

SECTION 4

LEGISLATIVE AND LEGAL ENVIRONMENT FOR MEDIA ACTIVITIES IN THE KYRGYZ REPUBLIC

The mass media of Kyrgyzstan, being at the center of public life in the country, is regulated by the following fields of law:

1. *Constitutional law* (the right to freedom of expression as an inherent right of a human being and citizen; the right to freedom of media);
2. *International law* (the Universal Declaration of Human Rights – the right to freedom of expression as an inherent right of a human being and citizen);
3. *Special legislation on media* (regulates the issues of establishment and activities of media organizations);
4. *Civil legislation* (regulates the issues of publication of media materials, such as libel, slander and insult, violation of dignity and reputation of citizens, compensation for moral damages, etc.);
5. *Legislation on elections* (includes the Elections Code and other statutory and normative acts regulating media access during elections);
6. *Criminal law* (media organization as a subject enjoying full rights with the process and bearing responsibilities);
7. *Labor law* (media outlet as an organization unifying employees on the basis of common interests, as well as trade unions and associations of media employees created for protection of labor, social and economic rights and the interests of their members);
8. *Tax law* (media organization as an economic unit subject to taxation);
9. *Customs law* (media organization as an entity with the right to be involved in economic activities and respective obligations, bearing responsibility for violation of tax rules associated with such activities);
10. *Financial law* (control by financial bodies over the sources of media revenue, amounts received and actual payment).

Below is a brief analysis of the main legislative acts regulating activities of mass media in the Kyrgyz Republic.

4.1 Legislative foundation for media activity

4.1.1 Constitution of the Kyrgyz Republic

The foundation of media activity in Kyrgyzstan is laid down by the constitutional norms guaranteeing all the main rights and freedoms of citizens prescribed by modern international standards of democratic countries. In particular, the Constitution of the Kyrgyz Republic (adopted in 1993), guarantees the freedom of speech and expression establishing that each citizen of the country has the right «to free expression and spreading of thoughts, ideas and opinions, to freedom of literary, artistic, scientific and technical creativity, freedom of press, transfer and dissemination of information» (Article 16).

Further, the Constitution specifically establishes the freedom of mass media: «Culture, art, literature, science and mass media are free» (Article 36, p.1). Although this constitutional clause confirms that there is no clear-cut separation between these areas of human activities and places the media within the cultural¹ rather than political or social and economic sphere. In this particular case it is important that the media freedom is guaranteed by the Constitution. The same article obliges the state to create «conditions necessary for the development of literature, art, science, mass media and sports» (Article 36, p.2).

The clause on freedom of speech and freedom of mass media is enforced by a constitutional amendment adopted at the end of 1998, as a result of the national referendum, along with the other most important amendments which were to enforce democracy and further promote the economic reforms. This amendment was included into Article 65, p.8: «Adoption of laws limiting the freedom of speech and freedom of press is not allowed». Taking into account the fact that this article is included in the "Legislative Activity" section, a parallel may be drawn between this amendment to the KR Constitution and the First Amendment to the US Constitution, which is recognized to be one of the most significant achievements in the American democratic tradition. It should be noted that this amendment was introduced after several attempts by the Parliament of the Kyrgyz Republic to change the media law toward more limitations on media activity, although the amendment did not prevent further attempts in this area.²

4.1.2 Law «On Mass Media»

This is the main law regulating activity of mass media in Kyrgyzstan. The Law «defines the general legal, economic and social foundations of organization of messages through mass media» and is aimed at «free functioning of mass media, regulating their relations with the state bodies, public associations, enterprises, organizations and citizens.»

¹ Most probably, this is a remnant of the Soviet tradition of the state structure, where mass media was considered to be a part of the cultural sphere, and the media employees, specialists and trade unions were equal to culture employees, with the same privileges and benefits.

² See paragraph «Law on protection of honor, dignity and business reputation of citizens».

