



THE POLICY OF CONTROL

The State of Freedom of Expression in Tajikistan

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1. INTRODUCTION

Following the collapse of the Soviet Union and the gaining of independence, Tajikistan fell into a civil war between the ruling elite and the Islamist-led opposition, which lasted from 1992 to 1997. The war ended with a power-sharing peace deal between the two sides.

With its Islamic Renaissance Party (IRP), Tajikistan is the only Central Asian country with an established religious opposition party.¹ Tajikistan was also the first country in Central Asia to include an active opposition in government. However, overall democratic progress has been slow since independence.²

President Emomali Rahmon³ has been president since 1994, when he was elected in a ballot deemed to be neither free nor fair by international observers.⁴ Rahmon has recently moved to further increase his grip on power: in a 2003 constitutional referendum he secured the right to run for two further consecutive seven-year terms. In addition, representatives of his party, the People's Democratic Party, and his supporters took most seats in the 2005 parliamentary elections. Both votes were heavily criticised. Most of the power is now concentrated in the hands of the President and his entourage.

The last presidential elections took place in November 2006, when President Rahmon was confirmed in his third term, with over 79% of the vote.⁵ Tajik officials put voter turnout at about 91%. Opposition parties, the OSCE and other international organisations have criticised the electoral process, particularly in light of the government's control of the media and suppression of the opposition's campaign before the elections.⁶ At the same time, the EU also noted that the 2006 elections marked an improvement compared to previous elections, but still fell short of complying with international commitments for democratic elections.⁷

¹ The IRP was part of the anti-governmental forces in the 1992-1997 civil war and of the coalition government after the end of the civil war. In 1999, the only credible opponent to President Rahmon was an IRP candidate, Davlat Usmon. The IRP was also one of the leading political parties in the Tajik opposition before the November 2006 presidential elections. The death of the IRP leader, Said Abdullo Nuri, in August 2006 left the party leadership in political disarray, leading to infighting. In September 2006 the new leader, Muhiddin Kabiri, announced that the IRP would not field a candidate for the November 2006 presidential elections.

² Some argue that, despite the improved economic conditions and enhanced security, part of the process towards political pluralism achieved through the 1997 peace accords has been reversed.

³ Previously Rahmonov. The name was recently changed to 'Rahmon'.

⁴ Rahmon has, however, been in power since 1992. In November 1992 he was elected chairman of the Parliament, and according to the (then) Constitution he was officially the head of government. A new Constitution was adopted in 1994, and provided for holding presidential elections. Rahmon was re-elected in 1999. International observers also noted irregularities in these elections.

⁵ Like IRP, the Democratic Party of Tajikistan announced in September that it would not be taking part in the elections of November 2006. The Social Democratic Party opted out of the elections as well, calling it an 'unfair poll'. The candidates that competed in the 2006 election were: Communist Party candidate Ismoil Talbakov, Socialist Party candidate Abduhalim Ghafforov, Agrarian Party candidate Amir Karakulov, and Party For Economic Reform candidate Olimjon Boboev. Rahmon won the election easily: the candidate that came closest was Boboev, who only secured 7% of the vote.

⁶ The OSCE stated: "the lack of any serious campaign and credible alternatives undermined this election to a degree that it did not provide an adequate test of Tajikistan's commitment for democratic elections. A range of other shortcomings were also evident in the electoral process", "Tajik Democracy not Fully Tested in Uncompetitive Presidential Election", <http://www.oscepa.org/index.aspx?articleid=+529>.

⁷ Radio Free Europe/Radio Liberty, "EU Says Vote Improved, but Still Not Good Enough", 15 Nov 2006, http://www.rferl.org/features/features_Article.aspx?m=11&y=2006&id=4D131CD1-D8C1-4369-B923-

Despite the fact that the President has used heavy-handed tactics with the opposition, media and NGOs - especially as a reaction to the so-called 'colour revolutions' in Ukraine (2004), Georgia (2005) and Kyrgyzstan (2005) - his approval rating has remained very high. Rahmon is seen as a key figure in bringing an end to the five-year civil war, improving the economy, and acting as the key stabilising factor in Tajik politics since the end of the war.⁸

Tajikistan is the poorest country in the former Soviet Union⁹ and it has relied heavily on Russia to deal with trying economic conditions. The situation is exacerbated by the fact that nearly 40% of the population is aged 14 and under,¹⁰ and many (mostly rural) men are forced to emigrate, primarily to Russia, to support themselves and their families. Approximately half of the population live below the poverty line,¹¹ yet Tajikistan's economy is showing signs of recovery. Following the war in Afghanistan, enhanced international attention to the area has resulted in a more secure investment climate and continued economic assistance for development.¹²

That said, Tajikistan is still recovering from the civil war. There is widespread perception that the conflict was a consequence of the proliferation of new media outlets and NGOs following the Soviet Union's collapse and the experience of, for the first time, freedom of ideas.¹³ Tajiks currently look to the government for political and economic stability, and there seems to be little interest in improving human rights. It is unlikely that human rights issues will be re-explored by the general public until Tajiks have fully recovered from the trauma of the conflict - or until the civil war can no longer be used as a pretext to limit political freedoms, and Tajiks can enjoy more political stability and widespread economic prosperity.

1.1. Civil Society

Even prior to its independence in 1991, various informal civic groups, implementing social initiatives, existed in Tajikistan.¹⁴ Following independence, new NGOs emerged and by the end of 2005, 2,500 NGOs were registered in Tajikistan, though a large number of them only existed on paper and others were heavily dependent on Western aid.¹⁵ As in most Central Asian societies, 'mahalla' - informal social organisations - are active. Women have also played a very important role in Tajik civil society groups: an estimated one third of all NGOs in Tajikistan are headed by women.¹⁶

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⁸ According to a 2004 survey by the USA-funded International Federation of Election Systems, in 2004 58% of Tajiks saw Rahmon as the most trusted figure in the country.

⁹ On this see, for example, 'Special Representative of UNO Called Tajikistan the Poorest Country of the CIS', Eurasianet, http://www.eurasianet.org/resource/tajikistan/press_digest/digest5.26.shtml.

