

SOCIAL SCIENCES

THE FEATURES OF FORMATION OF MEDIA LEGAL REGULATION IN MONGOLIA

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Abstract

This article summarized the current situation of media regulation in Mongolia. The issues of the legal environment of Mongolian media and the down of indicators of freedom of the press have been identified and their causes have been analyzed. Also, some cases decided by the court related to the mass media were analyzed as examples.

Keywords: Freedom of the press, legal regulation of media, right to know, features of journalistic activity.

As of 2023, Mongolia ranks 88th for press freedom and is named a country with significant problems. In 2022, it ranked 66th on the Democracy Index, down four positions compared to the previous year¹. Also, according to the corruption index, it dropped by 2 places and took 116th place². The decline in these indicators of democracy and the country's development also affects the situation with freedom of the press. Although Mongolia has had a democratic political system since 1992, there is currently no strong opposition to the ruling party. The president, members of the government and the majority of members of parliament belong to the same party. Therefore, for journalistic organizations, protecting the freedom of the press, freedom of speech and expression of citizens has become an important requirement of the time. As of 2023, approximately 500 media outlets are operating in Mongolia. Today, the legal sphere of Mongolia is in a period of modern legal maturity. Since the adoption of the Constitution in 1992, reforms in the field of law have continued. In 2022-2024 the government plans to carry out legal reforms in the information and communication sphere. Thus, in the coming years, work will intensify to revise laws relating to the mass media. Therefore, the journalistic industry needed to unite its positions and take part in reform work. There are more than 880 laws in Mongolia, of which about 110 relate in one way or another to the activities of the media. The number of laws, decrees and regulations affecting the activities of the media and journalists has increased dramatically in recent years. However, most of them are more about restrictions on press freedom and refer to dependence on the state than about support for the activities of a free press. Due to the inflexible, sometimes unclear and overly general rules, journalists

and editors have chilling effects of being subject to legal liability. This hurts the development of investigative journalism and prevents it from fulfilling its special role of being the voice of democratic society and citizens and monitoring the activities of government.

The main direction of legal influence on social relations is considered as legal function. Law has the function of regulation and protection due to its nature of social regulation³. In developed countries, there is an opinion that the media should operate freely within the bounds of the law. In developing countries, it is believed that the media should work for the development of the country and the general interests of the country. But under a dictatorial regime, the media is seen as the voice of the state. Even if a country has a law that respects press freedom and supports independent journalism, it is clear that its effectiveness directly depends on how it is used and perceived. During this transition time from socialist legal thinking to modern legal thinking, old attitudes continue to have an important influence on the content of media laws in Mongolia and their implementation. When determining whether or not any law is a branch of law, it is considered according to the things it regulates, the method of regulation, and its role in society. "Media regulation" refers to the process by which a range of specific, often legally binding, tools are applied to media systems and institutions to achieve established policy goals such as pluralism, diversity, competition, and freedom⁴.

¹EIU. (2023). Democracy Index 2022. p5.

² 2022 Corruption Perceptions Index: Explore... - Transparency.org

³ Globe International. (2006). Your protection of legal regulation. Ulaanbaatar. p5.

⁴ <https://www.oxfordbibliographies.com/display/document/obo-9780199756841/obo-9780199756841-0095.xml>

Based on this theory, media law is an independent branch of law, and it is developing as a regulatory field that is quite mixed with other laws⁵.

The raw material of journalism is information. If the necessary information cannot be obtained, journalistic activities will be stopped. Thus, journalists have the right to access information and the first conditions to carry out their work, if possible. However, obtaining information from government officials or organizations is the number one problem that prevents Mongolian journalists from doing their job. The study of the project "The right to free expression, to receive information and to participate in the political process with information," conducted by Globe International in 2023, involved 284 journalists. 58 percent of journalists ranked "unreasonable refusal to provide information" by officials as the number one problem they face in doing their jobs. Also, to the question "What rights were violated?" the largest number (48 percent)⁶ answered "the right to receive and process information. The Law on Publicity and Right to Information was first adopted in Mongolia in 2011. In this law, the process of citizens receiving information from government organizations was legalized. In 2014, the Glass Accounts Law was passed, and in 2021, the Public Information Transparency Law was passed, and relevant information of government organizations was disclosed. In 2019, the Constitution⁷ confirmed the right to know about the impact of subsoil use on the environment as part of the right to live in a healthy and safe environment. In Mongolia, legal standards regarding the right to access information have improved in recent years, but journalists are not yet able to use it freely. On the one hand, this is due to the poor development of information disclosure infrastructure (websites of government organizations). The fact that some organizations do not have information technology employees, information archives and databases do not have standard requirements, and there is no mechanism for transferring information to the relevant organization. So on, the biggest problem for journalists remains the attitude of the state and government organizations address to information as their property.