The Law defines as mass media all «newspapers, journals and magazines, supplements to them, almanacs, books, newsletters, one-time publications meant for public distribution with permanent title, as well as television and radio broadcasting, cinema and video studios, audio- and visual records and programs produced by state bodies, information agencies, political, public and other organizations, private persons». This broad definition lead to a situation where all mass media in the country were registered as separate legal entities. For example, the weekly supplement "V kontse nedeli" ("On the weekend"), to the newspaper "Slovo Kyrgyzstana", is registered as a separate publication although in terms of the editorial policy and personnel it is absolutely the same as its "parent" organization. Some newspapers had 3-4 weekly supplements, which were registered separately. This situation also explains the large number of existing mass media in the country and, partly, the contradictions in the data on their exact number.³

Adopted in 1992, the Law on Mass Media was considered one of the most progressive laws in this sphere in the entire post-soviet environment at that time. And indeed, the open prohibition of censorship and direct government regulation of or interference in media activity, as well as the quite broad and liberal rights of journalists were great achievements for a country that proclaimed democracy as its ultimate goal. One more positive novelty of the law was the permission for media to be involved in commercial activity (Article 3). This had a threefold effect. Firstly, this meant that media products were now considered to be goods that could be bought and sold freely, which gave a powerful impetus for development of the media market. Secondly, this permission encouraged development of independent mass media as a commercial activity able to renounce state subsidies and support. Another clause that encouraged the appearance of a larger number of diverse media was the right provided by Article 5 to establish mass media. Previously limited to state bodies, this was now extended to public associations, labor collectives and citizens of the republic, i.e. practically anyone wishing to do so.

However even with all its progressiveness, the law has a number of serious shortcomings and limitations in terms of established media theory. One of them is the requirement of obligatory registration of all media as legal entities with the Ministry of Justice. Although the representatives of the Ministry of Justice claim that the registration has only a recording character and is necessary to legitimize the existence of a mass medium and to know how many mass media exist in the country, the practice has shown that in some cases the procedure of registration may be used in order to prevent "undesirable" media from starting their activities.⁴

The second serious limitation of the Law is Article 23 is with the list of types of information not subject to public dissemination. The fact itself of existence of the list as a limitation imposed on media is a deviation from the principle of freedom of speech and press. In addition, most of the items on the list, according to the established practice of the

³ See also Chapter «Registration of mass media».

⁴ For more details see Chapter «Registration of mass media».

democratic media theory, are included either in the sphere of ethics (which means they should be regulated by ethical norms and codes rather than legislation prescribing punishment for violation), or in the sphere of media self-regulation. Here, again, the soviet tradition of a "paternalistic" attitude toward journalism took over: the state tells the journalists what is right and what is wrong and prescribes punishment for deviations from "correct" behavior. Quite interesting is the fact that when the law was adopted, and during the first years thereafter, many journalists and media specialists believed that the existence of this list was justified, that these limitations were necessary to prevent chaos and disorder in the society. It was their view that since neither journalists nor the society itself had "matured" enough, issues of pornography or the incitement of ethnic or religious hatred could not be self-regulated or fully referred to by the sphere of ethics. However even at that time many people understood that the item on protection of honor and dignity from the same list could be used against journalists when they were disclosing corruption or wrongful actions of government officials. Subsequently, this was seen to happen repeatedly in practice.

Another major shortcoming of the 1992 Law is that it was aimed mostly at regulation of print media, having left out the electronic media. The specifics of electronic media are such that they have to be regulated by a separate law. Although later attempts were made to regulate them with the help of a general law on licensing and various regulatory acts, the necessity of the introduction of a separate law on television and radio broadcasting was understood even at that time. In spring 2001 one more draft law was submitted to the Parliament which has not yet been adopted.

As for the general character of Media Law, many media specialists and lawyers emphasize its declarative character. «It proclaims the norms and the implementation mechanisms for which are provided neither by the law itself nor by the subsequent regulatory acts. Some articles of the law are not formulated clearly enough, which leaves space for their interpretation in application.»⁵ In addition, excessively broad wordings of the law provide vast opportunities for justification of the necessity of regulatory acts that may be issued practically on each individual case depending on what is convenient or desirable for the government. And although this refers to other laws of the country as well, mass information and journalism are so important for the public domain that all these shortcomings of the Law are seen more clearly than in other spheres.

