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Policy Paper on
Freedom of Expression
in Tajikistan

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Preface

This policy paper is based on the research I have made in the period of November 1998-July 1999 in Tajikistan funded by the International OSI Policy Fellowship Program. My research and its findings are described in details in the attached report. This paper aims at summarising my thoughts as well as thoughts of interviewed people on advisable policy in Tajikistan in the field of freedom of expression. The media encounters many different factors providing its well functioning. As it is fully described: “The freedom and diversity of the media depend on the willingness of the authorities to allow it; on the independent judiciary to safeguard it; on the economic conditions for achieving it; on the interest of the public in independent and credible media; and on the commitment and professionalism of journalists’ themselves. If these conditions combine, the media will be the watchdog and catalyst of democracy.”¹ Therefore while writing this paper I had in mind three major target groups, for whom these recommendations may be useful. First of all, the government of Tajikistan being the guarantor of the rule of law and the rights of the people would be the one to suggest the legislative reforms and enforcing actions towards the laws. The second target group I considered the journalists themselves and ideally recommendations on media practice, education, civil society would be addressed for them. And finally the Open Society Institute as well as similar other international organisations may be contributing from my thoughts.

According to a Freedom House Report “Press Freedom 1998” Tajikistan is classified as having *not free* media. In the same group we can find almost all other Central Asian republics, Uzbekistan, Kazakhstan, Turkmenistan with an exception of Kyrgyz Republic. However, the degree of media freedom among even these states varies. Tajikistan has much more potential to improve freedom of expression because of weakened by civil war state infrastructure, presence of opposition in the government, strong influence of Russia and resistance to the influence of neighbouring central asian republics and serious need for financial support from outside. Therefore, the involvement of the Open Society Institute and generally international organisations in conducting more media activities in Tajikistan is crucial.

Media Legislation

Tajikistan has ratified all six major international human rights treaties. It is also the only Central Asian country that signed Optional Protocol on Individual Complaints to the International Covenant on Civil and Political Rights (9 December 1998). As a State Party to the ICCPR Tajikistan is obliged: “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant without distinction of any kind”; “to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant”; “to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy” (Article 2 of the ICCPR). Thus, Tajikistan legislation should be accorded with the international human rights standards. If the mentioned here points are taken into consideration by the government, it will make the legislation more democratic and accountable to the international human rights standards.

¹ Yasha Lange, *Media in the CIS. A study of the political, legislative and socio-economic framework*, European Institute for the Media (1997, European Commission), p. 27

It is undoubtedly crucial to have a good legislation, which accords to all the international standards. At the same time even on the examples of established democracies we can see that it takes very long time to change the existing legislation and requires very active and co-ordinated actions from NGOs to lobby and from the parliamentarians to agree. Therefore all the above mentioned points are for a long-term implementation with the participation of government, NGOs and international organisations. Another very important side of the same coin is that laws do not really matter if they are not enforced. As it may be observed in almost every CIS country, including Tajikistan, a weak or sometimes not at all enforcement of the law is the reason for abuses, discrimination and non-democratic practices.

1. Neither of the relevant laws including Constitution explicitly defines freedom of expression as the right of every citizen to seek, receive and impart information. (Article 19 of the Universal Declaration and ICCPR) This important clause guaranteeing a free access to information to everyone is highly desirable to be included in Tajik Constitution and media law.
2. Both Universal Declaration of Human Rights and the ICCPR (Article 19(3)) subject restrictions of freedom of expression to a three-part legitimate test, i.e. restrictions shall:
 - Be provided by law;
 - Have a legitimate purpose expressly enumerated in the text of the treaties;
 - Be shown to be necessary.

Tajik Constitution in Article 14 prescribes: “In implementing rights and freedoms, limitations in the constitution and laws are allowed only to ensure the rights and freedoms of others, public order, and to safeguard the constitutional structure and the territorial integrity of the republic.” In almost analogous words the cases when mass media can not be used are described by Article 6 of the Press Law and Article 28 of the LTRB. National laws do not mention a three-part legitimate test and therefore do not provide a sufficient protection for the people. This three-part test should be included in Tajik legislation as it is very important not to allow officials to interpret any critical expression under above-mentioned articles without any limitations.

