

# FOR SUE-HAPPY OFFICIALS, KYRGYZ JOURNALISTS HAVE BECOME THE COWS

*By Tolkunbek Turdubaev, journalist, Bishkek*

**For Kyrgyz journalists it is sometimes easier to go to jail than to pay the fines imposed by court. Even according to President Akaev, the execution of justice in the country is such, that a vast majority of Kyrgyz citizens have no faith in it.**

Journalists, experts and public representatives are almost unanimous in their belief that during the years of independence a rather progressive Kyrgyz legislation has developed that allows media workers to work efficiently enough, and which promotes the development of freedom of speech and the independent media. At the same time many legally developed, reasonable provisions are being ignored or distorted, or in fact turning into its opposite, and becoming a means to put pressure on the media. One such method in increasingly widespread use in Kyrgyzstan has become making claims against journalists for astronomical sums of money.

## THE LAWS ARE GOOD

When talking about legally ensuring journalists' professional work in Kyrgyzstan, media workers, members of parliament, and lawyers all demonstrate an enviable and rare unanimity.

According to Rina Prizhivoit, founder of the «Protection of openness» public foundation and chief political editor of the independent newspaper Moya Stolitsa Novosti, there is a strong enough legislative base guaranteeing free and independent journalism in Kyrgyzstan. Firstly, there is Article 16 of the Constitution, the «Media Law». There are also the laws

passed by under the president's initiative: «On warranties and freedom of access to information», and «On the protection of journalists' professional work». This set of laws allows for complete freedom, while naturally respecting press ethics.

Kabai Karabekov, Deputy of the Legislative Assembly, Chairman of the Committee for Public Associations and Information Policy, and a former journalist also believes that the current «Media Law» is one of the best laws in the CIS. It takes into account all the rights and responsibilities of a journalist. In addition, a constitutional provision passed a few years ago under the initiative of President Akaev that prohibits the passing of any law restraining freedom of speech and journalists' rights in Kyrgyzstan is still in force.

The well-known lawyer Yuri Maksimov, who used to defend journalists and human rights activists at loud judicial proceedings, gave the following curt response to the legislative acts concerning media and journalists: «I believe that we have a rather tolerable legislation. I emphasize: a rather tolerable one.»

## PRETTY GOOD ON PAPER

However, a good legal base does not yet mean universal and competent application of the legislation,

which frequently gives rise to justified claims by journalists to officials and those who work in the judiciary. Chief editor of the independent newspaper Tribuna, Yrysbek Omurzakov, is also rather skeptical in this respect: «There is a certain legislative base in the country, but it is not working. The laws are broken, first of all by those who passed them, as well as those who are in charge of their observance. When a journalist needs information he may not be simply admitted to the head of an institution by order of the head himself and on various pretexts.»

Articles 127 and 128 of the Kyrgyz Republic Criminal Code provide for criminal responsibility for slander and libel, respectively. When someone brings an action against a journalist a guilty verdict usually follows immediately. This happens against a background of general distrust of the judicial system. The head of the state has quite unambiguously defined the decline in trust of courts and judges as being below the critical mark: the overwhelming majority of Kyrgyzstanis feel such skepticism.

Yrysbek Omurzakov, who has spent several months in prison, believes that «the principle of presumption of innocence is not respected as far as journalists are concerned. Judges seldom go into the root of the case, whether it is lawful or not, especially while considering claims against independent media workers. In practice, the courts usually divide the Kyrgyz

media into two categories: governmental and contra-governmental. This is also confirmed by an analysis of civil claims: the independent media is fined hundreds, thousands, even millions of soms because they call things by their proper name, disclosing the names of plunderers stealing millions. At the same time the government media, in particular the Slovo Kyrgyzstana and Kyrgyz Tuusu newspapers, who openly offend members of the opposition, calling them «monkeys,» or sticking other labels on them, go unpunished, and at the worst are fined a few thousand soms ...