During the eight years after adoption of the Media Law, several attempts were made to change the old law or to introduce a new one. The first amendment to the Law was introduced in 1993. It provided that «establishment of a mass medium by state bodies jointly with public associations. Working collectives and citizens shall not be allowed» (Article 5, p.3). This meant that such newspapers as "Slovo Kyrgyzstana" in fact became illegal as their founders were both the working collective of the newspaper and the state. This contradiction was resolved only in April 1996, after attempts by

⁵ Lev Bardin, newsletter «Mass media: Legislation and Practice» of the Kyrgyzstan Bureau on human rights and compliance with the law, Issue 1 (February 1996).

the staff of "Slovo Kyrgyzstana" to acquire full independence from the government. A "rotation" of heads of the media controlled by the government was made and a number of actions were taken as a result of which the government became the sole founder of the newspapers "Slovo Kyrgyzstana" and "Kyrgyz Tuusu."

Several years after the 1992 Media Law was adopted, a number of draft amendments to the law or new draft laws (a total number of about seven) were developed, which never made it through final adoption by the Jogorku Kenesh (Parliament). The first serious attempt to introduce a new law was made in 1996, when the Parliament received a draft law developed by the Legislative Assembly deputy Adakhan Madumarov (a former TV journalist). This draft law was not much different from the 1992 Law, however, it prescribed in more detail the procedure of registration which was obviously of a permissive character. It also contained an article on language, which many people understood as prescribing all media content to be produced in the state language and translated into other languages. The draft law also provided criminal responsibility for "abuse" of freedom of speech, which could be used against any journalist writing sharp, critical materials. The draft law has a number of other shortcomings that imposed on media even more limitations than did the 1992 Law. However it was not adopted by the Parliament and sent for revision.

After the revision, in November 1997, Parliament adopted the Mass Media Law which to all limitations of the 1996 Draft Law added the following ones: that journalists had no right to publish prior to the court decision any information on persons against whom criminal proceedings were initiated; media representatives not allowed to enter the premises of joint stock companies and private enterprises without special permission, neither to publish the facts of citizens' private lives; moral damage to be compensated by the court decision at the amount specified by the plaintiff; journalists to name their sources of information at first demand by any person; inadmissibility of use of media for instigation of class discord, etc. The reaction from media specialists and activists of human rights was universal – the adopted law was characterized as a rough violation of elementary legal norms for ensuring freedom of expression and press. The President of the republic used his right of veto, which Parliament could not overcome and the Law was never validated.

In 1998, there was another attempt to introduce a new Media Law. This new draft represented a hybrid of the current 1992 Media Law and 1996 Draft Law. However, this time it was not adopted by the Parliament either and the 1992 Law is still in force - although discussions on the necessity of a new law have never stopped.

Law «On Protection of State Secrets»

This was the first of a number of laws relating to mass media. Adopted in 1994, the Law «defines the legal foundations of the functioning of the system for protection of state secrets in all types of activities of state bodies, enterprises, associations, organizations, irrespective of forms of property, military units and citizens of the Kyrgyz

Republic in the entire territory of the country and in its institutions abroad». Although the law was characterized as limiting human rights (and especially the ones of journalists) to receive information, this law provided a definition of state secrets (with divisions between the state secret, military secret and office secret), and separated them from non-state secrets (commercial secret, information for office use, information not to be disclosed, investigation secret, doctor secret, personal secrets and other types of secrets). The advantage of this Law was that it established these lines of division, which had not been done by the 1992 Media Law that nonetheless prescribed responsibility for disclosure of state and commercial secrets (commercial and office secrets were not defined in the Law either). Subsequently, the Law on state secrets was effectively used by the military to justify non-provision of information on military events of 1999-2000 in Batken.

The Law «On the professional activity of journalists» and the Law «On guarantees and freedom of access to information» were adopted in November 1997 in the same package with the Media Law vetoed by President Akaev. Although media specialists note a number of shortcomings in both laws, in essence the wordings of the laws are so broad and of such a general character, sometimes just repeating the norms of the common legislation included into the Civil and Criminal Codes, that it is quite difficult to state that introduction of these laws made the activity of journalists easier or harder. However, during focus group discussions, newspaper chief editors pointed out an obvious contradiction in the Law "on journalists' professional activity." Article 9 «Investigative journalism» establishes the right of a journalist to conduct journalistic investigations, while on the other hand Article 7 «Journalist's obligations» prohibits the journalist to use "audio and video recording devices without the consent of the source of information or the author." This clause makes it difficult to receive credible and convincing evidence in conducting journalistic investigation. In general, as far as these two laws are concerned, many journalists do not even know they exist or their content, which was often confirmed in focus groups and personal interviews with journalists and heads of media.