¹⁰ CIA. *The World Factbook. Tajikistan*. 2006. <https://www.cia.gov/cia/publications/factbook/geos/ti.html>.

¹¹ According to the data from a World Bank study, in 2003 64% of the population lived below the poverty level, and this was acknowledged by the president. IREX, *Media Sustainability Index 2005, Central Asia, Tajikistan*, http://www.irex.org/programs/MSI_EUR/2005/MSI05-CentralAsia.pdf. Since then, the poverty level percentage has decreased to approximately 50%, but this is primarily because of financial support from Russia rather than domestic policies.

¹² CIA. See note 10.

¹³ ARTICLE 19 interview with international and local organisations in Dushanbe, September 2006.

¹⁴ For example Ru Ba Ru – Face to Face, and Ehyo – Renewal. Freedom House, *Nations in Transit 2006. Tajikistan*, <http://www.freedomhouse.hu/nitransit/2006/tajikistan2006.pdf>.

¹⁵ *Ibid*, Freedom House.

¹⁶ *Ibid*.

In 2005, in light of the ‘colour revolutions’ that led to regime changes in the region, the government became suspicious of NGOs and began to closely monitor their activities. The Tajik authorities, like other Central Asian governments, have suspected international manipulation by Western donors and governments via NGO-funding. In 2005, the Interior Ministry ordered financial audits of various domestic groups and asked foreign embassies to inform the government of their meetings and activities with NGOs, political parties and local journalists. A law on the activities of NGOs, restricting the receipt of foreign funds and reminiscent of a controversial law adopted in the Russian Federation in 2005, was adopted in 2006.

2. THE MEDIA LANDSCAPE

The State maintains a firm grip on national television and politically-relevant print outlets.

In 2006, there were over 300 newspapers registered in Tajikistan,¹⁷ although only approximately half were active, with many publications dying out after a handful of issues.¹⁸ The largest publications are *Asia Plus*, *Tojikiston*, and *Vecherny Dushanbe*. There are no daily publications.

Some political parties have their own newspaper, including the Islamic Renaissance Party (*Najot*), the ruling People’s Democratic Party (*Minbar-i Khalq*) and the Communist Party (*Nido-i Ranjbar* and *Golos Tajikistana*). It is hardly possible for political viewpoints that do not command their own media to be heard.

During 2005, eight new print media outlets were registered, but all primarily covered entertainment or were non-political.¹⁹ During 2005, the Ministry of Justice registered only one new newspaper publishing materials of a political nature, *Millat*, and a State newsletter, *Nabzikhobar*.²⁰ In 2006, five newspapers were registered, including *Fakti i Kommentariya*, *Sobytiya*, *Ovoza*, *Nigoh* and *Farazh*. Other registration requests were rejected. A number of opposition newspapers have also ceased to operate due to governmental pressure. Yet newspapers remain a popular medium in Tajikistan as there is no truly independent electronic media that could provide an avenue for pluralistic expression.

Indeed, broadcasting is dominated by State-run radio and television: in 2005 there were six State-owned television stations and 25 private ones, yet only a few of the latter enjoyed some editorial independence.²¹ Most existing private television stations are pro-governmental. Nevertheless, television is the main source of information, as it reaches most of the public. Among the top-ranking radio stations in Dushanbe are Radio Vatan, Radio Orieno and Asia Plus.²² As the government has *de facto* control over them, most private stations depend on the government for broadcasting facilities.²³

¹⁷ Private communication with Internews Tajikistan, March 2007.

¹⁸ BBC Country Profile: Tajikistan, http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1296639.stm.

¹⁹ US Department of State. Tajikistan. Country Reports on Human Rights Practices - 2005., 8 March, 2006 <http://www.state.gov/g/drl/rls/hrrpt/2005/61679.htm>.

²⁰ US Department of State - 2005 (*ibid.*).

²¹ US Department of State. Tajikistan. Country Reports on Human Rights Practices - 2006.6 March 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78843.htm>.

²² BBC Country Profile: Tajikistan. See note 18. Asia Plus is also a news agency and has its own newspaper.

²³ US Department of State - 2005, see note 19.

Access to international media is not restricted by law and over 70% of urban residents have access to cable television that delivers European and Russian channels.²⁴ In addition to many programmes of poor quality, satellite also offers higher-quality programmes that are not available nationally. However, satellite TV is available only to a few.

Although the Internet is less developed in Tajikistan than, for instance, in Kazakhstan, it is instrumental for the dissemination of alternative information, as it is not subject to specific legal regulation. Nevertheless, five websites were shut down in 2006 for ‘undermining State policy’.²⁵ Internet publications include *Avesta*, *Asia Plus* and (opposition website) *Charoghi Ruz*. The Internet is, however, still largely inaccessible to the general public because of grossly insufficient infrastructure, intermittent electricity and high costs.²⁶ Although a handful of media centres exist around the country, providing Internet access and up-to-date information to journalists, they are few in number and largely confined to the main towns.

Tajikistan is a multi-ethnic country, where approximately one quarter (23%) of the population are ethnic Uzbeks and 10% belong to other ethnicities, including Russian and Kyrgyz.²⁷ Yet the government propagates Tajik mono-ethnicity in the context of its nation-building efforts. Similarly, the State media places much emphasis on Tajik identity. There are few news or cultural programmes in Uzbek on national radio and television, despite the fact that Uzbeks make up the largest minority. However, some schools teach in Uzbek, and there are television stations, albeit few and regional, broadcasting fully in the Uzbek language; there are also some Uzbek newspapers (the regional newspaper *Leninobod Kakikaty* and the national newspaper *Khalk Obozi*). In the areas near the border with Uzbekistan, ethnic Uzbeks can have direct access to television from Uzbekistan.

Besides some Islamist literature belonging to the banned Islamic movement Hizb ut-Tahrir, there are no known underground newspapers in Tajikistan. This is likely an indication of the population’s preference for stability and economic growth than somewhat abstract notions of human rights and freedom of expression, which many associate with the chaos and bloodshed of the country’s civil war.

3. MEDIA AND DEFAMATION LAW

Article 30 of the Tajik Constitution protects the right of freedom of expression in the following terms:

Each person is guaranteed the freedoms of speech and the press, as well as the right to use information media. Governmental censorship and prosecution for criticism are forbidden.²⁸

²⁴ IREX, *Media Sustainability Index 2005*, see note 11, p.245.

