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LEGAL REVIEW

Features of legal regulation and law enforcement practice of the right to freedom of speech and expression in the Republic of Kazakhstan.



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PF “Wings of Liberty” & Institute for War and Peace Reporting (IWPR)

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LEGAL REVIEW

Peculiarities of legal regulation and law enforcement practice of the right to freedom of speech and expression in the Republic of Kazakhstan»

Astana, 2023. – 36 pages.

This legal review was prepared by Public Foundation “Wings of Liberty” and IWPR as part of the “Study on Digital Rights: Access to Information and Freedom of Expression in Kazakhstan”.

As part of this review, Kazakhstani and international legislation was analyzed.

The outcomes of the analytical review accurately depict the present state of affairs within the studied domain, and they are not influenced by the subjective viewpoints or intentions of those who conducted the review.

“Study on Digital Rights: Access to Information and Freedom of Expression in Kazakhstan” was carried out as part of the project “Kazakhstan Uncensored” funded by the European Union.



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Brief Summary

This document is a legal analysis of the “Study on Digital Rights: Access to Information and Freedom of Expression in Kazakhstan” and includes an analysis in several directions, starting with the current legislation in force and law enforcement practice and up to the bill of the Law of the Republic of Kazakhstan “On Mass Media”, which is under consideration in the Parliament of the Republic of Kazakhstan. In addition, an analysis of international documents ratified by the RK is included, and, accordingly, an assessment of compliance, which affects independent ratings on freedom of expression and the press, which are carried out by international organizations.

According to the ratings of international organizations, the press in Kazakhstan is “not free”, but they do not include innovations in the legislation on the work of the media, as well as the restrictions expected with the adoption of the new law. That is why an analysis of individual articles of the draft Law of the Republic of Kazakhstan “On Mass Media” has been prepared, as well as current and potential challenges for content creators, both journalists and bloggers. In addition, the study includes an analysis of the level of censorship and self-censorship in the Republic of Kazakhstan, as well as the impact of persecution of journalists on them.

Particular attention is paid to violations and threats in the field of digital rights, such as Internet rights, through the prism of the right to access information and freedom of expression online.

Given all the current information about the persecution of media workers, independent bloggers and activists, recommendations have been developed to improve the situation of freedom of expression and the press in Kazakhstan.

The objective of the legal component of the “Study on Digital Rights: Access to Information and Freedom of Expression in Kazakhstan” is to identify existing and potential challenges encountered by media professionals and content creators. Additionally, it aims to formulate practical recommendations for use in the legislative process and the creation of mechanisms to safeguard press freedom and the right to freedom of expression in the Republic of Kazakhstan.

List of Abbreviations



CRKAO	Code of the Republic of Kazakhstan “On Administrative Offenses”
TC RK	Code of the Republic of Kazakhstan “On taxes and other obligatory payments to the budget”
EC RK	Entrepreneurial Code of the Republic of Kazakhstan
CrCRK	Criminal Code of the Republic of Kazakhstan
CiCRK	Civil Code of the Republic of Kazakhstan
CPCRK	Civil Procedure Code of the Republic of Kazakhstan
ICCPR	International Covenant on Civil and Political Rights
Optional protocol	Optional Protocol to the International Covenant on Civil and Political Rights
General Comment No. 34	General comment No. 34 adopted by the Committee at its 102nd session (102nd session) 11-29 July 2011.
Committee	Human Rights Committee
Law “On MM”	Law “On Mass Media”
Law on Online Platforms	Online Platforms and Online Advertising Law
Law of the Republic of Kazakhstan “On Communications”	Law “On Communications”
Law “On Personal Data”	Law of the Republic of Kazakhstan “On personal data and their protection”
Law of the Republic of Kazakhstan “On the procedure for organizing and holding peaceful assemblies in the Republic of Kazakhstan”	Law on Peaceful Assemblies

MJ RK	Ministry of Justice of the Republic of Kazakhstan
MCI	Minimum calculated index
MISDRK	Ministry of Information and Social Development of the Republic of Kazakhstan
CEC RK	Central Electoral Commission
Order	Order dated February 20, 2018, of the Minister of Finance of the Republic of Kazakhstan “On approval of the Rules for maintaining a database on persons who received and spent money and (or) other property received from foreign states, international and foreign organizations, foreigners, stateless persons, as well as their inclusions and exclusions from the database”
Registry	The information contained in the database is placed in the form “Register of persons receiving money and (or) other property from foreign states, international and foreign organizations, foreigners, stateless persons, subject to publication.



Introduction

Freedom of speech and opinion is a natural and indivisible human right, as well as an essential constitutional right of a citizen of the Republic of Kazakhstan.

Freedom of speech and expression is an essential element of a democratic society in which the principles of transparency and accountability prevail.

In other words, the actual protection and promotion of the principles of freedom of speech and expression is one of the main indicators of the level of democratization and the desire to build an open society.

Moreover, the promotion of freedom of speech and expression allows for timely feedback between the authorities and society.

On the other hand, the systematic restriction of freedom of speech and expression of opinions by the state allows to conclude that the authorities are striving for a monopoly in the field of publishing and disseminating information and preventing the emergence of any alternative views on the socio-political processes in the country.

In Kazakhstan, the situation in the field of freedom and expression is consistently difficult and requires significant systemic changes to improve it (the situation).

Despite the constitutional status and the prohibition of censorship, freedom of speech and expression may be limited by relevant legislation.

Moreover, the restriction of the expression of opinions, especially on the Internet (blocking both individual accounts and Internet resources) can be carried out according to the relevant instructions of the prosecution office and national security authorities.

Administrative and criminal legislation contains articles that are most often used in the persecution of journalists, bloggers, civil activists who express their alternative point of view.

It is important to pay attention to the latest initiatives of the authorities, both doctrinal and legislative.

In this vein, in March 2023, in accordance with the decree of the head of state, the “Information Doctrine” was approved.

The doctrine introduces a number of extremely controversial concepts and directly points to the danger of social networks as the main source of disinformation.

On September 10, 2023, the extremely controversial Online Platforms Law will come into force. The above law assumes “close” cooperation between the owners and / or legal owners of online platforms with authorized state bodies.

In particular, a joint “fight” against false information and inaccurate content is expected, up to the blocking of accounts and the transfer of personal data of users of online platforms at the request of authorized bodies.

