkmenistan.

Out of those, only the *Neutral Turkmenistan* newspaper is published in Russian; the other 12 are published in Turkmen.

There are two national periodicals: *Neutral Turkmenistan* and *Turkmenistan*.

The following are regional periodicals: *Ashgabat, Vatan* (“The Motherland”), *Mary-Shykh-Dzhakhan, Balkan*.

Special interest periodicals: *Esger* (“The Soldier”), *Adalat* (“The Patriot”), *Mugalymlar* (“The Teacher”), *Turkmen Duniyasy* (“The Turkmen

World”); *magazines Lukman* (“The Doctor”) and *Gurbansoltan-Edzhe* (a women’s magazine, named after President’s Niyazov’s mother).

The only foreign publication functioning inside Turkmenistan is the Turkish Zaman newspaper. It has a separate edition entitled Zaman – Turkmenistan, as well as its own publishing house. The agreement regarding Zaman’s circulation on the territory of Turkmenistan has been made at the highest state level, and confirmed by a separate Presidential Act.

Circulation

Neutral Turkmenistan – published daily, 23,110 copies

Turkmenistan – daily, *circa* 23,000 copies

Ashgabat – published three times a week, 15,000 copies

Vatab – three times a week, 11,000 copies

Esger – once a week, *circa* 7,000 copies

Adalat – once a week, *circa* 7,000 copies

Mugalymlar – published twice a month, 10,670 copies

Turkmen Duniyasy – twice a month, 6,200 copies

Gurbansoltan-Edzhe – a monthly magazine, over 2,000 copies

Lukman – published quarterly, 1,000 copies

Unfortunately, in light of the specifics of the situation in Turkmenistan, it is impossible to conduct any independent representative sociological research regarding the popularity of the media outlets.

Content

As already mentioned, an absolute state monopoly over the media exists in Turkmenistan. The principal task assigned to the media by the government is essentially ideological catering to the regime. All print media are used as propaganda tools.

Thus, the following are the integral attributes of all print media: a portrait of President Niyazov, one of his numerous pronouncements, and **the Oath of Loyalty to the head of the state – the President and the Motherland**. In reality, the newspapers differ only in their respective

names and formats. A large part of the publications in all of the newspapers praise and glorify the accomplishments of Saparmurat the Turkmenbashi (“Father of all Turkmen”) and his services to the Turkmen people. The rest of the articles resemble very closely publications from the Soviet era, focusing on optimistic reports from the workplace, descriptions of various national holidays and customs, stories covering working class heroes, etc.

Publications of a critical nature are not to be found in Turkmen media, besides those specially sanctioned by the government. The vast majority of critical statements appears in the speeches of the President; the speeches usually take up most of a day’s edition, and are published by all daily newspapers simultaneously.

According to a selective poll, the majority of the population does not read Turkmen newspapers due to the low level of information. In light of this, the state has assumed the responsibility for subscriptions to print media. Thus, the staff of State Ministries and other government offices are required to subscribe to newspapers and magazines.

Besides the single edition in Russian (*Neutral Turkmenistan*), there are no editions in Turkmenistan published in a language other than Turkmen, despite the fact that large groups of Uzbeks, Kazakhs, Azeris, and Armenians reside in the country.

Independent and/or opposition media sources are non-existent in Turkmenistan. The only edition that aspires to such status is the *Erkin Turkmenistan* (“Free Turkmenistan”) magazine, published in Russia and funded by its publisher. The magazine is not published regularly and is largely unknown in Turkmenistan due to problems with its delivery.

News Agencies

Currently, there is one state information agency in Turkmenistan. It is known as TDH – *Turkmen Dowlet Habarlar Gullugy* (Turkmen State News Agency), up until recently known as *Turkmen Press*.

According to a structure established by the state, all media correspondents (including those representing the TDH) receive information

regarding governmental activity from the President's Press Office, or other commissioned state structures. Up until recently, the President's Press Secretary also served as the head of the TDH.

Foreign news agencies in Turkmenistan are forced to operate within the least favourable framework, which sternly demands that the news are covered only in the context of loyalty to the Turkmen government and its policies. The vast majority of press releases are in fact documents prepared by the Press Office of the President, or the TDH.

Electronic Media: Television and Radio

Quantitative Characteristics

There are three state television stations that broadcast nation-wide on the territory of Turkmenistan: TMT-1, TMT-2, and TMT-3.

Content

All three television stations broadcast in the Turkmen language. Daily broadcasting is 16-17 hours. Domestic news comprise about 10 percent. 20-25 percent is devoted to films and cartoons. The remaining time is divided into two information segments: musical programmes (concerts by national dance ensembles, popular and folk singers, etc.), with most if not all performances dedicated to the President. The second segment is comprised of patriotic and ideological programmes, such as "The Lessons of the Great Saparmurat the Turkmenbashi!", or "The XXI Century as the Golden Century for the Turkmen People!", or "Turkmenistan: Reborn and Independent!" All of these programmes readily inform the public of the "wise policies of the President" and the "happy life of the Turkmen people." There is little if any difference among the programmes broadcast by the three stations. Each station carries the golden logotype of the President's profile in the upper right hand corner of the screen.

This percentage distribution balance is disrupted only when so-called presidential "model government sessions" are broadcast, or the President

travels around the country. Reports of these events occupy up to 50 per cent of air-time, and are broadcast up to three times daily.

The national radio of Turkmenistan broadcasts only in Turkmen, and does not differ from television in respect to content. Of all the Russian radio stations, only *Mayak* is re-broadcast in Turkmenistan.

Private television and radio stations are non-existent in Turkmenistan.

Since October 1998, the broadcasts of the Russian television station ORT in Turkmenistan have been reduced to 5-6 hours per day, in the evening. The government of Turkmenistan motivated this action by citing financial disputes with ORT. However, in his interview to *Nezavisimaya Gazeta*, the Turkmen President announced that all ORT broadcasts, except for news programmes, would be censored due to content disharmonious with the mentality of the Turkmen people. In essence, ORT broadcasts in Turkmenistan are currently limited to daytime programmes (for children and teenagers), and to entertainment ones.

Media Legislation

During its ten years of independence, Turkmenistan has still not developed any substantial media legislation acceptable in the democratic family of OSCE participating States. The current Constitution does not pay due attention to the media, and avoids the subject of information access both on the level of individual rights and the rights of media professionals, which in a democratic setting are intended to exercise a certain control over the functions of the government. The Law “Concerning the Press and Other Sources of Mass Media,” signed before the disintegration of the Soviet Union, had been rather progressive for its time; however, in the current situation, its defects and the lack of practical mechanisms for the protection of journalists are evident.

The other piece of legislation concerning the function of the media and the rights of media professionals is of a fragmentary nature, and

deals with peripheral issues. Turkmenistan has no independent law covering television and radio broadcasting. Also missing is any act regulating information rights, including the actual right to receive information.

