



# MEMORANDUM

on

## Kazakhstan's Law on Mass Media

London  
August 2006



Commissioned by the Representative on Freedom of the  
Media of the Organisation for Security and Cooperation  
in Europe

ARTICLE 19 · 6-8 Amwell Street · London EC1R 1UQ · United Kingdom  
Tel +44 20 7278 9292 · Fax +44 20 7278 7660 · [info@article19.org](mailto:info@article19.org) · <http://www.article19.org>

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## SUMMARY OF RECOMMENDATIONS

ARTICLE 19 is extremely concerned that Kazakhstan's Law on Mass Media inhibits the development of a free, independent and pluralistic media in Kazakhstan and that it has restricted the public's right to receive information on matters of public interest from a variety of sources. The Law on Mass Media was introduced in 1999 and amended several times since – most recently, in July 2006. With each amendment, the regulatory regime has become stricter; the most recent amendments introduced tough fines and barred editors or owners of publications that have been banned from editing or owning another publication for a period of three years.

Our overriding recommendation is that the Law should be reworked to become a law that truly enables media freedom. Its positive features, including primarily those conferring rights on journalists, should be strengthened. All restrictions should be reviewed against international standards on freedom of expression and either be moved to legislation of general application, such as the civil code, or be abolished altogether. The registration scheme for print media outlets should also be abandoned. Georgia's 2004 Law on Freedom of Expression may be taken as an example for this exercise. ARTICLE 19 would be happy to assist in this process.

Until such revision takes place, we recommend that Article 4(2) of the current Law, which provides that rights conferred in international treaties ratified by Kazakhstan take precedence over incompatible national legislation, is applied. Kazakhstan has recently ratified the *International Covenant on Civil and Political Rights* and we strongly believe that both the media registration regime and the majority of the content restrictions contained in the Law on Mass Media restrict the right to freedom of expression beyond the extent permitted under that treaty. This should mean that these provisions cannot be legitimately applied.

We are also aware that several civil society organisations are currently working to propose amendments to the Law on Mass Media, or to propose an entire new law. We wholeheartedly support this process and encourage the organisations involved to promote the highest possible standards on freedom of expression. The fact that the Kazakhstan government has recently ratified the *International Covenant on Civil and Political Rights*, and is therefore under a binding legal obligation to promote media freedom, should provide significant leverage to the arguments brought by these organisations.

The following paragraphs summarise our recommendations on the detail of the Law.

### **Regarding regulatory authorities:**

- No public bodies other than an independent regulatory agency should have any regulatory powers over the media.
- The independence of the “authorised agency” should be protected, both explicitly in the law and through rules relating to funding, accountability and the appointment of its members.
- There should be a possibility of appeal to the courts for all decisions made by the “authorised agency”.
- Self-regulation should be the preferred method of regulation for the print media. Statutory regulation for the print media should be established only when there is a

pressing social need to do so; in practice, this means that it must be shown that self-regulatory mechanisms have been tried and have failed.

**Regarding the right to publish and registration:**

- There should be no restrictions on the right to express oneself through the media based on nationality, or on the fact that a person has been convicted of an offence.
- The restriction on foreign ownership to 20% is likely to deprive the media sector of needed foreign investment and should be revisited.
- The registration regime is unnecessary and has already been abused to restrict freedom of expression, and should therefore be repealed.
- The restrictions on who may be appointed editor are illegitimate and should be removed.
- The prescriptions regarding the internal organisation of publications are overly onerous and unnecessarily bureaucratic and should be removed.

**Regarding content and language restrictions:**

- All content restrictions in the draft Law should be critically reviewed for compliance with the “three part test” of legality, legitimacy and necessity, as required under international law. Illegitimate restrictions must be abolished; and to the extent that restrictions are legitimate, they should be moved to laws of general application (such as the Civil Code or Criminal Code).
- The restriction on the use of languages other than the State language should be dropped.
- The restriction on re-broadcasting foreign programming should be reconsidered in favour of providing subsidies for Kazakhstani productions and including realistic local content obligations in broadcast licences.

**Regarding journalists’ rights and obligations:**

- The statement of rights in the Law goes to the heart of freedom of expression and should be retained and built upon.
- The definition of ‘journalist’ should be broadened to include every person who exercises their right of freedom of expression to communicate with a mass audience through a regularly published medium.
- The privilege of confidentiality of sources should be reworded to ensure that a court may not order disclosure unless necessary in the investigation of a serious crime, or for the defence of a person being tried for a crime, and as a matter of last resort.
- Consideration should be given to incorporating the principle that journalistic premises or materials may not be searched or seized unless absolutely necessary, and only after a court order has been obtained.
- Serious consideration should be given to removing all statements of journalistic duties from the Law in favour of a self-regulatory regime. In any event, none of the duties should be so stringent as to infringe the right of every journalist to publish critically and use appropriate investigative techniques in the public interest. In particular, the absolute duties to always publish accurately, to respect privacy and to refrain from the use of hidden cameras or tape recorders should be reconsidered to allow for publication on matters of public interest.

**Regarding the right to freedom of information:**

- While Articles 2(2), 18(2)-(3) and 20(2) and 20(6) of the Law state important principles, they are insufficient to provide a full guarantee of the right to freedom of

information. We recommend that efforts are begun to introduce true freedom of information legislation, applicable to all and in conformity with the principle of maximum disclosure established under international law and outlined in this Memorandum.

- The media themselves should not be subject to any freedom of information obligations.

**Regarding the right of reply:**

- Efforts should be made to establish a self-regulatory regime through which a right of reply may be realised. If this is not possible, the right to reply or refutation provision should be amended to incorporate the following minimum principles:
  - o If the impugned statement concerns a matter of public interest, the burden of proving the falsity of the information must be on the person demanding the refutation;
  - o The requirement that “originating” organisations withdraw or replace their publications and notify all recipients of the false information is excessive, particularly if the incorrect material only formed a small part of a magazine or newspaper; and
  - o The paragraph allowing for a claim of damages must be deleted. Any action for defamation should be pursued through the courts, relying on the country’s ‘normal’ defamation law.

**Regarding the duty to deposit copies of all publications with central agencies:**

- The requirement to deposit copies of all publications with the “authorised agency” should be abolished.
- The possibility of a voluntary deposit scheme with the national library, book chamber and library of parliament should be pursued.

**Regarding the accreditation regime:**

- The accreditation regime should be automatic for all applicants.
- The regime should be overseen by an independent body, whose decisions should be allowed to be appealed in court.
- Accreditation should be lost only for serious and repeated public order offences.

## 1. INTRODUCTION

This Memorandum analyses Kazakhstan’s Law “on Mass Media”, as most recently amended in July 2006, against international standards on freedom of expression.<sup>1</sup> It also examines amendments to the Code on Administrative Offences, the Tax Code and the Budget Code which were introduced alongside the amendments to the Mass Media Law, in July 2006.

Kazakhstan’s Mass Media Law was originally enacted in 1999 and has been amended several times since – most recently in July 2006. Each of the successive amendments introduced a new set of restrictions on the right to freedom of expression and ARTICLE 19 is very concerned that the Mass Media Law is now so restrictive that it seriously stifles free expression in Kazakhstan’s media. The last set of amendments, which tightened the registration regime and introduced severe penalties for failing to obey rules on the use of non-national languages in broadcasting, was enacted in the face of widespread condemnation by local and international groups, including Adil Soz, ARTICLE 19 and Freedom House.<sup>2</sup> The Law now requires all media to register with central authorities and provide information concerning, amongst others, their ‘thematic direction’ and the names of the editor-in-chief and publishers. Any change in these details, even a change in address, triggers a re-registration requirement, and both registration and re-registration can be denied on a number of grounds. Mass media outlets that ignore these rules face stiff fines or even suspension. The Mass Media Law also imposes several vague restrictions on what may be published, such as a duty not to “undermine” national security or to advocate for the partitioning of Kazakhstan; it restricts who may own, or edit, a mass media outlet; and it imposes a number of ‘duties’ on journalists, including not to publish any information that later turns out to be incorrect and to “carry out other responsibilities laid upon him/her in accordance with legislation of the Republic of Kazakhstan”. In practice, the Law is frequently used to fine or suspend newspapers. For example, in April 2006, two newspapers were suspended for three months for having “changed their thematic focus”;<sup>3</sup> and in December 2005, the opposition newspaper Zhuma-Taims was fined and suspended for ‘insulting the President’.<sup>4</sup>

ARTICLE 19 does not believe that this regime can be considered compatible with the right to freedom of expression. Kazakhstan is a party to various OSCE agreements that affirm the right to freedom of expression and has recently ratified the *International Covenant on Civil and Political Rights*, the flagship United Nations human rights treaty. The latter requires Kazakhstan to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.”<sup>5</sup> This means that Kazakhstan is required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In our opinion, the July amendments to the Mass Media Law have done exactly the opposite: they have restricted the right to freedom of expression beyond the extent permitted under international law.

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<sup>1</sup> Our comments are based on an unofficial English translation of the two laws; we can take no responsibility for the accuracy of the translation.

<sup>2</sup> See IFEX feature of 12 July 2006: <http://www.ifex.org/en/content/view/full/75624>.

<sup>3</sup> As reported by Adil Soz: <http://www.ifex.org/en/content/view/full/73961>.

<sup>4</sup> As reported by the Committee to Protect Journalists: <http://www.ifex.org/en/content/view/full/71302>.

<sup>5</sup> Article 2, ICCPR.

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This Memorandum elaborates on our concerns in some detail. Section 2 of this Memorandum details Kazakhstan's international human rights obligations and sets out international standards on the right to freedom of expression.<sup>6</sup> Section 3 analyses the Mass Media Law against these standards and details our concerns with the Mass Media Law as it now stands. At the request of the OSCE Representative on Freedom of the Media we have included a separate section on the July 2006 amendments; Section 4 of this Memorandum discusses the amendments to the Tax Code, Budget Code and Code on Administrative Offences alongside the amendments made to the Mass Media Law.

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<sup>6</sup> The standards relied on are drawn from international law, including the International Covenant on Civil and Political Rights and the various OSCE commitments that Kazakhstan is party to, judgments from international human rights courts and tribunals, statements by international bodies such as the UN Special Rapporteur on Freedom of Expression and the OSCE Special Representative on Freedom of the Media, and comparative constitutional law on freedom of expression..

## 2. INTERNATIONAL STANDARDS ON FREEDOM OF EXPRESSION AND MEDIA REGULATION

### 2.1. The Importance of Freedom of Expression

The right to freedom of expression has long been recognised as a crucial human right. It is of fundamental importance to the functioning of democracy, a necessary precondition for the exercise of other rights and, in its own right, it is essential to human dignity. The *Universal Declaration of Human Rights* (UDHR), the flagship human rights instrument adopted by the United Nations General Assembly in 1948, protects the right to freedom of expression in the following terms, at Article 19:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>7</sup>

The *International Covenant on Civil and Political Rights* (ICCPR),<sup>8</sup> a legally binding treaty very recently ratified by Kazakhstan, in January 2006, guarantees the right to freedom of opinion and expression in very similar terms to the UDHR, also at Article 19. Pursuant to Article 4(3) of Kazakhstan's Constitution, the provisions of this treaty take precedence over incompatible domestic legislation. Kazakhstan's Constitution also protects the right to freedom of expression, in Article 20.

Freedom of expression is also guaranteed in various OSCE documents agreed to by Kazakhstan, such as the Helsinki Final Act,<sup>9</sup> the Final Document of the Copenhagen meeting of the human dimension of the OSCE,<sup>10</sup> the Charter of Paris agreed in 1990,<sup>11</sup> the final document of the 1994 Budapest CSCE Summit,<sup>12</sup> and the Istanbul Summit Declaration.<sup>13</sup> The Charter of Paris states:

Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person ... We affirm that, without discrimination, every individual has the right to freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and peaceful assembly, freedom of movement (...).<sup>14</sup>

The Istanbul OSCE Charter for European Security states, similarly:

We [The participating States] reaffirm the importance of independent media and free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded

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<sup>7</sup> UN General Assembly Resolution 217A(III), adopted 10 December 1948.

<sup>8</sup> UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

<sup>9</sup> OSCE, Helsinki, 1 August 1975.

<sup>10</sup> Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990. See in particular paragraphs 9.1 and 10.1.

<sup>11</sup> Charter of Paris for a new Europe, CSCE Summit, November 1990.

<sup>12</sup> Towards a Genuine Partnership in a New Era, CSCE Summit, Budapest, 1994, paragraphs 36-38.

<sup>13</sup> OSCE Istanbul Summit, 1999, paragraph 27. See also paragraph 26 of the Charter for European Security adopted at the same meeting.

<sup>14</sup> Note 11.



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transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.<sup>15</sup>

The Moscow OSCE Human Dimension meeting agreed explicitly that “independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms”;<sup>16</sup> and that any restrictions on the exercise of the right to freedom of expression would be “in accordance with international standards.”<sup>17</sup>

Global recognition of the importance of freedom of expression is reflected in the three regional systems for the protection of human rights, the *American Convention on Human Rights*,<sup>18</sup> the *European Convention on Human Rights* (ECHR)<sup>19</sup> and the *African Charter on Human and Peoples’ Rights*,<sup>20</sup> all of which guarantee the right to freedom of expression. While neither these instruments nor judgments of the courts and tribunals operating under them are directly binding on Kazakhstan, they are important comparative evidence of the content and application of the right to freedom of expression and may be used to inform the interpretation of Article 19 of the ICCPR, which is binding on Kazakhstan.