At present, the draft Law “On Mass Media” is under consideration in the Mazhilis of the Parliament.

Draft Law “On Mass Media” provoked a negative reaction from a part of the human rights community, pointing out the vagueness of the wording, as well as the essentially segregation policy of journalists on the basis of accreditation.

Moreover, the grounds for both obtaining and revoking previously received accreditations are in some cases ambiguous and to some extent discriminatory.

Further, the country has prepared a legislative framework for the introduction of the institution of foreign agents, which, according to the logic of the legislator, can and most likely will affect both the media and individual users of online platforms and bloggers.

Considering all the aforementioned factors, freedom of speech and expression has become a subject of concern and heightened scrutiny for the state.

Judging by legislative and other normative legal activities, the Kazakhstani government appears to have opted for increased oversight of the freedom of speech situation, encompassing both traditional media and online media, through additional regulations.



International Standards

Freedom of speech and expression are essential elements of any free and democratic society, as well as an unalienable human right.

In the Republic of Kazakhstan, the implementation of freedom of speech and expression is regulated by several legislative acts, different legal force.

Moreover, when citizens exercise freedom of speech and expression, the provisions of a number of international treaties voluntarily ratified by the Republic of Kazakhstan can be applied (paragraph 3, article 4 of the Constitution).

In this context, of greatest interest is the ICCPR ratified by the Republic of Kazakhstan based on the Law of the Republic of Kazakhstan dated November 28, 2008, No. 91¹.

By ratifying the ICCPR, the Republic of Kazakhstan pledged to “respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in this Covenant.”

These rights include, among other things, the right to freely express and hold one’s opinions, as well as the freedom to seek, receive and impart information of all kinds (paragraphs 1 and 2, article 19 of the ICCPR)².

Article 19 (3) of the ICCPR states that freedom of expression and the use of information may be limited by law and is necessary:

- a. to respect the rights and reputations of others;
- b. for the protection of state security, public order, health, or morality of the population.

It is important to note that the ICCPR sets a certain standard, which the state party must properly implement not only at the level of legislation, but also at the level of law enforcement practice.

The rights and freedoms identified in the ICCPR are disclosed through general comments specially developed and adopted by the Committee.

For example, article 19 of the ICCPR is fully disclosed in General Comment No. 34 adopted by the Committee at its 102nd session (one hundred and second session) on 11-29 July 2011³.

General Comment No. 34 to Article 19 of the ICCPR contains information on freedom of opinion, freedom of expression, including through the media, and the right to access information.

1 https://adilet.zan.kz/rus/docs/Z050000091_links

2 https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

3 <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrdB0H115979OVGGB%2BWPAXik-s7ivEzdmLQdosDnCG8FaGzYH6OnzWb2RXT7yJopp6wnueK3xDIZpJtsnQ4NnehKxA27tv6yxSEu56OqU0tVD>

In this regard, general comments indicate:



- Freedom to hold one's own opinions (specified in paragraph 1, Article 19 of the ICCPR), including on political, scientific, historical, moral or religious matters is absolute. The freedom to hold one's opinions includes the right to change one's opinion at any time and for any reason, as long as any person makes a free choice in doing so;
- All forms of compelling persons to hold or not to hold any opinion are prohibited. The right to freedom of expression necessarily includes the freedom not to express one's opinion;
- No one should be subjected to any discrimination, persecution, including criminal proceedings, or be at a disadvantage due to the existence of their opinion.
- Paragraph 2, Article 19 of the ICCPR establishes that States Parties (participating states) are obliged to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers.
- Paragraph 2, Article 19 of the ICCPR protects all forms of dissemination of opinion. Such forms include oral and written speech, sign language, as well as non-verbal communication tools such as images and art.
- Paragraph 2, Article 19 of the ICCPR protects all means of expressing dissemination of opinions. The means of expression include books, newspapers, brochures, posters, banners, uniforms and materials not prohibited by law. These include all types of audiovisual, electronic, and Internet-based media of expression.
- A free, uncensored and unrestricted press or other media in any society is an important element in ensuring freedom of opinion and expression, as well as the enjoyment of other rights under the ICCPR .
- States Parties should pay particular attention to promoting the independence and diversity of the media.

- States Parties should consider the magnitude of changes in information and communication technologies, such as electronic information dissemination systems based on the Internet and mobile communications, which have significantly changed the way we communicate around the world.
- States Parties should take all necessary measures to strengthen the independence of the (Internet) media and ensure access to them for the public.

As mentioned above, paragraph 3, Article 19 of the ICCPR provides for the possibility of imposing certain restrictions on the freedom of expression and information.

However, paragraph 21 of General Comment No. 34 reads: "The State Party shall place restrictions on the exercise of the right to freedom of expression, these restrictions must not jeopardize the very principle of this right."

Among other things, paragraph 22 of general comment No. 34 indicates under what exceptional conditions restrictions may be accepted, which include:

- may be established only on the grounds provided for in subparagraphs a) and b) of paragraph 3 of Article 19 of the ICCPR;
- be based strictly on the law.
- strictly meet the requirement of necessity and proportionality.

Thus, no restrictions established on grounds other than paragraph 3 of Article 19 of the ICCPR are allowed.

Furthermore, limitations can only be enforced for their intended purposes, and they must be directly linked to and proportionate with the specific objective they aim to accomplish.

In conclusion, it is important to emphasize that freedom of opinion and expression is at the heart of the full enjoyment of a wide range of other human rights.

Thus, for example, freedom of expression is an integral part of the exercise of the rights to freedom of assembly and association, as well as the exercise of the right to vote (paragraph 4, general comment No. 34).

In turn, based on paragraph 1, article 28, a committee consisting of 18 members is formed.

Further, Article 1 of the Optional Protocol expressly states:

“A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant⁴.”

It should be noted that the Republic of Kazakhstan duly ratified the Optional Protocol on the basis of the Law of the Republic of Kazakhstan dated February 11, 2009, No. 130 - IV.⁵

Thus, starting from February 2009, citizens of the Republic of Kazakhstan have the full right to apply to the Committee for the protection of their rights specified in the ICCPR, including under Article 19, subject to the conditions of admissibility.

From the point of view of the law enforcement practice of the Committee, Article 19 of the ICCPR is quite “popular” among the citizens of the Republic of Kazakhstan.