In the Law on Public Service Ethics, "Article 8. General ethical requirements for civil servants. 8.1.4. not to ignore or distort the business opinions of others, not to disseminate false information in any form", Article 37 of the Civil Service Law "General duties of civil servants. 37.1.10. be neutral, not be influenced by any political influence, and also expressed in the press and media only the official position on issues related to public policy". The Code of Conduct for Civil Servants and Services, approved in 2019, included clause "3.1.6. express through the press and the media only the official position on issues relating to government policy." Because of these points, civil servants continue to refuse to provide information to the media, given the risks to the organization and their work. In a focus

group, interview we conducted, young journalist B.Badamtsetseg said: "Information from government organizations at first glance seems transparent, but it is not. They say, look for it on our website. But it is not clear where and how to look, sometimes information is not available at all on official websites. Although a lot of information is disclosed under the Public Information Transparency Act, it is not provided when a "get information" request is made. "Where can I get it?" Questions are not answered or they are told "cannot be given". In some cases, information is presented in a distorted form that no one can understand and does not meet any requirements. The most difficult problem is that such laws are not implemented, and officials make additional demands that are not specified in the law. The attitude of government agencies and officials to information as their property also leads to journalists being threatened, harassed and forced to reveal their sources. Journalists are not given even unnecessary information, believing that it is better to be safe than to disseminate and use information in the public interest. 20 percent of journalists who participated in the above-mentioned Globe International study believed that the right to protect their sources was violated. The openness of public information should not be a storefront where sellers receive permission, but an information supermarket where everyone can choose the product he needs within the rules.

In the laws of Mongolia, provisions on confidentiality of information are not reduced but strengthened. This shows that socialist legal thinking that the government should control information is still present in our country's legal system. Due to rise of social media and internet usage, government attempts to control information under the guise of crime prevention, public safety, child safety, and privacy. Numerous cases registered during the Covid-19 pandemic. In September 2020, an organization against fake information was created at the Police Department. It was widely criticized and was withdrawn. Government Decree No. 29 of 10/02/2021 states that news and information should be transmitted only through one channel and as directed by the Government. This violated the journalist's professional activities and the public's right to know. Quotas were also imposed on media organizations without justification or explanation. There were violations, such as limiting the number of journalists who could access the Ministry of Health to obtain information. There is also no legal basis for the government to finance the "Information Flow" news program, in which four television channels participated, and the right to prepare and broadcast information.

Also, government organizations and politicians continue to demand large sums of money from the media in by Articles 21 and 511 of the Civil Law for libel. In May 2021, the state-owned company "Mon-Atom" demanded 100 million tugriks (MNT) by filing a lawsuit in the Civil Court, claiming that "Ugluunii

5 Naranjargal Khashkhuu.(2021). Free expression and free journalism. Ulaanbaatar. p67.

6 Globe International.(2023). The right to free expression, the right to information and the right to informed participation in the political process.p3.

7 Constitution of mongolia (legalinfo.mn).

Sonin" daily newspaper had violated its business reputation. Journalist of "Ugluunii Sonin" prepared a report with interviews and explanations about the negative impact on the health of citizens and animals of the activities of the company "Badrah Energy", operating in the Ulaanbadrah sum of the Dornogovi province. "Mon-Atom" owns 34 percent of "Badrah Energy". According to Article 511.2 of the Civil Law, the emotional harm and consequences for the victim can be monetary.

Government agencies and officials do not provide official comments on criticism and negative information from the media, but instead file legal action against the media, which will somewhat limit the possibility of free discussion in society.

Approved on January 19, 2023, the Social Media Human Rights Protection Bill (overridden by the President's veto) echoed the provisions of other laws and allowed the government to remove content on social networks and media at its discretion. Content restrictions were too broad and contained provisions that restricted citizens' freedom of speech. While supporters of the law have explained that it aims to protect children's rights on social media, the law's provisions risk allowing the state to control public information. Social networks cannot be completely controlled by the state. However, it is possible to participate in public information by properly explaining and understanding government policies and activities. Moreover, when information and communication technologies are developing and changing day by day, compulsory control of social media by law is ineffective.

