

# IV. Legislation

## General

Apart from some contradictory and restrictive aspects of the texts on media law, the legal situation of the media in Tajikistan also suffers from an absence of court practice on decisive issues which usually strongly determine journalism practice (like libel), as much as of a comprehensive vision of the media system. “In the last five years in the judicial practice in Tajikistan, no examination of cases

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<sup>14</sup> Christoph Schüpp, *op. cit.*

<sup>15</sup> Oleg Panfilov, *op.cit.*

of libel are known”, wrote Said Yunusov in a study published in 1999<sup>16</sup>. More generally, “there is virtually no court practice of cases connected with the activities of the media.”<sup>17</sup> Such assertion might be excessive: some cases have been examined by some courts in Tajikistan, but their decisions only represent some isolated precedents, not discussed or contested in a comprehensive framework. They do not, therefore, form a basis for the development of a coherent jurisprudence. Cases like the one of Vose, described further in the section “Criminal code (libel)”, only give the image of a judicial system being under the influence of politicians. This absence of a developing jurisprudence together with the total non-existence, in some cases, of clear procedures to appeal against decisions taken by the authorities (such as the refusal to give a broadcasting license to a private television or radio) contribute to deepen the present “great gap (...) between the norms declared by the Constitution and reality.”<sup>18</sup> In theory, freedom of speech and freedom of the media are guaranteed by the Constitution. But, as far as the application of these principles is concerned, “every manifestation of disagreement with the policy of the government is being punished.”<sup>19</sup> This might take different forms: “the seizure of the issues of some newspapers, the unclear interdiction by the authorities to publish some material, physical persecution and intimidation of independent journalists.”<sup>20</sup>

The legal basis of freedom of speech and media activities in Tajikistan are essentially defined by the Constitution: laws “On Press and Other Media” and “On Television and Radio”, together with laws “On Copyright and adjacent Rights” and “On State Secrets”. The evolution of the media law since the declaration of the country in 1991 is generally perceived as a restrictive one. An in-depth analysis published in June 1999 in the state-owned newspaper *Narodnaïa Gazeta*, co-signed by Djuinaid Ubodov and Bahodoor Kosimov (the latter Managing Director of the organization Internews in Tajikistan), gives an illustration of this evolution. Adopted in December 1990, the law “On Press and Other Media” was born, so the authors, “in a period of democratic romanticism”. It “clearly forbids whatever interference from the side of acting bodies, governmental and public organs, in the activities of media (art. 36), establishing the criminal character for any violation of this fundamental principle of independence and functioning of the media”<sup>21</sup>. On the contrary, say the authors, the law “On Television and Radio”, adopted in 1996, clearly limits in its 6<sup>th</sup> article the principle of non-interference to the only “creative activity of TV-radio- organization”, thus providing the authorities with a “perfect legal tool” to make obstacles or to interfere in any form and by any means in the concrete activity of any “undesirable media”.<sup>22</sup>

Reading through the legal texts concerning the media hardly reveals any idea of any comprehensive media strategy from the legislator’s side. In terms of electronic media, the texts acknowledge two forms of broadcasters: “gosudarstveni i ne-gosudarstveni” – “state” TV or radio, and “non-state” TV or radio, with no mention of any kind of public service. The mission of the state broadcaster is roughly defined, with accent on the obligation to put on the air “official announcements, decisions of legal bodies, executive and judicial powers officially available” (article 6). The whole functioning of the state media thus appears essentially orientated towards the activities of the acting state structure,

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<sup>16</sup> Said Yunusov, *Media Laws and Practice in Tajikistan*. In: *Press Laws and Practice in the Countries of CIS and Baltics*. – Glasnost Defense Foundation, Moscow, 1999.

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Djuinaid Ibodov, Bahodoor Kosimov, “Mir informatsii bez granits?” (“World of Information without borders?”), *Narodnaïa Gazeta*, Dushanbe, 24 June 1999.

<sup>22</sup> The article 6 of the law states that : “ Interference of governmental organs, local authorities and their acting bodies, political parties, public organisations and any citizen in the creative activity of TV-radio-organisations, together with censorship, as well as control over the ideological content of the TV-radio-programs is forbidden”. (Free translation).

with no larger mission, frequently devoted to public media in other countries, such as aiming to represent different points of view or to maintain a particular form or culture. In fact, the only form of pluralism established by law in the media concerns the language, article 19 of the law “On Television...” stipulates that “TV and radio companies broadcast in the state languages, and also in other languages”.