The Law «On advertising» was adopted in 1998, when the advertising market began to develop, in order to regulate «relations emerging in the process of production, placement and dissemination of advertising in the markets of goods, works and services of the Kyrgyz Republic, including securities markets and the markets of banks, insurance and other services associated with use of monetary means by individuals and legal entities. The goals of this Law are protection from dishonest competition in the sphere of advertising, the prevention and blocking of improper advertising capable of misleading the consumers or harming health, property of individuals or legal entities, environment, or causing harm to honor, dignity or business reputation of the above persons and entities, as well as infringing upon public interests, principles of humanity and morale » (Article 1, p.1-2). On the whole it was positive in its wording, but the Law on Advertising has never brought the expected rapid growth of the advertising market.

This is due most probably to a hard general economic situation in the country rather than the character of the Law.

The Law «On information» was adopted in October 1999. One of the drafters of the Law, academic of the KR National Academy of Sciences, Valery Zhivoglyadov, justified its necessity in the following way: «We are striving to create an information society, and we need a legal foundation for this. This law will become the basis for this, protecting the information, copyright, ownership of information resources and certification of information resources and systems. It will allow us to avoid future situations causing damage. The computer virus "Chernobyl" caused damage worth hundreds of thousands of American dollars. Here no one is insured against this, but no one is protected by legislation either».⁶ This law was adopted to implement the idea of the creation of an «Informational Silk Road» from Europe to China (a project, in which Georgia is participating as well), and reflects the state policy of creation of domestic information resources and the entry of Kyrgyzstan into the "world information space. Although it is necessary to point out that during discussion of the draft law the deputies excluded the article from providing a 10-percent funding from the national budget of information resources and systems, believing this to be too large an amount for this sphere.

The Law «On television and radio broadcasting», as it was already mentioned above, is still under consideration by the Parliament. It is expected, that at the fall session of 2001 a new draft law will be discussed, developed by the Ministry of Transport and Communications. In the absence of a special law, activities of electronic media are regulated by the Laws "on electric and mail communication," "on licensing" and since their adoption in May 2001, the general Regulations "on licensing of certain types of entrepreneurial activity." All these laws and regulatory acts suffer from the fact that they do not reflect the specificity of electronic media (procedure for closing the media, defining of responsibility of media officials, etc.) and do not specify the rights of electronic media or the procedure for their protection.

Besides these key laws, media activity is regulated by several "adjacent" laws, such as the laws "on the system of scientific and technical information," "on author and adjacent rights," and various presidential decrees and regulatory acts. These include resolutions and regulations of the Government on licensing of television and radio companies and accreditation of foreign journalists in Kyrgyzstan. As for media legislation on the whole, it is worth mentioning that practically all laws suffer from the fact that they are not properly applied because there are no effective mechanisms for their implementation. Media specialists often make comments such as, "the laws are good in general, but they do not work in practice." This was heard at focus group discussions and personal interviews. In addition, a constantly growing number of new laws only make the situation more confusing. As media lawyer Lev Bardin states, "first of all, in practice there may appear disputes about the superiority of some laws over others.

⁶ Cited in Internews newsletter "Communication", Issue 18 (June 1999).

Second, it is very difficult to avoid repetitions and contradictions of various laws. As a result, we may face even more conflict situations.⁷ As specialists point out, it is necessary to create either one law that would cover all aspects of media activities, or a Code of Laws on media and guarantees of journalistic activities which would simplify and unify all current laws and regulatory acts.⁸

Special attention should be given to a failed attempt of the Legislative Assembly of the KR Jogorku Kenesh to adopt the *Law «on protection of honor, dignity and business reputation»* in June 1999. Although, according to the Law developers, it was aimed at protection of honor and dignity of all citizens of the country (for example, it had special provisions on honor and dignity of children and the deceased), in fact it was drawn up to protect representatives of the government, officials and candidates to elected positions. It also included a special article (Article 6) protecting the honor and dignity of the President, deputies of the Jogorku Kenesh, members of the Government, Constitutional Court, Supreme Court and Highest Arbitration Court of the Kyrgyz Republic. Parliament adopted this Law after the Constitution was amended to prevent adoption of laws limiting the freedom of expression and media, which gave grounds to the President to denounce the law as unconstitutional and put a veto onto it which the Parliament was not able to overcome.