International Obligations

Turkmenistan is a member of the United Nations and the Organisation for Security and Co-operation in Europe. It recognises the UN Charter, and has ratified the principal international human rights treaties. Thus, in 1997 it ratified the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights.

The concept of Turkmenistan's foreign policy as a neutral state declares that "as a member state of the United Nations, Turkmenistan recognises the organisation's priority in resolving any issues within its jurisdiction. Turkmenistan's permanent neutral status does not concern the execution of its obligations ulterior of the UN Charter, and will promote the achievement of the goals set forth by the United Nations."

Turkmenistan is a signatory member to the Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1 August 1975), which also concerns the state's human rights obligations. The Final Act also clearly reads that the participating States "will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development." Apart from the Helsinki Final Act, numerous other OSCE media commitments exist that have been subscribed to by Turkmenistan.

The OSCE Representative on Freedom of the Media has organised three Central Asian Media conferences that have brought together dozens of professionals from the region (they were held in 1999, 2000 and 2001). On all three occasions, the Government of Turkmenistan (the only one among the five) refused to co-operate with the OSCE Representative and did not allow Turkmen journalists to attend by refusing to issue them exit visas.

The Constitution of Turkmenistan

According to the Constitution, the citizens of Turkmenistan have the right to act freely according to their convictions, as well as the right to receive information, unless it contains state, official, or commercial secrets. The Constitution clauses therefore deliberately constrict the list of rights that are customary for international documents concerning human rights and freedom of the media. Thus, for instance, lacking in the Constitution is the right to collect, create, and distribute information. Nothing is mentioned regarding the restrictions placed on freedom of speech and opinion.

However, Constitutional norms in Turkmenistan, including those dealing with human rights, and the country's international obligations are not directly applicable in a court of law.

The Law “Concerning the Press and Other Sources of Mass Media in the Turkmen SSR”.

The Law, signed at the time when Turkmenistan was still a republic in the USSR, has preserved every anachronism characteristic of the period. While the majority of the CIS countries had adopted new laws, regulating the media and journalistic activities, it seems that the Turkmen Republic had not felt a need to do so.

The definition of the media in the Law “Concerning the Press and Other Sources of Mass Media in the Turkmen SSR” is of a rather general nature. According to Article 2 of this legislation, the media is defined as newspapers, magazines, television and radio programmes, documentary films, other periodical forms of public distribution of information. However, the actual notion of “public distribution” on the part of the media is not clearly defined, which, should the government be inclined to encourage it, can certainly cause different reading, which in turn can cause the legislation to be applicable to any form of information distribution (such as the Internet).

Article 7 may serve as an example of an anachronism. This Article determines the list of physical and legal entities with the right to institute

media sources. This list still includes the Congresses of People's Deputies, as well as the citizens of the currently non-existent Turkmen Soviet Socialist Republic.

Another peculiarity in the Law is a direct link between the material and technical maintenance of a media source and its functional capability. According to Article 9, the media registration application should include data on publishing facilities, sources of newsprint, etc. The lack of such technical resources may lead to a denial of the registration request. Currently, all enterprises facilitating the material and technical maintenance of the media (printing houses, broadcasting companies, etc.) are owned and tightly controlled by the government. The Acts regulating the approval of purchasing and using copying and duplicating equipment are such that they effectively exclude the possibility for the emergence of printing houses disloyal to the government. This situation, in turn, presents the state with an opportunity to exercise complete control over the emergence of new sources of print media.

The Law also introduces the notion of a media "action programme." Thus, according to Article 32, a journalist must continuously implement the action programme of the media outlet that employs him/her, as well as adopt the media's editorial policy as his/her professional guide. This action programme is approved by the founder of the media outlet, and is implemented by the staff. Since the government serves as the founder for all Turkmen media, the journalist's obligation to implement the action programme is equated with compulsory loyalty to the state.

A mechanism for providing information is practically undeveloped in the Law. Article 24 confirms the right of the media to receive information regarding the activities of the state structures, associations, and officials. However, the Law does not provide for any deadlines for this legal mechanism, which leads to its complete incapacitation. Besides, the causes for potential denial of information are not defined, either, which leads to a possibility of arbitrary use. The Law determines the right of the media representative to appeal to a higher authority or official, and subsequently to a court. However, the lack of legislative criteria for distinguishing between lawful and unlawful denial nullifies this provision as well.

Turkmenistan's Legislation Concerning Access to Information

Currently, this legislation consists of the Law "Concerning the Protection of State Secrets," adopted in 1995, and the Law "Concerning Commercial Secrets," signed on 19 December 2000.

The Law "Concerning the Protection of State Secrets" "determines the legal grounds for protecting state secrets in Turkmenistan's governmental activities, as well as in the activities of enterprises, associations, organisations of all patterns of ownership, military establishments, officials and citizens on the entire territory of the state and beyond its borders." Despite the declared direction, the norms of this Law are of a formal nature. A state secret is defined as "information, distribution of which may have a negative impact of the qualitative state on the military and economic potential of the country, or have other heavy consequences for the defensive capability, national security, economic and political interests of Turkmenistan." Stating that much, the Law is missing any additional criteria or means of evaluating the consequence of classified information distribution. A list of information not subject to restriction is limited to a single category: "information concerning the rights, liberties, and lawful interests of the citizens and their realisation, as well as information that cannot be classified due to a threat to personal security and health of the citizens." The Committee for Protection of State Secrets exercises preliminary censorship over the media. Officially, that is considered as part of protecting state secrets.

The Law "Concerning Commercial Secrets" defines the legal norms of providing, using, distributing, storing, and protecting information classified as a commercial secret. Adopted fairly recently, this Law is primarily a component of the existing economic, rather than media, legislation. Until the present time, this Law has not had a substantial impact on Turkmen journalists and their activities.

Turkmenistan's Criminal Legislation Curbing Media Freedom

Turkmenistan's Criminal Code contains a rather substantial number of

articles that may be applied to journalists in one way or another. Traditional to the countries of the CIS is the establishment of criminal liability for libel and insult. The Criminal Code of Turkmenistan also contains these norms, and provides for penalties in the form of fines or imprisonment.

The Criminal Code also contains articles establishing liability for war propaganda, appeals for forcible changes to the constitutional order, stirring of social, national, or religious unrest and enmity, and violation of state symbols. Perpetration of these acts through the use of mass media is considered a heavier crime, and is punished more severely. In addition, these norms are somewhat vague, and carry no legal definitions, with their interpretation varying. Thus, for instance, Article 178, "Violation of State Symbols," defines the *corpus delicti* as a "violation of the State Banner, State Emblem, or State Anthem of Turkmenistan," which naturally assumes a subjective view of whether or not a specific act could be categorised as a violation.