## **Overview of the legal base**

### **The Constitution**

The Constitution of Tajikistan, like constitutions of some other post-soviet countries, contains substantial principles in terms of defense of human rights and freedoms, including the freedom of speech. At the same time, it includes grounds for restriction of those freedoms.

Article 30 of the Constitution declares that:

“Freedom of speech, press, right to use mass media is guaranteed for everyone”;

“State censorship and persecution for criticism is prohibited”;

“The list of information concerning state secrets is determined by the law.”

Common restrictions of freedom of speech are contained in article 7 (“Propaganda and actions directed to split the unity of the state are prohibited”), and article 11 (“Propaganda of war is prohibited”). But, Said Yunusov pays special attention to article 14<sup>23</sup>, considering that the formula of “public order” is so broad that it could be used to restrict all human rights and freedoms, including the freedom of speech. The Constitution also guarantees the inviolability of private life (article 23), a norm that may limit the freedom of the media, and does not include freedom of speech in the list of freedoms that cannot be limited by Martial Law (Article 47). The text of the Constitution does not mention the right of the people to receive information.

### **Law “On Press and Other Media”**

The law “On Press and Other Media”, like the same laws of Kazakhstan, Uzbekistan and Armenia, was adopted in 1990 before the Soviet Union was officially dissolved by the leaders of Russia, Ukraine and Belarus. It is a replica of the Soviet law with the same name, and repeats its spirit and logic. This law was amended on 14.03.92; 01.02.96; 12.12.97 and 11.12.99. According to different analyses in Tajikistan, the amendments decreased the level of freedom of speech. According to the Article 2 of the law “On Press...”, the media in Tajikistan is free, every citizen of the country has the right to freely express his or her views and opinions, disseminate them in any form in the press and other media, and censorship is forbidden. Article 5 says that the state, the political and public organizations, as well as officials are obliged to provide information to the media. In case the state officials and public organs prevent journalists from doing their duties, force them to publish or not to publish information, they could be punished and fined (article 36).

An important element of journalism is contained in article 29, which says that a journalist has no right to unveil his sources of information, excluding the cases, when this might be requested by a court. Lawyer Djunaid Ibodov<sup>24</sup> believes that the phrase “has no right” is too strict, and should be replaced

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<sup>23</sup> “The rights and freedoms of citizens can be restricted only to ensure rights and freedoms of other citizens, public order, defense of the constitutional order and territorial integrity of the republic.”

<sup>24</sup> Said during a seminar on “Legislative Education of Journalists”, – in Kairakkum, September 13-15, 2000.

by “may not” or “could not”. This article contains also limitations. It forbids to unveil any information that can make publicly known the identity of a juvenile delinquent without his prior consent, and contains a ban to predetermine a court decision. The Law on Press contains several other limitations. Article 6, under the title “Inadmissible Abuse of Freedom of Speech”, bears the key restrictions. According to that article, the media cannot publish state and other secrets; calls to coup d’état; war propaganda, violence and cruelty; racial, national, religious discrimination or intolerance; pornography, calls to commit criminal and other crimes, as well as information defaming the president and the country (such provisions are qualified by Reporters sans Frontières as means frequently used by authoritarian governments in order to repress any criticisms in respect of the authorities in position<sup>25</sup>). According to Nicolas Daniloff, articles of this kind (they exist in respective Armenian and Azerbaijani laws on press) are controversial, because they limit the freedom of speech, while mistakes in journalism, as well as in any other sphere of human activities, are inevitable<sup>26</sup>.

The same restrictions are mentioned in article 22 of the law, according to which media containing the type of information mentioned in article 6, should be forbidden. The same article states that it is forbidden to prevent distribution of media, “including by requisitioning its circulation or a part of it”. This means that, in several cases, the actions of the officials of the printing house Sharki Ozod are illegal (see below). A court can decide to close a media outlet, if the provisions of articles 6 and 22 are violated. The presence in the law of a chapter on the “Rights and Obligations of Journalists” is in itself controversial, as such rules belong more to the general understanding of the functioning of the media than to pure legislation, except the usual relevant aspects of the civil and the penal code (such as respect of the privacy or libel). Article 33 of the law also appears questionable and may become a basis for arbitrary and political decisions. According to that article, foreign journalists can be deprived of accreditation, if they “systematically prepare and spread misinformation about the internal and foreign policy of the Republic of Tajikistan, so harming its interests”.

