

UZBEK MEDIA CAN CRITICIZE AUTHORITIES, BUT AT LOCAL LEVEL

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The mechanism providing for the media's legal protection via the civil courts doesn't work. Critical reports and journalistic investigations have almost altogether disappeared from the press, as well as from television and radio programs.

During 2001, as few as six legal actions were instigated in the civil courts, including the consolidated Mirabad city court of Tashkent, where all central newspapers and magazines and many other periodicals, radio stations and television companies are concentrated. These were mostly defamation cases (pursuant to provisions within the "Media Law").

The document bars "the media from being used to defame citizens or interfere in their private life", while Article 27 establishes that a legal or real person has the right to demand that editorial staff refute that information it has made public which is both not true and constitutes defamation. The same document makes it clear that evasions and delays in publishing such corrections give "the physical or legal entities the right to sue at law."

NEWS MEDIA AND THE LAW

There are a few laws and statutes effective in Uzbekistan regulating relationships in this field today. The principal one is the above-mentioned "Media Law", which was adopted in 1991. In 1997, it was revised and approved by the Oliy Mazhlis (Parliament). Parliament also passed two other laws in April 1997 – the law "On the Protection of Journalists' Professional Work" and the law "On Guarantees and Freedom of Access

to Information". According to these documents, citizens of the republic as well as those of other countries are entitled to settle many problems and disputes relating to the work of the Uzbek media and journalists in court. Thus, Article 2 of the "Media Law" notes that the media has the right to research, receive and disseminate information, and is responsible for the truthfulness and trustworthiness of broadcasts or published information in accordance with the legislation.

There is one more right set forth in the "Media Law" – that for the founder or editorial board to appeal to the court against a state organization's refusal to register their media organization or its decision to cease their activities.

Insignificant in volume, the law "On Guarantees and Freedom of Access to Information" has become important in essence. Article 10, "Confidentiality of Information Sources", notes that the media does not have the right to divulge an information source or the real name of an author who uses a pseudonym without their consent, and that this may only be done after a court decision. Article 12 of the same statute interestingly reads: "The action or inaction of state bodies, self-governing bodies, public organizations, enterprises, establishments and officials who limit

citizens' rights to receive information can be appealed against in court."

As for the law "On the Protection of Journalists' Professional Work", there are two articles worth mentioning on the subject of settling disputes using legislation. Article 5 establishes a reporter's right to demand damages in court for defamation and repayment for material damage caused to his/her rights as an author through distortion of his/her information in the media. Another article guarantees the right of foreign journalists to appeal against the Uzbek Foreign Ministry's decision to terminate their work in the country.

THEORETICAL FREEDOM

There is one more point worth dwelling on which relates to journalistic investigations in Uzbekistan. Legislatively, reporters enjoy an absolute freedom to carry out such work. They may publicize their findings through the media and send them to government authorities and non-governmental associations. Moreover, "materials and documents received during journalistic investigations may not be seized from journalists nor subjected to examination." Regrettably, though, the law "On the Protection of Journalists' Professional Work" says nothing about the responsibility to be borne by those who violate this provision or the place to where one can appeal against any unlawful actions by government officials.

There are, therefore, several

areas in which, theoretically, Uzbekistan's civil courts may consider various cases (civil and criminal courts have operated separately since 2001). How do Uzbek and foreign citizens exercise their rights, secured by the republic's legislation, in reality?

JOURNALISTS SUED

In fact, the consolidated Mirabad court of Tashkent examined no more than three cases throughout 2001. Fazriddin Saminzhanov lodged one of the claims against the "Darakchi" newspaper, in accordance with the provisions contained within the "Defamation & Damages for Defamation" Civil Code. The newspaper's founder is the Samarkand STV broadcaster and a limited liability company. The complaint arrived at the court on July 30, 2001. It claimed that on May 24, 2001 the newspaper carried an article with the headline "Beware of the Car" in its crime news column. It was a story about two unemployed guys who turned to crime and were both tried and sentenced – one to ten years six months and the other to eleven years nine months imprisonment.