One of the more notable peculiarities of the Turkmen Criminal Code, quite logically in line with the general ideology of President Saparmurat Niyazov's personality cult, is the Article that establishes liability for defaming the President. Part II of this Article introduces the notion of liability for defamation and insult of the Turkmen President. These criminal acts are punishable by imprisonment for up to five years.

Some Conclusions

Unfortunately, the current legislation does not have a substantial impact on the activities of media in Turkmenistan. Preliminary censorship, lack of information received by the population as well as the media itself, and government ownership of all media cause the legislation to exist in a vacuum, as well as to be used only as an official cloak for various government actions. In this situation, there is no need to correlate the law with reality. This fact is largely responsible for the existence, yet also a complete lack of use for the Law "Concerning the Press and Other Sources of Mass Media."

Also notable is the referring nature of the legislation. Many of its norms refer the regulation of various issues to the jurisdiction of the Council of Ministers, or other government structures. Formally declaring the rights and liberties, the state makes their *de facto* realisation impossible by issuing specific accessory laws.

All publications obtained by the media are subject to strict censorship, justified by the need to preserve state secrets. The activities of the media have a clearly ideological direction, yet even that may not necessarily prevent the displeasure on the part of government officials and the President. Thus, the *Sedar Ely* (“The Leader’s Path”) newspaper, published in April 2001, was confiscated on the grounds of being published without Turkmenbashi’s official permission. This happened despite the fact that the newspaper had not only never strayed from the prevailing ideology, but rather was dedicated specifically to the life of Saparmurat Niyazov.

Conclusions and Recommendations

Turkmenistan is a member of the OSCE. It has also ratified the majority of international human rights treaties and together with the other OSCE participating States has established the institution of the OSCE Representative on Freedom of the Media. However, the specifics of various types of liberties in Turkmenistan is dictated not by the laws, but rather by a verbal right, exemplified and vocalised by the President, whose maxims are almost immediately considered if not laws, then at least instructions for numerous government officials. While preserving the legislative basis on paper, these officials completely emasculate its essence with accessory laws and bureaucratic indoctrination. Thus, it is mandatory in Turkmenistan to centrally register all copying and duplicating equipment; the list of available foreign publications is rather limited due to the strive to protect the nation’s morality; it is common practice for customs officials to confiscate foreign newspapers and magazines at the border; instances of mail tampering are not uncommon, either. Additionally, there is a strict government monopoly over the use of the Internet in Turkmenistan.

Without exception, the President names the editorial boards of all of the Turkmen media. Therefore, the guarantee of freedom of speech in Turkmenistan carries but one meaning: guaranteeing the absolute power of the state ideology, with the media fully subordinate to it.

Independent journalists had to leave Turkmenistan, facing the threat of reprisals. Those remaining are forced to work under conditions of severe and total censorship.

Turkmenistan is a country where the notion of freedom of the media has not undergone any real changes since the days of the Soviet regime. Furthermore, in the course of the entire decade since the disintegration of the Soviet Union, the Turkmen government has carried out a deliberate policy of subjecting all of the nation's media to the interests of building their totalitarian state.

In certain aspects of media activities, this usurpation of the absolute right to the truth by the government is so evident that one hardly needs to comment on it: for instance, the Turkmen President appears as the founder of all national and regional newspapers; a golden logotype of his profile in the upper right hand corner of the screen accompanies every programme on Turkmen television. The timid attempts on the part of Turkmen journalists and publishers in the early and mid-1990s to take the initiative and change the situation were harshly suppressed by the government.

The notion of freedom of speech is completely and utterly absent in Turkmenistan. The media serve as a component of the larger state structure, catering to the existing political regime. In light of this role played by the media as a mechanism for expressing the political will of the existing system, any recommendations for change may be viewed as attempts to interfere with the internal affairs of the state, as an attempt to alter the very foundation of the Turkmen system. The President has repeatedly rejected the "attempts at introduction of alien models of democracy," and is quite sensitive to any criticism directed against himself and his policies, most notably those concerning human rights in general and freedom of speech in particular.

Any recommendations to the government of Turkmenistan regarding possible changes of state media policies may only be made within the

larger context of a global and fundamental change in the state's attitude towards freedom of speech, in the context of adhering to the entire spectrum of international human rights.

The following recommendations can be made to the government of Turkmenistan:

- To strictly adhere to the norms of its national legislation and to the country's international human rights obligations.
- To correlate national media legislation with international norms and standards.
- To conduct detailed investigations of violations of journalists' rights, especially the cases of Natalia Sosnina and Nikolai Gerasimov.
- To implement significant changes in the state media, as well as to facilitate the liberalisation of the publishing and information services market.
- To provide freedom of access to foreign media.

**REPORT
ON THE MEDIA SITUATION
IN UZBEKISTAN***

* This report was prepared by outside experts.

The OSCE Representative on Freedom of the Media would like to thank the Centre for Journalism in Extreme Situations of the Russian Union of Journalists for substantially contributing to the report.

Introduction

Uzbekistan, a Central Asian post-Soviet republic, after becoming independent in 1991 proclaimed that it would build a democratic state based on the rule of law. However, over the past eleven years instead of introducing democratic reforms, the state implemented a policy of subjugating all mass media to the interests of a government of a more and more authoritarian nature. The ideals and principles of human rights, including freedom of expression, declared in the country's Constitution, are seldom utilised mostly for decorative purposes. Today Uzbekistan is an authoritarian state, where all power is concentrated in the hands of the President and his close associates. Practically, there is no separation of powers in the republic, no independent parliament and judicial system, no independent media.

Although in both the Constitution and in the legislation of Uzbekistan there are no restrictions on freedom of expression, in reality the government has established almost complete control over all media. Since there are no opposition political parties, publishers and journalists are defenceless before a state system that is aimed at stifling dissent.

The few attempts made by journalists and publishers in Uzbekistan in the first years after independence to be more active and freethinking were ruthlessly suppressed. At the same time the first elements of a civil society and secular opposition were also crushed. State censorship did not allow independent media to develop, and today there is not one independent media outlet in the country. One can say that the state of freedom of expression currently seems worse than it was in the last years of the Soviet Union.

The authorities prohibit any meaningful discussion of domestic problems in the media. State structures, just as during the old Soviet times, continue to use the media as a propaganda tool and as a mechanism to fight "enemies." The number of issues that can not be raised in the media is quite vast. In one case in an article titled *Exporters of Oil will Have to Move* (published in the newspaper *Toshkentskaya Pravda*) all information related to the country's oil potential had been censored notwith-

standing the fact that it was made public by President Karimov during his trip to the United States. The content of the media also depends on the current foreign policy of the government. It has become common to use the media to voice discontent with the policies of other states and their leaders.

The chief instrument in the media field is the Press Office of the Administration of the President, which sometimes allows journalists to write some critical stories, however, never touching upon the economic and political situation in the country. A journalist who becomes critical just on his own free will always runs into trouble, in a best case scenario he will just be fired.