So, according to the website of the Supreme Court of the Republic of Kazakhstan, from 2014 to 2021 inclusive, the Committee issued 27 decisions and considerations in relation to the Republic of Kazakhstan under Article 19 of the ICCPR.⁶

4 https://www.un.org/ru/documents/decl_conv/conventions/pactpro1.shtml

5 https://adilet.zan.kz/rus/docs/Z090000130_

6 <https://sud.gov.kz/rus/content/resheniya-komitetov-oon-v-otnoshenii-respubliki-kazahstan>



International / Kazakhstan Ratings

Monitoring and research on freedom of speech, expression and digital rights and freedoms, conducted by international organizations, unanimously illustrate their absence and various violations occurring in Kazakhstan.

The study examined reports from organizations such as Freedom House, Article 19, Reporters Without Borders, Committee to Protect Journalists, International Press Institute.

Citing [Freedom House](#)⁷, which annually ranks freedom according to various criteria, Kazakhstan is rated as “not free” and is ranked 23 out of 100. Political rights are rated at 5/40, and civil liberties at 18/60 (2023).

The study assesses the adherence to human rights since 1990 and establishes a connection between violations of freedom of expression, the political system, and the present government.

The organization highlights a crucial factor that has had a detrimental impact on freedom of expression in the country, namely, the presidential election in 2019, which witnessed extensive and pervasive violations. Freedom House concludes that both parliamentary and presidential elections are characterized by a lack of fairness and freedom, with genuine opposition figures consistently marginalized or imprisoned. Additionally, dominant media outlets are either state-owned or controlled by government-affiliated businessmen. Restrictions and penalties persist on freedom of speech and assembly, while corruption remains widespread.

In addition, the 2022 protests, which were accompanied by Internet blockages and illegal detentions of citizens participating in the protests, had a great impact on the deterioration of the situation of freedom of expression in Kazakhstan.

Freedom House monitors the Political Rights and Civil Liberties ratings in several categories with its own indicators.

“Political Rights”

Electoral process:

- Was the current head of government or other chief national authority elected through free and fair elections? – **0/4**
- Were the current national legislative representatives elected through free and fair elections? – **0/4**
- Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? – **1/4**

Political pluralism and participation:

- Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? – **1/4**

- Is there a realistic opportunity for the opposition to increase its support or gain power through elections? – **0/4**
- Are the people’s political choices free from domination by forces that are external to the political sphere, or by political forces that employ extrapolitical means? – **1/4**
- Do various segments of the population (including ethnic, racial, religious, gender, LGBT+, and other relevant groups) have full political rights and electoral opportunities? – **1/4**

Functioning of government:

- Do the freely elected head of government and national legislative representatives determine the policies of the government? – **0/4**
- Are safeguards against official corruption strong and effective? – **1/4**
- Does the government operate with openness and transparency? – **0/4**

The “Civil Liberties” assessment reveals in more detail the position of the object of this study, freedom of expression.

Freedom of speech and religion:

- Are there free and independent media? – **0/4**

Considering this indicator in more detail, Freedom House notes: “Media independence is severely limited in Kazakhstan. While the constitution provides for freedom of the press, most of the media sector is controlled by the state or government-friendly owners.

Independent publications and journalists are regularly shut down or harassed, and self-censorship is rampant. Defamation was decriminalized in 2020, but defamation remains a criminal offense and the Criminal Code prohibits insulting the president and other officials.”

In addition, the assessment is affected by widespread lockdowns and the 2022 shutdown.

- Are individuals free to practice and express their religious faith or nonbelief in public and private? – **1/4**
- Is there academic freedom, and is the educational system free from extensive political indoctrination? – **2/4**

- Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? – **1/4**

This indicator directly relates to the topic of the study, given that in Kazakhstan there are political persecutions of activists, journalists and citizens who oppose the authorities and the political regime.

Associational and organizational rights

- Is there freedom of assembly? – **1/4**
- Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work? – **1/4**
- Is there freedom for trade unions and similar professional or labor organizations? – **0/4**

Rule of law

- Is there an independent judiciary? – **1/4**
- Does due process prevail in civil and criminal matters? – **1/4**
- Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? – **1/4**
- Do laws, policies, and practices guarantee equal treatment of various segments of the population? – **1/4**

Personal autonomy and individual rights

- Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? – **2/4**
- Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or non-state actors? – **2/4**
- Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? – **2/4**
- Do individuals enjoy equality of opportunity and freedom from economic exploitation? – **2/4**

Hence, Freedom House effectively demonstrates that freedom of expression is intricately linked to the overall state of democracy within the country by monitoring various aspects of human rights and freedoms.

Other organizations such as Reporters Without Borders, focuses only on freedom of speech rankings and evaluates them for indicators such as violations against journalists, harassment and internet blocking through the Press Freedom Index.

The above organization shows how many journalists and media workers have been killed or subjected to political legal persecution.

In Kazakhstan, since the beginning of 2023, two people have been persecuted because of their journalistic activities: Mikhail Kozachkov, editor, was detained and has been under house arrest since February 18, 2023. (According to the latest news, he was given a three-year suspended sentence). Amangeldy Batyrbekov, editor-in-chief, was detained and convicted.

Kazakhstan's index for 2023 is 134 out of 180, down 12 points from last year: "While the quality of online news is improving, repression is being modernized, control of the Internet is tightening - the only space where the independent press gains freedom of speech".

In turn, Reporters Without Borders built their rating according to several categories: "Media landscape", "Political context", "Legal framework", "Economic context", "Socio-cultural context", "Security".

It's crucial to emphasize the evaluation of the economic backdrop in relation to press freedom in Kazakhstan. The level of state support for media outlets is directly contingent on their effectiveness in promoting the state agenda and official propaganda.

Independent media, deprived of state subsidies, are completely dependent on advertising. For it, they compete with the pro-government media, which have the resources to reduce advertising rates. This situation clearly illustrates the lack of independent media in the country.

Other organizations like Committee to Protect Journalists focus on individual stories of violations of the rights of journalists, including those in Kazakhstan. Among the urgent reports of the organization in 2023, the following situations were recorded:

Assaults on the personal property of journalists and media professionals occurred in January 2023.

"Starting from January 12, journalists across Kazakhstan have been targeted, with incidents including car arsons, attacks on their residences, and acts of vandalism in their offices," as reported by media outlets and journalists."