### CHANGE THE LAW

There is currently a public debate going on in Kyrgyzstan on whether to remove the article providing punishment for slander from the Criminal Code, and especially part three, which permits sentencing of six months to three years. Both journalists and human rights activists reasonably believe that the punishment stipulated in law does not limit for the sum in dispute, and the claimant is not obliged to document the size of material and moral damage suffered. Under to the current legislation the claimant defines it at his own discretion.

As to the law, many journalists, especially in remote areas, suffer difficulties both in their everyday work and when at trial, because they are not lawyers and have no texts of the various media laws to hand. As Yuri Maksimov says about this: «I used to oppose the separation of media legislation into numerous laws and said that we need a single law, or even a code, on the media. Why do we need this? We need this because many journalists do not know these complex laws. I would go even further and say that judges' ignorance of the law results in them making

unwarranted demands on journalists in courts. One example is the law «On warranties and freedom of access to information». Not only does this establish journalists' competence in court, it also states that a journalist may attend any court session, protests, or any public meetings or tribunals without the need for anyone's permission. However, in my experience I have heard the judge asking journalists

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many times: «Who allowed you to attend and make records in court?» So I have had to help journalists remind judges that nobody needs to ask for admittance, because the law allows him or her to attend and make records. Nevertheless, the court has prohibited them. This has particularly happened in the Oktyabrsky district (Bishkek), when in violation of the current legislation, the judge prohibited any records being made in court.

The general culture delivering justice, especially in cases concerning journalists, is so low and primitive that sometimes journalists are found not guilty, but are illegally convicted anyway. This happens because judges do not know all the subtleties of the law. For example, according to the Legislative Assembly, journalists are not responsible for official information received from official bodies. But at one trial the judge demanded that the journalist prove whether it was an official document or not, even though this was quite obvious! The Legislative

Assembly again provided one more special explanation, and the journalist was again forced to prove that he had received this or that document from the Legislative Assembly or Prosecutor's office, or from officials in the law-enforcement agencies, and so on. In other words, ignorance and imperfect knowledge of the media laws entail many conflicts, omissions, clashes, and, I believe, un-

founded demands to journalists by judges. Although the controlling regime of journalists as a whole is becoming rather weakened.

However, this situation will continue for the time being: as soon as more senior individuals are concerned, like deputies of the Legislative Assembly or the Prosecutor's office, legal action against journalists will follow. It is necessary to ensure that such claims are satisfied immediately by giving them «a green light,» and that journalists are penalized. Many judges do not know the proper definition of the term «slander».

### WHAT IS SLANDER?

They consider each lie or mistruth reported about an individual as slander, while not every mistruth or erroneous piece of information is actually slander. I have had to prove more than once to judges that a journalist may make a thoughtless or unwarranted statement, but this cannot be defined as slander, it is simply a lie or it is a piece of erroneous information.

Moreover, when sometimes information on an event that has taken place is published, a journalist will naturally interpret this event in his own way. Sometimes his interpretation is regarded as slander. There is also another widespread error being made when individuals, who do not run a business practice bring an action against journalists for damaging their business reputation. But this law refers only to businesspersons.

To prove the above, let me mention the following facts. On July 5, 1996 the Naryn regional prosecutor brought criminal action No.1-54 against Yrysbek Omurzakov, a journalist with Res Publica, in connection with a leaflet found in possession of another citizen. The criminal action was also based on articles written by Omurzakov under the headlines «What have we come to?» and «Everybody will support the referendum, especially the inhabitants of Naryn», published in Res Publica before and just after the presidential elections, on December 15 1995 and February 6 1996 respectively.

### CRIMINAL ACTION

The Naryn regional prosecutor brought the criminal action the day after the publication, February 7. On April 15 of the same year the author of the articles was placed under arrest.

On July 5 1996 the journalist was convicted by the Tien-Shan (now Naryn) district court in accordance with Article 128, part 2, of the Kyrgyz Republic Criminal Code, and sentenced to two years in a settled colony. The formula of the sentence was «for slander»

After 110 days of imprisonment, Article 41 of the Criminal Code was used, and Omurzakov was released from custody with

delay of execution of punishment for one year. They had taken his aging mother and three dependents (school age children and a baby) into consideration, as well as the fact that he had no previous convictions. There had also been pressure from the international community.

