

IN KAZAKHSTAN, JOURNALISTS AND JUDGES LACK A COMMON LANGUAGE

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Libel and slander lawsuits have become the main subject of civil cases against the media in Kazakhstan's courts between 1996 and 2000. This is confirmed in the digest of court decisions, «A journalist at the bar», issued in Almaty in 2001.

The International Fund for Freedom of Speech «Edil soz» (A just word) has prepared this rather weighty book in cooperation with Kazakhstan's Supreme Court, using a grant from the European democratisation and human rights program. The digest includes 59 court decisions, definitions and resolutions concerning Kazakhstan's judicial practice and legislation in the field of the information rights from 1996-2000. In the book, Viktor Monakhov, Professor of Journalism at the Moscow State Linguistic University, and first class counsellor of justice, gives his expert evaluation of each of the court decisions. He, along with Supreme Court judge, Marziya Baltabai, and the head of Edil soz's legal service, Iliodor Kalsin, analysed independently of one another, Kazakhstan's judicial practice in the field of information rights. It has emerged that there has been a sharp growth in the number of libel and slander cases against the media over the last few years.

«This category of lawsuit currently makes about 30 percent of all cases against the media, and moreover their numbers are growing,» concludes Marziya Baltabai in her analytical article published in the digest. The author believes that there are individuals who specialise in starting such suits, and that trials have become a means

of «payback» in the political struggle.

LINGUISTIC REQUIRED

Studying libel and slander cases against Kazakhstan's media, Marziya Baltabai comes to the conclusion that the legal treatment of publications in dispute is frequently rather arbitrary. The reason for this is not only the absence in legislation of correct definitions of a number of key concepts, but there is a linguistic aspect to the problem as well. «The actual issue is how pieces of news, the distribution of which discredits one's honour and dignity, are understood,» is how Marziya Baltabai explains the essence of the problem in the digest's pages.

The lawyer admits there is a conflict between journalism and jurisprudence. What is the difference between such intangible personal rights as «dignity» and «honour»? Which definition is correct: «humiliation of honour and dignity» or «humiliation of honour and belittling of dignity»? Is it logical and appropriate to use the word combination «moral prestige»? How is one to understand the term «good name»?

Kazakhstan's judicial practice used to confront such linguistic encumbrances during slander and libel cases against the media. Marziya Baltabai believes that this problem can be settled through

perfecting the current legislation, by conducting special research with the participation of journalists and lawyers, and by the publication of a digest explaining the definition of the terms involved. It is especially important, as the problem exists not only in Kazakhstan, but in Russia as well and, probably, in other former Soviet republics. The conclusion became obvious after she became acquainted with the expert evaluation of the courts' decisions published in a book by Viktor Monakhov, Professor of Journalism at the Moscow State Linguistic University.

SELF-RESPECT

In his study of information collected in Kazakhstan, the expert analysis was based on commonness of roots, or, as he called them, «rootlets,» of the system of protection from slander and libel in both Russia and in Kazakhstan. «... They (the roots), having been cultivated over the course of several decades of common social and legal life of our peoples, still exist in our legal system,» the professor said. Such an approach undoubtedly extends the usefulness of the digest «A journalist at the bar» to cross the borders of the whole former Soviet Union.

NEED OF DEFINITION

Viktor Monakhov believes that in both Kazakhstan and in Russia there is now a need to define the juridical facts that form the subject to be proven in slander and libel lawsuits. The Russian lawyer believes that three elements, or

facts, are essential to prove the offence: reports affecting honour and dignity should be disseminated; the reports should discredit the injured party; the reports should be false. «There is no doubt that this set of elements, or juridical facts, is necessary. The question is whether this set is sufficient?» asks Viktor Monakhov, anticipating the idea that a generalized category, such as «items of news», should be strictly divided into two types: items of news stating a fact, and items of news evaluating a fact.

In the expert's opinion, the first type of news contains objective, verifiable facts, and the second type, which includes opinions, judgements, and evaluations, is subjective and cannot be checked and verified through the legal system. These two components are directly associated with the media's professional work and are invoked to create a forum for discussion in a democratic society. Viktor Monakhov investigated the problem of what is needed to ensure that the demand for protection from slander and libel does not contradict the interests of free discussion on political matters and, in a more comprehensive sense, freedom of

speech. The author also analyses such questions as the volume of news needed in media reports on a person for the purposes of a court case, the legal regime of news items obtained from interviews and press conferences, public apologies, public figures, public interest, and many others.

LEGAL PRACTICE

The problems of the relationship between freedom of speech and justice have also been analysed in the article by the head of Edil soz's legal service, Iliodor Kalsin. This expert's ideas will attract attention of those who are interested in legal provisions and how they are treated in Kazakhstan's courts as far as the media is concerned. The author calls this conflict «legal stories and the practice of law enforcement».

Iliodor Kalsin believes that until recently in Kazakhstan there existed a rather clear, democratic, constitutional system of information rights that gave journalists free enough rein to publish their views and opinions, and operate with reliable sources of information. However, as the expert regretfully remarks, the current system

is in the process of severe transformation.

Iliodor Kalsin feels anxious about the percentage limitations imposed by Kazakhstan's Media Laws on the translation of foreign television and radio channels, especially when one considers that this contradicts the constitutional guarantee of freedom to receive and distribute any information, apart from state secrets. An analysis of the legislative and department normative base ratio is interesting too. «Cases occur frequently,» writes the expert, «when department or local regulations supplement the law or directly contradict it, but are nevertheless used everywhere.»

The article reveals the author's views of the problem of slander and libel cases, which on the whole coincide with the opinions of other experts in the digest. Thus, the digest «A journalist at the bar» allows readers to acquaint themselves with a whole set of problems existing today in the law and directly related to the media. The main purpose is to understand that without solving these problems no interests, of either the individual or society, can be satisfied.