4.2 Other legislation relating to media

Libel legislation

This takes a special place in media activities. Responsibility for libel and insults is provided by both the Civil and Criminal Code of the Kyrgyz Republic. Particularly limiting for journalists and often used against them for initiating multi-million court cases are Articles 127 and 128 of the Criminal Code put into force in 1998, which prescribe criminal punishment for libel and slander (part 3 of Article 127, for example, prescribes confinement of 3-6 months or imprisonment of up to 3 years). During the period 1999-2000, the number of the court cases and major claims of damage compensation increased so highly that in June 2001 the Parliament was considering draft laws on alteration of criminal responsibility for libel.

One of the draft laws was submitted by President Akaev with the proposal to exclude both libel articles (127 and 128) from the Criminal Code. The Parliament's own draft suggests to exclude only part 3 of Article 127, i.e. criminal libel, having preserved in the Criminal Code responsibility in the form of fines. Both drafts also provide introduction into the Law "on state fees", with a separate clause prescribing that a plaintiff claiming compensation of moral damages caused by libel and slander must pay a fee at the amount of 5% (President's draft) or 10% (Parliament's draft) of the claimed sum, which should discourage the number of cases initiated to receive compensations for

⁷ Newsletter «Media: Legislation and Practice» of the Kyrgyzstan Bureau on Human Rights and Compliance with the Law, Issue 10, 1998.

⁸ *Ibid*, Issue 8, 1997, commentary by lawyer Yuri Maksimov.

damages caused by media publications. These draft laws were discussed during the spring 2001 Parliament session, but were never adopted.

Tax law

Similarly to other units involved in economic activity, mass media in Kyrgyzstan is subject to taxation. Up to the middle of the 90s, taxation of media was beneficial: the media did not pay value added tax and profit tax was at 15%, which also facilitated impetuous development and the appearance of new mass media. However with the introduction in 1997 of the new Tax Code the media became equal to other profit-making enterprises which are required to pay all "commercial" taxes, namely 20% VAT, 30% profit tax and 8% direct and indirect taxes. This has complicated the situation with the media to such an extent that in February 2001, a number of heads of leading media addressed the President, Government and Legislative Assembly of the Parliament with a request to remove taxes impeding development of the media in the republic – both profit tax and VAT.⁹ However, if the draft law developed by the Government which introduces a 10-percent rate of profit tax is validated, as planned, starting from January 2002, this issue will be resolved for the benefit of the media and other commercial enterprises without giving the media a special status or provision of special benefits for the media.

4.3 Regulatory agencies

In Kyrgyzstan there is no ministry or agency directly and immediately regulating activity of mass media. Here is the proper place to note again too broad wording of the Media Law which does not specify which regulatory functions will be carried out by which agency and this is why the regulatory structure was and is subject to frequent change.

The Ministry of Information and Print that existed under the Soviet Union was abolished as early as 1991, as a result of restructuring of the Government initiated by President Akaev.

The functions of the former union *Ministry of Communication*, later put through various transformations and renaming, are currently carried out by two structures – the *Ministry of Transformation and Communications* and the *State Agency on Communications (SAC) under the Government of the Kyrgyz Republic*. Here we should note the phenomenon of the Communications Agency which grew out of the former union ministry on the basis of the function of frequency distribution for broadcasting. For a long time this existed as an independent national technical service distributing frequencies and issuing licenses to electronic media with the right to control the condition

⁹ The full text of the address see in *Internews* newsletter "Communication", Issue 68, February 2001 or at the site <http://www.internews.kg/russian/bulletin/buls.htm>.

of technical means and equipment of television and radio companies. According to the former head of National Agency on Communications (NAC), if such technical means and equipment of electronic media did not comply with the requirements on electric and magnetic specifications and quality indications, the Agency initiated the procedure of "prohibition of exploitation" of the transmitter. But this should not be confused with the act of shutting down the electronic media, which can be done only through a court."¹⁰ After the recent restructuring of the Government of the Kyrgyz Republic at the end of 2000, the NAC lost its status and is no longer an independent structure but instead comes under the government, which implies less freedom in decision making. The Communications Agency in no way influences the content or programming of the electronic media. The agency also requires from the electronic media re-broadcasting channels of other countries to produce an agreement permitting such re-broadcasting in Kyrgyzstan.