The story was accompanied by a photograph of respectable and law-abiding citizens – F. Saminzhanov, a lecturer at the Administrative Law Department of the Tashkent Institute of Law, and one of his students. The claimant demanded 20 million sums (US \$1 is equal to 1,500 sums) in compensation for defamation and 20,000 sums in legal costs. The matter was adjourned because neither the claimant nor the defendant appeared in court.

In 2001, the consolidated Mirabad court considered another case against Darakchi similar to the previous one. This time, however, it involved a report that derided a

woman who had ostensibly visited a health resort for rest but had instead engaged in a love affair. As in the above-mentioned case, a photograph appeared alongside the story, this time of a well-known woman who had received government awards and was professionally involved in educating children. She demanded 28 million in compensation for defamation. Since Darakchi's head office is located in Samarkand, all documents pertaining to the case were sent to the editorial office's address.

INSULTING HONOUR

Using the article "On Defamation" of the Civil Code of Practice, British citizen, Jetenda Ambal Patel, lodged the third claim, this time against the "Adolat" newspaper (an organ of Uzbekistan's Social Democratic Party). The application, which arrived at court on February 14, 2001, was in connection to an article by Yuldash Kasymov published on January 12, 2001. The application noted, "According to Toshev, the newspaper's editor-in-chief, the article was published under a pseudonym. Its author was a reporter called Kazachenko, who used the newspaper to disseminate lies about myself, an investor in Uzbekistan, and thereby besmirched my good name as an individual and as the President of the "Quick Stop Group" and "Quick Stop Shopping" companies. The article was published without verification of the authenticity of the facts cited, without formal documents having been read, and without any documents being requested from the Quick Stop Group Company. The reporter didn't deem it necessary to meet with me, read court documents demonstrating the absurdity of the facts cited in the publication and their differ-

ence from the real circumstances. Expressions like "there is a black sheep in every flock", "but instead of using them for the purposes they were designed for, he started selling them to business people", "(he) continued his trickery", "(he) withdrew from the contract with the company that was fooling people and boasted", etc., are insulting to my honour, dignity and business reputation from the point of view of orderliness and social morality."

REPORT ORIENTATED

The British businessman demanded that the editorial board publish a correction and that the respondent apologize publicly, however the court did not hear the case because the claimant didn't appear. However, it was apparent from case records presented by the Chief of Court, Flora Makhmudova, that the claimant, President of two foreign companies, had aroused the suspicion of his Uzbek partners. This was not the first time he had sued in the republic, and he had taken legal recourse before.

The case records contained a document signed by the deputy chairman of the State Property Committee M. Askarov, which noted that J. Patel concluded a contract to purchase shares in one of the republic's enterprises but never paid for them, and that is why the contract was cancelled. There is also a letter in which the author notes that the British businessman's companies offices, at the addresses given to the Uzbek party, carry no signs with the names "Quick Stop Group" or "Quick Stop Shopping". All this gives grounds to believe that Adolat's critical report was not mere chance.

Cases considered by the Tashkent Civil Court presided over by Kozimzhon Kamilov are characterized by having been completed,

and with judgments being passed on them, one of which follows. The “Khuriyat” independent newspaper, published by the Fund for Media Democratization and Support, ran an article written by the journalist K. Mirzaakhmedov under the headline “Brake”. It was the story of a woman named Khalima Nazyrova, a resident of Bukhara. Her damages claim against S. Jumayev was under consideration for a year. On May 30, 2001, the district court passed a judgment in favour of the plaintiff, but the judgment was not executed for a long time and the woman turned to the journalist for help.

He in turn sent a letter to the justice department of the Bukhara provincial administration asking for assistance. The reporter received a reply saying that the judge who had heard the case had quit and that the judgment had therefore not been executed. The reporter wrote an article on this story in which he laid bare the bureaucracy of law enforcement officials. The latter believed that the reporter’s story contained insults directed at them, and one of the former officers of the provincial justice department, Jurayev, sued him and “Khuriyat”.