Legal proceedings initiated by a Russian court against the Kazakhstani publication Arbat.Media in connection with its coverage of the war in Ukraine.

"On January 24, the Leninsky District Court of the western city of Vladimir summoned the Kazakh independent news site Arbat.Media to a hearing on February 17 for publishing false information about the war in Ukraine."

The Kazakhstani editorial office of the newspaper "My City/Moi Gorod" received a threat about a planned explosion.

"On April 7, the editorial office of the newspaper "My City" in the northwestern city of Oral received an email message that a bomb had been planted in the editorial building."

An incident involved setting fire to the vehicle of Kazakhstani journalist Viktor Sutyagin.

"Around 2:30 a.m. on Thursday, May 11, surveillance footage captured an unidentified individual approaching Sutyagin's car in the western city of Atyrau. After a brief moment, the footage revealed a small explosion followed by the car engulfed in flames."

Kazakhstani journalist Amangeldy Batyrbekov has been sentenced to 20 days in jail for libel.

"On July 3, the Saryagash District Specialized Administrative Court of the South Turkestan Region of Kazakhstan sentenced Batyrbekov, editor-in-chief of the local independent newspaper S- Inform, to 20 days of administrative arrest for a March 10 Facebook post in which he accused a member of parliament of corruption. He was taken out of the courtroom to begin serving his sentence."

Thus, it becomes obvious that international organizations do not always have access to the full picture of what is happening, since many situations of attacks on journalists remain uncovered. That is why, in order to obtain a comprehensive understanding of the situation, it is necessary to analyze information from several sources.

For example, on another source - the international organization International Press Institute - for 2023, only the situation with the attack on the Kazakhstani journalist Dinara Egeubayeva was considered⁷: "In the early morning of Saturday, January 14, five juvenile delinquents, as the police later established, set fire to the journalist's car. In addition, the suspects threw a brick into the rear window of the car⁷."

⁷ https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry?data_type=general&year=2023

⁸ <https://cpj.org/ru/>

However, there are organizations that not only conduct independent monitoring, but also carry out full-fledged research with the participation of Kazakhstani organizations.

Thus, Article 19, together with the Kazakhstani media organization Legal Media Center, released a joint study “The right to freedom of expression and restriction of “extremism”.

In this report, ARTICLE 19 and the Legal Media Center examine the most important elements of legal restrictions on freedom of expression in Kazakhstan aimed at combating “extremism”, and their application in practice⁹.

Moreover, “According to the 2023 World Press Freedom Index¹¹, which assesses the environment for journalism in 180 countries and territories and is published on World Press Freedom Day (3 May), the situation is “very serious” in 31 countries, “difficult” in 42 countries. “Problematic” in 55 and “good” or “satisfactory” in 52 countries.

In other words, the environment for journalism is “poor” in seven out of ten countries and fair in only three out of ten,” reports the international organization Reporters Without Borders.

Kazakhstan is ranked 134th out of 180 countries in the latest report, a drop from its 122nd position in 2022. The study characterizes the situation in our country as “challenging”.

The results of the review of reports and monitoring of independent organizations indicate large-scale violations of the freedom of expression of both media workers and all citizens.

⁹ <https://ipi.media/kazakhstan-authorities-must-investigate-intimidation-of-journalist-dinara-yegeubayeva/>
¹⁰ <https://ipi.media/kazakhstan-authorities-must-investigate-intimidation-of-journalist-dinara-yegeubayeva/>



National Legislation

Current National Legislation

The following laws were used for the analysis:

1. Constitution of the Republic of Kazakhstan
2. Law of the Republic of Kazakhstan “ On Mass Media “
3. Criminal Code of the Republic of Kazakhstan
4. Code of the Republic of Kazakhstan on Administrative Offenses
5. Law “On Access to Information”
6. Law “On Peaceful Assemblies”

Article 20, paragraph 1 of the Constitution of the Republic of Kazakhstan provides all Kazakhstanis with the right to freedom of speech, creativity, receipt and dissemination of information in any way not prohibited by law. This phrase “in any way not prohibited by law” provides a certain loophole for government bodies to prosecute citizens whose political views are not suitable for creativity and publication based on other articles of national legislation. Activists, bloggers , and artists are attracted for posts, articles, drawings, and peaceful gatherings that have a political connotation. As a justification, this is presented as the dissemination of false information, violation of public order, violation of the law on

peaceful assemblies and so on. For instance, on April 21, 2019, activists Asiya Tulesova and Beybarys Tolymbekov displayed a banner that read, “You can’t run away from the truth #I have a choice;” which they placed on a fence near a pedestrian bridge along the route of a marathon. During the marathon, Tulesova, Tolymbekov, and artist Suinbike Suleimenova were detained and later sentenced to 15 days of imprisonment on charges of “violating the law on organizing rallies”¹¹.

This is just one of the prominent cases where Kazakhstani citizens have been prosecuted for exercising their right to freedom of speech and the dissemination of information. In practice, it’s observed that none of the decisions in administrative or criminal cases directly reference articles related to “disseminating information” or “expressing an opinion.” Instead, each case is grounded in a relevant article from national legislation that inherently restricts the rights of Kazakhstanis concerning freedom of speech and information. It’s crucial to consider each case within the context of the prevailing political situation in the country.

However, in practice, we often see contradictory data that the media, including online publications, receive requests to delete or correct already published information.

¹¹ <https://rus.azattyq.org/a/kazakhstan-almaty-activists-support-tulesova-tolymbekov/29895948.html>

Article 20 of the Constitution of the Republic of Kazakhstan¹² guarantees the right to freedom of speech and prohibits censorship, the country's authorities use various means to restrict this freedom and encourages self-censorship among journalists and the media.

At the same time, censorship, in paragraph 18, in Article 1 of the media law, is explained as: "preliminary approval of messages and materials by the media with **government bodies, officials** and other organizations at their request or for other reasons for the purpose of restricting or banning for the distribution of messages and materials or their individual parts." This article talks specifically about preliminary approval, but not about when the material has already been published. Can it then go through an editorial process with demands for changes, and will such an act be called censorship?