The Public Chamber of Mass Media Activities under the KR President was created in August 1994 as a non-governmental organization to solve the issues of morals and decency in media publications.¹¹ The Chamber was abolished by Presidential Decree in April 1996.

The Ministry of Justice carries out a very specific function in relation to mass media – their registration as legal entities, which should be paid special attention.

4.3.1 Registration of mass media

Registration of mass media deserves special consideration, especially due to the events of 2001 around re-registration of existing media and the registration of new media. In accordance with the Media Law of 1992, each mass medium must be registered with the Ministry of Justice as a legal entity: "A mass medium organization shall carry out its activity only after its registration" (Article 6), and the Ministry of Justice should consider the documents submitted for registration within one month. In fact, the Law establishes not an applicative and recording but a permissive procedure of registration.

Case Study: «Semeinaya Gazeta»

The editor of "Svobodnye Gory" newspaper, which was shut down by court decision (August 1994), Ludmila Jolmuhamedova registered a new newspaper – "Semeinaya Gazeta" with the Ministry of Justice and published a test issue on January 19, 1995. Despite the peaceful title, many materials of the issue were written in a politicized, critical manner, i.e. the editor made it clear that she was not going to deviate from the previous policy.

On February 6, 1995 the Ministry of Justice cancelled its own decision on registration of "Semeinaya Gazeta." Reason: allegedly, some violations were made in the registration process.

Source: Newsletter «*Media: Legislation and Practice*», Issue 1, February 1996.

Up to 2001 there were no cases of factual rejection of registration based on incompliance of documents. Even if the documents were returned to the founders, it was done usually because they did not meet the registration requirements and after revision and completing they were submitted again. However, there was a case when the registration of a newspaper was cancelled after its first issue came out (see Case study: "Semeinaya Gazeta").

¹⁰ From the interview of the NAC head İ.Kaiyikov for Internews newsletter "Communication", Issue 5, December 1998.

¹¹ See also Chapter «*Censorship*».

On April 5 2001, the Collegium of the Ministry of Justice issued a Resolution "on the issues of re-registration of mass media and political parties", on the basis of which all the mass media and political parties of the republic registered before January 1, 2001 were to go through re-registration prior to July 1, 2001. Internews lawyers¹² and other specialists characterized this Resolution as unjustified, since the requirements of re-registration and the termination of activity of legal entities are regulated by the Law "on state registration of legal entities." However, the rationale that the Ministry of Justice used was that there are many mass media in the republic that do not publish over long periods of time although still considered to be in operation. According to the Ministry of Justice, this resolution was to identify such "dead bodies." Despite protests on the part of Internews and other rights protection organizations and individuals, the Ministry kept the Resolution in force. Moreover, in his interview with a "Delo Nomer" correspondent, the Deputy Minister of Justice E. Mamyrov specifically pointed out: "This resolution is not aimed at filtering out opposition newspapers. We only want to identify and verify the number of operating mass media." He invited everyone who disagreed with the Resolution to appeal against it through the courts.¹³

On June 20, 2001 the Collegium of the Ministry of Justice issued one more resolution on cancellation of 16 media registered after April 5, referring to the resolution on registration of media issued also on April 5 and prescribing to suspend registration of new media till completion of re-registration of existing media. The 16 media whose registration was cancelled included the newspaper «Moya Stolitsa», established by former staff of the Vecheny Bishkek, who left after a change of ownership headed by the former VB chief editor A.Kim. Also the newspapers "Agym," "Techenie" and "Joltiken", which was initiated by "ex-candidate to president Melis Eshimkanov, whose most popular newspaper 'Asaba' was closed."¹⁴ What happened in this case is exactly what the deputy minister of justice denied so vigorously – the registration procedure was used by the government to prevent operation of "undesirable" and potentially dangerous newspapers.