3. It is necessary for the public to have an access to its parliament. Having a free access to the building as well as to the full records of the sessions and new legislation provides an opportunity to keep the parliament open and accountable to its electorate and is one of the signs of any democratic country. Chapter 3 of the Constitution about Majlisi Oli (Parliament) should have an article on free access to parliamentary buildings during the sessions. The access should also be given to full records of the sessions and the legislative documents.
4. One of the reasons of a severe self-censorship in Tajikistan is disproportionate defamation law. Article 135 (2) of the Penal Code for defamation as ‘distribution of obviously false information defaming person’s honour, dignity or reputation’ sentences for up to 2 years of imprisonment. While administrative measures are acceptable, it is disproportionate to imprison a person for defaming. Article 137 for insult or defamation against President convicts up to 5 years of imprisonment. The last article strongly contradicts international standards in that it provides even a stronger

protection to the public figure than to an ordinary citizen, while according to the international law on freedom of expression, the limits of acceptable criticism should be wider concerning governmental bodies and political figures than concerning private individuals. Though such articles could be found in the legislation of the majority of the former USSR republics, it would be step forward from the past to remove such article from the Penal Code of Tajikistan.

5. The registration requirements for electronic and print media, if the power decision is given to non-neutral structures, are widely accepted as another reason for a self-censorship. In Tajikistan any new media outlet is required to register with the state bodies, as State Television and Radio Committee for electronic media and notary office for print media. Such regulation gives officials a powerful instrument to control media at their own discrete. The most recent examples are with the refusals to register given to two radio stations which are described in my report. Only independent institutions (if any at all) should be granted the right to decide on questions of licensing. And it is obvious that the State Committee on Television and Radio is not independent and therefore shall not have a power to license all the media outlets.

Media practice

1. Law enforcement

It became common among people in Tajikistan to speak about corruption everywhere. What frightens more is that the corrupted judiciary and law enforcement system are becoming a norm. As a result the reluctance of the people, including journalists to apply to the courts with any complaints regarding their rights has been found all around the CIS countries. The journalists are usually involved in the judicial proceedings as defendants rather than pendants. Such problem derives, first of all, from the inability or unwillingness of the government to enforce laws. But such reasons as the law democratic culture, post-war apathy of the population, lack of knowledge about relevant legislation can not be put aside either. Regarding freedom of expression, the following articles would be given more attention and as much as possible enforcement:

- Article 10 of Constitution on direct applicability of international norms and treaties in domestic legislation and practice. Though Tajikistan signed almost all human rights treaties there is a little recognition of them among lawyers and judiciary.
- Article 162 of the Penal Code explicitly says about interference into journalists' activity. Such article if properly enforced could prevent many cases of intimidation and generally provide more security for media professionals. This particular article could be used by the media against any interference or pressure.
- Article 27 of the Press Law and Article 20 of the Law on TV and Radio Broadcasting (LTRB) states that if journalists are denied in any kind of information (except restricted information infringing public order, morals, state secret, etc), they can appeal to the courts.
- Article 15 of the Press Law and Article 10 of the LTRB on right to appeal the refusal to register a media outlet are not enforced and exercised.

As majority of interviewed journalists stated they would not appeal to the court being afraid of reciprocal actions against them. I agree that the security reasons are still quite

painful and it will take again time for these articles to gain weight. But I also urge the journalists and public to get known more our own legislation and how we could use it.