²⁵ These were www.centrasia.ru, www.fergana.ru, www.arianastorm.com, www.charogiruz.ru, www.tajikistantimes.ru. SNG News, *Internet-provaidery Tadjhikistana gotovy k blokirovke ‘nebezopasnykh’ saitov*, 9 October 2006 and US Department of State – 2006, see note 19. Following widespread protests, the decision was reversed on 11 October 2006, but most of the websites remained inaccessible.

²⁶ CIA, see note 10.

²⁷ 67% of the population are ethnic Tajiks. US State Department, Bureau of South and Central Asian Affairs, *Background Note: Tajikistan*, April 2007, <http://www.state.gov/r/pa/ei/bgn/5775.htm>. During the civil war 1 million people fled Tajikistan and only a few have returned. The number of Russians has decreased from 8% to approximately 2%. *The Economist Intelligence Unit, Tajikistan. Council Profile*.

²⁸ However, the article continues by saying that “a list of information considered secrets of the state is determined by law”.

In addition, the international guarantee of freedom of expression is incorporated into domestic law through the Constitution. The status of international law in the Tajik legal system is defined by Article 10, which stipulates that “international legal acts” are recognised as a constituent part of the domestic legal system, and that they prevail over any domestic law inconsistent with them. Instruments such as the *International Covenant on Civil and Political Rights* (ICCPR), ratified by Tajikistan in 1999, can therefore be invoked before domestic courts. Yet there is little, if any, practice of their application, with courts refraining from referring to them.²⁹

Freedom of expression is also guaranteed by Article 2 of the Law on Press and Other Mass Media.³⁰

Article 162 of the criminal code criminalises actions that hinder a journalist’s activity.³¹ However, no complaints seem to have been brought by journalists against the authorities in case of violations of their rights. This seems to be due to a lack of legal awareness amongst journalists, in addition to journalists’ fear of the authorities and a lack of relevant legal precedent. Moreover, journalists do not tend to believe that complaints will lead to effective remedies, as well as there being a general distrust of law-enforcement officials.³² As a result, investigations have only rarely been opened in case of attacks against journalists by the authorities.³³

Overall, Tajikistan’s legislation affecting the media presents contradictions and loopholes, and leaves many opportunities for abuse. Some problematic provisions were inherited from the Soviet period, and are in urgent need of reform.

3.1. Licensing and Registration

3.1.1. Broadcasting

The 1996 Law on Television and Radio Broadcasting³⁴ regulates the activity of broadcasting outlets. Under this law, the government-controlled Committee for Television and Radio Broadcasting is charged with overseeing broadcasting activities. Between 2001 and 2004, the Committee allocated broadcasting licences on the basis of its Decision 91 on the ‘Regulation on the Licensing in Sphere of Television and Radio Broadcasting’, which lacked clear criteria

²⁹ Interview with the Bureau of Human Rights and Rule of Law, September 2006. Bureau of Human Rights and Rule of Law, *Alternative NGO Report to the United Nations Human Rights Committee in relation to the Examination of the Initial Report by the Republic of Tajikistan on the Implementation of the International Covenant on Civil and Political Rights*, May 2005.

³⁰ Article 2 states:

The press and other mass media in the Republic of Tajikistan are free. Every citizen has the right to freely express his beliefs and opinions, disseminate them in any format, in print and other mediums. State censorship and the в печати и других средствах массовой информации. Государственная цензура и преследование за критику запрещается (unofficial translation)

³¹ Similarly, Article 36 of the Media Law imposes liability for obliging a journalist to disseminate or to refrain from disseminating any information through violence against him/her, destroying his/her property, or by the use of threats. Article 6 of the same law prohibits interference by State bodies in the work of broadcasters, and harassment in retaliation for criticism.

³² Interview with the Bureau of Human Rights and Rule of Law, September 2006.

³³ One exception is the case of R. Mirzo of the *Ruvi Naz* newsletter. However, the investigation was inconclusive.

³⁴ Law No. 382, adopted 14 December 1996. Consolidated version (including several subsequent amendments) available at <http://www.medialaw.ru/exussrlaw/l/tg/broadcast.htm>.

for developing a pluralistic broadcasting landscape and provided many vague grounds for refusal of a licence application, including a lack of ‘necessity’ for the programmes proposed by the applicant, and ‘other substantive grounds and reasons’.³⁵ In February 2004 the Law on Television and Radio Broadcasting was significantly amended.³⁶ Pursuant to the new Article 12, the rules concerning licensing of outlets were delegated to a separate piece of legislation, the Law ‘on the Licensing of Individual Types of Activities’,³⁷ adopted in May of the same year. This law was subsequently further elaborated in a Regulation adopted in September of 2005. Section 52 of the regulation deals with broadcasting, which is defined very broadly and encompasses terrestrial, cable, digital, satellite and Internet broadcasting.³⁸ According to the law and the accompanying regulation, a decision on a licence has to be reached within 30 days, and can be refused only when the information supplied by the applicant is false or the application requirements have not been fulfilled.

In addition to a broadcasting licence, a broadcaster is required to obtain a second, technical licence from the Ministry of Transport and Communications.³⁹ Moreover, a 2005 Regulation required electronic media outlets to obtain a licence not only to broadcast but also to produce programmes. However, this second requirement was removed through amendments to the Law ‘on the Licensing of Individual Types of Activities’ of July 2006.

In 2002, a process was started for the drafting of an alternative media law by the OSCE, Internews and other local and international organisations. However, it was never formally reviewed in Parliament.

The Ministry of Culture prepared a draft decree for the re-registration of the print media in Tajikistan. Fortunately, the initiative did not have the government’s support. Moreover, new regulations governing the award of audiovisual production licenses were established by the State Committee on Television and Radio Broadcasting in May 2006, but were not made public for six months.