In our understanding, this article should be edited as follows: "Censorship is a demand made by participants in information processes for obtaining prior or other approval from government bodies, officials, other organizations, or financial groups for the messages and materials being distributed in the media. Its purpose is to adjust, control, restrict, or impose a ban on the dissemination of messages and materials, or their components."

Despite the fact that censorship is prohibited, it does occur and is observed, including through questions from journalists at government briefings, blocking of websites of online publications, bans on the publication of posts and other materials.

Restrictions on freedom of speech in the Republic of Kazakhstan undermine the principles of the rule of law and create obstacles to the free expression of opinions. This may limit citizens' access to information and limit their ability to actively participate in public life.

According to the 2023 World Press Freedom Index, which evaluates the journalism environment in 180 countries and territories and is released on World Press Freedom Day (May 3), the situation is categorized as "very serious" in 31 countries, "difficult" in 42 countries, "problematic" in 55, and "good" or "satisfactory" in 52 countries. In other words, the journalism environment is deemed "poor" in seven out of ten countries and only "acceptable" in three out of ten, as reported by the international organization Reporters Without Borders.

Kazakhstan's ranking in this index dropped to 134th out of 180 in 2023 from 122nd in 2022, signifying that the situation in the country is regarded as "difficult."

The activities of the media are regulated mainly by the Law on Mass Media¹³, adopted in July 1999. This law also underwent a number of amendments, the latest were as of 01.05.2023.



According to this law (Articles 5, 10), all news agencies are subject to mandatory registration and re-registration in such cases as a change of name, address, distribution area, and frequency of publication. A mandatory licensing procedure applies to TV and radio news agencies (Article 4-1).

The Mass Media Law (Article 13) also defines the grounds on which, by decision of the owner or court, the media must suspend and stop the production and distribution of products. Suspension is allowed for a period not exceeding three months. At the same time, the grounds for suspending the release of the mass media or the distribution of mass media products are **propaganda** or agitation of a violent change in the constitutional order, violation of the integrity of the Republic of Kazakhstan, undermining the security of the state, war, propaganda of extremism or terrorism, publication of materials and dissemination of information aimed at to incite interethnic and interfaith hatred, as well as failure to eliminate the reasons for the suspension of the release of the mass media or the distribution of mass media products within the prescribed period (Article 4).

In the event of a suspension or termination of mass media publication or distribution by the owner or court decision, a notification is sent to the relevant regulatory authority. Failure to comply with this decision may result in the revocation of the registration certificate (as stipulated in Article 5).

When the media is an Internet resource, it entails a ban on the use of a domain name with the same or duplicate name for a period not exceeding three months (Article 7). A court decision to terminate the distribution of mass media products or the release of mass media, when the mass media is an Internet resource, entails the cancellation of the domain name registration and a ban on the use of a domain name with the same or duplicate name for one year, the registration of which was canceled by the decision court.

12 Constitution of the Republic of Kazakhstan, Article 20,

https://online.zakon.kz/Document/?doc_id=1005029&pos=203;-49#pos=203;-49

13 https://online.zakon.kz/Document/?doc_id=1013966&pos=5;-109#pos=5;-109

The closure and cessation of media activities is excessive interference. The use of violent methods, including the termination of media activities by court order, is unacceptable in a democratic society.

According to the provisions of the Law on Mass Media, some violations by the media entail fines under the Administrative Code¹⁴, without registration after a decision has been made to suspend, terminate their release (broadcast) or recognize the certificate of registration as invalid - on officials in the amount ten, for small businesses - in the amount of twenty, for medium-sized businesses - in the amount of fifty, for large businesses - in the amount of three hundred monthly calculation indices, with confiscation of media products (Chapter 26, Article 451-1).

If there was no re-registration in cases of change of owner or its legal form, name, as well as the name of the media, change in the language of publication or broadcasting, territory of distribution, main thematic focus, frequency of release - entail a fine on officials in the amount of forty, for small businesses - in the amount of one hundred, for medium-sized businesses - in the amount of two hundred, for large businesses - in the amount of one thousand monthly calculation indices, with the suspension of the release (broadcast) of the media for a period of up to three months. In case of repeated violation within a year after the imposition of an administrative penalty, it will entail a ban on the publication (broadcasting) of the mass media (Chapter 26, Article 451-2,3).

It is worrying that even a minor technical error can lead to the suspension or termination of activities.

The above laws create a rather confusing system and greatly complicate the correct application of legal norms, and as a result, the possibility of interpretation in the direction of the interested.

On June 14, 2023, journalists from the ABAI NEWS Telegram channel reported that their Instagram account had been temporarily blocked due to suspicions of manipulating the number of subscribers. However, after appealing the blocking, the journalists successfully regained access to their account.

ABAI NEWS notes that within 1-2 days the number of their followers on Instagram increased by about 2000 people, and Instagram suspected them of cheating followers.

The ABAI NEWS editors are actively covering the situation with the forest fire in the Abai region and continue to publish current news on their pages on social networks and in the Telegram channel.



The Law on Access to Information¹⁵, Article 5 states that “The right to access information may be limited only by laws and only to the extent necessary to protect the constitutional order, public order, human rights and freedoms, health and morality of the population”.

The Law of the Republic of Kazakhstan “On Access to Information,” Article 9, paragraph 2, outlines the rights and obligations of information owners. It states that information owners are not only required to grant access to information but also to provide accurate and comprehensive information¹⁶.

The Law also provides the possibility of an oral request (information mainly of a contact and reference nature), a written request and a request in the form of an electronic document (equivalent to a written request). Due to the lack of priority of the law on access to information, in practice there is a mixture of two procedures for requesting and obtaining information, provided for by the Law of the Republic of Kazakhstan “On Access to Information” and the Law of the Republic of Kazakhstan “On the Procedure for Considering Appeals from Individuals and Legal Entities”.

There are several problems noted by journalists and public figures with obtaining information upon request, which include:

- failure to comply with the deadlines for providing a response. Despite the fact that a fairly long response time is set at the legislative level - 15 working days with the possibility of a one-time extension up to 30 days, in practice, information is often provided much later;
- provision of information not on the merits of the request or provision of information only on a part of the request;

This is a common issue where the information owner responds with a formal reply or provides information that is unrelated to the request. For instance, when the public foundation “Erkindik Kanata” and the socio-political business publication BES.media requested information from the CEC of the Republic of Kazakhstan regarding the determination of the number of candidates by political affiliation, they received a response containing two links to a general website, which did not contain the relevant information.

