

Strasbourg, 8th July 2021

Dear Director,



With reference to your letter dated 12 July 2019 on the “Kyrgyzstani News Website 24.kg Facing Damages in Austrian Courts” alert on the Platform for the Safety of Journalists and Protection of Journalism, I have the honor to transmit herewith the response by the Austrian authorities. It reads:

The Austrian Government would like to respond to the media freedom alert “Kyrgyzstani News Website 24.kg Facing Damages in Austrian Courts”, published on the Council of Europe “Platform to promote the protection of journalism and safety of journalists”, as follows: The case concerns a legal claim (injunction) against a Kyrgyz media platform. The complaining parties (a natural person living in Austria as well as an Austrian company with its company HQ in Austria) sued the Kyrgyz media platform to cease and desist from stating that the complaining parties were “pseudo-investors”. In addition, the parties sued for the revocation of the statement. The claim was based on Section 1330 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch) which provides as follows: “(1) Everyone who has suffered material damage or loss of profit because of an insult may claim compensation. (2) The same applies if anyone disseminates statements of fact which jeopardise another person’s credit, income or livelihood and if the untruth of the statement was known or must have been known to him. In such a case the public retraction of the statement may also be requested...”

Austrian jurisdiction was based on Section 83c Law on Jurisdiction (Jurisdiktionsnorm, JN), according to which, in the case of disputes under Section 1330 Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) due to publication in a medium, the court in whose district the act was committed has jurisdiction if the defendants neither own a company nor have their general place of jurisdiction or habitual residence in Austria. As the plaintiff had accessed the website of the defendant party in Vienna, the matter was subject to the jurisdiction of the court district of Vienna pursuant to Section 51 (1) 8b Law on Jurisdiction. The defendant party, who was represented by an attorney, did not attend the preparatory hearing, - despite having been duly summoned - which is why a judgment by default was issued. In the meantime this default judgment has become legally binding. A plea in the matter was not made at the court hearing.

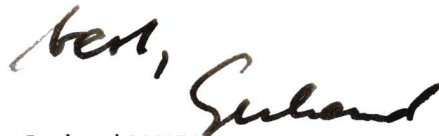
The defendant received the legal claim through the Austrian Embassy Nur-Sultan (at the time Austrian Embassy Astana), which covers matters regarding Kyrgyzstan. A district judge of Swerdlowskij in Bishkek certified the delivery of the legal claim to the News Website 24.kg. On 24 April 2014, the default judgment was delivered to the defendant’s lawyer, who then objected to it (“Widerspruch”).

One month after the objection was raised the lawyer announced the ending of his legal representation. Upon this announcement, the representative was informed that in legal disputes, in which legal representation is obligatory, this legal representation only ends with the appointment of a new representative. The announcement of termination in itself was therefore ineffective. Until a new representative is appointed, all deliveries shall therefore be made to the previous representative.

The initial default judgment was eventually repealed and a new default judgment was made on a limited scope of the claim. This second default judgment was delivered to the defendant's lawyer and has become legally binding and enforceable.

I'd be grateful for your uploading this response to the Platform website, and remain,

Sincerely yours,



Gerhard JANDL
Ambassador

Matjaž GRUDEN

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