

EXPERT MEETING

Third Central Asia Judicial Dialogue

24-25
June
2021

online

This year the third Judicial Dialogue follows up on a successful event in Samarkand in March 2020. The expert meeting will be held online and will bring together about 35 judges from higher and appellate courts from five Central Asian countries, as well as judges and experts from Germany, Norway and Ukraine. They will discuss national legislation, international standards and best practices in cases concerning the protection of, and restrictions on, freedom of expression and freedom of the media in relation to defamation.

The platform, which has established itself across the region, highlights the important role of judges, who have a critical responsibility in protecting freedom of expression and in determining the circumstances under which States can restrict freedom of expression in conformity with international human rights standards.

The Judicial Dialogue platform will evaluate national approaches to the said issues in all of the Central Asian States but also in other OSCE participating States. Participants will be able to present reforms that have been undertaken nationally as well as react to case studies relevant to the discussed topics. The Judicial Dialogue aims at strengthening the capacity of the judiciary to protect freedom of expression and media freedom while taking into account the other rights and encouraging the exchange of best practices in the OSCE region. The first Judicial Dialogue was held in Bishkek, Kyrgyzstan, in December 2018.

DAY 1: THURSDAY, 24 JUNE

09.20 – 09.30
(Vienna time) Participants connect on Zoom online platform

09.30 – 10.00 OPENING SESSION

Introduction:

- Teresa Ribeiro, OSCE Representative on Freedom of the Media

10.00 – 12.30 SESSION I: Adjudication of Defamation Cases in the OSCE Area

This session focuses on the current trends in adjudication of defamation cases involving media outlets and bloggers in the region, the issue of damages and the role of the textual expertise in such cases. The speakers will focus on approaches to defamation cases involving media outlets and present the recent amendments to national legislations. The following discussion points are offered to the participants:

The OSCE Representative on Freedom of the Media, along with UNESCO, the UN Human Rights Council and other international organizations, has continuously advised the OSCE participating States to abolish criminal responsibility for defamation as an unnecessary restriction on freedom of the media. Currently, most of the participating States in Central Asia have decriminalised defamation. However, in some legislations, criminal provisions still may be applied.

Recent amendments to criminal codes in the region have seen defamation moved to the administrative, rather than civil codes, thus opening a door for the executive to decide, which materials they consider defamatory.

The role of the textual expertise plays an important role in defamation cases, however questions remain about necessary qualifications of experts and independence of such agencies, which provide the expertise.

In defamation cases, many plaintiffs are public figure or business people with considerable clout. Often they sue for very high damages, in the worst-case scenario, causing the media outlets to close. Should there be a statutory limit on the amount of damages, or should this remain within the remit of presiding judges?

Speakers: Manfred Dauster, Presiding Judge at the Bavarian Supreme Court, Germany

Eldos Zhumaksanov, Deputy Chief of Staff, Head of Communication Centre, Supreme Court of the Republic of Kazakhstan

Babamergen Babayev, judge, Ashgabat City Court, Turkmenistan

Fotima Ismailova, Deputy Chairperson, Yunusabad District Criminal Court of the city of Tashkent, Uzbekistan

Moderator: Antonina Cherevko, Legal Officer, ARTICLE 19; Chairperson, Independent Media Council in Ukraine

Discussion

12.30

End of Day One

DAY 2: FRIDAY, 25 JUNE

09.20 – 09.30

Participants connect on Zoom online platform

09.30 – 11.30

SESSION II: Legal protection of public figures and ‘deliberately false information’ in relation to standards of freedom of expression

This session is dedicated to the measures provided by national legislations and judicial practices in Central Asia for protection of public figures, distribution of deliberately false information and others, which may restrict reporting on matters of public interest. A relevant case study will be presented to the participants at the end of the session. The following discussion points are offered to the participants:

There is widespread agreement among courts, international standard-setting bodies, and CSOs concerning defamation laws that public officials must be more, not less, tolerant of criticism than private persons. In that regard the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and UN Special Rapporteur on Freedom of Opinion and Expression and stated that: “[D]efamation laws should reflect... the principle that public figures are required to accept a greater degree of criticism than private citizens; in particular, laws which provide special protection for public figures (...) should be repealed.” Yet nearly half of OSCE participating States offer special protection to the reputation and honour of the head of state.

Since the beginning of the global fight against the pandemic, authoritative international organizations, starting with the UN, repeatedly recommended that countries refrain from using the emergency situation to suppress any public criticism of the government's actions and prosecute those who used their constitutional right to freedom of expression. Unfortunately, these recommendations were largely not heeded. The article ‘most in demand’ and applied against journalists, bloggers and citizens alike was the article on “dissemination of deliberately false information in a state of emergency.” One can say that this article has successfully replaced the previous criminal liability for libel.

Speaker: Arnfinn Bardsen, Judge, European Court of Human Rights

Moderator: Joan Barata Mir, International Expert in Freedom of Expression, Fellow at Stanford Cyber Policy Center

Discussion

11.30 – 12.00 **SESSION III: Conclusions**

Recommendations and closing remarks by OSCE Representative on Freedom of the Media Teresa Ribeiro

12.00

End of Day Two