Currently, the term for re-registration of existing media is prolonged till October 1, 2001, according to the Ministry of Justice, following the requests of those media that did not manage to prepare their documents. Only about 40 media were re-registered by July 1, 2001.¹⁵ At the same time, registration of new media is still not allowed until the re-registration is over, which, as the Internews Director Chris Schuepp notes, has paralyzed further development of media in Kyrgyzstan.¹⁶ The newspaper "Moya stolitsa" comes out on the pages of the newspaper "Advokat" and initiated a case in the Bishkek City Arbitration Court on cancellation of the Ministry of Justice resolution. Representatives of the Ministry of Justice either did not come or did not produce the necessary documents at the first two court sessions and the case was postponed. The

¹² For more details, see Internews newsletter "Communication", Issue 74, April 2001.

¹³ Cited *ibid*.

¹⁴ «Greetings, dear friends!» (Address of the newspaper "Moya Stolitsa" to the readers), newspaper "Advokat," July 24, 2001.

¹⁵ Internews newsletter "Communication", Issue 82, July 2001.

¹⁶ *Ibid*, Issue 83, July 2001.

three above mentioned newspapers – “Agym,” “Techenie” and “Joltiken” – also initiated a case against the Ministry at the city arbitration court.¹⁷

This example shows clearly that in certain situations the applicative registration procedure may be used as permissive in order to prevent appearance of those media that for one or another reason may seem dangerous or undesirable for the government. In this situation even more reasonable seems the proposal that had been formulated many times by various experts – to introduce into media legislation a change that would establish the truly applicative and recording character of registration carried out by statistics bodies rather than the Ministry of Justice.¹⁸

4.4 Censorship

In accordance with the Constitutional principle of freedom of expression and freedom of media, direct censorship of mass media in Kyrgyzstan is officially prohibited by the Law “on Mass Media” (Article 1, p.2) and Law “on Protection of Journalist’s Professional Activity” (Article 4, p.1). This also establishes that “no one has the right either to require from a journalist preliminary approval for messages and materials or to require to change the text or entirely remove from publication (air) materials or messages” (Article 4, p.2) and that “there must be no limitation for access of a journalist to information presenting public interest or relating to the rights, freedoms and lawful interests of the citizens” (Article 4, p.3). Article 9 also provides journalists with the right to conduct journalistic investigation which is an additional guarantee of a journalistic freedom, and the same article provides the right to “spread in mass media the results of the journalist’s professional investigation, voluntarily to provide them to the state bodies, self-government bodies, public associations, enterprises, organizations and officials. No one can seize or inspect materials and documents received by a journalist during investigative journalism, other than through a court procedure.” Therefore, the legislation provides sufficient mechanisms to protect both journalists and media as organizations from censorship.

However, in practice there are various forms of indirect censorship. For example, many journalists provide examples of phone calls from “the top” that earnestly request not to

publish or air already prepared materials. This is an especially effective way to affect state and pro-government media and in such cases threats of tax or financial inspections may be used, even inspections by firefighting services. All these forms of pressure are nothing but a certain form of preliminary censorship. Another effective way not to block information for publication (and therefore also a form of censorship in essence), is limitation of journalists’ access to information. In this area the Laws “on Protection

¹⁷ The described situation that existed at the time of report preparation has changed: after the official term for re-registration expired, the new newspapers were allowed to be issued and starting from November 2001 the newspapers “Moya Stolitsa – novosti” and “Agym” come out regularly.

¹⁸ These and other recommendations formulated by media specialists and lawyers for the changes in legislation are exhibited in Annexe A.

of State Secrets” and “on Guarantees and Freedom of Access to Information” have turned out to be effective in protecting state and other secrets which have never been defined clearly. In this way there exists a wide space for interpretation of what is a commercial secret, information with partial access, etc. Thus, through regulation of the issues of access to information and by protecting various types of secrets, the legislation provides sufficient opportunities for influence other than censorship and for the limitation of journalists’ actions in the absence of direct censorship.