Thanks to the state propaganda machine, these days freedom of expression in Uzbekistan is considered a destabilising factor. Among the public the view that prevails is that a free press may lead to unrest and civil war if it is not restricted. That is why journalists are always called upon to be “dedicated to the Motherland” and to foster among the people a sense of humility and patience.

Since all opposition political parties and leaders had to either go underground or leave the country after 1993, the media practically do not discuss issues related to the secular and Islamic opposition in Uzbekistan. Any attempts to distribute opposition newspapers may lead to a prison term. For example, the distribution of the annual *Human Rights Watch* report on Uzbekistan was classified as an “illegal dissemination of leaflets.”

The authorities have used the fight against terrorism as a reason to attack their political opponents and independent journalists. The Ministry of Internal Affairs’s Anti-Terrorist Department was tasked to gather information on former members of the opposition groups *Erk* and *Birlik*, including correspondents for the Uzbek services of the *BBC* and *Ozodlik* (according to a letter from the Namangan Office of the Ministry of Internal Affairs # 7/925 of 19 April 2002). The police were supposed to collect data on members of these parties, on journalists and their families, including photographs.

Although the Constitution proclaims a diversity of political institutions and ideologies and says that no ideology should become predominant, in practice there is a monopoly of the state ideology. It is called the “ideology of national independence” and all aspects of public and cultural life including the work of the media are judged on the merits of being in conformity with the “ideology of national independence.” Dissenters are branded as “enemies of the people,” or as “provocateurs who hate independence.” A local TV station in Khorezm *ALC* was closed down after the authorities accused it, among other things, of “broadcasting programmes that are not in line with the national ideology of independence.”

Uzbekistan is a member of the UN, the OSCE and other international organisations, has a reasonably respectable national legislation and has ratified most international human rights documents. However, by not utilising the country’s legal framework, the authorities completely change the meaning of the laws through by-laws and decrees. For example, to open a private TV station one needs the approval of the local authorities and to register a media outlet its founder has to belong to a loyal organisation.

The appointment of heads and editors of national media is made by the leadership of the country only after thorough interviews and checks regarding their loyalty. The absolute majority of editor-in-chiefs of newspapers and magazines were appointed only after interning in the President’s Office. Almost all officials from the President’s Press Service moonlight as journalists: they have their own TV programmes and columns.

Many independent journalists fled the country under the threat of reprisals and some of them are in prison or working for foreign media. All other journalists work under conditions of harsh control.

Media Legislation

During its eleven years of independence, Uzbekistan has developed media legislation that is mostly in line with democratic norms, although

it still needs improvement. The challenge lies in the implementation of the legislation.

The Constitution of Uzbekistan provides for freedom of expression. Media legislation in Uzbekistan includes the following laws:

- On Media (adopted in June 1991, a new version adopted in December 1997);
- On Defending the Professional Work of Journalists (adopted in April 1997);
- On Guarantees to Access to Information (adopted in April 1997);
- On Publishing (adopted in August 1996);
- On Authors Rights (adopted in August 1996);
- On Advertising (adopted in December 1998).

There are additional laws that also concern the media:

- On Information Technologies (adopted in May 1993);
- On Communications (adopted in 1992);
- On Archives (adopted in April 1999);
- On Telecommunications (adopted in August 1999);
- On Protecting State Secrets (adopted in May 1993);
- On State Language (adopted in 1991).

Also the following decrees deal with media matters:

- Cabinet of Ministers Decree # 160 of 15 April 1998 on Registration of Media in the Republic of Uzbekistan;
- Cabinet of Ministers Decree # 293 of 10 July 1998 on Additional Measures in Raising the Effectiveness of Utilising the Frequency Spectrum and the Production and Broadcasting of TV and Radio Programmes and Data;
- Cabinet of Ministers Decree # 393 of 11 August 1997 on Streamlining Issues Related to Publishing in the Republic of Uzbekistan.

The work of foreign correspondents is organised in accordance with the Rules Regulating on the Territory of Uzbekistan the Professional Work of Correspondents for the Media from Foreign States approved by a Cabinet of Ministers Decree # 391 of 11 September 1998.

The majority of these by-laws adopted by the government to allegedly “develop a mechanism for the utilisation of laws” actually are in contradiction with the laws of the country and nullify the rights and freedoms guaranteed by the Constitution and these laws.

The framework governing the work of the media in Uzbekistan is impressive by the amount of different acts as well as by the aspects they cover. These laws are of a direct and indirect nature and include international agreements, national legislation, government decrees and also several articles of the Criminal, Civil and Tax codes, as well as other legal provisions that may deal with media matters (for example, laws on the Referendum, on Elections of the President, on the Office of the Prosecutor, on Courts, on Elections to the Ulii Mazhlis, on Requests from Citizens, etc.)

In Uzbekistan there is no separate law dealing with broadcasting. Currently this area is regulated through by-laws adopted by officials without any prior public debate.

International Obligations

Uzbekistan is a signatory to the UN Charter and has ratified most international human rights treaties, among them the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural, and Social Rights. As a participating State to the OSCE, Uzbekistan has also agreed to follow all the organization’s commitments related to freedom of expression and media.

The Constitution recognises the priority of international law. However, the government does not fulfil its obligations. For many years human rights, including freedom of speech, have been systematically violated.

The Constitution of the Republic of Uzbekistan

According to Article 67 of the Constitution the media are free and function in compliance with the law, they are responsible for the accuracy of the information and censorship is prohibited.

In accordance with Article 29 of the Constitution and Article 3 of the Law on Media, freedom of expression, the right to speak through the media, and to openly voice one's opinions is guaranteed for all citizens. In line with Article 29, everyone has the right to gather, receive and disseminate any information. This right is restricted if it is used against the constitutional order. Also, freedom of expression can be restricted when it concerns state secrets.

Among the constitutional guarantees of freedom of the media is the declaration of ideological pluralism. An important role is also played by Article 12: "In the Republic of Uzbekistan social life develops through the diversity of political institutions, ideologies and views. No ideology can be adopted as a state one."

The Law on Media

The Law on Media is the main piece of legislation that regulates the work of the media in Uzbekistan. As some other legal acts, it has several shortcomings that lower its effectiveness. For example, Article 16 stipulates that "termination of publication of a media outlet may be done at the request of the founder or the body that registered the media or a court of law." The founder has the right to establish, terminate or suspend the publication of a media outlet and a court should objectively, based on the rule of law, review the work of any body, including the media. However, putting the registration authority into the same sentence is questionable both factually and legally. It basically means the same as if a marriage office that registered a marriage would conduct a divorce without the consent of the partners involved.