A consequence of the authorities’ reluctance to award new broadcasting licences is that Tajikistan’s airwaves are slowly being crowded out by foreign broadcasters, including by television and radio broadcasters in Uzbekistan and Kyrgyzstan who have installed powerful new transmitters. The signal of the Khujand-based SM-1, arguably the country’s most developed private television station, used to cover most of Sogd Oblast. A new transmitter broadcasting on the same frequency from the southern Uzbek city of Kokand, however, now overpowers SM-1’s signal up until the edge of Khujand itself.

3.1.2. Print media

Pursuant to Articles 9(15) of the Law on Press and Other Mass Media, owners of print media outlets must register with the authorities before commencing operations.

³⁵ Bureau of Human Rights and Rule of Law, see note 29, p.57.

³⁶ Law No. 7, adopted 28 February 2004.

³⁷ Law No. 37, adopted 17 May 2004. Available at <http://www.medialaw.ru/exussrlaw/l/tg/lic.htm>.

³⁸ Regulation on the Specifics of the Licensing of Individual Types of Activities, No. 337, 1 September 2005.

Available at <http://www.business-club.tj/index.php?lng=ru&id=1134&PHPSESSID=c943e3df3278a5c35fb2e9201825cefb>

³⁹ Law No. 56 “on Electronic Connection”, 10 May 2002. Available at <http://www.medialaw.ru/exussrlaw/l/tg/svyaz.htm>.

A serious problem is the possibility of registration being denied on a number of vague grounds specified in Article 12. While in the case of broadcasting there is a need to regulate and limit the number of outlets because the frequency spectrum is finite, such a rationale does not apply in relation to the print media. Registration of a newspaper should be automatic upon the submission of basic information, such as its name and address, and should not be left to the authorities' discretion.

3.2. Defamation provisions

Defamation is a criminal offence in Tajikistan. Article 135 of the criminal code defines defamation as “distribution of obviously false information defaming a person’s honour, dignity or reputation,” which is punishable by a fine of up to 500 times the minimum monthly wage or two years of correctional labour. Aggravated penalties apply in various circumstances - for instance if the statement was made in public, disseminated through the media or made with a “mercenary motive”. Article 136 criminalises insult, which is “abasement of honour and dignity, expressed in an indecent way”, and may result in a fine or a year of correctional labour.

Article 137 of Tajikistan’s criminal code stipulates a separate offence of defaming or insulting the president, punishable by a fine or a maximum of five years’ imprisonment. The defamation of other public officials is punishable by a fine or a year-long sentence to public works (Article 330).

“Honour, dignity and business reputation” are also protected under the civil code (Articles 172 and 174). These provisions apply in cases of the dissemination of false facts which lower someone’s reputation. Where the impugned remark was made in the media, the plaintiff can demand a refutation. Plaintiffs may also demand compensation for moral damages, pursuant to the Law on Press and Other Mass Media (Article 38) or the civil code (Article 1115 and 1116).

In practice, the defamation provisions are often applied not only to factually false attacks on reputation, but when the media criticises politicians. The provisions granting special protection to public officials go against the international guarantee of freedom of expression, pursuant to which public figures should tolerate a *higher*, not lower degree of criticism than ordinary citizens.⁴⁰

Moreover, ARTICLE 19 is of the opinion that all criminal provisions on defamation and insult should be abolished and replaced with appropriate civil defamation laws. The criminalisation of a particular activity implies a clear State interest in controlling it and imparts a social stigma to it, which is not justified in relation to the protection of individuals’ reputations, which by nature is a matter between two private individuals. International courts have stressed the need for governments to exercise restraint in applying criminal remedies when restricting fundamental rights. In many countries, the protection of reputations is adequately dealt with exclusively through civil law, proving that a criminal approach is

⁴⁰ For example, the European Court of Human Rights in its landmark 1986 judgment in *Lingens v. Austria*, stated that:

[Politicians] knowingly and inevitably lay [themselves] open to close scrutiny of [their] every word and deed by both journalists and the public ... and [they] must consequently display a greater degree of tolerance [than ordinary members of the public]... [while politicians are entitled to protection of their reputation,] the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues. (paras 45 and 42).

unnecessary. In particular, prison sentences are a disproportionate response to defamation, and create an unduly ‘chilling effect’ on the work of the media.

4. PROBLEMS FACED BY THE MEDIA IN PRACTICE

4.1. Direct interference in the work of the media

Media outlets in Tajikistan frequently experience harassment, such as orders to shut down and impromptu tax inspections. Journalists have often been intimidated, through telephone calls containing ‘warnings’, and have been victims of violence perpetrated by unidentified individuals.

For example in January 2006, Zafar Muradov, a reporter for *Kulyabskaya Pravda* newspaper, was detained while reporting on a demonstration by a group of market vendors. He had witnessed the police using force against the demonstrators.⁴¹ Muradov was held for a few hours and then released. In June 2006 he reportedly received death threats, but continued to write on the Tajik government in a critical manner.

Rajabi Mirzo, editor-in-chief of independent *Ruzi Nav*, was beaten by unknown individuals in July 2004, hit on the head with an iron bar, and suffered a concussion. Mirzo had also been assaulted in January of the same year, together with three other colleagues.⁴²

At least four opposition newspapers were shut down in 2005⁴³ and two television networks were temporarily suspended. Journalists were given prison or corrective labour terms for articles critical of the government, although the charges levelled against them were primarily for theft and disorderly conduct.⁴⁴ In September 2006 two journalists were temporarily detained for filming students picking cotton in Qorghon-Teppa; upon release, they were warned to refrain from publishing materials that might ‘destabilise the country’.⁴⁵

The newspaper *Millat* has also experienced problems with the authorities, although it has managed to keep moderately friendly relations with public officials. Still, the newspaper was denied the opportunity to have its premises in the *Gosudarstvennyi Zhurnalistsicheskii Kompleks* (‘State Journalists’ Complex’), where most media outlets and advertisers are located, at a convenient distance from printing houses.⁴⁶

Representatives of local authorities often require journalists to request approval of topics to be discussed on television shows or published in the press. They are also required to screen the

⁴¹ Adil Soz, NANSMIT, “Journalist Detained, Prevented from Covering Demonstration” in IFEX, 27 January 2006, <http://www.ifex.org/en/content/view/full/71861/>.

