

Editorial independence: Regal regulations and comparisons

(Summary)

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1. Introduction

Since transition to democracy in Mongolia among many measures to guarantee freedom of speech were incorporated in the Constitution¹, including freedom of opinion, freedom to seek, receive, and impart information. Mongolia also joined Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, and other international treaties in the field.

As a result, today we have in Mongolia 389 registered media outlets that employ 3840 journalist and media workers (according to 1st half of 2010 monitoring survey conducted by the Press Institute of Mongolia).

Some time ago Mongolian Parliament passed a law prohibiting for the government to own or censor any media. And today, private media is flourishing in a competitive environment. Despite this, journalist and editors are vulnerable to the interests of media owners or those who finance publications or place advertisements.

Thus, in this study we deal with the basic requirement for freedom of media – editorial independence and its legal regulations. We approach the matter in the following methodology:

- a) Purpose of the study
 - Research foreign legislation and some practices
 - Develop recommendations for improving legal environment
 - Increase awareness and knowledge about the editorial independence among lawyers, media practitioners and human rights NGOs.
- b) Expected outcomes
 - Prepare comparative study on legal regulations for editorial independence
 - Develop recommendations for improving legal environment for media, and distribute them to relevant organizations.
- c) Methodology
 - Normative acts. International and national laws and legal acts will be analysed. Regulations having positive or negative impact on the editorial independence will be revealed.
 - Comparative study. During the research seek practices of legal protection of editorial independence.

¹ Constitution of Mongolia, Article 16, Clause 16.16, 16.17.

- Descriptive method. Determine current situation with the editorial independence in Mongolia, research foreign best practices and apply them for writing of recommendations.
- d) Scope of the research
- The study will be limited to research of international and domestic regulations and practices related to editorial independence.
 - Comparative study will be carried out at institutional and practical aspect levels. Following criteria will be used: 1. Scandinavian countries will be preferred as leading countries in ensuring media freedom. 2. Selective countries with strong democratic institutions will be case studied. 3. Countries that emerged to democracy around the same time as Mongolia will be studied selectively.

2. Concept of Editorial Independence.

Policy Paper on Editorial Independence by the Canadian Association of Journalist suggest following definition of editorial independence:

“The personal or political views of the owner or publisher should not interfere with day-to-day news content or the individual opinions of columnists. That includes decisions about what to cover, how to cover it and where to place the story in a newspaper, magazine or broadcast news program. Only reporters and editors should make those decisions. It’s understood that the owner or publisher is responsible for the overall content and that they can suggest story ideas or pass on views, but they should not assign or determine the content or tone of a story”.

Contrary to above there are following potential threats to editorial independence:

- a. Censorship of editorial policy of a publication or a broadcast.
- b. Use of journalists name for unrelated publication or broadcast.
- c. Force journalist to write an article or prepare a program against their will.

3. State of Editorial Independence in Mongolia

Journalistic independence is regulated in a number of Mongolian laws, such as Article 16 of the Mongolian Constitution, Law on Freedom of Media, Public Broadcasting Law of Mongolia, Article 139 of the Criminal Law and Advertising Law. But, issues related to editorial independence still exist in following manner:

- Journalistic and editorial independence are protected in the Public Broadcasting Law, and therefore apply to public broadcaster only. The law does not necessarily apply to other media, thus making journalist working for private broadcasters legally unprotected from the interference with editorial independence.
- Provisions in the above mentioned legal acts are defined too general, and declarative, and therefore relevant issues are not fully reflected. For instance, Law on Freedom of Media provides protection of media from government interference, but does not provide journalists and editors with the freedom from other legal subjects, organisations and owners. Specifically, relations between

the owner and editorial desk/journalists were left out without any legal regulation.

- When there is a lack of legally prescribed rights and duties, it is difficult to enforce responsibilities provided in the law. To be precise, when the statutory law provides protection of rights, and disposition for legal subjects not to break the law, there need to be a sanction to be used for violation of rights. Therefore without the statutory law it will be useless whatever detailed commentary to the criminal law provision is used to describe the protection. Statutory law that provides fundamental definitions and basic principles is a tool for regulatory provisions. But the penal code that imposes punishment for criminal action, even when provided detailed commentary in the court regarding the matter in question, will not be compatible with the principle of Nullum crimen sine lege². Therefore there is nothing illegal for the Supreme Court issuing limited commentary on the matter.