International bodies and courts have made it very clear that the right to freedom of expression and information is one of the most important human rights. At its very first session, in 1946, the United Nations General Assembly adopted Resolution 59(I),<sup>21</sup> which refers to freedom of information in its widest sense and states:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.

As this resolution notes, freedom of expression is both fundamentally important in its own right and also key to the fulfilment of all other rights. This has been echoed by human rights courts. For example, the UN Human Rights Committee, the body established to monitor the implementation of the ICCPR, has held:

The right to freedom of expression is of paramount importance in any democratic society.<sup>22</sup>

Statements of this nature abound in the case law of human rights courts and tribunals from around the world. The European Court of Human Rights has noted, for example, that “[f]reedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.”<sup>23</sup> As this statement notes, freedom of expression is fundamentally important both in its own right and also as the cornerstone upon which all other human rights rest. Only in societies where the free flow of information and ideas is permitted and guaranteed is democracy able to flourish. In addition, freedom of expression is crucial for the unveiling and exposure of violations of human rights and the challenging of such violations.

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<sup>15</sup> Note 13, paragraph 26.

<sup>16</sup> Moscow Meeting of the Conference on the Human Dimension of the CSCE (October 1991), paragraph 26.

<sup>17</sup> *Ibid.*

<sup>18</sup> Adopted 22 November 1969, in force 18 July 1978.

<sup>19</sup> ETS Series No. 5, adopted 4 November 1950, in force 3 September 1953. As of 7 July 2003.

<sup>20</sup> Adopted 26 June 1981, in force 21 October 1986.

<sup>21</sup> 14 December 1946.

<sup>22</sup> *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

<sup>23</sup> *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49.

The guarantee of freedom of expression applies with particular force to the media. The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law.”<sup>24</sup> It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.<sup>25</sup>

And, as the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>26</sup>

The Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”<sup>27</sup> The media as a whole merit special protection, in part because of their role in making public “information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.”<sup>28</sup>

The European Court of Human Rights has also stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] ... it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”.<sup>29</sup>

## 2.2. Restrictions on Freedom of Expression

The right to freedom of expression is not an absolute right; it may, in certain narrow circumstances, be restricted. However, because of its fundamental status, restrictions must be precise and clearly stipulated in accordance with the principle of the rule of law. Moreover, restrictions must pursue a legitimate aim; the right to freedom of expression may not be restricted just because a certain statement or form of speech is considered offensive or because it challenges established doctrines. The European Court of Human Rights has emphasised that precisely such statements are worthy of protection:

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<sup>24</sup> *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

<sup>25</sup> *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

<sup>26</sup> UN Human Rights Committee General Comment 25, issued 12 July 1996.

<sup>27</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

<sup>28</sup> *Thorgeirson v. Iceland*, note 24, para. 63.

<sup>29</sup> See *Castells v. Spain*, note 25, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65.

[Freedom of expression] is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.<sup>30</sup>

Article 19(3) ICCPR lays down the narrow parameters within which freedom of expression may legitimately be restricted. It states:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

This has been interpreted as establishing a three-part test, requiring that any restrictions (1) be prescribed by law, (2) pursue a legitimate aim and (3) be necessary in a democratic society.<sup>31</sup> The European Court of Human Rights, ruling on the very similar clause stated in Article 10(2) ECHR, has stated that the first requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”<sup>32</sup> This means that vague or broadly worded restrictions, or restrictions that leave excessive discretion to executive authorities, are incompatible with the right to freedom of expression. Second, the interference must pursue one of the aims listed in Article 19(3); the list of aims is an exhaustive one and thus an interference which does not pursue one of those aims violates Article 19. Third, the interference must be “necessary” to secure one of those aims. The word “necessary” has specific meaning in this context. It means that there must be a “pressing social need” for the interference;<sup>33</sup> that the reasons given by the State to justify the interference must be “relevant and sufficient” and that the State must demonstrate that the interference is proportionate to the aim pursued. As the Human Rights Committee has stated, “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.”<sup>34</sup>

### 2.3. Media Regulation

In order to protect the right to freedom of expression, it is imperative that the media is permitted to operate independently from government control. This ensures the media’s role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest. The primary aim of media regulation should therefore be to promote the development of an independent and pluralistic media, thus fulfilling the public’s right to receive information from a variety of sources.

Article 2 of the ICCPR places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This

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<sup>30</sup> *Ibid.*

<sup>31</sup> See, for example, *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, 18 April 2005, para. 6.8.

<sup>32</sup> *Ibid.*, at para. 49.

<sup>33</sup> See, for example, *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.

<sup>34</sup> *Rafael Marques de Morais v. Angola*, note 31, para. 6.8.

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means that States are required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and ensure equal access of all to, the media. As the European Court of Human Rights stated: "[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism."<sup>35</sup> The Inter-American Court has held that freedom of expression requires that "the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."<sup>36</sup>

The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance 'national unity' violate freedom of expression:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.<sup>37</sup>

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism<sup>38</sup> and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression. In a Joint Declaration issued in December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression state:

Individual journalists should not be required to be licensed or to register.

...

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance.<sup>39</sup>

Similarly, the three special mandates on freedom of expression have expressed their disapproval of registration schemes for media outlets as they are easily abused to repress media freedom. Their December 2003 Joint Declaration states:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration,

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<sup>35</sup> *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

<sup>36</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 27, para. 34.

<sup>37</sup> *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

<sup>38</sup> See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 27.

<sup>39</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003, online at:

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>

which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.<sup>40</sup>

Finally, it has now been widely accepted that any public bodies with regulatory powers in the media or telecommunications sectors should be fully independent of the government, and protected against interference by political or commercial interests. If this is not the case, the system for media regulation can be easily abused for political or commercial purposes. The three special mandates have therefore recommended:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>41</sup>

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<sup>40</sup> *Ibid.*

<sup>41</sup> Joint Declaration, note 39.

### 3. ANALYSIS OF KAZAKHSTAN'S LAW "ON MASS MEDIA"

#### 3.1. The aim and purpose of media laws

As noted in Section 2.3 above, the aim of media regulation ought to be to promote the development of an independent and pluralistic media and fulfil the public's right to receive information from a variety of sources. It should therefore seek to create a level playing field for all media, regardless of ownership or political orientation, and eliminate any restrictions on media freedom that cannot be reconciled with international standards on the right to freedom of expression. It should also provide positive elements of protection for media workers, such as the right to protect sources of journalistic information. The recently enacted Georgian Law on Freedom of Speech and Expression may be taken as an example of a 'good' media law;<sup>42</sup> it provides appropriate legal protection to journalists, reforms the law of defamation to bring it in line with progressive international standards and outlines in some detail the kind of restrictions that may be legitimately imposed.

Kazakhstan's Law on Mass Media fails to implement these basic principles. It contains only a few provisions that outline the right to freedom of expression and journalists' rights; and these are vastly outweighed by the Law's other provisions, which set up a highly restrictive registration regime and establish severe limitations on who may own or edit mass media outlets, and what may be published. The registration scheme serves no discernable legitimate purpose and is in practice easily abused to repress opposition voices. For that reason alone, it ought to be abolished. Many of the content restrictions in the Law are unacceptably vague and duplicate restrictions already found in the civil and criminal codes; and most of the 'duties' imposed on journalists are far better dealt with through self-regulatory rules of professional ethics. For example, while journalists should always strive to report truthfully, they cannot be placed under a binding legal obligation to do so: sometimes, even well-researched stories turn out not to be true.<sup>43</sup>

Our overall recommendation is therefore that the Law on Mass Media be thoroughly reviewed. Its positive elements should be retained and strengthened; the registration scheme should be abandoned; and the restrictions should be reviewed with an eye to remove them altogether or to move them to legislation of general application (such as the Civil Code). The end result of this exercise should be the creation of a single Law on Media Freedom and Freedom of Expression that clearly states the rights of journalists and contains only such regulations and restrictions as are a. clearly worded; b. pursue a legitimate aim; and c. are truly "necessary in a democratic society".

Subject to these overall recommendations, the remainder of this Memorandum discusses the draft Law in more detail, identifying positive and negative elements and making specific recommendations for improvement.

#### **Recommendations:**

- The draft Law should be reworked to become a law that truly enables media freedom.

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<sup>42</sup> 24 June 2002.

<sup>43</sup> See, for example, the European Court of Human Rights' judgment in *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999, Application no. 21980/93.

Its enabling provisions, including primarily those conferring rights on journalists, should be strengthened. All restrictions should be reviewed and either be moved to legislation of general application, such as the civil code, or be abolished altogether. The registration scheme should be abandoned.

### 3.2. The ICCPR prevails over incompatible provisions of the Law on Mass Media

As recalled in the introduction, Kazakhstan ratified the *International Covenant on Civil and Political Rights* in January 2006. Its ratification not only has legal effects under international law – which requires Kazakhstan to implement the treaty – but also under national legislation. Article 4(2) of the Law on Mass Media provides:

If an international treaty sets other rules than contained in the present Law, then the rules of [the] international treaty prevail.

This repeats a constitutional provision to the same effect.<sup>44</sup> This means that any provision of domestic law – including the Law on Mass Media – that contravenes a right guaranteed under an international treaty, such as the *International Covenant on Civil and Political Rights*, cannot be applied. This can be said, in practical terms, to have the effect of suspending the provision of national law.

As we argue in the following paragraphs of this Memorandum, the vast majority of the restrictions imposed by the Law on Mass Media are incompatible with international standards on freedom of expression as expressed in the *International Covenant on Civil and Political Rights*. We believe that, because of Kazakhstan's recent ratification of that treaty, Article 4(2) of the Law on Mass Media and Article 4(3) of the Constitution should have the effect of suspending these restrictions and we urge any media against whom action has been taken under the Law on Mass Media to challenge restrictions imposed on them on this ground.

#### **Recommendations:**

- Article 4(2) of the Law on Mass Media and Article 4(3) of the Constitution should have the effect of suspending restrictive provisions of the Law on Mass Media. Media outlets against whom action has been taken under the Law on Mass Media should seek judicial review on this ground.

### 3.3. Regulatory authorities

Articles 4.1 – 4.6 set out the responsibilities of different government departments and regulatory agencies in the area of media regulation. Article 4.1 specifies that public “control” of the media is implemented by supervising the implementation of relevant legislation, and by licensing television and radio broadcasting. The second paragraph of Article 4.1 specifies that the “authorised agency” is the lead government agency regarding media regulation, together with other public bodies acting within their sphere of competence. The “authorised agency” is defined in Article 1(19) as “a central executive body, which fulfils state regulation on activity of mass media and information agencies”. Articles 4.2, 4.3 and 4.4 go on to specify the

<sup>44</sup> Article 4(3) of Kazakhstan's Constitution.

responsibilities of the government, the “authorised agency” and local executive bodies, respectively. Broadly speaking, Article 4.2 provides that the government is responsible for setting “basic directions” of state media policy; the “authorised agency” implements that policy, conducts the licensing process, and monitors adherence to licence conditions; local public bodies monitor and supervise implementation of media legislation within their localities.

### Analysis

We have two basic concerns with the regime established under Articles 4.1-4.5 of the Law on Mass Media. First, as noted in Section 2.3 of this Memorandum, as a matter of principle any public body that has regulatory powers in the media sector should be independent of the government and protected against undue interference of a political or commercial nature. The government’s role in media regulation should be to set the main outlines of media policy; an independent regulatory body should be responsible for the implementation of that policy. Articles 4.1-4.5 of the Law on Mass Media fail to adhere to these basic principles by placing local public bodies in charge of supervising the implementation of media legislation, and by failing to protect the independence of the “authorised agency”. The latter, in particular, is a pivotal body in the implementation of media policy and its independence should be explicitly protected, and members of the body should be democratically appointed. The following principles, taken from broadcast regulation,<sup>45</sup> should serve as minimum standards:

#### Principle 10: Independence

All public bodies which exercise powers in the areas of broadcast and/or telecommunications regulation, including bodies which receive complaints from the public, should be protected against interference, particularly of a political or commercial nature. The legal status of these bodies should be clearly defined in law. Their institutional autonomy and independence should be guaranteed and protected by law, including in the following ways:

- specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
- by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
- through the rules relating to membership;
- by formal accountability to the public through a multi-party body; and
- in funding arrangements.

#### Principle 11: Explicit Guarantee of Independence

The independence of regulatory bodies, as well as a prohibition on interference with their activities and members, should be specifically and explicitly provided for in the legislation which establishes them and, if possible, also in the constitution. While there is no particular form of words that must be used for this purpose, the following is one way of guaranteeing independence:

The [name of body] shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies. This autonomy shall be respected at all times and no person or entity shall seek to influence the members or staff of the [name of body] in the discharge of their duties, or to interfere with the activities of the [name of body], except as specifically provided for by law.