⁴² Committee to Protect Journalists, Protest Letter, “Tajikistan: CPJ Calls for End of Intimidation Campaign”, 31 August 2004.

⁴³ *Razi Nuv*, *Nerui Sukhan*, *Odamu Olan* and *Adolat*. IFEX, “Tajikistan: Independent Media Disappearing”, 21 September 2005. <http://www.ifex.org/da/content/view/full/69360/>. *Nerui Sukhan* was closed several times, for reasons including alleged tax violations. *Razi Nuv*, *Nerui Sukhan*, *Odamu Olan* remained closed in 2006. *Adolat* resumed operations but was prevented from being printed for a week in September 2006.

⁴⁴ Jumaboj Tolibov was sentenced to two years imprisonment, Muhtori Bokizoda to 2 years of corrective labour and Vakhobi Latif to a year of corrective labour. Interview with Internews Tajikistan, May 2007.

⁴⁵ US Department of State – 2006. See note 21

⁴⁶ Interview with the OSCE Mission to Tajikistan, September 2006.

programme or show in advance the text they plan to broadcast.⁴⁷ Publications are observed closely by the Ministry of Security, the Ministry of Foreign Affairs and the Prosecutor General's Office. All this leads to self-censorship by reporters and editors, who fear reprisals in the form of tax inspections or refusal of licences and access to printing presses. The authorities also give occasional direct 'orders' to the media, including advice not to publish information on events in a manner that reflects negatively on the authorities.⁴⁸ In particular, this has occurred in the regions, where the local authorities often enjoy a higher degree of control over the media and journalists are less aware of their rights and means to protect themselves.⁴⁹ Television stations' broadcasts (including private ones) are also routinely suspended when announcements are made concerning the President of Tajikistan (for example on the occasion of State visits). Consequently, media outputs are routinely biased and the level of State interference in the work of the media seems to be progressively increasing.

Although seizures of publications are formally allowed only by court order, in some cases they have occurred without one. One example is that of the newspaper *Dzhiekhon*, which was seized in August 2004, for allegedly printing more copies than it had declared.⁵⁰

Direct cases of pressure on media outlets seem to be more widespread in rural areas,⁵¹ where there are fewer checks and balances, and where journalists have less knowledge of their rights.

4.2. Licensing and registration

The licensing procedure is the biggest obstacle to the functioning of broadcasters. It is currently very difficult for a new station to obtain a licence. Some media outlets have waited for years, while others got licences quickly, suggesting a selective implementation of the legislation. This ambiguity results in a lack of certainty for broadcasters.

In mid-2005, allegedly the government secretly instructed the Ministry of Justice to refrain from registering new broadcast and print media outlets. Up to 30 media outlets' registration requests were left pending, including that of the newspaper *Imruz*, which is affiliated to an opposition party.⁵² Therefore, immediately prior to the 2005 parliamentary elections, no new media outlets were allowed to register, which had an impact on the electoral campaign and possibly the election results.⁵³

Only four broadcast stations (three television and one radio) received licences in 2006, after a long wait. However two of these were already in operation and only required renewal and the others are not fully independent.⁵⁴ *Asia Plus*, the first independent radio channel in Dushanbe,

⁴⁷ Bureau of Human Rights and Rule of Law, see note 29, p.5.

⁴⁸ *Ibid*, p.54 and US Department of State - 2005, see note 19.

⁴⁹ Bureau of Human Rights and Rule of Law, see note 29, p.54.

⁵⁰ *Ibid*.

⁵¹ Freedom of Speech in Tajikistan (1999-2004), IREX, p.76

⁵² Freedom House, see note 14.

⁵³ Bureau of Human Rights and Rule of Law, see note 29, p. 56. See also below, section 4.6.

⁵⁴ The two stations whose licences were renewed are TV Anis of Kanibadam and TV Khurshkada of Istaravshan. The new stations are one radio (Nau Tajikistan) and one television station (the Independent Social Television Station of Tajikistan), both based in Dushanbe. This television channel was founded by Zeynatullo Ismayilov, a former employee of the State Committee on Television and Radio Broadcasting.

which has been operating for several years, has so far been unable to obtain a licence for a television station.⁵⁵

Foreign stations have also experienced difficulties. By the autumn of 2006, BBC FM radio, which was suspended in January of the same year, had still not been granted a licence. The State Committee on Television and Radio Broadcasting based its denial on a provision of the Law on Television and Radio Broadcasting added in 2005, which requires a reciprocal agreement between Tajikistan and foreign governments as a precondition for licensing foreign broadcasters.⁵⁶ In addition, the BBC had reportedly failed to comply with new media regulations requiring foreign FM broadcasters to register with the Ministry of Justice.⁵⁷

4.3. Printing Houses

There are approximately 20 printing houses in Tajikistan. The majority of printing presses, like broadcasting facilities, are under State control, either directly or through government subsidies. The main, specialised printing press, *Sharqi Ozod*, is under the control of the executive apparatus of the President of Tajikistan. This makes it difficult to print material of which the government might disapprove.⁵⁸ Independent publications are either subjected to a complicated bureaucratic process or, as routinely happens, turned away outright by publishers for fear of indirect governmental reprisals. In some cases, private newspapers are forced to rely on smaller printing houses, which are often inefficient and require three to four days to complete a printing job.

In sum, the lack of independent printing houses is one of the most serious obstacles to the free flow of information in Tajikistan. Fear of discontinuation of printing, which would cripple a print media outlet, frequently leads to self-censorship.

The opening of independent printing houses would be a logical solution, but is complicated by the fact that a printing house needs the permission of the Ministry of Security to operate. In addition, private printing houses have faced a range of other problems. The newspaper *Nerui Sukhan* set up its own printing house, *Kayhon*, but the newspaper's editor-in-chief, Mukhtor Bogizoda, was sentenced to two years' forced labour in August 2005 for illegal use of electricity – a much more severe sentence than usual in such cases.⁵⁹ Another private printing

⁵⁵ Interview with Asia Plus, September 2006.

⁵⁶ Committee to Protect Journalists, "CPJ Alarmed by Suspension of BBC FM Broadcasts", 23 January 2006, <http://www.ifex.org/en/content/view/full/71747/>.