CLAIM REFUSED

The Mirabad consolidated civil court partially upheld Jurayev’s claim for “defamation”. The newspaper was required to pay the claimant 25,000 sums and the reporter had to pay 50,000 sums in compensation for moral damage. However the plaintiff was not satisfied with that decision and appealed to Tashkent’s city civil court where the case was reviewed. According to the city court’s chief, the court agreed with the newspaper’s arguments concerning non-execution of the judgment and recognized that the law enforcement of-

ficial’s reply was a mere brush off. The reporter’s actions and his article were recognized as true and well grounded, and the facts cited in the publication were not found to defame Jurayev. The lower court’s decision was abrogated, and a new judgment was passed that refused to sustain the claim.

SATIRICAL PROGRAM

This year saw yet another long-delayed procedure dealing with a claim by Samarkand’s head physician, A. Buriyev, against the editorial board of the satirical radio programme “Karmok”, broadcast by Uzbekistan’s State Broadcasting Company. As long ago as 1999 it aired a report that used phrases that, in Buriyev’s opinion, defamed him. The district court upheld the claim, and the editorial board was required to publish a correction and repay the plaintiff 10,000 sums. The respondent lodged an appeal that was heard by Tashkent’s city civil court. The court upheld the district court’s decision, and ordered the State Broadcasting Company to pay the plaintiff an additional 1,225 sums.

Finally, there was the case lodged by M. Agilov and B. Ruziyev against the “Khalk Suzi” newspaper’s editorial board (a newspaper controlled by the Oliy Mazhlis and Uzbekistan’s Cabinet of Ministers). The claimants applied to the Mirabad consolidated civil court for defamation. They demanded that the newspaper publish a correction, however their claim was dismissed, and the city court’s board of appeal upheld the lower court’s decision.

THE MEDIA DOESN’T ACT

Laws passed by Uzbekistan’s Oliy Mazhlis as well as other legislative acts demonstrate that fairly democratic legal conditions have

been created in order for the media to function, and a number of international norms, such as freedom of speech and openness, have been incorporated into the law. Thus, article 4 of the “Media Law” says that censorship of the media is inadmissible in the Republic of Uzbekistan. Reporters carrying out journalistic investigations enjoy serious legal protection. Should their rights be violated, they are free, de jure, to go to court, as is accepted in developed democracies.

The question therefore arises, as to how one can possibly explain the fact that despite there being so many newspapers, magazines, television and radio companies (more than 720 in total) only a few cases were heard by the various levels of civil court during the last ten months. Is it possible that editorial boards have no problems and conflicts in their relationships with readers, listeners, viewers, or with the authorities and members of various ministries?

Two claims instigated against Darakchi are examples of ordinary negligence on the part of reporters and editors. Undoubtedly, similar instances would have produced indignation and a natural wish to hear an apology from the wrongdoers. In my opinion, had the editorial boards done so from the very outset, there would have been no lawsuits at all.

SMALL SCALE CRITICS

The further three cases involving claims against “Khuriyat”, “Khalk Suzi” and the State Broadcasting Company are the most typical. They were the result of critical stories directed at middle-level authorities. Of all the cases heard by the Mirabad consolidated and the Tashkent city civil courts this year not a single claim has been lodged against the respondent by a

republican-level institution or a head of such. It is immediately connected to the fact that numerous district, city and republican media do not, in fact, publish stories that criticize ministries and other central institutions. In their newspapers and magazines, radio and television reports Uzbek reporters only mention the glorious achievements of work collectives and the successes scored “on the way to economic transformation under the conditions of a transition to a market econo-

my” while taking little interest in the serious challenges confronting society on the way to those transformations and reforms.

Who would sue a media that, as a matter of record, does nothing except deliver eulogies? It cannot happen other than in instances of error, as was the case with “Darakchi”. Uzbekistan’s legal framework permits the mass media to make extensive use of an entire body of methods to enable the provision of profound and all-round

insight into, and a coverage of, social life, including journalistic investigations, analytical articles, critical reviews focusing on various problems and the advocacy of reporters’ right to have access to hidden information. Instead, one sees an inactive attitude to the opportunities available and, as a result, an absence of publications that can produce responses in society and lead to considerable change. As we can see, this is all reflected in legal practice.