#### Principle 13: Membership

13.1 Members of the governing bodies (boards) of public entities which exercise powers in the areas of broadcast and/or telecommunications regulation should be appointed in a manner which minimises the risk of political or commercial interference. The process for

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<sup>45</sup> *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*, ARTICLE 19, London, March 2002, available in Russian at <http://www.article19.org/pdfs/standards/access-to-the-airwaves-russian-.pdf>.



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appointing members should be set out clearly in law. Members should serve in their individual capacity and exercise their functions at all times in the public interest.

13.2 The process for appointing members should be open and democratic, should not be dominated by any particular political party or commercial interest, and should allow for public participation and consultation. Only individuals who have relevant expertise and/or experience should be eligible for appointment. Membership overall should be required to be reasonably representative of society as a whole.

13.3 The following exclusions or 'rules of incompatibility' should apply. No one should be appointed who:

- is employed in the civil service or other branches of government;
- holds an official office in, or is an employee of a political party, or holds an elected or appointed position in government;
- holds a position in, receives payment from or has, directly or indirectly, significant financial interests in telecommunications or broadcasting; or
- has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime, and/or a crime of dishonesty unless five years has passed since the sentence was discharged.

13.4 Members should be appointed for a fixed term and be protected against dismissal prior to the end of this term. Only the appointing body should have the power to dismiss members and this power should be subject to judicial review. A member should not be subject to dismissal unless he or she:

- no longer meets the rules of incompatibility, as set out above;
- commits a serious violation of his or her responsibilities, as set out in law, including through a failure to discharge those responsibilities; or
- is clearly unable to perform his or her duties effectively.

13.5 The terms and conditions of membership, as well as the responsibilities of members, should be set out clearly in law. No other terms, conditions or responsibilities should apply. In particular, no minister or other government representative should have the power to impose terms, conditions or responsibilities on members. Neither individual members nor the body itself should receive instructions from any body other than the one that appointed the members.

13.6 The rules relating to payment and reimbursement of members should be set out clearly in law in a manner that does not allow for discretion in relation to individual members. Members should be prohibited from receiving any funds in connection with their functions as members other than those provided for by law.

13.7 The power to adopt internal rules, for example relating to meetings and quorum, should either be set out in law or vest in the regulatory body itself.

#### Principle 15: Accountability

15.1 Regulatory bodies should be formally accountable to the public through a multi-party body, such as the legislature or a committee thereof, rather than a minister or other partisan individual or body. Regulatory bodies should be required by law to produce a detailed annual report on their activities and budgets, including audited accounts. This annual report should be published and widely disseminated.

15.2 All supervision by regulatory bodies should be exercised in relation to actions already taken (a posteriori) and should never have the purpose of trying to influence an individual decision.

#### Principle 16: Judicial Review

All decisions of regulatory bodies which affect individuals should be subject to judicial review.

#### Principle 17: Funding

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17.1 Regulatory bodies should be adequately funded, taking into account their mandates, by a means that protects them from arbitrary interference with their budgets. The framework for funding and for decisions about funding should be set out clearly in law and follow a clearly defined plan rather than being dependent on ad hoc decision-making. Decisions about funding should be transparent and should be made only after consultation with the body affected.

17.2 Funding processes should never be used to influence decision-making by regulatory bodies.

As established under the Law on Mass Media, the “authorised agency” is easily brought under State control and functions as an executive arm of the government.

Our second concern is that the regulatory regime established in Articles 4.1-4.5 extends to the entire media sector, including the print media. Even disregarding the fact that the bodies in charge are not independent from the government, this is an overly heavy-handed approach to print regulation. There is no reason why the print media should be regulated by a statutory body; experience in many democratic countries around the world has demonstrated that self-regulation is both perfectly achievable and by far the most effective way of regulating and raising standards in the print media sector. We therefore recommend that until and unless self-regulation has demonstrably failed to uphold minimum standards in the print media sector, no statutory mechanism need exist.

#### **Recommendations:**

- The independence of the “authorised agency” should be protected, along the lines set out above.
- No public bodies other than the independent regulatory agency should have any regulatory powers over the media.
- There should be a possibility of appeal to the courts for all decisions made by the “authorised agency”.
- Self-regulation should be the preferred method of regulation for the print media. Statutory regulation for the print media can be established only when there is a pressing social need to do so; in practice, this means that it must be shown that self-regulatory mechanisms have been tried and have failed.

### **3.4. Right to publish and registration**

Under Article 5 of the Law on Mass Media, “[t]he right to found a mass medium belongs to natural and legal persons in accordance with legislation of the Republic of Kazakhstan”. Foreign citizens or legal entities may not own or control more than 20% of a legal entity that owns a media outlet. Article 6 provides that a mass media outlet owner may also function as its editor, journalist, publisher or distributor. Article 7 lays down certain rules pertaining to the internal organisation of mass media organisation and bans 3 categories of persons from holding the office of editor-in-chief:

1. persons who have been declared incapable by a court;
2. convicted persons whose conviction has not yet expired; and
3. foreigners or stateless persons.

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Article 10 of the Law on Mass Media requires that all mass media outlets in Kazakhstan, with the exception of Internet media, must be registered with “the authorised agency”. The “authorised agency” is defined in Article 1 as “a central executive body”; but there is no further elaboration of its status, and no requirement that this “agency” be independent from the state, or from political or commercial pressures.<sup>46</sup> A registration fee must be paid, and information provided on matters including the area of distribution and the proposed ‘thematic direction’. Applicants must also submit certified documents showing the “right to entrepreneurship”, a certified copy of incorporation, and evidence of payment of the fee. Registration may be refused on one of six grounds:

1. that the name of the mass media outlet is similar to that of an outlet already registered;
2. that incorrect or incomplete registration details have been submitted;
3. that the outlet has been closed less than a year ago by court order;
4. that the fee has not been paid;
5. that documentation regarding ownership has not been submitted;
6. that a publication of a same name and thematic direction has previously been banned, or that the application has been submitted by an owner or editor whose previous publication has been banned, unless more than three years has passed since the imposition of the ban.

The media outlet must begin publication within three months of being granted registration (or, in the case of a broadcast outlet, six months). Whenever there is a change of owner, name or language of publication, thematic direction, or when there is a new editor, the mass media outlet must re-register.

Article 12 exempts various outlets from the registration requirement, including outlets with a circulation of 100 copies or less; outlets exclusively dedicated to publishing regulatory, legal or other acts; bulletins of judicial practice; cable and satellite networks distributed to only one building or to a single complex of buildings; and Internet media outlets.

Under Article 13, registration may be suspended or terminated on various grounds, including violating the prohibitions on publishing state secrets or hate speech (we discuss these prohibitions in detail below, in Section 3.5).

### Analysis

Both the provision on the right to publish and the set of provisions concerning registration raise serious question with regard to the protection of the right to freedom of expression. We also have serious concerns with regard to the provisions that prescribe the internal organisation of mass media outlets.

### *Restrictions on the right to publish*

We seriously query the limitation of the right to publish to ‘citizens’ and Kazakhstan legal entities. Article 19 of the Universal Declaration of Human Rights provides: “*Everyone* has the right to freedom of ... expression” [emphasis added] and Article 19 of the International Covenant on Civil and Political Rights similarly applies to ‘everyone’. Equally importantly, Article 2 of the ICCPR requires States to ensure respect for the rights guaranteed by it for all persons “within its territory and subject to its jurisdiction”, without distinction of any kind, including on the basis of national origin. The limitation to ‘citizens’ deprives non-nationals

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<sup>46</sup> See Section 3.3 for further commentary on the “authorised agency”.

such as refugees or stateless persons of the right to publish – something that cannot be justified under international law.

We also question the wisdom of limiting foreign ownership of media outlets to 20%. While limitations on foreign ownership are often found in broadcasting laws, the current draft applies to all media. Broadcasting is a specific form of publishing where stricter rules can sometimes be justified; primarily because the airwaves only accommodate a very limited number of broadcasters.<sup>47</sup> This argument cannot, however, be made with regard to other media. Even in the broadcast sector, we would question the wisdom of limiting foreign ownership to 20%. In order to survive and compete in a global media environment, Kazakhstan's media sector needs investment. A 20% limit may well be so low as to deter badly needed foreign investment.

#### *The registration regime*

We also seriously query the need for the registration regime. We have commented on several of Kazakhstan's media laws and proposed amendments to it before, and on the media laws of other countries in the region, and each time we have recommended the reconsideration of registration regimes as they are open to abuse on political grounds. Kazakhstan's current registration laws are roundly abused to repress media freedom. The media freedom NGO Adil Soz recently reported that two newspapers, *Aina Plus* and *Alma-ata info*, received three-month suspensions for having changed their thematic focus, following a lawsuit instigated by Almaty Akimat's Internal Politics Department. The department sent a similar warning to another newspaper, *Gorod 326*.<sup>48</sup> Adil Soz suggested that the requirement to register a publication's main thematic scope was censorship in disguise. In other countries in the region, registration laws are abused to silence critical voices, too. Notably in Uzbekistan, we have received real and indisputable evidence of the abuse of registration laws – even though the laws are, on their face, purely technical in nature. We have brought two communications before the United Nations Human Rights Committee arguing that these laws are in clear violation of the right to freedom of expression. The UN Human Rights Committee has already ruled that imposing registration requirements on media outlets with a print run as low as 200 constitutes a violation of the right to freedom of expression.<sup>49</sup> The regime established by the Law on Mass Media applies to publications with a print run as low as 100.

International press freedom watchdogs, including the OSCE's own Representative on Freedom of the Media, have also warned of the danger posed by registration laws. In a Joint Declaration issued in December 2003, the UN, OAS and OSCE special mandates on freedom of expression and media freedom stated:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.<sup>50</sup>

Our overriding recommendation is, therefore, that the registration scheme established by the Law on Mass Media be abandoned. We oppose it in principle, because of its potential for

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<sup>47</sup> Although digital broadcasting greatly increases the number of available terrestrial channels.

<sup>48</sup> See Adil Soz's press release of 24 April 2006, as reported on the International Freedom of Expression Exchange (IFEX): <http://www.ifex.org/en/content/view/full/73961>.

<sup>49</sup> *Laptsevich v. Belarus*, 20 March 2000, Communication No. 780/1997.

<sup>50</sup> Joint Declaration, December 2003.

abuse; as well as in practice, to the extent that it illegitimately restricts the rights of various individuals to set up publications (including, for example, refugees and stateless persons).

Beyond this very basic concern, we also question why it would be necessary to submit information regarding the publication's main thematic directions, language and its geographical scope of distribution; and why re-registration must be sought if any of these change. The requirement that individual applicants produce a document "ascertaining their right to engage in entrepreneurial activities", while companies are to produce a certificate of registration as a legal entity, erects further bureaucratic hurdles for would-be publishers to overcome. If the scheme was truly technical, all that would be needed for registration is a name and some contact details. The requirement to submit content-related details, including information on the 'thematic direction' of the publication, as well as the various bureaucratic hurdles are all indications that the registration regime will be used to control the media, particularly in view of the recent suspensions of registration of two newspapers.<sup>51</sup> The fact that editors or owners of publications that have been shut down may not work as an editor or own another publication for at least three years is further evidence of the restrictive nature of the regime, as is the fact that the regime will be administered by an agency whose independence has not been guaranteed.

#### *Internal organisation of mass media outlets*

We query the legitimacy of all restrictions in Article 7. We do not believe that the restrictions on who may be appointed editor of a mass media outlet are compatible with the right to freedom of expression. The restriction on non-citizens would make it impossible for any foreigner even to edit a magazine aimed at their own community; the restriction on persons whose sentence has not yet expired would make it potentially impossible for former inmates to publish a magazine or newsletter dedicated to issues relating to rehabilitation. These are but two examples of cases where the law would either prohibit or make it difficult for particular individuals to express themselves through the media of their choice – a right granted explicitly under Article 19(2) ICCPR, recently ratified by Kazakhstan.

We similarly query some of the other, over-prescriptive provisions of the Law on Mass Media. We don't see why a newspaper or magazine could not be led by a team of two or three chief editors, as indeed many magazines are. Yet under Article 7(2) of the draft Law, every publication must have a single editor-in-chief. Similarly, Article 7(3) requires that every publication has internal regulations or an explicit contract in place regulating the relations between the owner and the editorial staff. While we understand the rationale for this, and ARTICLE 19 supports editorial charters, prescribing them by law is simply an overly bureaucratic approach.

#### **Recommendations:**

- There should be no restrictions on the right to express oneself through the media based on nationality, or on the fact that a person has been convicted of an offence.
- The restriction on foreign ownership to 20% is likely to deprive the media sector of much-needed foreign investment and should be revisited.
- The registration regime is unnecessary, has already been abused to restrict freedom of expression, and should therefore be repealed.
- The restrictions on who may be appointed editor are illegitimate and should be

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<sup>51</sup> Note 48.

removed.

- The prescriptions regarding the internal organisation of publications are overly onerous and unnecessarily bureaucratic and should be removed.