The right to access and disseminate information is a fundamental human right. Press freedom organizations therefore argue that these basic human rights must be ensured from the start. However, government agencies treat journalists differently and continue to violate some of their rights. "Eagle News" broadcasting journalist Ulsbold said: "In the procedure for reporting parliament, there is a provision that a journalist can enter with a laptop. Previously, we only wrote in our notebooks by pen and no photographs were taken. The press was banned from taking photographs in parliament after a photo was published of a parliament member playing a video game on a mobile phone during a meeting. TV channels take ready-made footage from the press service of the parliamentary apparatus, cut it according to content and prepare it. But this is a sketch, it does not convey the atmosphere of the real situation, and it is deceiving. Therefore, it is no longer possible to cover the parliamentary meeting". This is an example of a journalist not respecting his professional rights and being treated differently from other people. Moreover, government agencies and officials began to treat journalists and the media differently. As mentioned earlier, government agencies do not provide the media with simple non-confidential information without going through many stages, which sometimes leads to the inability to obtain information in the usual way. Some journalists and media outlets do not produce negative information about some officials and government organizations. Even when a

government organization announces a press conference, media with "friendly" relations are discriminated against and others are not allowed in. This creates a unified flow of information and forces them to be "friendly" to government agencies for information. In March 2023, Prime Minister Oyun-Erdene Lubsannamsrai, Minister of Education and Science Enkh-Amgalan Lubsantseren and other officials took part in the opening ceremony of the new building of the Faculty and Student Development Center at the National University of Mongolia. Then reporters from some TV channels were not allowed in if they had not concluded a cooperation agreement with the Government. Government organizations create media channels and structures to disseminate or not disseminate their information through advertising contracts, which has become economic censorship that infringes on the freedom of the press.

Mongolia's legal system has provisions supporting the independence and professional rights of journalists and media outlets, but their enforcement in legal practice is weak. The most obvious example of this is the Freedom of the Media Act. Over the past 25 years, cases and disputes regarding violations of this law have not been resolved by the court. If journalists and journalistic organizations had filed a complaint immediately after this law was violated, they would have done at least a small amount of work to explain, clarify, and revise the provisions of the law.

Article 1.4 of the Criminal Code, revised in 2015, states that "no criminal liability shall be imposed for the opinion or belief of a person". This provision is very important and ensures that the publisher does not criminalize anyone's right to express their opinion. However, Article 14.13 of the Criminal Code contains a provision related to the dissemination of false information, and a bill is being prepared that will return to the law the act of "insult", which violates Article 1.4. Chapter 14 of the Criminal Code makes discrimination based on belief an offense against personal and political rights and freedoms, punishable by up to five years imprisonment. Also, Article 14.2 "Obstructing the search and receipt of information" prohibits the use of force or the threat of force to impede the search and receipt of information on non-confidential issues (since 2017). Article 14.3 provides that any information that affects the legitimate interests of a person or other persons is subject to liability if anyone uses force or threatens to use force to prevent the dissemination of any information that affects his legitimate interests or the legitimate interests of others, or intentionally doesn't publish it. However, there are currently no cases decided by the court under these provisions. According to Article 14.3, *gerelnews.mn* journalist Gerelmaa G filed a complaint, but the case has not been solved yet. On June 9, 2022, he was detained by the police during a live broadcast, his mobile phone and camera were confiscated, and some data on the mobile phone was deleted. He was also assaulted, threatened, and detained for six hours. Although the officers who used force were fired and police officials apologized, the matter was not clarified. It was considered that this case would not be considered under Article 14.3 of the Criminal

Code, but it was transferred to the special service as a violation of police ethics and duty.

Any good regulation reflects the specifics of the industry and takes into account its strengths and weaknesses. From this point of view, it is essential to consider the peculiarities of journalistic activity in the process of creating and implementing laws. This is not about the priority of journalists over others, but about whether journalists have the opportunity to fulfill their duties according to the law. Journalism is characterized by a social responsibility to work in the public interest. The US Supreme Court and the European Court of Human Rights have set a precedent for decisions that take into account the fundamental characteristics of journalism, the public interest, and the protection of freedom of expression. However, in our country, there is a legal regulation according to which a journalist can be held legally liable if he makes a professional mistake in disclosing useful and useful information to the public. In 2017, section 6.21 of the Contraventions Act introduced "libel" and was removed in January 2020. According to this norm, a local journalist was fined for writing that the chairman of the meeting of representatives of citizens of the Arkhangai region paid for 15 trips from budget funds, and not 13, as it turned out in reality. However, despite the goal of protecting the public interest, when a journalist exposed wasteful use of public funds, a professional or factual error was considered a violation, which became an incorrect example in the history of journalism. A free press can inform citizens of their leaders' successes or failures, convey the people's needs and desires to government bodies, and provide a platform for the open exchange of information and ideas. When media freedom is restricted, these vital functions break down, leading to poor decision-making and harmful outcomes for leaders and citizens alike⁸.