From a legal point of view, this article of the law is in violation of the Constitution, which states in Article 19 that "The rights and freedoms of

citizens, promulgated in the Constitution and in the laws, can not be changed or restricted outside a court of law.” Article 16 of the Media Law also is in violation of the constitutional guarantees of the right to property since a media founder is also the owner and the Constitution protects the rights of owners to hold and use property.

Serious problems exist when registering a media outlet. Article 11 of the Media Law specifies that “judicial and physical individuals of the Republic of Uzbekistan have the right to register a media outlet. It can also be registered by several founders.” However, Article 15 of the same law says that registration could be denied if the “founder or one of the founders of a media outlet lives outside the Republic of Uzbekistan.” So, it seems only residents have the right to register media. In reality, a founder, a citizen of Uzbekistan, who lives abroad, does not have the right to register a media outlet, basically he/she does not hold the same rights as all the other citizens of the country. This is in violation of Article 10 of the Constitution, which declares that “All Citizens of Uzbekistan have the same rights and freedoms and are equal before the law.” Also, Article 22 states that “The Republic of Uzbekistan guarantees legal protection and support to all its citizens on the territory of Uzbekistan and beyond it.”

Another peculiarity of the Media Law is the connection between the material and technical capability to support a media outlet and its functioning. Article 13 of this law says that when applying for registration one must declare the source of financing and of material and technical support. Lack of such resources inside the country is a reason for the lawful refusal of a registration. Currently all bodies that ensure the proper functioning of the media – publishing and printing houses, transmitters, etc. – are controlled by the state. Decrees that regulate the registration of printing and media distribution facilities exclude the possibility of their being established if they are not in line with the State. This leads to a situation where it is impossible to establish a media outlet independent from the authorities.

The Law on Defending the Professional Work of Journalists

The Law on Defending the Professional Work of Journalists stipulates that “a journalist, when fulfilling his duties, is guaranteed immunity.” Also the Law prohibits the prosecution of a journalist for publishing critical materials and provides for guarantees for the professional work of a journalist, like access to information. Interference in the professional duties of a journalist or access to information a journalist obtained from his sources is prohibited. In reality, all these rights are of a declarative nature and are ignored by the authorities.

As a rule, the term “reliable” is used in the legislation when referring to information, which divides information from opinions. It also provides a criteria for assessments: verifiable or not. The Constitution states that “the media are free and function in line with the law being responsible as proscribed for the reliability of information.” Article 2 of the Media Law adds another term “truthfulness”: “The media have the right to seek, receive and distribute information and are responsible for the truthfulness and reliability of the published information in line with existing legislation.” Article 6 of the Law on Defending the Professional Work of Journalists substitutes “reliability” with “objectivity” and the journalist is required “to provide objective information.” This way, the lawmakers have given the government a huge present, since “truthfulness” and “objectivity” are subjective terms. It is not clear how one defines if the information is objective or not. If one talks about “reliability” how does one then assess views and opinions, thoughts, theories hypothesis, etc? In essence, true freedom of expression and opinion (including “non-objective” ones) becomes unrealistic which is in violation of Article 12 of the Constitution: “In the Republic of Uzbekistan public life develops on the basis of a plurality of political institutions, ideologies and views.” The democratic development of the country is not possible without a free flow of different views, opinions and ideas (including those that may be considered “non-objective.”)

Access to Information

The principles of access to information are barely developed in the Media Law. The Law on Defending the Professional Work of Journalists only provides for the right to receive information from state and public institutions and their functionaries. However, it does not provide for any timeframe making this norm obsolete in practice. The one-month deadline specified for answering requests from citizens in the Law on Citizens Requests is not usable for the media since information becomes outdated rather quickly. The media must be able to receive an immediate answer when making an oral request and in three days when making one in written form. Also, the legislation does not specify the reasons for denying access to information. The law provides for the right to appeal to a higher-ranking body or person, or, after that, to a court of law. Still, a lack of clear legislative criteria for what information can be restricted and what cannot nullifies this provision of the law.

Regarding the Law on the Protection of State Secrets, its norms are formal, subjective and refer to other legislative acts. For example, Article 6 outlines that “the system for the protection of state secrets, including procedure, access and restrictions, as well as the procedure on how to deal with state secrets is defined by the Cabinet of Ministers of the Republic of Uzbekistan.” According to Article 5 “Information is classified and declassified in accordance with this Law, the Regulations on the Procedure for Classifying and the Levels of Classification, and with the List of Information to be Classified in the Republic of Uzbekistan approved by the Cabinet of Ministers of the Republic of Uzbekistan.” The law refers to the Regulations and the List of Information, but both these documents are themselves classified as secret and can thus be misused. Journalists are put into a position where they have to follow legal provisions to which they do not have access.

The Law on Protection of State Secrets does not provide for any legal criteria for assessing the damage from access to such information. Usually, in similar laws, substantial provisions exist regarding information that cannot be classified as well as the issue of responsibly for the

unlawful classification of information. The list of information that cannot be classified is outlined in one sentence: “Information that, if classified, can lead to endangering the security of the people.”

The Uzbek Criminal Code carries penalties for divulging state secrets, but it does not provide for the unlawful classifying of information, although Article 10 of the Law on State Secrets says that “those who unlawfully classify information are responsible in accordance with the legislation of the Republic of Uzbekistan.” The borders that define “state secrets” are so wide that it allows the authorities to subjectively deal with their citizens on this matter. Under the pretext of defending state secrets, freedom of expression is trampled, journalists and human rights activists harassed.

Criminal Provisions that Restrict the Activities of the Media

The Criminal Code carries several articles that can be used against journalists. It provides for criminal penalties for libel (Article 139) and for defamation (Article 140), which involves fines or incarceration.

It also prohibits the propaganda of war (Article 150); advocating the forceful change of the constitutional order (Article 159); advocating national, racial or religious hatred (Article 156); espionage (Article 160); divulging state secrets (Article 162); production and distribution of materials that contain threats to public safety and public order (Article 244-1). If any of these acts are committed with the utilisation of the media this is considered as an aggravating factor and is punishable more harshly. Also, all these norms are very vague, do not provide for clear legal definitions and can thus be misused.

Article 158 of the Criminal Code is called “Infringements on the President of the Republic of Uzbekistan.” It falls in line with the general ideology of the cult of personality of President Islam Karimov but is in violation of international norms and the country’s Constitution. Part two of the Article deals with insult to the President, which is punishable by “corrective works” for up to three years or incarceration for up to five years. The Code already has a provision dealing with libel and there was

no need for an additional one regarding the President since according to the Universal Declaration of Human Rights all are created equal, and Article 18 of the Uzbekistan Constitution says that “All citizens of the Republic of Uzbekistan have the same rights and freedoms and are equal before the law.” The honour of the President is no less and no more than the honour of any other citizen.