### 3.5. Content and language restrictions

The Law on Mass Media poses a number of restrictions on the content of what may be published. Article 3 bans the following:

- propaganda or calls for the forcible change of the constitutional order;
- calls for violation of the integrity of the Republic of Kazakhstan;
- undermining State security;
- advocating war, social, racial, national, religious, class and clan superiority;
- advocating the cult of cruelty and violence;
- publication of pornography; and
- disclosure of state secrets or other secrets protected by law.

Article 13 repeats some of the prohibitions of Article 3 and adds the following:

- disclosure of “technical principles” and tactics of anti-terrorism operations in the Republic of Kazakhstan when an emergency situation has been announced;
- propaganda of drugs, psychotropic substances and precursors;
- propaganda for extremism or terrorism.

A violation of any of these prohibitions may lead to temporary suspension of registration; while a violation of the ban on agitating for secession, undermining national security or propaganda for war, extremism or terrorism may lead to permanent loss of registration. Repeat violations of the other prohibitions may also lead to permanent loss of registration.

Article 25 provides that mass media outlets are fully responsible for the content of anything published by them, regardless of the source of their information. The only exceptions to this rule are laid out in Article 26, which exempts editors-in-chief and journalists if impugned information disseminated by them formed part of an official publication or communication; if the information was received from an advertiser, information agency, press service or public official; if the statement was a direct quote from an official statement; if the impugned statement was part of a live broadcast; or if the statement was part of an official announcement pursuant to Article 18 of the Law on Mass Media.

Finally, the Law on Mass Media restricts the use of languages other than the State language. Under Article 3, the “weekly volume of television and radio-programs of the media in the official language ... must not be less than the summary volume of transfers in other languages.” Article 14 limits the amount of foreign language re-broadcasts to 20% of the total amount of programming carried by a broadcaster.

#### Analysis

##### *Content restrictions*

We have a number of concerns with regard to the content restrictions in the Law on Mass Media. Our first concern is that most if not all of these restrictions most likely repeat existing prohibitions under civil or criminal law, or that they create subtle variations of existing prohibitions. For example, we expect that existing laws already prohibit publication of hate

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speech, pornography and materials that violate the right to privacy. From a purely legal point of view, repeating or varying these provisions in the draft Law creates a highly confusing situation. In addition, repeating the prohibitions sends a signal to the media that they are being singled out for special scrutiny, which is likely to have an illegitimate chilling effect on their right to freedom of expression. This concern is particularly valid given the broad and vague nature of certain of many of the restrictions.

Our second concern is that a number of the restrictions are so broadly phrased that they are very easily abused for political purposes. While freedom of expression is not an absolute right, restrictions on it must pass the three part test described in Section 2.2 of this Memorandum: they should be clearly and narrowly stated in law, pursue a legitimate aim and be “necessary in a democratic society”. As stated in Section 2.2, vague and broadly worded restrictions constitute an illegitimate interference with the right to freedom of expression. It is also important that restrictions are not themselves stated in absolute terms and strike at the heart of the right to freedom of expression. Many of the restrictions in the draft Law fail these international law tests. For example:

- The prohibition on divulging state or other secrets should allow for publication of these materials when it is in the public interest – for example, when they reveal corruption;
- A call for segregation of part of Kazakhstan, or any other state for that matter, is a legitimate exercise of the right to freedom of expression, so long as the call does not incite to violence;
- The prohibitions on the publication of material that advocates social, racial, national, religious, class or clan superiority or the “cult of cruelty or violence”, “propaganda” for “terrorism” or “extremism” and the prohibition on “undermining State security” are very vague and easily abused for political purposes; and
- The prohibition on the disclosure of anti-terror tactics would make it impossible for the media to have any discussion over whether the army or police used the correct tactics in any given case, including, for example, when police “anti-terror” actions result in the deaths of civilians.

We recommend, therefore, that all restrictions in the draft Law are reviewed for compliance with international law standards on freedom of expression. To the extent that they are legitimate and necessary, they should be moved to legislation of general application, such as the civil or criminal code.

#### *Language restrictions*

We do not believe that the restriction on the use of non-State languages is compatible with the right to freedom of expression. The choice in which language to broadcast is an integral part of the right to freedom of expression, protected under articles 19 and 27 ICCPR; it is also the subject of specific guidance by the OSCE High Commissioner on National Minorities. Read together, articles 19 and 27 mean that a State may not restrict the use of languages other than the State language, except in key public venues such as courts or parliament. The UN Human Rights Committee, the body of experts set up to supervise implementation of the ICCPR, has said:

A State may choose one or more official languages, but may not exclude, outside the spheres of public life the freedom to express oneself in the language of one’s choice.<sup>52</sup>

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<sup>52</sup> *Ballantyne and Others v. Canada*, 31 March 1993, Communication Nos. 359/1989 & 385/1989.

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In a case interpreting a restriction similar to the one stated in Article 3 of the Law on Mass Media, the Latvian Constitutional Court held that given the current widespread use of non-State languages in the broadcast media, in particular Russian, a limitation on the use of these languages “cannot be regarded as socially needed in the democratic society.”<sup>53</sup> The reasoning of the Latvian Constitutional Court relied heavily on Article 10 ECHR, which is substantively similar to Article 19 ICCPR. We believe that the rationale for its decision can be extended to the restriction proposed here; and conclude that it cannot be justified as “necessary” in a democratic society.

We would also point to recently adopted OSCE “Guidelines on the Use of Minority Languages in the Broadcast Media”,<sup>54</sup> which state:

In regulating the use of language in the broadcast media, States may promote the use of selected languages. Measures to promote one or more language(s) should not restrict the use of other languages. States may not prohibit the use of any language in the broadcast media. Measures to promote any language in broadcast media should not impair the enjoyment of the rights of persons belonging to national minorities.

We do not believe that the proposed restrictions can be reconciled with this Guideline.

Finally, we do not believe that the restriction on foreign re-broadcasts can be justified as “necessary”. While we appreciate the desire of the Kazakhstan government to promote locally produced media output, this is something that is addressed more appropriately through the licensing system – for example, by including as a licence condition that a station must carry a minimum amount of locally produced content during prime-time hours – and by providing non-discriminatory subsidies for home-grown productions. Even if local content quota are imposed through licence conditions, a 20% limit on all foreign re-broadcasts may well be unrealistically low: such a limit would not even allow a station to re-broadcast foreign media between the hours of midnight and 7am. Yet such re-broadcasts are quite common, provide cost-effective programming and even fulfil a need with the audience. Therefore, if local content requirements were introduced as licence conditions, they must be set at a realistic level.

### **Recommendations:**

- All content restrictions in the draft Law should be critically reviewed, along the lines suggested above, and, to the extent that they are justifiable as “necessary in a democratic society” to protect a legitimate interest, be moved to laws of general application (such as the Civil Code or Criminal Code).
- The restriction on the use of languages other than the State language should be dropped.
- The restriction on foreign re-broadcasting should be reconsidered in favour of providing subsidies for locally produced content and including realistic local content obligations in broadcast licences.

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<sup>53</sup> *The Republic of Latvia – Constitutional Court*, Case No. 2003-12-01-06, Judgment of June 5, 2003. Available at: [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106\(03\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106(03).htm).

<sup>54</sup> October 2003: Office of the High Commissioner on National Minorities.



### 3.6. Journalists' rights and obligations

Article 2 of the Law on Mass Media restates the basic premise of the right to freedom of expression, and prohibits all forms of censorship. Article 1(13) defines “censorship” as the requirement to submit materials to a government agency for its approval prior to publication. Article 20 of the Law elaborates the specific rights and duties of journalists. Article 1(11) defines ‘journalists’ as “a natural person maintaining activity on collection, processing and preparation of messages and materials for the mass medium on the basis of a labour agreement or other contract relations”.

Article 20 spells out the following rights of journalists:

- to research, request, receive and impart information;
- to visit the state agencies and organisations regardless of their ownership and to meet their representatives and discuss matters relevant to the agency’s business;
- to take pictures, record, including with the use of audio and/or video recording equipment, except in cases when recording is prohibited by the laws of the Republic of Kazakhstan;
- upon production of a press card, to have access to the location of natural disasters, emergencies and catastrophes, mass riots, to the meetings and demonstrations, as well as to be present in places where public, group and individual interests and protest is expressed in any other form;
- to have access to documents and materials, except the parts thereof that contain information constituting a state secret and other secrets protected by law;
- to verify the ‘trustworthiness’ of the information obtained;
- to seek expert opinion to verify information received by them;
- to publish under their own name or under a pseudonym;
- to refuse to publish anything under their name or pen-name that conflicts with the journalist’s personal views;
- to maintain the confidentiality of sources of information, except when ordered by a court to disclose.

Article 21 follows this statement of ‘rights’ with a list of ‘obligations’, requiring every journalist:

- to implement the “program” of the owner of a media entity, which the journalist has a contract with, and comply with the legislation of the Republic of Kazakhstan;
- not to disseminate incorrect information;
- to credit sources of information and authorship, if they so request;
- to respect the rights and interests of natural persons and legal entities;
- to obtain consent for the use of audio or video recording equipment;
- to carry out their functions in accordance with the laws of the Republic of Kazakhstan.

#### Analysis

We welcome the clear statement of rights in the Law on Mass Media. While many of these rights have been recognised under international and comparative constitutional law as inherent in the right to freedom of expression, an express statutory statement to this effect serves to emphasise their importance. We do have some suggestions for further improvements.

First, it is important that the definition of ‘journalist’ is understood to apply to every person who uses the right to freedom of expression to publish information to a larger audience –

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including human rights defenders, for example, and non-governmental organisations. We note that the various rights stated in the Law are drawn from the general right to freedom of expression as stated in Article 19 ICCPR, which is a right that belongs that every person.

Second, we recommend that the privilege of confidentiality of sources be tightened. Under the Law, any court may order disclosure of a source for any reason. This violates the minimum standards, set by human rights courts and regional human rights bodies, that a court may only order disclosure of sources if necessary in the investigation of a serious crime, or if necessary to defend a person in criminal proceedings, as a matter of last resort.<sup>55</sup>

We also recommend that a related right is added, stating that police may not search media offices or seize journalistic material without a court order, and that a court may order search or seizure only when absolutely necessary in the investigation of a serious crime, or for the defence of someone accused of a crime, and that material with the same evidential value cannot be obtained elsewhere.<sup>56</sup>

While we welcome the statement of rights, we doubt whether the various statements of journalistic duties are appropriate. The duty, under Article 21(2) of the Law, “not to disseminate information that does not comply with reality”, would appear to impose an absolute legal requirement always to publish accurately. This is simply impossible; even the best journalists sometimes make mistakes. To leave them open to criminal punishment for any mistakes they make would be to undermine the public interest in receiving timely information. The nature of the news media is such that stories have to be published when they are topical, particularly when they concern matters of public interest. As the European Court of Human Rights has held:

[N]ews is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.<sup>57</sup>

This means that while there is not always time to conduct an in-depth investigation to verify the facts of everything that is published. Normal practice in democratic countries is, therefore, that matters of accuracy are left to self-regulation. A typical journalists’ code of ethics would require that every journalist should ‘strive’ for accuracy; meaning that journalists are normally required to check their sources’ facts before publishing.<sup>58</sup>

We also question the legitimacy of requiring consent for every use of video or audio recording equipment. A journalist investigating allegations of corruption may well use a hidden video camera or tape recorder to expose his ‘target’. There is nothing untoward about that; it is in the public interest that investigative journalists should be able to do their jobs with suitable means. The requirement to always respect a person’s “legal rights”, in paragraph (4), is similarly problematic. First, the right to privacy, while an internationally recognised human right, is not absolute and may be restricted - for example, to report on events that are of public interest. Second, paragraph (4) refers to unnamed ‘interests’, which may be very broadly and subjectively defined.

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<sup>55</sup> See, for example, Recommendation (2000)7 of the Committee of Ministers of the Council of Europe on the right of journalists not to disclose their sources of information, 8 March 2000.

<sup>56</sup> See the European Court of Human Rights’ judgment in *Roemen and Schmidt v. Luxembourg*, 25 February 2003, Application No. 51772/99.

<sup>57</sup> *The Sunday Times v. the United Kingdom (No. 2)*, 24 October 1991, Application No. 13166/87, para. 51.

<sup>58</sup> And even this is not a hard and fast rule, for the reason elaborated by the European Court of Human Rights: news is a perishable commodity (note 57).

**Recommendations:**

- The statement of rights in the Law goes to the heart of freedom of expression and should be retained and built upon.
- The definition of journalist should be broadened to include every person who exercises their right of freedom of expression to communicate with a mass audience through a regularly published medium.
- The privilege of confidentiality of sources should be reworded in line with the principles outlined above.
- Consideration should be given to incorporating the principle that journalistic premises or materials may not be searched or seized unless absolutely necessary, and only after a court order has been obtained.
- Serious consideration should be given to removing all statements of journalistic duties in favour of a self-regulatory regime. In any event, none of the duties should be so stringent as to infringe the right of every journalist to publish critically and use appropriate investigative techniques in the public interest.