6. Influencing the attitude of public authorities

There is a common misunderstanding of the role of media and journalists among Tajik authorities. According to their logic the less information they give to journalists, the less opportunity for them to do wrong and to be fired. The hostile resistance to meet, to talk to media and provide even basic information partly came after civil war, since many prominent figures were killed because of the publicity around them. However, Tajikistan was able to overcome the war and now is in the peace-building process. It is only beneficial when people get known about what the officials think and can do. The establishing of the connection between ‘demos’ and rulers is a required feature of any democratic society. Tajikistan has proclaimed itself also a democratic country and joined all major OSCE documents. Public authorities should change their hostile attitude towards press and be more open to give necessary information and to enable media to fully carry the role of public informant, which is vital like oxygen for well-functioning society.

3. Support of media NGOs

Media professionals in Tajikistan are extremely disintegrated. There are only a few local non-governmental organisations working particularly in the field of media, i.e. Tajikistan Union of Journalists that is inherited from the Soviet time, “Difo”- Foundation to protect journalists’ rights, Association of New Independent electronic Media (ANIEM). All of them lack activity, money and operational ability. In comparison with more than 40 women NGOs, for example, the civil movement of media professionals is almost unnoticeable. International organisations may include the support for media civil movement among their priorities.

Ideally, media and its professionals would be a distinguishing autonomous professional group, whose professional interests will be represented at least by one organisation (of trade union or NGO type or even soviet style Union of Journalists) and which will have enough human resources to operate and to tackle the most important problems. Despite the fact that there is competitiveness, Tajik journalists should overcome isolationist attitudes towards each other and take a more active role to promote professionalism and journalists’ solidarity. A way to start it would be to try to create a Code of Ethics of Journalists with an independent Committee reviewing the local print media and uniting local journalists. The involvement of younger journalists (who are more open and flexible and ready to change) and those professionals who intend to work in independent media could be extremely beneficial. Such ‘converted’ people will become gradually the ‘buffer’ of the progressive development of Tajik media.

4. Access to new technologies and Internet

Nowadays it is hard to underestimate the importance of new technologies and particularly Internet. Media dedicated to find and provide as much diverse information for the public as possible extremely benefits from the use of technologies as finding new alternative sources of information, publishing on Internet, advertising, communicating with the rest of the world, etc. In Tajikistan, which is geographically located quite far from the Europe and Americas and has very weak local cover of news in press and on television, nation-wide

access to Internet could play a decisive role in not only improving the quality of media outlets but generally in establishing the climate for free media and democratic ruling.

Tajikistan does not have any legislative acts, clearly discussing the regulation of the matters concerning Internet. The Law on Television and Radio Broadcasting mentions only electronic media generally. Such unclear legislative situation gives power to the authorities of wide interpretations on regulation of Internet. Though officially the first Internet project has been announced in Tajikistan by the Telecom Technology Ltd. (local company) in the beginning of 1999, in practice some state organisations have already had Internet for interior use for several years. It seemed that the state tried to monopolise this area but because of the absence of any regulatory acts, local company was able to break it simply not applying to any permit or licence and ignoring the threats of the Ministry of communication. Unfortunately such commercial access to Internet is unaffordable and inaccessible for Tajiks (particularly for journalists who sometimes hardly have any access to computers) and does not change anything on local level.

To correct such situation Internet and all matters concerning it should be clearly discussed in law and no monopoly (state or commercial) shall be allowed under it. Access to Internet would be provided as much wide as possible on local level.

Education for media professionals and technical assistance

There is a large number of organisations dealing with education in general in Tajikistan. Regarding media education programs only Internews had accomplished some training for media professionals. This fact is quite surprising considering that the overall presence of international organisations in Tajikistan is much higher than in other republics, but so far majority of them have been interested in providing humanitarian assistance. Repeating what I have said in the Preface I urge organisations-donors to consider financial assistance to Tajik media even more important than other directions. It is more important because with the political stabilisation an economical improvement will come too and if the society continues not to have any decent information to account on in analysing the policy of the government, the state will claim more and more control over people and their minds brainwashing and eliminating those who present a different view and gradually Tajikistan may turn to be an authoritarian country like Uzbekistan and Turkmenistan. To avoid it, training of media professionals would be included in the strategy of any international organisation dealing with education.