Some Observations

The level of democracy is based not on what is written in law but on how these laws are implemented. The current legislation in Uzbekistan has very little impact on the development of the media. It exists beyond everyday reality and is used only as a fig-leaf to cover some of the government’s actions.

The legislation has also a referral trend. The laws often defer to the competence of the Cabinet of Ministers or other state structures. Thus, although formally proclaiming basic human rights and freedoms, the state makes it impossible to realise them through the adoption of by-laws.

The current government in power and shaky legislation allows all authorities to conduct an information policy designed to service the interests of those in power and not that of society.

In this situation, journalists should learn how to be more organised and should develop mechanisms that will allow them to influence political and social developments in the country.

However, the journalists’ community is divided, media legislation is not developed and not implemented, the administrative powers of the state are very strong. The press is financially dependent on different conglomerates, often acting as an applause mechanism for the government thus losing any credibility with the populace, already plagued by a low level of political and legal education.

Quantitative Statistics

According to the State Committee on Press, the State Register of Media in Uzbekistan lists 796 media outlets, among them 557 newspapers, 165 magazines, 4 news agencies, 70 TV and radio companies, 96 electronic media outlets.

Of the 557 registered newspapers, 89 are national, 197 regional, 42 city, 179 district and 50 local; 408 are state newspapers, 65 published by public institutions, 84 commercial ones, two religious (Islamic newspaper *Islom Nuri* and the Orthodox *Slovo Zhizni*).

Of the 165 registered magazines, 106 are state controlled, 31 by public institutions, 27 commercial ones and 1 Islamic magazine *Hidoyat*.

Of the 70 registered TV and radio companies, 45 are TV broadcasters, 10 are radio and 15 are involved in both TV and radio broadcasting.

The press is published in Uzbekistan in several languages: Uzbek, Russian, English, Kazakh, Tajik, Karakalpakian, and Korean. In accordance with the Uzbek Law on State Language the majority of publications is in the Uzbek language, especially in the regions.

Also, political parties, public organisations registered by the Ministry of Justice have their own publications. Among them are the newspapers *Uzbekiston Ovozi*, *Golos Uzbekistana*, *Millii Tiklanish*, *Adolat*, *Fidokor*, etc. The opposition parties and movements *Erk* and *Birlik* are not registered and as a result the distribution of their newspaper *Erk* and magazine *Harakat* is prohibited. There are several cases when people were prosecuted for distributing and even reading these two publications.

Periodicity and Circulation of the Main Publications

Halk Suzi – newspaper published three times a week, circulation: 29,210;

Narodnoe Slovo – newspaper published three times a week, circulation: 10,216;

Pravda Vostoka – newspaper published three times a week, circulation: 11,950;

Kishlok Haeti – newspaper published three times a week, circulation: 20,720;

Uzbekiston Ovozi – newspaper published three times a week, circulation: 17,600;

Unson Va Konun – newspaper published once a week, circulation: 9,000;

Marifat – newspaper published twice a week, circulation: 32,500;

Hurriyat – weekly newspaper, circulation: 3,200;

Mohiyat – weekly newspaper, circulation: 4,100;

Toshkent Haftaligi – weekly newspaper, circulation: 21,500;

Tashkentskaya Nedelya – weekly newspaper, circulation: 26,000;

Mulkdor – weekly newspaper, circulation: 8,300;

Tong Ulduzi – weekly newspaper, circulation: 58,000;

Gulchehralar – weekly newspaper, circulation: 67,000;

Oila Va Zhamiyat – weekly newspaper, circulation: 33,000;

Futbol – weekly newspaper, circulation: 16,980;

Saodat – monthly magazine, circulation: 45,000;

Sinfdosh – monthly magazine, circulation: 83,000;

Esh Kuch – monthly magazine, circulation: 34,000;

Sanam – monthly magazine, circulation: 15,000;

Mushtum – monthly magazine, circulation: 4,700;

Guliston – monthly magazine, circulation: 2,909;

Shark Ulduzi – quarterly magazine, circulation: 1,500.

According to Article 21 of the Media Law publications are mandated to print their circulation. However, many avoid doing so that since it affects advertising revenue. Most advertisers prefer not to publish ads in newspapers with a circulation below 10,000. Currently, the majority of the press has lower circulation figures and the advertiser is often given incorrect information on this matter. Journalists are often accused of revealing “commercial secrets” by the newspapers themselves when they provide information on circulation.

There are no representative and independent public pollsters that would determine the true popularity of the existing media outlets.

Research done by the pro-government Centre *Izhtimoi Fikr* (Public Opinion) does not breed confidence.

The Ban on Censorship

Prior to 7 May 2002, press censorship was conducted by the Ministry of Press that had a special division dealing with this issue: the Chief Inspection for the Protection of State Secrets in the Press headed by Erkin Kamilov. He previously headed Uzlit (a censorship agency in Uzbekistan during the Soviet period) and has been working in this area for 30 years. For many years all media were censored, journalists had to provide their stories prior to publication for any potential “state secrets” being revealed. Stories that had absolutely nothing to do with classified information were nevertheless also scrutinised.

In May this Inspection received new functions and its head, Kamilov, was removed. The Press Ministry stated that from now on the editors would be personally responsible for what is published. Although the abolishment of official censorship could be considered a positive step, an inclination by editors to exercise self-censorship can undermine this step forward.

The inbred fear and a lack of understanding by the state structures of the stabilising role of the media led to the fact that even this ban could not breath fresh air into the mass media in Uzbekistan.

Censorship in Uzbekistan is multi-layered (self-censorship, editorial, control by the authorities, monopoly on distribution, etc.) and different (political, financial, administrative, etc). Control over what is published is exercised not so much by the state structures but inside the editorial offices themselves. Usually, if there is any doubt regarding a story, it is taken off the page or off the air by the editor. This control exercised by the editor, who is summoned to the Office of the President for publishing anything that could be considered potentially seditious, leads to a situation when events that are seen as mildly provocative or critical will never become the theme of a news story. Journalists and editors try to avoid writing about issues that may provoke displeasure among the authorities.

As a result of such self-censorship there are rarely any conflicts between the journalists and the state. Uzbek media is put in a situation where it cannot utilise freedom of expression that is guaranteed by the Constitution.

Foreign Media

Journalists working for foreign media are usually better protected by international organisations and are more independent from the authorities than those working for national media. However, their news stories are never carried locally. The Post and Telecommunications Agency refuses to provide the *BBC* and *Ozodlik* radio stations with an FM frequency. The Ministry of Foreign Affairs is dragging its feet in providing “disloyal” journalists with accreditation. For example, Alisher Toksanov, a correspondent for the magazine *Central Asia and the Caucasus* published in Sweden has been waiting for his accreditation for almost a year and can still not get a plausible answer from the Foreign Ministry.