**3.7. Freedom of information**

Article 2(2) of the Law on Mass Media provides that Government bodies, public associations, government officials and mass media must “provide an opportunity for each citizen to become familiar with documents, decisions and information sources affecting his rights and interests”. Article 18 of the Law provides specific access to information rights for journalists, outlining the following mechanism:

1. All public bodies are required to provide mass media representatives with information on an equal basis, regardless of their form of ownership and affiliation, with the exception of information classified as a State secret;
2. Public bodies must respond to information requests within three days;
3. A response to a request that requires searching through a large volume may be delayed for up to a month;
4. A refusal to provide information may be appealed to a higher administrative body, and from there to a court;

Article 20, detailing the rights of journalists, repeats the right to have access to “documents and materials except their fragments containing data that is a State secret”.

While we welcome the spirit of these provisions insofar as they impose some transparency obligations on public bodies, due to their lack of detail, they cannot substitute for a fully-fledged ‘freedom of information’ regime, designed to realise the right of everyone to access information held by a public body. Under international law, freedom of information, including the right to access information held by public authorities, is guaranteed as an aspect of freedom of expression.<sup>59</sup> Any restrictions on the right to freedom of information – for example, to protect national security or privacy – must be narrowly interpreted and convincingly established as necessary in a democratic society.

<sup>59</sup> E.g. Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1995/31, 14 December 1995, para. 35.

ARTICLE 19 has published a key standard-setting work on this topic: *The Public's Right to Know: Principles on Freedom of Expression Legislation*.<sup>60</sup> This work has been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression in his 2000 Annual Report.<sup>61</sup> It elaborates a number of principles, which may be summarised as follows:

1. **Maximum disclosure:** Freedom of information legislation should be guided by the principle of maximum disclosure.
2. **Obligation to publish:** Public bodies should be under an obligation to publish key information of their own motion.
3. **Promotion of open government:** Public bodies must actively promote open government.
4. **Limited scope of exceptions:** Exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests.
5. **Processes to facilitate access:** Requests for information should be processed rapidly and fairly, and any refusal to disclose should be subject to an appeal to an independent body.
6. **Costs:** Individuals should not be deterred by excessive costs from making requests for information.
7. **Open meetings:** Meetings of public bodies should be open to the public.
8. **Disclosure takes precedence:** Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.
9. **Protection for whistleblowers:** Whistleblowers – individuals who release information on wrongdoing – should be protected from any legal, administrative or employment-related sanctions.

Articles 2(2), 18(2)-(3) and 20(2) and 20(5) of the Law represent an apparently well-intentioned attempt to legally ensconce the principle of government openness, but their brevity and superficiality prevents them from providing any meaningful guarantee of the right to freedom of information. The majority of the principles outlined above are not addressed at all. We recommend that these provisions are amended or removed in favour of the introduction of a fully-fledged freedom of information regime, providing a right of access to information for all persons, not just the media (although such a regime may provide for expedited processing of information requests made by the mass media).

Secondly, there can be little doubt that the mass media are for most people the prime source of information about matters of public interest. However, to place them under formal access to information obligations, as proposed in Article 2(2), misunderstands both the role of the media and the nature of access to information legislation. Access to information laws exist to ensure transparency at governmental level and to implement the fundamental democratic principles that the government functions to serve the people, and that it holds information on behalf of the people, not to serve its own needs. The media, in contrast, collect information on matters of public interest in order to fulfil their role of watchdog of democratic society; an obligation on them to release information whenever requested to do so would not only be excessively onerous; it would also impede their ability to carry out investigative journalism.

#### Recommendations:

- Articles 2(2), 18(2)-(3) and 20(2) and 20(6) of the Law should be abandoned and replaced with a fully-fledged freedom of information law, providing a right to access

<sup>60</sup> (London: June, 1999).

<sup>61</sup> Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 42.

to information for all persons, in conformity with the principles outlined above.

- The media themselves should not be subject to any freedom of information obligations.

### 3.8. Miscellaneous

#### Right to refutation and retort

Article 19(1) of the Law provides that any person whose honour, dignity or (business) reputation has been defamed may demand refutation if the person who made the allegation cannot prove its truth. According to Article 19(2), a refutation must be published free of charge. Article 19(3) requires that if the information was obtained from a document published by another organisation, the document must be recalled and all its addressees must be notified of the erroneous information. If a mass media outlet refuses to publish a refutation, or if it delays for more than a month, the person or legal entity claiming the refutation may lodge a court case; the person or legal entity claiming the refutation may also claim compensation for moral harm and damages.

The right of reply or refutation is a highly disputed area of media law. Some see it as a low-cost, low-threshold alternative to expensive defamation lawsuits for individuals whose rights have been harmed by the publication of incorrect factual statements about them; others regard it as an impermissible interference with editorial independence.

Because of its intrusive nature, in the United States a mandatory right to reply with regard to the print media has been struck down on the grounds that it is an unconstitutional interference with the First Amendment right to free speech. In *Miami Herald Publishing Co. v. Tornillo*, the Supreme Court held:

[A mandatory right of reply] fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.<sup>62</sup>

On the other hand, the *American Convention on Human Rights*, covering the entire continent, requires States to introduce a right of reply<sup>63</sup> and in Europe, the right of reply is the subject of a resolution of the Committee of Ministers of the Council of Europe,<sup>64</sup> while many countries guarantee some form of a right of reply in law.<sup>65</sup> However, a legally enforceable right of reply constitutes a restriction on freedom of expression as it interferes with editorial decision-making.<sup>66</sup> As such, it must meet the strict three-part test set out above and a number of minimum requirements should apply.

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<sup>62</sup> 418 U.S. 241 (1974), p. 258.

<sup>63</sup> Note 18, Article 14. See also the Advisory Opinion of the Inter American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

<sup>64</sup> Resolution (74) 26 on the right of reply— position of the individual in relation to the press, adopted on 2 July 1974.

<sup>65</sup> This is the case, for example, in France, Germany, Norway, Spain and Austria.

<sup>66</sup> See *Ediciones Tiempo S.A. v. Spain*, 12 July 1989, Application No. 13010/87 (European Commission of Human Rights).

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ARTICLE 19, together with other advocates of media freedom, suggests that a right of reply or refutation should be voluntary rather than prescribed by law. In either case, certain conditions should apply, namely:<sup>67</sup>

- (a) A reply or refutation should only be in response to statements which are false or misleading and which breach a legal right of the claimant; it should not be permitted to be used to comment on opinions that the reader/viewer doesn't like or that simply present the reader/viewer in a negative light.
- (b) A reply or refutation should receive similar, but not necessarily identical prominence to the original article.
- (c) The media should not be required to carry a reply or refutation unless it is proportionate in length to the original article/broadcast.
- (d) The media should not be required to carry a reply or refutation which is abusive or illegal.
- (e) A reply or refutation should not be used to introduce new issues or to comment on correct facts.

Set against these standards, we have some concerns about the right to refutation scheme in the draft Law. Our overall recommendation would be for a right of refutation scheme to be implemented through a self-regulatory mechanism. Only if it is convincingly established that this cannot be implemented would we accept the need for statutory regulation.

With regard to the detail of the current mechanism, we have the following concerns:

- If the impugned statement concerns a matter of public interest, the burden of proving the falsity of the information must be on the person claiming the refutation;
- The requirement that 'originating' organisations withdraw or replace their publications and notify all recipients of the false information is excessive, particularly if the incorrect material only formed a small part of a magazine or newspaper; and
- The paragraph allowing for a claim of damages must be deleted. Any action for defamation should be pursued through the courts, relying on the country's 'normal' defamation law.

### **Recommendations:**

- Efforts should be made to establish a self-regulatory regime through which a right of reply may be realised. If this is not possible, the right to reply or refutation should be provision should be redrafted and incorporate the following minimum principles:
  - If the impugned statement concerns a matter of public interest, the burden of proving the falsity of the information must be on the person demanding the refutation;
  - The requirement that 'originating' organisations withdraw or replace their publications and notify all recipients of the false information is excessive, particularly if the incorrect material only formed a small part of a magazine or newspaper; and
  - The paragraph allowing for a claim of damages must be deleted. Any action for defamation should be pursued through the courts, relying on the country's 'normal' defamation law.

### Mandatory deposit

<sup>67</sup> See also the conditions elaborated in Resolution (74)26, note 64.

Article 16 requires that copies of all that is published in Kazakhstan, including small print-runs that are exempted from registration, are lodged with the National Book Chamber, the National Library, the Library of Parliament and the “Authorised Agency on the Matters of the Mass Media”.

Deposit requirements are sometimes enforced for copyright purposes, or sometimes to help maintain a national library (for cultural purposes). Such deposit requirements are often voluntary; in the countries where they exist, they are rarely enforced strictly. In this light, the requirement of Article 16 seems very rigorous: all publications, even if only a print-run of 10 or 20 was produced, must be lodged with no fewer than three libraries and cultural archives, as well as with the State body that regulates the media. The requirement to deposit copies of all publications with the regulatory agency, in particular, implies that this measure is at least in part control-oriented. This requirement should be abolished; and a voluntary deposit scheme pursued in relation to the three national libraries and archives.

**Recommendations:**

- The requirement to deposit copies of all publications with the “authorised agency” should be abolished.
- The possibility of a voluntary deposit scheme with the national library, book chamber and library of parliament should be pursued.

**Accreditation**

Article 22 of the Law states that the media may accredit their journalists with government agencies, public associations and organisations “upon concord”. Accredited journalists have a right to attend open sessions – but not private ones – and be given access to documents and other materials. While we welcome this provision, we are concerned that accreditation may be revoked “if the journalist violates the rules of the accreditation or for ... derogating honour and dignity of the government agencies, public associations and organisations that accredited him/her”; and that the regime is overseen by the “authorised agency”. It would be preferable if accreditation regime was supervised by an independent agency and if penalties for their breach would be proportionate, rather than lead to immediate revoking of accreditation. We are also concerned that defamation of a government agency may lead to loss of accreditation; both because a government agency as such should not be allowed to sue in defamation, and because this is easily abused to silence critical journalists.

The right to be accredited is protected under Article 19 ICCPR as part of the right to freedom of expression.<sup>68</sup> As an interference with freedom of expression, any accreditation scheme must pass the three-part test in order to be lawful. In particular, the scheme should pursue a legitimate aim, it should be in accordance with the law and it should be necessary in a democratic society. While a system of accreditation may be necessary to restrict access for security reasons or space constraints, and to control public access in order to enable the media to do their job, it should not be susceptible to political interference. It should impair the right to freedom of expression as little as possible; accreditation should be an automatic procedure, and the number of accredited journalists may be limited only when there are real and demonstrable problems in terms of accommodating the number of journalists.

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<sup>68</sup> See *Gauthier v. Canada*, 7 April 1999, Communication No. 633/1995 (UN Human Rights Committee).

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In a 1999 case, the UN Human Rights Committee considered the complaint of a Canadian journalist who had been refused a permanent pass to the Canadian Parliamentary Press Gallery. Without the pass, he was unable to report fully on Canadian parliamentary affairs. While the Committee recognised that, in some cases, States may be entitled to regulate access to the parliamentary press gallery, any limitations imposed have to be compatible with the provisions of the Covenant. In particular, the Human Rights Committee made it clear that the operation and application of any accreditation scheme “must be shown as necessary and proportionate to the goal in question and not arbitrary.”<sup>69</sup> This was not exclusively a matter for the State Party to determine, and the Committee set some clear parameters within which any accreditation scheme should operate:

1. accreditation schemes should be compatible with the provisions of the Covenant, and should not illegitimately restrict the enjoyment of other rights;<sup>70</sup>
2. accreditation schemes should set out criteria which are specific, fair and reasonable;<sup>71</sup> and
3. the application of accreditation schemes should be transparent.<sup>72</sup>

In addition, the Committee emphasised that under Article 2(3) of the ICCPR, States Parties are under an obligation to ensure that everyone whose rights have been breached should have an effective remedy and that any person who claims a remedy should have this claim determined by the competent authorities. Accordingly, the State Party is under an obligation to provide a procedure for independent review of any refusal of accreditation.

#### **Recommendations:**

- The accreditation regime should be automatic for all applicants.
- The regime should be overseen by an independent body, whose decisions should be allowed to be appealed in court.
- Accreditation should be lost only for serious and repeated public order offences.

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<sup>69</sup> *Gauthier v. Canada, op cit.*, para. 13.6.

<sup>70</sup> *Ibid.*, para. 13.4.

<sup>71</sup> *Ibid.*, para. 13.6.

<sup>72</sup> *Ibid.*, para. 13.6.



## 4. ANALYSIS OF THE JULY 2006 AMENDMENTS

This Section examines, separately, the amendments brought to the Law on Mass Media in July 2006. These amendments concerned various laws, not just the Law on Mass Media, but all were aimed at mass media in Kazakhstan. Broadly speaking, the amendments are divided in two sets: one set of amendments dealing with registration of mass media outlets; and the second set of amendments dealing with the use of State and other languages in the broadcast media. The following paragraphs first quote the amendments, and then provide our comments and analysis.<sup>73</sup>

### 4.1. Registration

The Amendments introduced the following new provision in the Code of Administrative Offences:

Article 342. Violation of legislation of the Republic of Kazakhstan regarding the mass media

1. Distribution of the mass media products, as well as distribution of communications and materials of the information agency without registration or after a decision was issued to suspend, or terminate publication (broadcast) or to invalidate a registration certificate -

is punishable by a fine of no less than 5 and no more than 10 monthly calculating units if committed by an official; or a fine of no less than 10 and no more than 50 monthly calculating units if committed by an owner of a media outlet when the owner is a small or a medium sized business enterprise; or a fine of no less than 200 and no more than 300 monthly calculating units if committed by a legal entity when this entity is a large enterprise concurrent with confiscation of mass media products.