⁵⁷ For more information see BBC website on BBC offices in Tajikistan - http://www.bbc.co.uk/pressoffice/pressreleases/stories/2006/01_january/18/ws.shtml. The BBC indeed did not have an intergovernmental agreement allowing a foreign company to broadcast in the territory of Tajikistan, according to the new licensing regulations. However, progress has since been made. The British government sent a memorandum to be signed by the Tajik government, and the State Television and Radio Committee has sent a revised version, with some additions, to the Tajik government for approval. At the time of writing, the issue was pending. Private communication with Internews, February 2007. Some attribute the failure to renew the licence to a desire to control media outputs prior to the November elections. US Department of State – 2006, see note 21.

⁵⁸ For example, in October 2006 the printing of the newspaper *Adolat* was suspended. This was allegedly because of a letter to the printing house from the Ministry of Culture, requesting the discontinuation of the printing of the newspaper. The Ministry of Culture denied having sent the letter. SNG News, 'Adolat' Nikto Zakryvat' ne Prosil, - Minkultury RT, 5 October 2006. Both State and private printing houses also refused to print *Ruzi Nav* and *Odamu Olam*. US Department of State – 2006, see note 21.

⁵⁹ He was found guilty of theft of electricity (the equivalent of approximately 500 USD in electricity, after

house which had been printing independent newspapers, *Jiyonkhon*, was closed in 2005, for allegedly evading taxes, but some believe it was actually to prevent the printing of independent newspapers.⁶⁰ The authorities also closed the printing house of popular oppositional newspaper *Ruzi Nav*. Other printing houses refused to print it, citing a lack of capacity. There was an attempt to print the publication in Bishkek, Kyrgyzstan, in 2005, but other technical obstacles were imposed by the authorities. Printing abroad is also problematic, firstly because of the added cost of transport, and secondly because information becomes outdated quickly, with an obvious impact on the revenues from sales. *Ruzi Nav* has been operating electronically, yet this is clearly not a long-term solution: the newspaper has no income, and most people in Tajikistan do not have access to the Internet. Those who were employed by *Ruzi Nav* have been forced to seek employment elsewhere, so that the newspaper has lost nearly its entire staff.⁶¹

4.4. Defamation

The Tajik courts heard 9 civil cases on the protection of the honour and dignity of officials in 1999-2004 and six cases in 2006. There were also three criminal defamation cases during this period.⁶² According to the civil code, moral damages should be awarded on the basis of fairness and reasonableness, yet disproportionate damages have been imposed on the media.⁶³ Likewise, disproportionate criminal sentences have been handed down. For example, in 2005, Rustam Fayziev, the deputy chairman of the unregistered Party of Progress, was sentenced to five years in prison for insult and defamation of the president and is currently serving the sentence.⁶⁴

One newspaper that has been at the receiving end of defamation suits is *Nerui Sukhan*; its journalist Latif Vakhob was sentenced to one year forced labour for an article written in 2004 accusing a professor of corruption.⁶⁵ Such cases are not very frequent, but this is primarily due to self-censorship, deriving from a disinclination of journalists to expose themselves to risks, given the precedents set.

As noted above, one particularly troublesome provision in Tajik defamation law is the special protection afforded to the president. It was applied in a case against Dododzhon Atovulloev, the founder of opposition newsletter *Charoghi Ruz*. Atovulloev was arrested in Moscow in 2001 (at the request of the Tajik authorities) and threatened with extradition to Tajikistan, as well as with the initiation of a criminal case against him for insult of the President of Tajikistan and incitement to ethnic hatred.⁶⁶ The case was dismissed in 2002 by a Russian judge, and although Atovulloev visited Tajikistan in 2004 and even met with the President in

allegedly connecting his office wires to street lights). The freedom of expression NGO NANSMIT stated it believed that this was a 'fabricated criminal case'. Committee to Protect Journalists, "Editor of Independent Weekly Sentenced to Two Years Corrective Labour", 26 August 2005, <http://www.ifex.org/da/content/view/full/68864>. The newspaper had criticised the government and the president. In January 2006, the verdict was reversed and imposed a fine instead of the labour sentence. However, the newspaper could not resume publication. US Department of State – 2006, note 21.

⁶⁰ IFEX, "Tajikistan: Independent Media Disappearing", note 43.

⁶¹ Interview with the OSCE Mission to Tajikistan, September 2006.

⁶² Bureau of Human Rights and Rule of Law, see note 29.

⁶³ *Ibid.*

⁶⁴ US Department of State – 2006, see note 20.

⁶⁵ The journalist was released in 2005 after completing his sentence.

⁶⁶ Bureau of Human Rights and Rule of Law, see note 29.

a cordial manner, he soon received threats, forcing him to again go into exile abroad. Although the provision on defamation of the President has seldom been applied, this can be attributed to the fact that virtually no media outlet now dares to criticise him.⁶⁷

4.5. Court practice

Although the judiciary is nominally independent, in practice it is subjected to pressure, as well as being crippled by corruption and inefficiency.⁶⁸ The president appoints and dismisses judges and prosecutors with the consent of parliament. The judicial authorities also suffer from insufficient training opportunities and poor facilities.⁶⁹

Journalists are frequently denied access to open court hearings, although such access is guaranteed by Article 13 of the code of criminal procedure and Article 10 of the code of civil procedure. As a result, there is limited coverage of trials and judicial issues.⁷⁰

4.6. Violations during election periods

Prior to the February 2005 parliamentary elections, the government shut down several newspapers and redoubled its efforts to suppress the independent and opposition media. Some of the tactics used involved arbitrary enforcement of tax laws, tougher registration procedures, revocation of agreements to use government and private printing houses, intimidation, arrests, and beatings.⁷¹ *Guli Bodom* and *Somonion*, two privately-owned television stations, were shut down for three months,⁷² allegedly for non-compliance with broadcasting regulations. The explanations given for the closures included inadequate documentation and procedures related to the board of directors' supervision over the station (*Somonion*), and unbalanced coverage of the election (*Guli Bodom*). *Guli Bodom* was allowed to reopen after the disciplinary period, yet *Somonion* remains closed.⁷³ Thirty media registration applications were simply ignored, including preponderantly the ones with links to the opposition.⁷⁴ Furthermore, the government threatened to revoke the licences of media that were critical of the government (or country's leadership), and journalists from independent outlets were at times refused accreditation to cover specific events.