¹⁴ https://online.zakon.kz/Document/?doc_id=31577399&pos=7478;-56#pos=7478;-56&sdoc_params=tex-t%3D%25D1%2581%25D0%25BC%25D0%25B8%26mode%3Dindoc%26topic_id%3D31577399%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=29

¹⁵ https://online.zakon.kz/Document/?doc_id=39415981&pos=80;-5#pos=80;-5

¹⁶ https://online.zakon.kz/Document/?doc_id=39415981&pos=180;-49#pos=180;-49

- “an administrative silence” - complete disregard for the request.
- refusal to provide the requested documents;
- unlawful assignment of the requested information to the category of information¹⁷ restricted in access, etc. An online survey of Kazakhstani media journalists, who most often use the written form of requesting information, also revealed the most common violations of the right to access information: violation of the deadlines for responding to a request (almost 80% of the respondents), answering questions that were not on the merits (almost 68 %), the answer only to “convenient” questions (60%) and no answer at all (41%)¹⁸.

According to the monitoring data of the International Foundation for the Protection of Freedom of Speech “Adil Soz”¹⁹ for June 2023, on obstruction of the legitimate professional activities of journalists (5 facts), attacks (1) and threats (6), interference in the activities of the media, requirement to disclose the source information, etc.

19 appeals (48%) out of 39 relate to the right to receive and disseminate information. In this category, there is also a 1.6-fold decrease in the number of reported incidents compared to June last year (32 reports in 2022).



In June 2023, journalists faced 15 refusals, restrictions, and deadline violations in providing information of public importance. Other problems include violation of media equality, blocking of an account on a social network, a case of illegal access to computer information, forced subscription.

In June 2023, **5 cases of court and pre-trial claims were filed** against journalists and editorial offices in connection with publications in criminal, civil and administrative proceedings.

Peaceful gatherings

The human rights community and activists express concern about the notification procedure for holding peaceful assemblies, believing that this remains only a formality and does not correspond to real practice. Firstly, the notification is not of a warning nature, but of a permissive one. Secondly, most notifications about holding peaceful assemblies (rallies) in Kazakhstan face refusals from akimats.

Despite the government’s announcement of a shift towards a notification-based process for organizing peaceful demonstrations, as outlined in the May 2020²⁰ Law on Peaceful Assemblies, activists, human rights advocates, and journalists still encounter harassment when taking part in protests.

For instance, on May 1st, Vlast.kz correspondent Beyimbet was detained at the site of an alleged rally in Astana, as reported by Moldagali, the publication’s editor. Despite the journalist presenting his service ID to the police, he was still taken to the Saryarka ROP. Beyimbet was prohibited from informing the editors about the incident, and the police attempted to confiscate his phone. At the police station, the journalist underwent photography and fingerprinting. Half an hour later, he was released without any explanation for the detention.²¹

In accordance with Art. 20 of the Law “On Mass Media” a journalist has the right to be present at peaceful meetings, as well as at other forms of expression of public, group and personal interests, by presenting a journalist’s ID and a distinctive badge; make recordings, including using audio-visual equipment. Consequently, the presence of the journalist at the site of the alleged rally was lawful.

According to Art. 787 of the Code of Administrative Offenses of the Republic of Kazakhstan, administrative detention is a short-term restriction of the personal freedom of an individual to prevent an offense or ensure the conduct of proceedings.

17 “In Pavlodar they urgently “declassified” the list of subsidy recipients.”
http://rate.kz/raw/v_pavlodare_srochno_rassekretili_spisok_poluchatelej_subsidij

18 Review “Access to information in Kazakhstan.”
<https://lprc.kz/wp-content/uploads/2020/06/Dostup-k-informaczii.pdf>, page 30.

19 <https://adilsoz.kz/monthly-monitoring/>

20 <https://adilet.zan.kz/rus/docs/Z2000000333>

21 <https://vlast.kz/novosti/54980-v-astane-zaderzali-zurnalista-vlasti.html>

According to Art. 788 of the Code of Administrative Offenses of the Republic of Kazakhstan, in the case of administrative detention, a protocol is drawn up, which is handed over to the detainee. At the request of a detainee for an administrative offense, his relatives, the administration of the place of work or study are immediately notified of his whereabouts. The detainee shall be explained his rights and obligations under this Code, which shall be entered into the record of administrative detention. Failure to fulfill the obligation to explain to the detainee his rights and obligations is considered a significant violation of the proceedings on an administrative offense and entails liability under the legislation of the Republic of Kazakhstan.²²

The administrative detention of the journalist, an attempt to seize his phone, as well as his forced fingerprinting and photographing, were carried out by the police illegally. In these actions of police officials there are signs of a criminal offense under Part 2 of Article 158 of the Criminal Code of the Republic of Kazakhstan (Obstruction of the legitimate professional activities of a journalist using his official position).

²² <https://adilsoz.kz/news/v-astane-policiya-zaderzhala-zhurnalista-vlastkz.html>



Latest Legislation and Legislative Initiatives in the Field of Freedom of Speech and Expression

Freedom of speech is one of the key human rights and constitutional rights of a citizen of the Republic of Kazakhstan. Freedom of speech is also an integral and indivisible part of digital rights, especially given the dynamic development of social networks and online media, which produce a colossal amount of competitive content.

The widespread distribution and high-quality development of a wide range of Internet media in the country is becoming an object of concern and close attention from the state. Judging by legislative and other normative legal activity, the government of Kazakhstan has decided to take the situation with freedom of speech in the context of additional regulation of Internet media under special control.

An important milestone in this area of activity on the part of the state is **the Decree of the President of the Republic of Kazakhstan No. 145 dated March 20, 2023 “On approval of the Information Doctrine of the Republic of Kazakhstan”**.

The doctrine is not, from the point of view of the hierarchy of normative legal acts, a document of direct legislative action (subparagraph 6, paragraph 2, article 10 Law “On legal acts”).

Nevertheless, the Doctrine demonstrates the way of thinking, as well as the direction of the future legislative activity of the authorized bodies.

According to the authors, the Doctrine represents a system of views on the development of the domestic information sphere, principles and mechanisms for increasing its openness and competitiveness.

The doctrine will also determine the ideological and value orientations that meet the interests of the people and contribute to the further development of the state and society.