2. ...

3. ...

4. Producing, manufacturing (replicating, printing) and/or distributing mass media products, as well as communications and materials of information agencies without re-registration in case of change of ownership or legal status, name of the owner or of the media outlet, change of language of publication or broadcast, territory of distribution, main thematic specialization, editor-in-chief (editor), address of the editorial office or periodicity -

is punishable by a fine of no less than 20 and no more than 40 monthly calculating units if committed by an official; or a fine of no less than 100 and no more than 200 monthly calculating units if committed by an owner of a media outlet when the owner is a small or a medium sized business enterprise; or a fine of no less than 800 and no more than 1000 monthly calculating units if committed by a legal entity when this entity is a large enterprise concurrent with suspension of publication (broadcast) of a mass media outlet for up to three months.

5. When offence prescribed by the paragraph 4 of this Article was committed repeatedly within a year after an administrative penalty was levied - it is punishable by a prohibition to publish (broadcast) the mass media outlet.

The Tax Code was amended as follows:

Article 425-1. General provisions

1. Fee for registration and re-registration of a mass media outlet (hereinafter 'fee') is charged when registering or re-registering a mass media outlet as well as when issuing a duplicate of a document certifying registration or re-registration of a mass media outlet.

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<sup>73</sup> Some of the analysis in this part repeats the analysis in Section 3. We have separated it out at the request of the OSCE Representative on Freedom of the Media, to aid those who wish to appraise the July 2006 amendments in isolation.

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2. Registration and re-registration are conducted by an authorised agency in the area of mass media (hereinafter ‘authorised agency’) in accordance with the procedure and terms established by the legislative act of the Republic of Kazakhstan.

#### Article 425-2. Fee payers

Fee payers are individuals or legal entities that set up a mass media outlet subject to registration or re-registration in accordance with the legislative act of the Republic of Kazakhstan.

Article 425-3. The procedure for calculation, payment of the fee and return of paid amount

1. Amount of the fee is calculated on the basis of rates established by the Government of the Republic of Kazakhstan and the fee shall be paid before the relevant documents are submitted to the authorised agency.

2. The fee shall be paid to the budget at the agency where the fee payer is registered.

3. The fee paid shall not be returned except in cases when the persons that paid the fee have decided not to register or re-register a mass media outlet before the relevant documents were submitted to the authorised agency.

The fee amount is returned after the payer presents a document issued by the authorised agency confirming that this person has not submitted documents for registration or re-registration of a mass media outlet.

The Law on Mass Media was amended as follows:

#### Article 10. Registration, re-registration of the mass media outlet

1. All mass media disseminated in the territory of the Republic of Kazakhstan regardless of their ownership, except for the websites, shall be subject to mandatory registration with the authorised agency.

2. To register or re-register a mass media outlet, its owner or his or her proxy submits an application to the authorised agency in compliance with the provisions of the Article 11 of this Law.

3. To register, re-register a mass media outlet or receive a duplicate of a document certifying registration or re-registration of a media outlet, a fee shall be paid in accordance with the procedure established by the Tax Code of the Republic of Kazakhstan.

A fee for re-registration of a mass media outlet shall not be charged when re-registration is due to change of the language of publication or broadcast, territory of distribution, editor-in-chief (editor), address of the editorial office and periodicity of publication.

4. Application to register, re-register a media outlet shall be reviewed within 15 working days from the day it was submitted. Upon reviewing the application, authorised agency shall give the applicant a registration certificate or refuse to register a mass media outlet on the following grounds:

1) if in the past the authorised agency has already issued a registration certificate to a media outlet with the same name and territory of distribution or with a confusingly similar to a name of a media outlet set up before;

2) if the content of the application does not comply with the provisions of the Article 11 of this Law;

3) if the application was submitted less than a year after the date of enforcement of a judicial decision terminating publication (broadcasting) of the media outlet;

4) if the fee for registration, re-registration of a mass media outlet has not been paid;

5) if the application to re-register a mass media outlet due to change of ownership is not accompanied by the agreement confirming the transfer of right of ownership of the media outlet to another person that has to be certified by a notary.

6) if the application is to register a mass media outlet with the same name (part of the name) and thematic specialization or duplicating the name and thematic specialization of a media outlet, publication or broadcast of which was previously prohibited by the judicial decision or when the application was submitted by the owner or editor-in-chief of a mass media outlet that was previously prohibited by court.

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5. The owner of a periodical press outlet reserves a right to begin production of a media outlet within three months after registration certificate was received.

The owner of a television, radio, video, documentary program or of an information agency reserves a right to begin production of a mass media outlet and distribution of information and materials for six months after the registration certificate was received.

The registration certificate of a mass media outlet shall be nullified by the decision of the authorised agency in case when the term for start of production of a mass media outlet has expired or when the mass media products were not produced for three months, unless when it happened due to suspension of publication or broadcast of a media outlet pursuant to a judicial decision.

6. Mass media outlet is subject to re-registration in case of change of the owner of a media outlet or of the owner's legal status, of the name, language of publication or broadcast, territory of distribution, main thematic specialization, editor-in-chief (editor), address of the editorial office, or periodicity of publication.

The following sub-paragraph (4) was added to paragraph 2-1 of Article 7:

citizens, who are editors-in-chief (editors) of the mass media, when through their fault publication/broadcast of the media outlet was terminated by the decision of court; shall not be appointed editors-in-chief for three years after the judicial decision on termination of a media outlet has entered in force,

Two paragraphs (6) and (7) were added to Article 11(1):

6) family name, name, patronymic of an editor-in-chief (editor);

7) address of the editorial office.;

and a new requirement was introduced that documents to be submitted needed to be certified by a notary public.

### Analysis

Essentially, the amendments tightened up the existing registration regime. The registration fees were increased, and a new Article 10 was inserted in the Law on Mass Media which increased the grounds on which registration may be denied. The amendments also barred an owner or editor whose publication was banned to own or edit another publication for a period of three years. Finally, more bureaucratic hurdles were added to the regime, asking that certain documents needed for registration be certified by a notary public. These amendments were made to a regime that was already unnecessarily onerous, and that is overseen by a body whose independence is not guaranteed. The amendments also introduce new, substantial fines for violations of the regime.

ARTICLE 19 views all registration requirements for the media, with the exception of broadcast media, with great suspicion.<sup>74</sup> We have commented on several versions of Kazakhstan's media laws before, and on the media laws of other countries in the region, and each time we have recommended the abolition of registration regimes as they are open to abuse on political grounds. Kazakhstan's current registration laws are roundly abused to repress media freedom. The media freedom NGO Adil Soz recently reported that two newspapers, *Aina Plus* and *Alma-ata info*, received three-month suspensions for having changed their thematic focus, following a lawsuit instigated by Almaty Akimat's Internal Politics Department. The department sent a similar warning to another newspaper, *Gorod*

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<sup>74</sup> The rationale for accepting registration of broadcast media is that the usable spectrum for broadcasting is a limited public resource; licensing is therefore universally accepted as necessary. This 'limited airwaves' argument does not, however, apply with regard to the print media. Democratic countries therefore do not require print media to be licensed, or even registered.

326.<sup>75</sup> Adil Soz suggested that the requirement to register a publication's main thematic scope was censorship in disguise. In other countries in the region, registration laws are abused to silence critical voices, too. Notably in Uzbekistan, we have now received real and indisputable evidence of the abuse of media and NGO registration laws – even those laws that, on their face, are purely technical in nature. We have brought two communications before the United Nations Human Rights Committee arguing that these laws are in clear violation of the right to freedom of expression. The UN Human Rights Committee has already ruled that imposing registration requirements on media outlets with a print run as low as 200 constituted a violation of the right to freedom of expression.<sup>76</sup>

International press freedom watchdogs, including the OSCE's own Representative on Freedom of the Media, have already warned of the danger posed by registration laws. In a Joint Declaration issued in December 2003, the UN, OAS and OSCE special mandates on freedom of expression and media freedom stated:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.<sup>77</sup>

In light of these principles the amendments must be condemned. They toughened an already harsh registration regime, putting it far beyond the administrative registration that international law would allow. We are concerned at every element of the amendments:

- editors or owners whose publication has been banned, on whatever ground, are barred from editing or owning mass media outlets for a period of three years;
- if a mass media outlet is closed, another one with a similar name may not be opened;
- the new fees are likely to be onerous;
- the additional bureaucratic hurdles are likely to be onerous and cannot be justified as “necessary in a democratic society”; and
- the fines are both unnecessary, and hugely disproportionate.

Our overriding recommendation is that now that it has ratified the ICCPR, the Kazakhstan government should abandon its mass media registration regime. The registration scheme prior to the amendments was already harsh; each of the July amendments have toughened it and brought it even further from the minimum standards set by international human rights law.

#### **Recommendations:**

- The new provisions act as a deterrent on media freedom. None of them can be considered ‘necessary’ in a democratic society and the entire registration regime should all be abandoned. Instead, the Kazakhstan government should make a public commitment to uphold the freedom of expression standards recommended by the OSCE Representative on Freedom of the Media, and developed under the *International Covenant on Civil and Political Rights*, and take immediate steps to promote a pluralistic and independent media, including by abolishing illegitimate criminal law restrictions on freedom of expression.

<sup>75</sup> See Adil Soz's press release of 24 April 2006, as reported on the International Freedom of Expression Exchange (IFEX): <http://www.ifex.org/en/content/view/full/73961>.

<sup>76</sup> *Laptsevich v. Belarus*, 20 March 2000, Communication No. 780/1997.

<sup>77</sup> Joint Declaration, December 2003.

## 4.2. Language of Broadcasting

The second set of amendments introduced new fines for transgressions of the language requirements that were already contained in the Law on Mass Media:

Article 342 (2) Devoting less airtime to broadcasting television and radio programming in state language than to the television and radio programming in other languages -

is punishable by a fine of no less than 5 and no more than 10 monthly calculating units if committed by an official; or a fine of no less than 10 and no more than 50 monthly calculating units if committed by an owner of a media outlet - a legal entity - when the owner is a small or a medium sized business enterprise; or a fine of no less than 200 and no more than 300 monthly calculating units if committed by an legal entity when this entity is a large enterprise concurrent with confiscation of printed or other products of mass media and suspension of publication (broadcasting) for up to three months.

(3) When offence prescribed by the paragraph 2 of this Article was committed repeatedly within a year after an administrative penalty was levied -

it is punishable by a fine of no less than 20 and no more than 50 monthly calculating units if committed by an official; or a fine of no less than 150 and no more than 250 monthly calculating units if committed by an owner of a media outlet - a legal entity - when the owner is a small or a medium sized business enterprise; or a fine of no less than 500 and no more than 1000 monthly calculating units if committed by an legal entity when this entity is a large enterprise concurrent with revocation of a broadcasting license and prohibition to publish (broadcast) the media outlet.

### Analysis

The choice in which language to broadcast is an integral part of the right to freedom of expression. Especially for linguistic minorities, the right to publish mass media, including the right to run minority language radio and television media, is an essential element of their cultural rights as well as of their right to freedom of expression. These rights are recognised under international law. Two sets of norms are of specific relevance. First, the *International Covenant on Civil and Political Rights*, recently ratified by Kazakhstan, protects both the right to freedom of expression, in Article 19, as well as the right to express one's own culture and use one's own language, in Article 27. This means that while the State may designate a particular language as the "State language"; it may not without proper and legitimate justification restrict the use of other languages. The UN Human Rights Committee, the body of experts set up to supervise implementation of the *International Covenant on Civil and Political Rights*, has said:

A State may choose one or more official languages, but may not exclude, outside the spheres of public life the freedom to express oneself in the language of one's choice.<sup>78</sup>

In a case interpreting a restriction similar to the one proposed in Kazakhstan, the Latvian Constitutional Court held that given the current widespread use of non-State languages in the broadcast media, in particular Russian, a limitation on the use of these languages "cannot be regarded as socially needed in the democratic society."<sup>79</sup> The reasoning of the Latvian Constitutional Court relied heavily on Article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, which is substantively similar to

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<sup>78</sup> *Ballantyne and Others v. Canada*, 31 March 1993, Communication Nos. 359/1989 & 385/1989.

<sup>79</sup> *The Republic of Latvia – Constitutional Court*, Case No. 2003-12-01-06, Judgment of June 5, 2003. Available at: [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106\(03\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106(03).htm).

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Article 19 of the *International Covenant on Civil and Political Rights*. We believe that the rationale for its decision can be extended to the restriction proposed here; and conclude that it cannot be justified as “necessary” in a democratic society.