In 2005, opposition parliamentary candidates were not always allowed to use the time that was allocated to them by law to communicate their electoral messages through the media.⁷⁵ In many cases, technical reasons were cited as the explanation.

During the November 2006 presidential elections, government control of the media also compromised the vote, with the authorities being accused of media manipulation. The State-sponsored media campaigned vigorously for President Rahmon, while non-government media

⁶⁷ Interviews with Tajik organisations, September 2006.

⁶⁸ US Department of State - 2005, see note 19.

⁶⁹ *Ibid.*

⁷⁰ Interview with the Bureau of Human Rights and Rule of Law.

⁷¹ Freedom House, see note 14.

⁷² The official explanation was unpaid debt. US Department of State - 2005, see note 19.

⁷³ Private communication with Internews Tajikistan, March 2007.

⁷⁴ Freedom House, see note 14. See also Section 4.2.

⁷⁵ US Department of State - 2005, see note 19.

outlets, especially those supporting the opposition, were disrupted and at times banned for the duration of the election campaign.⁷⁶ According to the OSCE election media monitoring report, the media predominantly reported on the President's campaign, while other candidates were marginalised.⁷⁷ Only independent newspapers like *Asia Plus* and *Bizness i Politika* did attain balanced coverage.⁷⁸ Overall, the coverage failed to provide the Tajik population with the information needed to make informed electoral choices.

The authorities blocked web access prior to elections in 2003, 2005 and 2006. On 7 October 2006 the Ministry of Communications ordered the blocking of the independent news websites *Centrasia* and *Fergana*, as well as the opposition online newspapers *Airanastorm*, *Charoghi Ruz* and *TojikistonTaims*.⁷⁹

Despite all this, the majority of the population - 65% according to a poll by an IFES survey prior to the 2005 Parliamentary elections - stated that they believed the State-run media outlets and newspapers had provided objective coverage of social and political developments in Tajikistan.⁸⁰

4.7. Other factors hampering the free flow of information

Tajikistan suffers from electricity shortages, poor telephone connections and incomplete coverage by cellular telephone services, all of which create problems for journalists. Particularly trying are the winter months, during which there is often no electricity in remote rural areas, making it difficult for broadcasts to reach the regions.

The postal system is too inefficient to make subscription feasible and instead newspapers are distributed via kiosks and street vendors. Some are pinned to public notice boards in outlying regions, a practice which is particularly efficient and popular.

Generally, the revenue generated by the media is insufficient for the dynamic development of the industry. Another financial obstacle for the media is that potential advertisers are reluctant to have contracts with critical publications for fear of attracting the attention of the authorities. In addition, although the advertising sector has greatly developed in recent years, there is still no adequate legal framework in this area.

The low levels of pay for journalists often force them to augment their income by accepting payments from those whose activities they cover. Indeed, corruption has penetrated all areas of society, including the media, and journalists are often paid for their articles by 'sponsors', who, in exchange, are presented in a positive light in news items. Newspapers are supposed to indicate whether an article has been paid for, so as to not mislead the public, but in practice few, if any, newspapers are frank about which articles are being published 'on order'. Many

⁷⁶ OSCE Election Observation Mission, *Statement of Preliminary Findings and Conclusions*, Presidential Elections Republic of Tajikistan – 6 November 2006, http://www.osce.org/documents/odihr/2006/11/21981_en.pdf

⁷⁷ *Ibid.* Election coverage was regulated by decrees passed in August 2006, which provided for only limited free airtime for candidates on State television. US Department of State – 2006, see note 21.

⁷⁸ OSCE report, p.9 (*ibid.*).

⁷⁹ Committee to Protect Journalists, *Government Control on News Compromise Vote in Tajikistan*, 3 November 2006, <http://www.cpj.org/news/2006/europe/tajik03nov06na.html>

⁸⁰ Freedom House, see note 14.

people do not condemn these practices: this apathy might be due to the legacy of the Soviet Union, when propaganda and media manipulation, rather than independent reporting, were the norm.

The habit of receiving payments from sponsors for the publication of articles affects non-profit organisations in their media/human rights work as well. To attend and cover a seminar or conference, journalists nearly always expect to receive a fee from the sponsoring agency, even if the event is related to human rights and media issues rather than economic/political interests.⁸¹

Standards of professionalism in the media are currently low as journalists are often former teachers, economists or practitioners of other professions; those with a journalistic background have been trained through programmes largely based on Soviet curricula, in which standards of balanced, accurate and comprehensive reporting were neglected.

Furthermore, journalists are little aware of their rights and are unable to defend themselves when penalised for their journalistic activities. This causes them to err on the side of caution when reporting and to shy away from controversial issues. The lack of legal professionals who specialise in media law, and who can effectively defend journalists in court, compound the obstacles to the free flow of information

As a consequence, information in the public interest and on human rights is seldom to be found in the Tajik media.

5. FREEDOM OF INFORMATION

Another key obstacle to media freedom in Tajikistan is the limited access to information held by State bodies.

There is no specific law on access to information, although reportedly a draft has been developed by the authorities. Some basic freedom of information provisions are found in the Law on Information.⁸² Article 25 prohibits restrictions on access to public information.⁸³ The right of journalists to access information is also nominally guaranteed in the Law on Television and Radio Broadcasting and the Law on Press and Other Mass Media.⁸⁴

Despite these provisions, direct and indirect refusals by public officials to provide information to journalists are the norm. This is particularly true in relation to independent media outlets, which are denied information much more often than State-owned media. Remote regions of Tajikistan suffer the most from lack of information. There are also bureaucratic obstacles to freedom of information, such as a need to consult with the head of the body before releasing information – who usually tends to be absent.⁸⁵ This reduces the quality of services provided to people on matters of public interest, such as public health, education or social services.

⁸¹ Interview with Bureau of Human Rights and Rule of Law and Interview with OSCE Mission to Tajikistan, September 2006.

⁸² Law No. 25, adopted 10 May 2002. Available at <http://www.medialaw.ru/exussrlaw/l/tg/inform.htm>.