At present there are no special “censorship structures” in the republic, however after shutting down the newspaper “Svobodnye Gory” in August 1994, a presidential decree established *The Public Chamber on Mass Media Issues* under the President of the Kyrgyz Republic. Its main function was to assist journalists in their work and not to allow use of mass media for creation of political instability and disturbance of national concord and civil peace.¹⁹ At the time of its creation, the Chamber consisted of one staff member – Chairperson K.Akmatov, a well-known Kyrgyz writer and several journalists, writers and media heads working for the Chamber on a voluntarily basis. The meetings of the Chamber were usually called after scandalous or non-conformist publications in the media, after discussion of which the Chamber published its statements in the state newspapers. One of such publications contained the mission statement of the Chamber, which was to “protect not only the President, but also any citizen from lies and insult. We are to sharpen the attention of juridical bodies, as passive sides, on these facts. We help the citizens of the Republic to defend their rights and freedom. We rank first the individual freedom; the liberty of press should not violate the freedom of an individual (...).The Chamber declares, that any fact of taking advantage or misusing of newspaper space, encroachment of people’s dignity, demagogic charges of any person by those who have an access to mass media, should not remain unpunished.”²⁰ Many journalists and media specialists assessed creation of the Chamber as an attempt to apply censorship on media, but the Chamber turned out to be a “toothless still-born agency with no real power,”²¹ which in the long run was abolished in April 1996 by a Presidential Decree under the pressure of public organizations and human rights organizations.

We should also note the existence of a half-mythical and virtual *Commission for Morals Under the Ministry of Justice*, the exact period of “life” of which is practically impossible to establish. According to some sources, it existed for about 1-2 years and was abolished in January 1999, and which in March 1999 appeared as one of the initiators of court cases against newspapers publishing erotic materials – “Paishamba,” “Limon” and “Kaptama.”²²

One could not but agree with the statement of the Center for Journalism in Extreme Situations (Moscow) lawyer E.Kandybina that in Kyrgyzstan “there is no censorship as

¹⁹ Decree of the President of the Kyrgyz Republic “On Establishment of Public Chamber for Mass Media Issues,” Slovo Kyrgyzstana, August 20, 1994.

²⁰ “Statement of the Public Chamber for Mass Media Issues,” Kyrgyzstan Madaniyaty, March 17, 1995.

²¹ S.Kulikova’s interview with the chief editor of “Asaba” newspaper on April 20, 1995.

²² See also the chapter on court cases and claims against media and Annexe B1 “Asaba.”

such, however each journalist, each editor of a mass medium has an understanding of the consequences that may fall upon his/her head in case of excessive (naturally, in the view of the government) indulgence in critical materials.²³ That is to say, simple self-censorship – each journalist knows exactly the line, the level which he/she can approach in criticism without risk of losing one’s job, and this is particularly characteristic of the government media. For example, heads of oblast media can criticize quite freely the rayon authorities and oblast structures, but not the governor himself, since he makes decisions on their funding. And the degree of criticism of the governor (where it is allowed) depends only on the governor himself, or to be more exact, on how tolerant he is to the criticism. Lately journalists often say that it is not advisable or is beyond their authority to criticize the President, leaving this for openly oppositional newspapers.

According to the former OSCE Bishkek representative Jerzy Wieclaw, in Kyrgyzstan there really exists so-called “structural censorship.” Among elements of such censorship he lists the monopoly of state for paper and printing services, control over the import of paper, increases of office rent payments, control over distribution of media products, channeling of advertising flows to friendly media and non-admission into unfriendly ones and the initiating of court cases for violation of honor and dignity with the requirement to pay incredibly high compensations. This type of censorship may also include tax inspections, creation of various committees on the protection of morals, claims related to non-compliance with ethical norms and other similar measures used for curbing the media.²⁴

All these measures and capacities together allow the government to ensure quite a high level of loyalty from most media outlets, in spite of the absence of direct censorship usually understood as an open demand by the authorities at various levels to coordinate with them in advance information published in the media. If all forms of practiced indirect censorship and self-censorship in Kyrgyzstan are considered, it becomes understandable how the authorities managed to achieve such a high level of media loyalty, while at the same time maintaining the legislative norms of a democratic system prescribing freedom of expression and absence of censorship of media. Various media experts and lawyers have repeatedly formulated recommendations, which, in their opinion, would help to improve the legislative foundation and practice of media activities. The most important of these recommendations are exhibited in Annexe A.

²³ E.Kandybina, «How to achieve media loyalty: Censorship in Kyrgyzstan», CAMEL, Issue 6, August 2000.

²⁴ See Internews newsletter “Communication”, Issue 50, July 2000, or “Slovo Kyrgyzstana” of May 12, 2000, article by U.Tesemnikov “Democracy and Media in Kyrgyzstan.”