Hindering Independent Journalism

There are many cases of direct and indirect pressure on independent journalists. One of the better known ones concerns the *AFP* correspondent Galima Buharbaeva. At a meeting with French journalists on 2 May 2002, Otabek Hamroev, a functionary with the Foreign Ministry Information Agency *Dzhahon* threatened her, pointing out that she held Uzbek citizenship and thus was less protected than foreign correspondents. On 10 May, she was refused access to a press conference by German Chancellor Gerhard Schroeder, finally being allowed in after interventions by both the German and the French embassies. On 14 May, two editors of the newspapers *Vremya I My* and *Mohiyat* wrote letters to the web site *ferghana.ru* in which they criticised her article dealing with the abolition of censorship (in it she quoted both editors.) In their communication they denied ever making the quoted remarks although they were said at a public press conference held together with a delegation

from the *Committee to Protect Journalists (CPJ)*. Both editors in private conversations acknowledged that they were “asked” to write their letters.

Electronic Media

State TV and Radio

There is no independent national TV or radio broadcaster in Uzbekistan. The state TV and radio company operates four channels, mostly in Uzbek: first channel **Uzbekistan**, channel *Eshlar*, *TTV* (Tashkent channel) and the fourth international channel. The level of programming is very low. There is a complete lack of any criticism of the government, of any serious analytical programmes, no plurality of views, all issues are discussed only from one angle: that of the state.

Private TV and Radio

There are approximately 30 private TV companies in Uzbekistan. Because of total state control and being afraid of losing their business these TV companies avoid touching upon the interests of the state structures. Two channels have been closed down for political reasons: *TV-ALC* and the radio station *Moi Gorod*.

Most of these companies employ people who are not professional journalists, and as a result the level of programming is very low. Some channels re-broadcast Russian programmes this way getting a bigger audience but still lacking the necessary technical base.

There are ten private FM radio stations broadcasting in Uzbek and Russian in Tashkent, Samarkand and in the Fergana valley. All of them are more or less the same, focusing on music and entertainment.

Control Over Import of Publications

Under the pretext of protecting the morals of the population, the import of publications is strictly controlled by the customs authority. The

list of publications allowed into the country is restricted, there are cases of mail being tampered with.

In October 2000, customs confiscated the magazine *Harakat*, published in the US. According to an expertise conducted by the Ministry of Culture of Uzbekistan, the magazine contained stories that were advocating the undermining of the constitutional order in the country and thus its copies were destroyed.

In September 2001, customs officials at the train station *Tashkent-Tsentrlnaya* seized copies of the magazine *Central Asia and the Caucasus* published in Sweden. A court in Tashkent ordered the confiscation of the 103 copies of the magazine. Experts from the Ministry of Culture concluded: “the facts [in the articles] were distorted, quoted by the authors as they liked, misinterpreting the real situation, and not helping the current state of inter-ethnic and inter-confessional harmony in the Republic of Uzbekistan.” Among these “facts” quoted by the experts were the following: “...at least in the area of human rights the situation in Kyrgyzstan is better than in Uzbekistan,” “...he was known for his brutality, violence, for the annihilation of millions of people...” (regarding Central Asian medieval leader Timurlan).

Internet

A state monopoly on access to the Internet exists in Uzbekistan since according to the Government’s decree # 293 the only licensed provider is *UzPAK*. The number of subscribers is minuscule: approximately 140,000 people. For most citizens Internet access is still a luxury. However, cyber space is relatively free allowing local independent journalists to voice their views regarding developments in the country and to publish articles on Russian and other foreign web sites. Nevertheless, the government is trying to block access to opposition web sites that are registered abroad. For example, for over a year those working for the *Independent Organisation for Human Rights* do not have access to the sites of the opposition party *Erk* and movement *Birlik*.

Attacks Against Journalists and Restrictions on Their Rights

Many facts dealing with physical and psychological violence against journalists are not known because the country is practically a closed state where the lives of those considered disloyal are totally controlled. Many journalists who have been harassed do not make public their conflicts with the authorities for fear for their own lives and those of their loved ones. Many had to leave Uzbekistan because of ongoing threats or just stopped working as journalists. Human rights organisations have documented several cases, often concerning correspondents for foreign media. By threatening to pull their accreditation, the authorities are trying to influence the content of their stories. However, most concerns arise regarding journalists sentenced to prison under fabricated charges.

Journalists: Those Who Died

Sergei Grebenyk

On 27 January 1996, Interfax said that its Tashkent correspondent Sergei Grebenyk had gone missing. Two Russian newspapers *Nezavisimaya Gazeta* (6 February 1996) and *Komsomolskaya Pravda* (8 February 1996) wrote that previously this journalist was harassed by the authorities: on three occasions he had been beaten up by “unidentified” individuals. According to his colleagues, Grebenyk was followed. His body was found on 8 February in the Kara-Sy canal in Tashkent. He was last seen leaving his brother’s house on 27 January. According to *Nezavisimaya Gazeta*, the official coronary report said that he drowned. According to the Ministry of Internal Affairs, a bottle of vodka was found in his pocket. The Uzbek media reported that Grebenyk was “a drunkard who drowned while intoxicated.” No independent investigation was ever conducted. According to Russian weekly *Obshaya Gazeta* (#9, 1996) his father is disputing the official version of events.

Emin Usman

On 28 February 2001, Uzbek writer Emin Usman died in police custody in Tashkent. He was detained on 11 February in the capital not far from the House of Writers. His lawyer was only able to see Usman on the fifth day after his arrest. The local prosecutor told the lawyer that Usman was charged under Article 244-1 of the Criminal Code (distributing materials that undermine public security.) On 1 March the body of Usman was delivered to his family covered with numerous bruises and he had a gaping wound in the back of his head. After the funeral, the authorities provided the family with a medical certificate that said that Emin Usman died of a brain tumour.

Pressure on Journalists

On 28 July 2001, the Office of the Prosecutor of Tashkent filed charges against the independent journalist, *TV-ALC* Director Shukhrat Babadjanov for violating Article 28 of the criminal code (production of counterfeit documents and their distribution). He was accused of producing counterfeit documents ten years before so as to be able to join the *Union of Artists of Uzbekistan*. Independent journalists and human rights activists believe that these trumped up charges are related to Babadjanov's active journalistic work. In the past two years he was trying to restart broadcasting of *ALC*. Fearing for his life, he was forced to flee to Germany where he received political asylum.

Detention of Journalists

As has already been noted, there are practically no critical stories in the Uzbek media. However, if such stories on rare occasions do make it through because of a "lack of vigilance," their authors will be charged not with libel or defamation, but with, for example, receiving a bribe, carrying a weapon, or possession of drugs. The authorities try to make it look as if the journalist was not detained for political reasons, which may

lead to interventions from foreign human rights organisations, but rather for criminal conduct.