We would also point to the recently adopted OSCE “Guidelines on the Use of Minority Languages in the Broadcast Media”,<sup>80</sup> which state:

In regulating the use of language in the broadcast media, States may promote the use of selected languages. Measures to promote one or more language(s) should not restrict the use of other languages. States may not prohibit the use of any language in the broadcast media. Measures to promote any language in broadcast media should not impair the enjoyment of the rights of persons belonging to national minorities.

We do not believe that the existing restriction on use of language in Article 3 of the Law on Mass Media can be reconciled with these Guidelines; it follows that the new penalties are also incompatible with international standards on freedom of expression.

### **Recommendations:**

- The restrictions on the use of languages other than the State language in the broadcast media cannot be justified and should be abandoned.

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<sup>80</sup> October 2003: Office of the OSCE High Commissioner on National Minorities.

## Appendix: Law of the Republic of Kazakhstan on Mass Media<sup>81</sup>

### Article 1. Basic concepts used in the present Law.

The following concepts are used in the present Law:

- 1) Mass information is printed, audiovisual and other messages and materials intended for an unlimited group of people;
  
- 2) Mass medium is a periodical print edition, radio and TV program, cinema documentary, audio visual recording and other form of periodical and continuous public dissemination of mass information, including WEB-sites in public telecommunication networks (internet and other)\*;
  
- 3) Periodical print edition is a newspaper, magazine, almanac, bulletin, appendixes to them that have a permanent name, current number and that are issued at least once in every three months;
  
- 4) TV, radio, video, newsreel program that is an aggregate of periodical audio visual messages and programs that has a permanent name and is aired at least once every six months;
  
- 5) Broadcasting is transmission of TV, radio programs, audio visual recording with usage of analogous and digital electromagnetic systems;
  
- 6) Product of a mass medium is circulation or part of circulation of a separate issue of a print edition or audio visual program, a separate issue of a radio, TV or newsreel program, information, placed on WEB-site in public telecommunication networks;
  
- 7) Official statement is information provided by government bodies and intended for further dissemination via mass media;
  
- 8) Dissemination of mass medium product is sales (subscription, delivery, distribution) of periodical print editions, broadcasting of radio and TV programs, demonstration of newsreel programs;

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<sup>81</sup> Taken from <http://www.medialaw.ru/exussrlaw/1/kz/media.htm> and <http://old.internews.kz/eng/law/law/index.htm>.

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9) Mass medium editorial office is a natural person or creative group, which is a structural subdivision of a legal person and that maintains collection and preparation of materials for a mass medium on the basis of labor agreement or other contract relations;

10) Editor-in-chief (editor) is a natural person who heads mass medium editorial office and possesses of respective rights for its issue, dissemination and broadcasting;

11) Journalist (mass medium representative) is a natural person maintaining activity on collection, processing and preparation of messages and materials for the mass medium on the basis of labor agreement or other contract relations;

12) Distributor is a natural or legal person who maintains dissemination of a mass medium product on the basis of agreement with its owner, publisher or on other legal basis;

13) Censorship is a preliminary concordance of messages and materials prepared by mass media with government bodies, officials and other organizations at their demand or on other basis with an intention to restrict or impose prohibition to disseminate messages and materials or their separate parts;

14) Adult material product is a print edition or TV, radio program that in general and systematically exploits interest towards sex.

15) WEB-site - is an electronic representative page of natural or legal entities of the Republic of Kazakhstan, prepared with assistance of special technical and program means, where an owner places information with a view of mass dissemination;

16) retransmission - is a receipt and simultaneous, or in recording, independent from use of technical means full and partial dissemination of television and radio programs (totality of television and radiocasts) of another mass medium;

17) complex - is a totality of buildings, connected by common earmarking and constituting a unified structure;

18) accreditation - is a procedure of appointment of a journalist and acknowledgement of his authorities by state body, public association and organization;



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19) authorized body on mass media affairs (further authorized body) - is a central executive body, which fulfils state regulation of activity of mass media and information agencies of the Republic of Kazakhstan” .

### Article 2. Freedom of speech, receipt and information dissemination

1. Freedom of speech, creative work, expression of one’s views and beliefs in printed or other form, receipt and dissemination of information in any legal way shall be guaranteed by the Constitution of the Republic of Kazakhstan. Censorship shall be prohibited.

2. Government bodies, public associations, government officials and mass media shall be obliged to provide an opportunity for each citizen to become familiar with documents, decisions and information sources affecting his rights and interests.

3. Use of a mass medium for propaganda or agitation of forced change of constitution order, infringement of integrity of the Republic of Kazakhstan, detriment of national security; war, social, racial, national, religious, class or patrimonial superiority, cult of cruelty and violence, pornography and dissemination of data forming state secret of the Republic of Kazakhstan and other registered secrets shall be barred.

### Article 3. Mass media language

1. Mass media shall be disseminated in the state and other languages.

2. State ensures the right of each to the use of a native language with obtaining and propagation of the media in accordance with the legislation of republic Kazakhstan about the languages.

3. Weekly volume of television and radio-programs of the media in the official language on the time must not be the less summary volume of transfers in other languages. The distribution of transfers in the official language in the daily grid of broadcasting must be achieved evenly during entire period of their output into ether. This requirement does not apply to the network of cable, ether-cable television.

### Article 4. Legislature of the Republic of Kazakhstan on Mass Media

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1. Legislature on mass media shall be based on the Constitution of the Republic of Kazakhstan and shall consist of the present Law and other normative legal acts of the Republic of Kazakhstan.

2. If an international treaty sets other rules than contained in the present Law, then the rules of international treaty are used.

### Article 4-1. Government control in the region of the media

1. Government control in the region of the media is accomplished via lawful guarantee, licensing of activity in the organization of television and (or) radiobroadcasting, control of the observance of the legislation of republic Kazakhstan in the region of the media.

2. Government control of the observance of the legislation of republic Kazakhstan about the media is achieved by the authorized organ and other public bodies in the limits of their scope, established by the legislation of republic Kazakhstan.

### Article 4-2. Scope of the government of republic Kazakhstan in the region of the media Government Of republic Kazakhstan

1) It develops and ensures the realization of the basic directions of state policy in the region of the media;

2) Kazakhstan determines the order of the calculation of the foreign media, extended in the republic;

3) The order of the licensing of activity in the organization of television and (or) radiobroadcasting asserts.

### Article 4-3. Scope of the authorized organ Authorized organ

1) It ensures formation and realization of state policy in the region of the media;

2) Setting to the calculation of the media is achieved;

3) It asserts the rules of conducting competitions to obtaining of right on tele-radiobroadcasting;

4) Conducting the those opened organizes competitions according to the distribution of the ratings of radio frequencies for the television and (or) radiobroadcasting;

5) Achieves a licensing of activity in the organization of television and (or) of radiobroadcasting in the order, established by the legislation of republic Kazakhstan about the licensing;

6) Monitors the observance by licensee of the conditions, indicated in the license, and makes decision about the stopping of the action of license in the order, established by the legislation of republic Kazakhstan;

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- 7) It forms, places and Kazakhstan checks the realization of state order on conducting of state information policy at the republic level in the order, established by the legislation of republic;
- 8) Is achieved international collaboration in the region of the media;
- 9) Kazakhstan conducts the united list of the calculation of the foreign media, extended in the territory of republic;
- 10) It develops and realizes state and branch (sectoral) programs in the region of the media;
- 11) The order of storage of the records, which have historical and (or) cultural value, is determined;
- 12) It asserts the rules of akkreditatsii of journalists;
- 13) The activity of local executing agencies for the realization of control of the observance of the legislation of republic coordinates Kazakhstan in the region of the media;
- 14) The activity of central and local executing agencies for questions of the media coordinates.

### Article 4-4. Scope of the local executing agencies of regions (city republic value, the capital)

Local executing agencies of regions (city republic value, the capital):

- 1) They realize state information policy through the regional media;
- 2) The calculation of the foreign media, extended to the territory of region (city republic value, the capitals), is achieved;
- 3) They assert the order of the arrangement of special stationary accommodations and rule of the realization in them of the periodic printed production, which publishes the materials of erotic nature,;
- 4) They form, place and is checked the realization of state order on conducting of state information policy at the regional level in the order, established by the legislation of republic Kazakhstan;
- 5) Is monitored the observance of the legislation of republic Kazakhstan by the media per appropriate administrative-territorial unit;
- 6) They allow into the authorized organ statistical data, information on the calculation of the foreign media, and also information on the observance of the legislation of republic Kazakhstan.

### Article 4-5. The government control

1. By purpose of government control is the guarantee of observance physical and legal persons of the legislation of republic Kazakhstan about the media.
2. Government control in the region of the media is achieved by local executing agencies of regions (city republic value, the capital), it includes:

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- 1) Control in terms of the observance of the requirements, provided by present law;
- 2) Control with respect to the advertisement, extended through the media.
3. The government control in the region of the media, achieved by the authorized organ, local executing agencies of regions (city republic value, the capital), is carried out in the form of checkings.
4. Types of verification: planned - planned by public body checking, conducted taking into account established by the laws of republic Kazakhstan time intervals with respect to the previous checkings; unplanned - checking, assigned in connection with the prevailing social and economic situation, which requires immediate reaction to the rotation of physical and legal persons; harbor - checking to the object of the presence of license, registration and other permissive documents, and also correctness of the application of monitoring equipment, which is been the object of the control of public body.
5. Period of conducting checkings must not exceed fifteen calendar days from the moment of presenting the order.

### Article 5. The right to found a mass medium

1. The right to found a mass medium belongs to natural and legal persons in accordance with legislation of the Republic of Kazakhstan. Mass medium may be found in a form of a legal person as well as in a form of structural subdivision of a legal entity.

Certificate of registration of a mass medium is a basis for realization of broadcasting (airing) of mass media products, dissemination of reports and materials of informational character. The given requirement does not apply to Web-sites".

2. It shall be prohibited for foreign natural persons and legal entities and persons with no citizenship to own directly or indirectly, use, dispose and/or manage more than 20 percent of stocks (shares) of a legal entity that owns a mass medium in the Republic of Kazakhstan or maintains activity in this sphere.

### Article 6. Owner of a Mass Medium

1. Owner is a natural person or a legal entity or an association of natural persons and (or) legal entities exercising the right to possess, use and dispose of the mass medium.

2. Mass medium owner shall have the right to function as an editorial office, editor, journalist, publisher, distributor in relation to his own mass medium as well as to other mass media on the basis of a respective agreement.

#### Article 7. Mass Medium Editorial Office

1. Editorial office shall maintain preparation and issue (broadcasting) of a mass medium on behalf of the owner.

2. Editor-in-chief (editor) shall manage the editorial office.

2-1. They cannot be the editor in chief (editor):

- 1) citizens, acknowledged by law court incapable;
- 2) citizens, who have at the moment of designation the convictions, which is not taken or not extinguished in the order established by law;
- 3) the foreigners or of face without the citizenship;

3. Relations between owner and editorial office shall be regulated by charter and contract.

4) Citizens, who are editors-in-chief (editors) of the mass media, when through their fault publication/broadcast of the media outlet was terminated by the decision of court; shall not be appointed editors-in-chief for three years after the judicial decision on termination of a media outlet has entered in force.

#### Article 8. Information agency

1. Information agency is a legal entity registered in accordance with legislative acts of the Republic of Kazakhstan, activity of which is directed at collection, processing and dissemination of messages and materials of information character.

2. Messages and materials prepared by an information agency shall be accompanied with its name and date of issue.

3. Mass media shall be obliged to make reference to information agency when disseminating messages and materials prepared by an information agency.

4. Articles 2 and 10 hereof shall apply to information agencies.

Article 9. Publisher of a mass medium

1. Publisher is a natural person or a legal entity that maintains material and technical supplying of mass medium production.
  
2. If an owner of a mass medium is not at the same time a mass medium publisher, rights, duties and responsibility of the owner shall be determined in a separate agreement.

Article 10. Registration, re-registration of the mass media outlet

1. All mass media disseminated in the territory of the Republic of Kazakhstan, except for the websites, shall be subject to mandatory registration with the authorised agency.
  
2. To register or re-register a mass media outlet, its owner or his or her proxy submits an application in compliance with the provisions of the Article 11 of this Law.
  
3. To register a mass media outlet or receive a duplicate of a document certifying registration of a media outlet, a fee shall be paid in accordance with the procedure established by the Tax Code of the Republic of Kazakhstan.
  
4. Application to register, re-register a media outlet shall be reviewed within 15 days from the day it was submitted. Upon reviewing the application, authorised agency shall issue the applicant a registration certificate or refuse to register a mass media outlet on the following grounds:
  - 1) if in the past the authorised agency has already issued a registration certificate to a media outlet with the same name and territory of distribution or when the proposed name is confusingly similar to a name of a media outlet set up before;
  
  - 2) if the content of the application does not comply with the provisions of the Article 11 of this Law;
  
  - 3) if the application was submitted less than a year after the date of enforcement of a judicial decision terminating publication (broadcasting) of the media outlet;

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4) if the fee for registration of a mass media outlet has not been paid;

5) if the application to re-register a mass media outlet due to change of ownership is not accompanied by the copy of provisions of agreement confirming the transfer of right of ownership of the media outlet to another person; such a copy shall be certified by a notary.