⁸³ Or 'open information' - not constituting a State secret.

⁸⁴ Articles 5 and 27 of the Media Law oblige State bodies to give the media the necessary information with the exception of state Secrets (Article 30 of the Tajik Constitution states that "the list of information that qualifies as a state secret shall be established by law").

⁸⁵ Bureau of Human Rights and Rule of Law, see note 29.

In many regions journalists (and people generally) are little aware of their right to know.

Underlying key problems include: lack of professionalism amongst public officials; officials erring on the side of caution for fear of being penalised if they make mistakes; the disinclination of journalists to confront public officials; a lack of trust amongst public officials in the media (including fear that journalists will misuse the requested information, with negative consequences for the officials/public body concerned); and non-existent enforcement. Although Article 148 of the criminal code prohibits refusals to provide citizens with information, no cases have been initiated under this provision.

According to international FOI standards, there should be a presumption that all information is available to the public. Restrictions to this general rule are permissible under international law, but must be as narrow as possible. They are legitimate only when they meet the following strict test:

- (1) the information relates to a legitimate aim listed in the law;
- (2) disclosure threatens substantial harm to that aim; and
- (3) the harm to the aim is greater than the public interest in having the information.⁸⁶

The third part of the test, known as ‘public interest override’, is of paramount importance, as it ensures that information will not be withheld when disclosure is preponderantly in the public interest.

Following activities around the theme of freedom of information and reports produced by civil society, particularly the freedom of expression organisation NANSMIT, in March 2005 the President issued a decree requiring ministers and heads of government bodies to organise quarterly press conferences. This decree, however, has only slightly improved the situation with regards to the availability of information. The new regime has also become an excuse to withhold information ‘until the press conference’, and these press conferences have generally consisted of self-congratulatory reports. Still, NANSMIT believes that the presidential decree is a significant first step towards greater transparency of public institutions. There have been other small victories: in some cases, information, which had been originally denied, was provided when the requester appealed to a higher authority.⁸⁷

6. CONCLUSIONS

The media in Tajikistan is largely controlled by the authorities, with the non-State media facing a range of obstacles, from harassment and intimidation, to difficulties in obtaining registration and licences, as well as hindrances in the use of printing houses, and threats of closure. The combination of these measures has induced self-censorship amongst journalists, who are also frequently willing to serve as a mouthpiece of the government and other sponsors in order to augment their meagre salaries. The dire economic conditions, the lack of training and opportunities for investigative and professional journalism, as well as the reluctance of the authorities to be open and transparent, also seem to rule out the development of genuine free media in the near future. A further contributing factor is Tajik society’s

⁸⁶ *The Public’s Right to Know: Principles on Freedom of Expression Legislation*, London: ARTICLE 19, June 1999, Principle 4, <http://www.article19.org/docimages/512.htm>.

⁸⁷ Interview with NANSMIT, September 2006.

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limited interest in human rights, given that, since the civil war, the dominant interest seems to lie in attaining stability and greater economic prosperity, even at the expense of civil liberties.

In order to improve the situation, Tajikistan has to take urgent measures to fulfil its responsibilities under international law by creating the conditions in which an independent, pluralistic media can flourish. The activities implemented by local and international human rights and media organisations are instrumental in this process. Ongoing freedom of expression projects include training for journalists and media lawyers; campaigning for greater freedom of expression and transparency of the institutions; and taking cases to the UN Human Rights Committee for violations of the International Covenant on Civil and Political Rights. However, there is still much resistance and practical obstacles to change, causing the independent media to continue to operate in critical conditions.

7. RECOMMENDATIONS

- Consistently with international law, the Tajik authorities should create an environment in which pluralistic expression can flourish.
- The Law on Television and Radio Broadcasting should be thoroughly reformed. Licenses for broadcasting should be administered by a body which is legally and factually independent from the government and commercial interests. They should be awarded on the basis of objective criteria according to a planned process designed to ensure pluralism in the airwaves.
- The licensing process should be streamlined: there should be no requirement to apply for a licence from *both* the Committee on Television and Radio Broadcasting and from the Ministry of Communications
- Registration of print media outlets should be abolished, or be made automatic upon the provision of basic information on the outlet; there should be no discretion to deny registration.
- Public officials should not be afforded special protection against defamation and insult and should be made to display a higher level of tolerance than ordinary citizens.
- All provisions criminalising defamation should be abolished, or, at a minimum, the possibility of prison sentences and disproportionate fines should be removed.
- The provisions on defamation in the civil code should be reformed, so that they protect only individuals' reputation from false attacks of a factual nature, rather than shielding them from criticism. Criteria should be introduced to ensure that alternative remedies are prioritised and defamation awards are proportionate to the actual damage suffered by the plaintiff.
- All forms of harassment against the media (including abusive tax inspections) should be put to an end.
- The authorities should promptly and effectively investigate all cases of threats or physical attacks against journalists, with a view to bringing the perpetrators to justice and ensuring non-repetition.
- The informal practice of prior censorship should be eradicated: the vetting of broadcasts or publications before their dissemination should be forbidden, and media outlets' editorial independence guaranteed in law and practice.
- Journalists should be accredited by an independent body according to objective criteria established by law.
- Seizure of publications should take place upon a court order and in exceptional cases where dissemination of the issue in question would lead to a grave and irreparable harm.
- Tajik authorities should put in place fair regulations for access to the media by all candidates/parties, so as to allow Tajiks to make informed electoral choices.
- Private printing houses should be allowed to operate without a need for prior permission and without informal interference.
- The judiciary should not be subjected to pressure, and there should be a presumption that court hearings are open to the public, subject only to narrowly drawn and objectively necessary exceptions.
- The State broadcaster should be transformed into a public service broadcaster, which is independent, offers diverse information and opinions, and cater to all sectors of society.

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- Newspapers should be required always to disclose when individual articles are financed by a sponsor.
- There should be a presumption that all information held by public bodies is available to the public, subject only to limited and narrow exceptions defined by law. A comprehensive access to information law should be adopted to guarantee and regulate this right.
- In the interim, the existing freedom of information provisions should not be applied selectively on the basis of a journalist/media outlet's political orientation.