However, criminal prosecution of the journalist did not cease there. On March 24, 1997 Omurzakov was again taken into custody in Bishkek, and on September 29, 1997, in accordance with Article 128 Part 2 of the Criminal Code, he was convicted for «offending the honour and dignity of the liquidator of the Frunze factory, Paryshkura Mikhail Ivanovich».

The action was based on a message to the President and Government made by 108 tenants of the Frunze factory's family hostels, which stated that Paryshkura and Polyakov Semen Yakovlevich, the head of the house-maintenance office, had illegally privatize the housing stock.

The court only agreed to consider Polyakov's action, and rejected the application of the public. The court also brought an action against those who had organized the collection of signatures Dinara Akhmatova and Gulya Ibrahimova. Lawyers considered the criminal action against them: «for giving false information to the journalist and thereby encouraged offending the honour and dignity of Mr Paryshkura.» Both were sentenced to 6 months in a settled colony «for libel», and both were granted an amnesty on July 30, 1997.

The journalist was sentenced to 3 years under Articles 128 and 129: «for slander and libel». It was also agreed that Omurzakov's imprisonment from March 24 to July

10, 1997 would be included in the sentencing period.

### TO BE REVIEWED

On January 20, 1998 the Supreme Court Board reconsidered Omurzakov's case and decided that «The sentence handed down by the Leninsky district court of Bishkek on September 29, 1997, and the decision made by the criminal cases chamber of the Bishkek municipal court on November 4, 1997 concerning Mr Omurzakov should be reviewed. To inflict on him a punishment according to Article 127 Part 2 of the Kyrgyz Republic Criminal Code, introduced on January 1, 1998, in the form of a fine payable to the state, of 100 minimum month wages to the sum of 10,000 soms. According to Article 38 of the Kyrgyz Republic Criminal Code, the remaining sentence fixed by the Tien-Shan district court on July 5, 1996 (6 months imprisonment) should be partially added to the fixed punishment. Therefore the total punishment is 6 months imprisonment and a fine of 10,000 soms. According to Article 4 of the «Amnesty Law» of July 30, 1997 Omurzakov should be freed from punishment.» Meanwhile, Omurzakov has served the fixed term in remand prison, where he was kept for nearly 7 months. The amnesty was granted after the sentence had been served. The court's decision in this occasion was as follows: «Omurzakov's petition to stop sentence and the proceedings should not be satisfied.»

In the summer of 1998 all the journalists working on Res Publica were joined to a case instigated by the head of the «Kyrgyzaltyn» state business, Dastan Sarygulov. As a result, one of the four employees brought to court,

Alyanchikov, who had called Sarygulov a «kolobok» and «corporal», was convicted. Despite the fact that his lawyer, Maksimov, claimed that no offence had occurred, because neither of these names were slander or libel, Alyanchikov was nonetheless convicted for libel. In public discussions on these types of case there are often assertions that journalists should bear responsibility for slander and libel. But in the examples above, there is a total absence of any illegal action on the part of the journalists.

Article 20 of the «Media Law» also states the unconditional need for journalists to check the facts to which he or she might refer in their reports: «A journalist is obliged to check the facts of his reports». However, according to some of Kyrgyzstan's outstanding lawyers, including Yuri Maksimov, «inaccuracies in reporting do not automatically entail slander and libel.»

The ease with which cases for such big sums are claimed against the media and journalists, and which are, as a rule, satisfied, has created a whole level of people keen to make a quick buck.

As Rina Prizhivoit, chief political editor of Moya Stolitsa, said: «To members of parliament and the mighty of this world, journalists in Kyrgyzstan have become not only the object of attacks and legal action, but a source of enrichment as well. This is because the claims are somewhat disproportionate: deputies value their honour and dignity at not less than one million soms (about \$20,000). Such claims destroy newspapers and work as an economic lever in hands of the authorities to silence the press.