From 2020, Article 13.14 of the Criminal Code "In the event of the public disseminating knowingly false information that causes harm to the honor, reputation or business reputation of a legal entity..." liability will be established. Although libel is governed by criminal law in more than 160 countries, the main factor to consider is the question of intent. This takes into account whether the journalist slandered the applicant intentionally, or whether this was due to professional errors or lack of opportunity to check the facts. In 2020-2021, cases decided by the court by the above provisions were analyzed in a study by the Open Society Forum, and the following conclusions were drawn. "When investigating and solving the crime of "dissemination of false information", provided for in Article 13.14 of the Criminal Code, the concept of "knowingly false information" refers to individual facts and events that have been assessed, criticized, have certain grounds, but are discredited, attacks or factual facts. Dissemination of incomplete or incorrect information, including negative, information is false but does not humiliate the social value of a person, denigrates the dignity of a person, but affects the

problems identified in the behavior and actions of a person, makes erroneous or erroneous conclusions about reality: "There is a problem of investigating such issues such as the dissemination of information by making a mistake by not checking the source, and the issue of a guilty plea by the court causes great harm to the right to speech and freedom of information"⁹.

As of August 2023, there was one reported case (ulsturch.mn) in which a journalist was prosecuted under this provision. When considering cases decided by the court in 2020-2023 on the website shuukh.mn, most of them are related to family disputes between citizens or slander of legal institutions and employees on social networks. However, this provision on the dissemination of "knowingly false information" does not take into account the fact that journalists have limited sources of information, the need to quickly report, and in some cases, it is impossible to prove the truth, which hinders the development of free journalism. However, in the judicial practice of our country, there are few examples of overturning a sentence taking into account the specifics of a journalist's activities. In 2012, a journalist for the newspaper "Udrin Sonin" daily newspaper was found guilty in the criminal court of first instance and fined 7,160,400 tugriks (MNT) in connection with an article entitled "Trade in state-owned license plates is developing more and more sophisticatedly". But in 2014, Judge Erdenebalsuren D, having reviewed the case, acquitted the journalist. At the same time, the judge's conclusion that the court's decision was aimed at attracting public attention to this issue is entirely true. In other words, it cannot be concluded that the content of the article is intended to communicate the honor of a certain person, or rather B.J.... the information is written based on what the source said, and the content is not based on something that did not happen at all. established by the evidence collected in the case... On the other hand, the purpose of insulting the dignity and reputation of a person is understood to include a goal with personal motivation, aimed at realizing several ideas, such as revenge, hatred, throwing out anger, jealousy, and malevolent suspicions. The journalist has consistently shown that he did not know B.J. and that he had no personal motive to slander the man, and there is no basis for charging him with libel when the investigation has not proven that he had the intention and intent to commit an atrocity". It has become a standard international decision in which courts and legal institutions take into account the specifics of journalistic activity.

To conclude, the Constitution of Mongolia and the main laws of journalism have provisions to protect and guarantee the freedom of the press. However, the lack of development, interpretation, and application of the law harms the implementation of the laws protecting the freedom of the press. Most importantly, Mongolian legal regulations do not take into account the specifics of journalistic activities. This does not create conditions for forming regulations supporting freedom of the press, and for journalists to do their work without legal

⁸ <https://freedomhouse.org/issues/media-freedom>

⁹ Open society forum. The practice of struggling with the crime of disseminating false information. 2021. p62.

pressure. The theories and approaches of journalism, which is a part of social science, originate from the basic theories and approaches of human and social relations. Theories and approaches from other fields that negatively interpret the effectiveness of journalism or consider it as an important social institution are still influential in society today. Mongolia's media law is in its maturity stage, but the transition of the social system in Mongolia has not yet been completed, the weak political culture and rule of law, poor mass media education, and the economic incompetence of journalism have been adversely affected by many factors. Self-regulation of mass media is developing in our country, but so far it has not been able to change the effectiveness of legal regulation. Mongolia's media law is in its maturity stage, but the transition of the social system in Mongolia has not yet been completed, the weak political culture and rule of law, poor mass media education, and the economic incompetence of journalism have been adversely affected by many factors. Self-regulation of mass media is developing in

our country, but so far it has not been able to change the effectiveness of legal regulation.

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