Positive and negative aspects of the doctrine

At first glance, the Doctrine appears to be a positive document that regulates the commitment to protect and promote freedom of speech. It also underscores the significance of having a competitive and independent media, providing its perspective on the events occurring in Kazakhstan, the region, and the world. The Doctrine recognizes the liberalization of the information sphere, the rejection of excessive regulation of relations in the media sphere, the strengthening of guarantees for freedom of speech and expression, the promotion and protection of the principle of protecting freedom of speech and pluralism of opinions.

Unfortunately, it is not disclosed exactly what steps will be taken to liberalize the information sphere and create a competitive and free media. At the same time, the Doctrine points to the existing problems both in the field of content produced by the “state” media, and in the general level of critical thinking on the part of consumers of the above content.

The doctrine states that the main television content is filled with series and talk shows of an entertaining nature. There is a shortage of analytical programs, investigative journalism, and vibrant journalism - important components of media recognition, a factor in increasing the media literacy of the population and forming a critical attitude towards the content consumed.

Further, the assessment of law enforcement practice shows that society is poorly informed about its right to access to information, and the level of information literacy of the population is low. This, combined with the low effectiveness of mechanisms to counteract information stuffing, contributes to a distorted perception of events by consumers and forms erroneous behavioral attitudes.

In other words, the Doctrine states:

- if not a complete, then a very noticeable failure of state policy in the field of public awareness of their right to access information, coupled with a low level of information literacy;
- “State” media can only produce entertainment content. While there is a shortage of analytical programs, investigative journalism, journalism, which, in principle, is an indicator of the situation associated with freedom of speech, censorship and an artificially created atmosphere of self-censorship.

The doctrine indicates that Internet resources are gaining widespread popularity among domestic media and notes the process of migration of content consumers to social media.

The phenomenon of “blogging” is especially noted.

The audiences of some bloggers can compete in size with the audiences of individual media outlets. At the same time, there is a tendency to turn the blogosphere into an alternative channel for obtaining socio-political information.

The doctrine contains information that “sociological surveys in 2021 showed that 45.2% of respondents prefer to receive information on social media”²³.

One of the advantages of social networks, according to the authors of the Doctrine, is the ability to integrate with technologies such as virtual reality (VR) and augmented reality (AR). The above technologies make it possible to simulate interaction with a virtual environment, combine the virtual and the real, and interact in real time.

Moreover, the Doctrine indicates that with the spread of “neural network” and “deepfake” technologies, there is a risk of stuffing media space of false video and audio content. Note that deepfake is an image synthesis technique based on artificial intelligence.

Deepfake is used to replace certain image elements with desired images, in particular to create fake photos and videos, and can also be used to create fake news and malicious deceptions.

According to the authors of the Doctrine, the perception of the flow of information through short and vivid images does not give a holistic view, leads to fragmentation of knowledge.

In the absence of critical thinking skills, this creates risks of large-scale disinformation and manipulation of public opinion.

Moreover, the Doctrine directly indicates that there is a high growth in the politicization of some social networks, which are becoming one of the sources of disinformation.

As a result, the Doctrine involves the adoption of legislative measures that ensure the transparency of the activities of new media entities (Internet platforms, social networks, influencers, etc.), as well as the creation of conditions for improving the professional skills of journalists and influencers.

The doctrine does not clarify exactly what legislative measures will be taken, and also what is meant by improving the professional skills of influencers.

Thus, the Doctrine almost directly points to the need for further regulation of social networks, instant messengers, popular Internet resources, bloggers, influencers.

Moreover, it is the above components of the domestic Internet space, according to the authors of the Doctrine, that create risks of large-scale disinformation and manipulation of public opinion, based on the politicization of the latter.

²³ The Doctrine does not contain references to the mentioned sociological research. The author of this work could not find references to similar sociological studies.

Controversial concepts

Not without interest is the presence in the doctrine of such concepts as:

- True information security.
- Ideological sovereignty.
- The main ideological vector.
- Destructive, manipulative, and inaccurate content.
- False narratives²⁴.

Before starting the analysis of the above phrases, it is important to understand the existing legal terminology and status.

Freedom of speech and the prohibition of censorship have a constitutional status (Article 20 of the Constitution).

Moreover, freedom of speech is mentioned in a number of international documents, some of which were voluntarily ratified by the Republic of Kazakhstan within the framework of a specially provided procedure, as well as in a host of other regulatory legal documents.

In turn, such concepts as “information sovereignty” or “the main ideological vector” cannot be found in any of the **current** Kazakhstani regulatory legal acts.

The doctrine also does not provide any definition of “information sovereignty” or “main ideological vector.”

The latter concept is particularly interesting given the fact that the country recognizes ideological diversity (Article 5 (1) of the Constitution).

It follows that the development of some probably unified ideological doctrine looks, to a certain extent, unconstitutional, especially given the extreme vagueness of the wording, in some cases it can develop into a manifestation of open censorship or the creation of an atmosphere of censorship.

In the absence of clear and established legislative definitions, along with a consistent practical approach, terms like “false narratives” and “destructive content” are susceptible to unlawful and, consequently, arbitrary interpretations.

However, the process of conceptual saturation of some, to put it mildly, controversial phrases, such as “information sovereignty,” is reflected in the current legislative initiative.

Draft Law “On Mass Media”

For almost a whole calendar year, the country has been developing the Draft Law “On Mass Media”.

Currently, the Draft Law “On Mass Media” is under consideration in the Mazhilis of Parliament.

Description of the draft Law “On mass media” is dated 06.06.2023 and is available on the website of the Mazhilis of the Parliament²⁵.

The dossier on the draft of the above law, which includes several versions of the draft law, the concept of the draft, an explanatory note, as well as minutes of meetings are available [here](#).

Draft Law “ On mass media”, dated June 2023, among other things, contains several very ambiguous concepts.

In particular, the concept of “information sovereignty” is the independence of the information space of the Republic of Kazakhstan, which determines the socio- political independence of the citizens of the Republic of Kazakhstan in the formation of the information agenda (paragraph 4, article 1 of the Draft Law “On Mass Media”).

In turn, what constitutes the socio-political independence of the citizens of Kazakhstan remains open.