I would like to give here a few my thoughts, which might be useful when media projects for Tajikistan are designed. By this I do not propose a comprehensive project or give an evaluation of similar projects. I only would like to draw attention to features, which I noticed were not considered important enough to be reflected. First of all, media programs requiring the knowledge of English language happen to have very low feasibility in Tajikistan. There is almost no knowledge of English among media professionals. Even among students of journalism the knowledge of English is very low. Secondly, it is also very desirable for international organisations-donors to be present geographically not only in the capital Dushanbe but have temporary (if permanent presence is not possible) missions to the north, south, Pamir, during which the presentations of available programs are made. It would provide a wider access to the financial resources, would increase the level of competitiveness and consequently may lead to a higher professional level of

projects and proposals. Thirdly, it could be effective to organise more exchanges² of journalists, scholars and journalism students between Tajikistan, Russia and Kyrgyz Republic. Such co-operation would allow to upgrade the level of all involved groups, would help to establish a regional network of media professionals, would be much cheaper than sending abroad or even inviting a foreign expert to come to Tajikistan and finally would solve the problem of communication, since Russian is a common language for all CIS. Within such exchange advanced journalism professors could share their experience and possibly provide help in drafting new curricular, textbooks and teaching materials.

Technical assistance for media outlets may be another powerful instrument to improve freedom of expression situation. Though technical assistance is extremely necessary for Tajik media, in my opinion it would be given on very strict and clear conditions. The idea of providing it through small grants, only under precondition of professional and truthful journalism might be considered. Or, as for example Internews does, providing equipment only to those media outlets whose staff participated in its training seminars. In this regard, the educational programs could give the opportunity to get acquainted with existing active media professionals and outlets and to build a group of professionals who would be able to create independent press and who might be supported later technically.

Human rights education

One of the crucial obstacles to freedom of expression and free media in Tajikistan is a low democratic culture. If it is not paid attention now, all the efforts undertaken by the international organisations in education, medicine or any other field will end up at electorate's decision in favour of totalitarian government. The usual scheme of human rights abuses, bad state-violator versus struggling victims, is not the only pattern of violations in Tajikistan. Population in general has quite undemocratic views and therefore supports undemocratic policies of the government towards press or any other group of population. For example, some journalists and many public officials find censorship or a lighter type of state control necessary to have in Tajikistan.

Democratic ignorance comes from the fact that there is no democratic culture or history that could influence people and make them believe in democracy, freedoms and human rights. Democratic ignorance sometimes is also linked or directly associated with national mentality of Central Asia (defined as resistant to any changes and being conservative and self-preserving). At the same time this mentality was not 'national' enough to accept and inculcate Soviet ideology making it an integral part of really national mentality. I really doubt the cultural or national resistance of Tajik (Uzbek, Kazakh, etc.) people to democracy. I rather tend to connect it with the simple lack of democracy in history of this region. In contrary, peoples of Central Asia because of the tradition to follow leaders and be obedient can quickly learn and adapt democratic culture upon favourable economic and political conditions as we have already done with Soviet ideology. In Tajikistan, in particular, because of serious economic and social challenges Tajik society has been going through, the possibility to implant democratic values and human rights culture is higher than in some other Central Asian states where state control is much stronger (as in Uzbekistan and Turkmenistan).

² The exchange of specialists and participants between various foundations within former Soviet Union could be a good solution. I propose to consider the idea of exchange between, for example, Kyrgyz, Russian and Tajik foundations in the field of media education (as well as any other direction).

Therefore a strong support for human rights education would become one of main directions for international organisations. For example, support for libraries and providing literature on human rights standards to schools and universities could be extremely useful. Such programs as training police and judiciary, providing of legal assistance in drafting laws, clinical legal education, improvement of curricular of legal schools might tremendously improve the human rights situation and freedom of expression. There is a very high need in such programs that would take more active role inside of Tajik society, i.e. not only educating somebody abroad but rather supporting programs and projects on site implemented by qualified international and local specialists. Particular attention could be put on increase of independence of judiciary system and, to possible degree, on power structures.