6) if the application for registration of a media outlet proposes a name (part of the name) and thematic specialization that is identical to or duplicates the name and thematic specialization of a media outlet that was previously terminated by the judicial decision; or when the application is submitted by the owner or editor-in-chief of a mass media outlet that was terminated by court within three years after the judicial decision entered in force.

5. The owner of a periodical press outlet reserves a right to begin production of a media outlet within three months after registration certificate was received.

The owner of a television, radio, video, documentary program or of an information agency reserves a right to begin production of a mass media outlet and distribution of information and materials for six months after the registration certificate was received.

The registration certificate of a mass media outlet shall be invalidated by the decision of the authorised agency in case when the term for start of production of a mass media outlet has expired or when the mass media outlet was not published for three months, unless when it happened due to suspension of publication or broadcast of a media outlet pursuant to a judicial decision.

6. Mass media outlet is subject to re-registration in case of change of the owner of a media outlet or of the owner's legal status or name, of the name, language of publication or broadcast, territory of distribution, main thematic specialization, editor-in-chief (editor), address of the editorial office, or periodicity of publication."

### Article 11. Application for Registration of a Mass Medium

1. An application for registration of a mass medium shall contain:

1) name, location, organizational and legal form of ownership of a mass medium;

- 2) language (languages) of the mass medium;
- 3) supposed periodicity of issue;
- 4) major thematic direction;
- 5) territory of reach;
- 6) family name, name, patronymic of an editor-in-chief (editor);
- 7) address of the editorial office.

The application shall enclose:

For natural persons—a copy of the document certified by a notary certifying the right for entrepreneurship;

For legal entities - certificate of state registration of a legal entity and charter documents certified by a notary;

Document certifying budgetary payment of a fee for registration of a mass media outlet.

2. It shall be prohibited to set other requirements while registering a mass medium.

#### Article 12. Exempt from registering a mass medium

Periodical printed editions:

With circulation less than 100 copies;

Official, normative and other acts;

Television, radio, video, newsreel programs, disseminated on cable networks, if service zone is limited by one building or complex;



Court practice bulletins shall be exempt from registration.

Article 13. Suspension and termination of issue (broadcasting) of a mass medium

1. Suspension or termination of issue (broadcasting) of a mass medium shall be possible at the decision made by owner or court.

2. By stopping is understood the temporary curtailment of the issue of one or several numbers of publications, and also of output into ether of radio- and tv programs, the release of other media. The stopping of the release (output into ether) of the media is allowed for the period not more than three months.

3. Bases for the stopping of the release (output into ether) of the media in the established law order are: the divulging of information, which compose state secrets or another guarded by law secret, the propagation of the information, which reveals technical methods and tactics of anti-terrorist operations in the period of their conducting, the propaganda of narcotic drugs, psychotropic substances and precursors, propaganda or the agitation of the cult of cruelty and violence, social, racial, national, religious, class and ancestral superiority, the propagation of radio -, tv programs, and also the demonstration of the cine- and of videoproduktsii of pornographical and special sexual- erotic nature, the violation of the requirements, provided by article 3, by the point of 3-2 articles 10, and also repeated disturbance during the year of the requirements of the point of 3rd article 14, of articles 15 and 16 of present laws.

4. Basis for suspension of issue (broadcasting) of a mass medium shall be propaganda or the agitation of a forced displacement of the constitutional system, disturbance of the integrity of republic Kazakhstan, the undermining of the National Security, war, the propaganda of extremism or terrorism, as well as a recurring violation of requirements set in paragraph 3 hereof by the mass medium as well as discontinuance of owner's activity in accordance with legislation of the Republic of Kazakhstan.

5. In event of suspension or termination of issue (broadcasting) of a mass medium at the decision made by owner or court a notification shall be sent to the Authorized Agency on the matters of mass media.

Termination of issue (broadcasting) of a mass medium shall entail annulment of registration certificate.

Article 14. Distribution of a Mass Medium

1. Distribution of a mass medium shall be accomplished at owner's decision by the owner or by editorial office, publisher, organizations or citizens on contract or other legal basis.

2. Retail sale of periodical print editions publishing adult materials shall be admissible on the specially provided premises, location and sales guidelines of which shall be set by local executive bodies.

Broadcasting radio and TV programs and demonstration of cinema and video products of pornographic and special sexual and erotic character as well as propaganda of cruelty and violence cult shall be prohibited.

3. Broadcasting television and radio programs and commercials promoting tobacco and alcohol containing products shall be admissible at 11:00 PM through 6:00 AM of local time.

Advertisement of alcohol and tobacco products in mass media shall be accompanied with easily distinguishable text about harm of their abuse.

3-1. Retransmission of television and radio programs of foreign mass media shall not exceed from January 1 2002 fifty per cent, from January 1 2003 - 20 per cent from the total broadcasting volume of telecasts on television and radio broadcasting channels.

The given requirement does not apply to broadcasting of cable and on-air-cable television.

4. Hindering mass medium distribution accomplished on legal basis by natural persons or legal entities as well as by government officials, illegal confiscation and extermination of circulation or its part shall not be admissible other than on the basis of court's decision in legal force.

#### Article 15. Issue Data

1. Every issue of periodical print edition must contain the following data:

1) name of a mass medium;

2) owner of a mass medium;

- 3) last name and initials of editor-in-chief (editor);
  - 4) number and date of issue of registration certificate and of agency that issued it;
  - 5) periodicity of publication;
  - 6) ordiecutive number and date of issue of the mass information;
  - 7) circulation;
  - 8) name of printery, its address and address of the editorial office.
2. Mass medium shall be obliged to announce its name every time it goes on the air or at least 4 times a day if it broadcasts continuously.

Article 16. Mandatory copies of periodical publications and storage of TV and radio program materials

1. Mandatory free copies of periodical publications including those exempted from registration by Article 12 hereof shall be sent to the National Book Chamber, National Library, Library of the Parliament of the Republic of Kazakhstan and to the Authorized Agency on the Matters of Mass Media by owner of the mass medium or by third person on his behalf on the day they are produced.
2. Editorial offices of mass media (television and radio broadcasting) shall be obliged to retain recordings of their own broadcast programs for one month and record them in registration book of air broadcasting and retain the registration book for at least one year after the last recording in it is made. Recordings of historical and cultural value shall be retained in an order set by an authorized agency.

Article 17. Author's works and letters

1. Editorial office shall be obliged to comply with rights for used works including copyright and other rights for intellectual property.

2. When publishing readers' letters abridgement and text editing that does not change the idea of contents shall be admissible.

3. No one shall have the right to oblige mass medium editorial office to publish material rejected by it if the Law provides no other.

#### Article 18. Official statements

1. Official statements by government bodies shall be placed in mass media in accordance with legislative acts of the Republic of Kazakhstan.

2. Government bodies shall be obliged to provide mass media representatives with information on equal basis regardless of their form of ownership and affiliation excluding information that constitutes state secrets of the Republic of Kazakhstan.

2-1. State bodies and other organizations are bound to present requested information no later than three days from the day of receipt of an address or give an answer with indication of term of presentation or motive of refusal.

Response to an address, which requires additional examination and checking, shall be given on term no later than one month from the day of receipt.

In case an address from a mass medium is received by state bodies or other organizations, which terms of reference do not cover resolution of set issues, on term no later than 5 days the given address should be forwarded to proper bodies with informing of a mass medium.

3. Refusal to provide the requested data shall be appealed by mass medium representative to superior agency or official and then in the court in an order provided by the Law for complaints against illegitimate actions of the state executive agencies and officials infringing rights of citizens.

#### Article 19. Right to refutation

1. Citizen or legal entity shall have the right to demand refutation of data derogating his honor, dignity and business reputation in court, if the person that spread this information is not able to prove that information is true.

2. If data derogating honor, dignity and business reputation of citizen or legal entity is disseminated in mass media, it must be refuted in the same mass media free of charge.

If a document coming from an organization contains the mentioned data, such document shall be subject to replacement or recall with mandatory notification of addressees about non-compliance of the data contained in this document with reality.

3. Demand of a citizen or legal entity to publish refutation or responsibility in a mass medium shall be processed in court in event when a mass medium refused to make this publication or if it didn't make this publication within one month and in event of its liquidation.

4. Citizen or legal entity, in relation to which data derogating his honor, dignity and business reputation was spread, shall have the right to demand compensation of losses and moral harm caused by initiator as well as refutation of such data.

#### Article 20. Rights of a journalist

Journalist shall have the right:

- 1) to accomplish research, request , receive and disseminate information;
- 2) to visit government agencies, organizations with all forms of ownership and to be received by their officials in relation to maintenance of their business responsibilities, be present at all events held by agency that accredited the journalist excluding events when a decision was made to hold a private event;
- 3) to make recordings including use of audiovisual equipment, cinema and photo shooting except events prohibited by legislative acts of the Republic of Kazakhstan;
- 4) to be allowed upon presentation of journalist's credentials in the regions of natural disasters, at meetings and demonstrations and at events with other forms of expressing public, group and personal interests and protest;
- 5) to have access to documents and materials except their fragments containing data that is a state secret;

- 6) to check trustworthiness of received information;
- 7) to address specialists when checking received information materials;
- 8) to disseminate his/her messages and materials under his/her signature and conditional name (pseudonym);
- 9) to refuse to publish material under his/her signature if its contents after editing contradicts his/her personal beliefs;
- 10) to keep the secret of copyright and information sources except for events when these secrets are published at court's demand.

#### Article 21. Duties of a Journalist

Journalist shall be obliged:

- 1) to implement the program of a mass medium activity, which he/she has contract relations with, in accordance with legislation of the Republic of Kazakhstan;
- 2) not to disseminate information that does not comply with reality;
- 3) to satisfy request of persons that granted information to mention their authorship;
- 4) to respect legal rights and interests of natural persons and legal entities;
- 4-1) to receive consent for use of audio- or video recording, upon conduction of interview with citizens;
- 5) to carry out other responsibilities laid upon him/her in accordance with legislation of the Republic of Kazakhstan.

#### Article 22. Accreditation of Journalists

1. Upon concord with government agencies, public associations and organizations mass media shall accredit its journalists with them.

2. Government agencies, public associations and organizations, with which the journalist is accredited, shall be obliged to notify him/her in advance on sessions, meetings and other events, provide him/her with verbatim, protocols and other documents.

3. An accredited journalist shall have the right to be present at session, meetings and other events held by government agencies, public associations and organizations that accredited him/her except for events when a decision was made to hold a private event.

4. Journalist may be deprived of accreditation if he violated the rules of accreditation or for dissemination of data, derogating honor and dignity of the government agencies, public associations and organizations that accredited him/her.

5. Rules of journalists' accreditation shall be asserted by an authorized agency in an established order.

This last one appears to have been deleted - probably no longer needed with the new chapter in the middle (4.1-4.5)

#### Article 23. Accreditation of mass media in the Republic of Kazakhstan abroad

Owner of a mass medium in the Republic of Kazakhstan shall have the right to found press stations, accredit journalists in other countries in an order provided by legislation of the Republic of Kazakhstan and of the country of stay if international agreements provide no other.

#### Article 24. Activity of foreign mass media representatives in the Republic of Kazakhstan

1. Accreditation of foreign mass media representative offices and their journalists shall be held by the Ministry of Foreign Affairs of the Republic of Kazakhstan.

2. Legal status and professional activity of foreign journalists and other foreign mass media representatives accredited in the Republic of Kazakhstan shall be regulated by legislation of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

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3. For dissemination of products of foreign mass media, which violate Constitution of the Republic of Kazakhstan and norms of the present law, is prohibited in legal form.

### Article 25. Grounds for responsibility for violating the legislation on mass media

1. Disseminating data derogating honor and dignity of a citizen or an organization (government agency, public, creative, scientific, religious or any other association of citizens and legal entities) that does not comply with reality and influencing the court by mass media shall entail responsibility provided in legislative acts of the Republic of Kazakhstan.

2. Responsibility for violation of legislation on mass media shall be taken by the guilty officials from the government agencies and other organization as well as the owner, distributor, editor-in-chief (editor) of a mass medium, authors of disseminated messages and materials.

2-1. An owner, chief editor (editor) of a mass medium bear responsibility, set by legislative acts of the Republic of Kazakhstan for dissemination of reports and materials, containing propaganda or agitation of forced modification of constitutional regime, crippling of the Republic of Kazakhstan, undermining security of the state, war, social, racial, national, religious, class and ancestral superiority, cult of cruelty, violence and pornography, independent from source of their receipt.

3. Hindering legal professional activity of a journalist shall entail responsibility established by legislation of the Republic of Kazakhstan.

### Article 26. Cases of exemption from responsibility for dissemination of data that does not comply with reality

Editor-in-chief (editor) equally with a journalist shall not carry responsibility for dissemination of data that does not comply with reality in the mass media:

1) if official messages and documents contained this data;

2) if the data was received from advertisement and information agencies or press services at government agencies;

3) if the data is an exact quotation of official statements made by deputies from representative agencies, government officials, organizations and citizens;



4) if this data was in author's speeches that were broadcast with no preliminary recording or in texts that are not subject to editing in accordance with the present Law;

5) if this data was in mandatory in accordance with Article 18 hereof messages.