Mamadali Makhmudov

In April 1999, the famous writer Mamadali Makhmudov received a 14-year prison term for allegedly trying to change the constitutional order. In fact he became a victim just because he was a friend of the leader of the political opposition Muhammad Salih and was actively involved with the opposition newspaper *Erk*. Notwithstanding international protests and deteriorating health, he continues to be incarcerated.

Shodi Mardiev

62-year old Samarkand journalist Shodi Mardiev was arrested in the summer of 1997 for allegedly taking a bribe and sentenced to 11 years in prison. According to local human rights activists, his arrest is directly connected with his professional work as a journalist. Mardiev was famous as an author of pamphlets and critical radio programmes targeted local politicians and police functionaries. He continued to be in prison for four years, although *Human Rights Watch* and *ICJ* had petitioned the President regarding his case. In February 2002 he was freed as part of a general amnesty commemorating the tenth anniversary of the independence of Uzbekistan.

Usuf Djumaev

Usuf Djumaev, a poet and journalist, was arrested on 23 October 2001 at his home in the Bukhara region. The Inspection for the Protection of State Secrets analysed his poems and found in them appeals to overthrow the constitutional order in the republic. On 29 October, he was sentenced to a suspended sentence of three years after appealing for clemency to the President and the people of Uzbekistan. In April 2002, Djumaev was

accused of stealing the neighbour's dog and was told to report for questioning. Fearing incarceration he has gone into hiding.

Chonzar Ermatov

The correspondent of the news programme *Davr* on state TV Shonzar Ermatov was accused of extortion in September 1999. During his subsequent detention, several grams of drugs were “found” in his car. He was sentenced to 11 years in prison. Although his colleagues do not completely exclude the possibility of extortion, however the “turned up” drugs and the harshness of the sentence put into question the fairness of the judicial proceedings.

Madzhid Abduraimov

57-year old journalist Madzhid Abduraimov from the newspaper *Yangi Asr* was arrested in March 2002 and charged with extorting and receiving a bribe. He was sentenced to 13 years in prison. According to human rights experts, this case was “a 100 percent ordered” and fabricated by the local authorities because of his critical stories regarding the top brass in the Surkhandaryin region, where he lived. The journalist accused high level officials of corruption and misconduct. According to several witnesses, a package was thrown into his car that contained 6,000 USD in cash.

Closure of Newspapers

Panorama

In May 1999, the Post and Telecommunications Agency suspended the publication of the independent newspaper *Panorama* in the Khorezm region. This suspension is directly connected with the *ALC* case. The editor of *Panorama* Kostantin Aksenov was a public defender during the court hearings on the *ALC* closure and his newspaper published critical

articles regarding the legal proceedings. After several tax inspections the newspaper stopped publishing and its editor was fired.

Oyna

In March 2001, the Press Department of the Samarkand region suspended publication of the independent newspaper *Oyna*. The decree issued by the head of this department Makhmud Eraliev says that the editor Rahim Mavlonov, because of the low level of his political thinking, can no longer head the newspaper that was accused of publishing unreliable information, where journalists questioned the achievements during the years of independence, where there were instances of unmitigated criticism of senior officials. When this report was going into print, the newspaper was still involved in court battles with the local department and has gone through all the judicial levels, with the top court sending the case back to the first level.

Closure of Radio Station *Moi Gorod*

Moi Gorod was closed down in September 1998. The Cabinet of Ministers Inter-Agency Commission revoked its licence under trumped up charges. Local and foreign journalists believe that it lost its licence because of re-transmitting *BBC* Uzbek service programmes on its FM frequency.

Closure of *TV-ALC*

One of the most revealing cases regarding any lack of enthusiasm among the authorities to introduce even some elements of freedom of the media concerns the closure of the Khorezm TV station *ALC*.

It was taken off the air in autumn 1999 right before the parliament and presidential elections. A local commission sealed off its transmitter with the pretext that it was not secured properly. However, it is clear that the authorities were afraid that these uncontrolled journalists might make problems when monitoring the elections in the region. For two years

ALC Director Shukhrat Babadjanov fought through the court system to get his channel re-opened to no avail. On 28 June 2001, the Cabinet of Ministers Inter-Agency Commission headed by Deputy Prime Minister Kharamatov finally refused to re-issue a licence to *ALC*. The protocol of this meeting specifies that this decision was made because of several irregularities in the documents submitted to the commission and because of a lack of a frequency. However, the Post and Telecommunications Agency took away the *ALC* frequency when the company applied for re-registration. Currently the frequency is not in use since the State TV channel in Khorezm *KhTV*, which has applied for it, does not have the necessary equipment to start broadcasting. Since Babadjanov continued to fight for his rights the authorities then fabricated a criminal case against him forcing him to flee the country.

Recommendations

Uzbekistan has voluntarily signed up to OSCE commitments, including those dealing with human rights, democracy and the rule of law. It should be strongly recommended to the Government of Uzbekistan:

- To ensure that national media legislation is fully in compliance with international norms and standards and to stop the practice of issuing by-laws that contradict international commitments and national legislation. Especially the provisions concerning libel, access to information, and state secrets should be reviewed. The expertise of the OSCE and other international organizations should be taken advantage of in this regard. Ways to protect media from undue editorial influence by monopolies, oligarchs and big business, political parties, sponsors and advertisers as well as founders should be considered. A Law on Broadcasting should be adopted.
- To reform or close down the State Committee on Press and the Inter-Agency Commission, since both organisations issue licences and regulate the media. The Press Committee should not have the right to unilaterally withdraw licences and close down media outlets outside the court system;

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- To improve and guarantee the plurality of the media market. The conditions for the publication and distribution of the opposition newspaper *Erk* and magazine *Kharakat* should be guaranteed. The *BBC* and *Radio Liberty* should be allowed to re-broadcast on the FM frequency and free access to all Internet sites must be provided. The transparency regarding the accreditation of foreign media in Uzbekistan should be provided, the practice of denying it to those media that criticise Uzbekistan should be ended together with the banning of importing foreign publications that are critical of the current state of affairs in Uzbekistan;
 - To conduct thorough investigations regarding the infringements of journalists' rights, especially the deaths of Grebenyk and Usmanov and the sentencing of Makhmudov, Bekzhanov, Ruzimuradov, Mardiev, Abduraimov and to stop attacking Djumaev. To free all Uzbek journalists currently in prison for performing their professional duties: Makhmudov, Bekdzanov and Ruzimuradov from the banned newspaper *Erk* and Abduraimov from the weekly *Yangi Asr*. To provide Babadjanov with safety guarantees so that he could return to Uzbekistan and re-start *TV-ALC*;
 - To provide guarantees that the government will stop using politically motivated court trials to attack independent media, like for example the Samarkand newspaper *Oyna*;
 - To permit the establishment of associations and organisations of journalists, independent broadcasters that defend the rights of journalists and private media;
 - To restructure the state media and to liberalise the market that provides printing and information services.