Based on above observation we may conclude that legal environment for editorial independence in Mongolia is insufficient, i.e. there are number of issues that require legal regulation, including:

- Interaction between the owner and journalist, their rights and duties,
- Protection and distinction of professional journalistic work from advertising or paid programs,
- Legal status and dispute resolution mechanism of an ombudsman – third party that facilitates resolution of disputes between journalist/editors and the owner,

Lack of regulation allows owners of the media outlet to interfere and censor journalistic activity. Most TV channels in Mongolia are owned by one or the other politician or businessman, and serve their interest only by providing biased, one-sided and distorted information. Employees of such TV are only allowed to broadcast information that was instructed and approved by the management, and therefore deprived of independent activities as professional journalists.

4. Editorial Independence: International practice.

- Studies by relevant organizations show that editorial independence is an issue that is important not for Mongolia only, but it is discussed widely internationally. For case studies we used practices of advanced free press countries such as Switzerland, Germany, Portugal, and Scandinavian countries – Norway, Iceland, Sweden. But also we studied legal situation with editorial independence in Russia, Georgia and Macedonia that are in transition.

Conclusions

When we studied media legislation in these countries in respect to editorial independence following conclusions were drawn upon:

- countries with advanced free press have adopted legal statutes related to their functioning and dissemination of information, as well as providing political and economic independence, confidentiality of information sources. But, on the other

² Criminal Code of Mongolia. Article 3.1. “This Code only shall recognize an act or omission a crime and shall determine the punishment and other measures of criminal liability to be imposed for committing them.”

hand, there were no specific regulations regarding independence from owners of the media outlet.

This might be related to the strong journalistic tradition of self regulation in these countries, where owner – editorial desk relations are regulated through editorial rules and journalistic ethics³. An illustrative evidence of this we can find in the Broadcasting Law of Portugal: “Each television channel must adopt an editorial statutes ... which clearly defines its orientation and objectives and which includes its commitment to respect the rights of spectators, as well as the deontological principles and professional ethics of the journalists”.

- Some practices appear to be interesting when there are no direct regulations on editorial independence, but there are provisions that indirectly point out to the matter. For instance, Freedom of the Press act of Sweden provides that “The mandate of a responsible editor shall embrace the power to supervise the publication of the periodical and to determine the contents thereof in such a way that nothing may be printed therein against his will. Any restriction of the powers thus vested in a responsible editor shall be null and void”.
- Countries in transition - Russia, Georgia and Macedonia – in contrary, tried to adopt specific regulations on editorial independence. Journalistic independence legally safeguarded in Russia could be of certain interest to us. Relevant clause of the Law of the Russian Federation "On Mass Media" provides the right to journalists “to refuse to prepare under his or her signature reports and materials inconsistent with his or her convictions”, and “to remove his or her signature put under the report or material whose content was distorted”. But, here we need to consider consistency of this regulation with the principles of editorial unity and necessary internal control.
- When we researched if editorial independence depends on the type of media, no specific distinction was found for print or broadcasting media. Same was true regarding adherence to journalistic ethics in different types of media.
- In most countries “Code of professional conduct” for journalists is adopted and it serves as a binding rules for all media workers and watchdog organizations are in place for cases of breaches of this Code. Editorial independence is usually reflected in these codes in the form of protection of journalistic professional activities and the journalistic content from the sources of financing.

5. RECOMMENDATIONS

Based on the existing legal environment for editorial independence in Mongolia, and using positive practices in some other countries, we propose following recommendations in support of providing true editorial independence in Mongolian media:

- Information about direct or indirect ownership of media outlet should be open to the public, and relevant regulations shall be incorporated in the law.
- Editorial independence needs special legal protection. Namely, relations and discretion between the owner and editorial desk need to be defined narrowly by description of rights and duties of each party, and non-interference in the journalistic work. Penalties for the breach thereof need to be clearly defined

³ Self regulation. http://www.osce.org/publications/rfm/2008/04/30697_1117_en.pdf

(here, practices of Russian Federation and some other countries should be taken into consideration).

- Legal framework for media internal rules and Code of journalistic conduct need to be defined, as well as legal protection and restrictions need to be provided to prevent abuse of media for economical and political interests of owners.
- Legal regulations must be in place in order to provide clear distinction between the professional journalistic work and any type of advertising or paid information.
- We call for creation of Press Council and independent ombudsman to oversee implementation of internal rules and code of conduct for editorial desk, along with regulations regarding their legal status, rights and responsibilities, dispute resolution mechanisms.
- Restrain from mass distribution of radio and TV frequencies that are public domain, promote policy for optimal number of means of mass media in the market.

In addition, we should consider use of provisions on employment contract in the Labour law for advancement of journalistic independence and fair working conditions for them. For stance, model employment contract with the media outlet could be drafted to include provisions of non-interference in the editorial policy and journalistic independence. Another option would be use of labour dispute commissions in the capacity of ombudsman.