Nowadays claimants pay a 10,000 som fee (about 20 cents). This amendment to the Tax Code

has been accepted under the initiative of people's deputy Omurbek Tekebaev. The result is that all the courts are simply overflowing with claims against newspapers and journalists. Tekebaev has won little, but a precedent has been created. There has been an avalanche of such cases, because by paying practically nothing one can claim an astronomical sum.

The popular independent newspaper Asaba, a champion in circulation amongst Kyrgyz lan-

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guage newspapers, was destroyed using this line of attack without risk. As the journalist and human rights activist, Omurzakov, who has his own bitter experience of the efficiency of such a «technique», responded: «The practice shows that, having filed an action against the independent media for one million soms, any claimant, who is close or loyal to the authorities, was assured of receiving two or three hundred thousand soms at least.

### MILKING THE MEDIA

In Kyrgyzstan there are a number of other regulations that have become a barrier to journalists, and which officials successfully use for their own benefit. First of these is Article 127 of the Criminal Code, part 3 of which stipulates that the punishment for slan-

der is a term of imprisonment from six months to three years. This applies not only to journalists, but also to any Kyrgyz citizen. Secondly, and amongst the most odious, is a provision of the Law «On state duty», which allows claims for many millions of soms after payment of an absurd fee.

People's deputy of the Legislative Assembly and chairman of the Committee for Public Associations and Information Policy, Kabai Karabekov, considers in particular that: «The Law «On state duty» puts claims for the protection of honour and dignity on the same footing as non-property claims, so that any claimant against a newspaper, television broadcast or journalist has to pay the state a tax amounting to ten soms (about 20 cents)! This is an obvious imbalance between the rights of the claimant and defendant.

At a recent plenary session of the Legislative Assembly, our committee submitted two amendments for consideration: to omit the above-mentioned punishments from Part 3 of Article 127 of the Criminal Code and the Law «On state duty». Our amendments, if passed, would establish a new state tax on claims for the protection of honour and dignity at ten per cent of the sum claimed. For example, if an official brings an action against a journalist and wants to claim 50 million soms (\$1m), he should pay five million soms in state tax. As no official is able to pay such a state tax, this measure will render the amounts claimed for the protection of honour and dignity more realistic.

Furthermore, even if a newspaper loses such a case, it can still pay the fines stated in a claim. Naturally, there will be no million som claims, and with this amendment

we can balance the rights of claimants and defendants.

Unfortunately, we needed two more votes to get these amendments passed. Nevertheless, having revised the amendments by lowering the tax to 5 per cent, policy-makers are preparing for another round of consideration. These amendments differ from the previous presidential draft law, because it does not propose removing Article 127 entirely, but only the most punitive part stipulating imprisonment for a term of six months to 3 years.»

«However, the Criminal Code,» reasons Karabekov, «does not state that these articles exclusively concern journalists. They can be applied to any Kyrgyz citizen. The Constitution grants us the right to the protection of honour and dignity, and we cannot deprive the

citizens of this country of their constitutional right for such protection in court. I hope that this draft amendment passes. The current regulations mentioned above are, firstly, unconstitutional and, secondly, limit not only journalists' rights, but also the rights of every citizen. Any punishment should be adequate and proportionate to the offence committed.»

#### **IMPLEMENT THE LAWS**

However, not all deputies' initiatives give journalists in Kyrgyzstan confidence. The continued attempts by any means possible to change and amend the «Media Law» is particular cause for alarm. Here is Rina Prizhivoit's opinion concerning these initiatives: «I don't even want to think about it. We have already worked with the current law for a decade

and, let's hope we will work with it for another decade to come. No amendments are needed. There are, of course, some peculiarities to this law, which were experienced at first hand in court, by, for example, the chief editor of Delo No., Viktor Zapolsky.

It is, however, better to first execute the law rather than changing it. Second, under the president's initiative and in conjunction with the results of a referendum, a provision has been added to the Constitution prohibiting the adoption of any statute in Kyrgyzstan that would limit journalists' freedom of speech and other rights. Thus, there is already the legislative base and legal field in which we may work freely, and we have actually proven this by creating a new independent newspaper (Moya Stolitsa Novosti).