### **Law “On Television and Radio”**

This law, which was adopted on 14.12.96 and amended on 30.06.99, appears more restrictive for the freedom of speech than the law “On Press...”. It places state- and private-TV and radio in unequal conditions, giving advantage to the state TV and radio. First of all, by giving the State Committee for Television and Radio (usually described as “Gosteleradio”) the competence to give licenses to the private TV and radio stations, which are *de-facto* its potential competitors. In its first draft, this law was however not even taking into consideration private broadcasters. “As a result of our lobbying, we succeeded in obtaining the introduction of the status of private media in the law”, says Bohodoor Kosimov from Internews<sup>27</sup>.

The state TV and radio have priority in using the state wire networks (article 8), and the state has the monopoly for international activities, i.e. re-broadcasting foreign TV- and radio-stations, foreign programs, buying programs and selling them. (article 5). The social defense of the employees of state TV and radio companies are established by the law (article 31), which also clarifies the sources of financing for state companies (article 32).

Article 3 lists the principles of activities of TV and radio stations. They are:

- objectivity of information;

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<sup>25</sup> Reporters sans Frontières, introduction to the Annual Report, 2000.

<sup>26</sup> “Paradoxes in the Caucasus: A Report on Freedom of the Media in Azerbaijan and Armenia”, by Nicholas Daniloff for the Committee to Protect Journalists, January 1998.

<sup>27</sup> Interview Cimera, Dushanbe, September 2000.

- reliability;
- right of the citizens to receive information;
- free expression of (own) views and opinions;
- respect towards general norms of morale;
- strict observance of professional ethics.

Only juridical persons in the Republic of Tajikistan can be founders of TV and radio organizations (article 11). The activities of TV and radio companies can be terminated by a court, but the law does not say on what grounds, or in what cases could a court take such a decision. Control over the ideological contents of the programs is prohibited. State organs and officials, political parties and public organizations, as well as private persons cannot intervene in the “creative work” of the TV and radio organizations (article 6). The right to obtain information for TV and radio organizations and their workers is stated in article 20.

### **Regulations on “Order of Licensing in Sphere of Television and Radio”**

Signed on 14.11.97, this is the very document according to which broadcasting licenses are given to electronic media. “Regulations on Order of Licensing in Sphere of Television and Radio” is the document which plays the most important role in obtaining broadcasting licenses (see below the chapter “Media system”, section “licensing”).

### **Criminal code (libel)**

Article 135 of the Criminal Code gives the following definition of libel: “The spreading of notoriously false information attacking someone else’s honour and dignity or undermining his reputation”. Court practice has not yet established a substantive definition of libel in Tajikistan. The slight information about such cases, like the one of Vose, gives more indication on the defective functioning of the judicial system in Tajikistan than it provides a base for the development of any consistent jurisprudence on this subject. Described to the authors of this report during direct interviews, the same case was also recorded by Human Rights Watch in its above-mentioned report. In 1999, the procurator of Vose, in southern Tajikistan, launched a criminal case for libel against the editors-in-chief of two newspapers which, in 1997, had published critical articles on the Chairman of the Executive Committee of Vose. The latter had then already attacked the journalists who made the articles, but the latter won the case. Despite this discharge, the editors-in-chief were then harassed, notably by the police, who tried to bring them by force to an interrogation. When both of them went to the Vose procurator’s office in 1999 accompanied by a representative of the Memorial Fund in Memory and Defence of the Journalists, they met the deputy procurator who, at the end of the meeting, according to the Human Rights Watch report “acknowledged that he was at fault and that he was only obeying the orders” of the Chairman of the Executive Committee. On January 1999, more than one year after the journalists had won their first case, they were attacked again, this time for slander, and sentenced to three years of imprisonment. They were finally liberated after letters of protest were sent to President Rakhmonov by various national and international journalist organizations.