Moreover, this concept is no longer disclosed in the proposed draft Law “On Mass Media”, with some exceptions:

- Information sovereignty must be ensured, strengthened, and protected (paragraph 30, article 1 of the draft Law “On Mass Media”).
- To ensure, strengthen and protect information sovereignty, the state will allocate grants from the republican budget (paragraph 1, article 32 of the draft Law “On Mass Media”).

Grants will be allocated to strengthen and protect the information sovereignty of the Republic of Kazakhstan by creating and disseminating information that **satisfies the interests of the state and society**.

However, the document does not provide clarity on what constitutes the satisfaction of state and societal interests, nor does it define these interests or the extent to which they align.

²⁴ <https://drfl.kz/ru/informatsionnaya-doktrina/>

²⁵ <https://www.parlam.kz/ru/mazhilis/post-item/36/16079>

Of course, ensuring, strengthening and protecting something that is not even properly formulated legislatively at the expense of the state budget is a strategically important task that requires maximum attention from the entire government vertical.

Further, the draft Law “On mass media” includes the concept of censorship.

Censorship is defined as the prior approval of media messages and materials by state bodies, officials, and other organizations at their request or for other reasons, with the aim of restricting or prohibiting the dissemination of such messages and materials, including their specific components (Paragraph 59, Article of the draft Law on Mass Media).

This circumstance looks extremely interesting, considering the fact that paragraph 1, article 2 of the Draft Law “On mass media” directly points to the prohibition of censorship.

There are no other references to censorship in the Draft Law “On Mass Media”.

Thus, the legislators have introduced the concept of what is directly prohibited both at the constitutional level and at the level of the Draft Law “On Mass Media”.

Procedure for accreditation and issuance of press cards

Draft Law “On mass media” introduces such concepts as a journalist, accreditation, as well as a press card.

According to the terminology used in the draft Law on Mass Media, a journalist (media representative) (referred to as a journalist hereinafter) is an individual who is involved in the collection, processing, and preparation of messages and materials for media outlets through labor or other contractual agreements with the media’s editorial office (Paragraph 21, Article 1, Draft Law on Mass Media).

In turn, accreditation refers to the procedure for appointing a journalist and recognizing his powers by a government body, public association and organization (clause 1, article 1, of the Draft Law “On Mass Media”).

In turn, a press card is a document and (or) electronic document confirming the special status of a journalist (media representative), granting the right to simplified accreditation and the rights provided for by this Law (clause 5, article 1 of the Draft Law “On Mass Media”).

Based on the logic of legislators, accreditation for journalists received by a journalist will mean:

- (accredited journalist) state bodies will be obliged to notify them in advance of meetings, councils, and other events, provide transcripts, minutes and other documents (paragraph 2, article 26 of the Draft Law “On Mass Media”).
- An accredited journalist has the right to attend meetings, councils and other events held by the state bodies that accredited him (paragraph 2, article 26 of the Draft Law “On Mass Media”).

At the same time, one can lose accreditation on the basis of extremely dubious and, to put it mildly, extra-legal grounds, such as:

- violation of the rules and accreditation.
- dissemination of untrue information discrediting the business reputation of the state bodies that accredited it (paragraph 4, article 26 of the Draft Law “On Mass Media”).

Regarding the dissemination of information that does not correspond to reality and / or discredits the business reputation of state bodies, it is important to take into account the procedural aspect associated with the element of proof.

Thus, proving damage to business reputation as a result of the dissemination of certain information must take into account the requirements of the Civil Code of the Republic of Kazakhstan.

As part of an open trial, where each party must prove all the circumstances to which it refers within the framework of the generally established rules of civil procedure.

In cases of so-called “slander” or “insult” according to the norms of administrative and criminal proceedings.

In turn, paragraph 4, article 26 of the Draft Law “On mass media” is formulated in such a way that the state body that issued accreditation can deprive a journalist of accreditation without a corresponding court decision that has entered into legal force, that is, arbitrarily.

Further, an important element of the Draft Law “On mass media” is the introduction of so-called press cards.

Article 29 of the Draft Law “On mass media”, establishes that press cards are issued by the commission for issuing press cards to journalists.

The commission, according to the legislator’s intention, will consist of representatives of non-profit organizations, the media and other interested parties.

To receive a press card, a journalist must meet the following requirements:

1. have at least 3 years of experience in the media industry with a higher education diploma in a relevant or related specialty;
2. having at least 5 years of work experience in the media industry in the absence of a diploma in a relevant or related specialty.
3. the existence of labor or other contractual relations with the mass media , registered with the authorized body (paragraph 4, article 29 of the draft Law “On Mass Media”)

In turn, there are grounds for refusing to issue or depriving a previously issued press card, which, among other things, include:

4. non-submission of documents provided for by the procedure for issuing press cards to journalists, determined by the authorized body;
5. the presence of an outstanding or unexpunged conviction in the manner prescribed by law.
6. non-compliance with established requirements
7. recognition of a journalist as guilty of committing a crime in accordance with the criminal procedure law;
8. non-compliance with the conditions established by the employment contract;
9. violation of the requirements established by this Law (paragraphs 4, 5, articles 29 of the draft law).

It is necessary to pay attention to the fact that the rules related to the issuance or deprivation of previously issued press cards are extremely vague, and in some cases discriminatory.

This is the rule associated with the refusal to issue a press card in the presence of an outstanding or unexpunged criminal record in accordance with the procedure established by law, regardless of the crime committed.

Article 79 of the Criminal Code of the Republic of Kazakhstan stipulates that an individual convicted of a crime is considered as such from the day when the court’s conviction becomes legally effective until the moment when the conviction is revoked or expunged²⁶.

A crime is recognized as a socially dangerous act (action or inaction) committed with guilt, prohibited by the Criminal Code of the Republic of Kazakhstan under the threat of punishment in the form of a fine, correctional labor, community service, restriction of freedom, or deprivation of liberty (Part 2, Article 10 of the Criminal Code of the Republic of Kazakhstan).

According to the logic of the Criminal Code of the Republic of Kazakhstan, a criminal record is established and subsequently expunged for conditionally sentenced citizens, as well as for those sentenced to more lenient forms of punishment than imprisonment.

Therefore, denying a journalist the issuance or revoking a previously issued press card solely on the grounds of an unexpunged criminal record or the commission of **any** offense defined by the Criminal Code of the Republic of Kazakhstan is considered a discriminatory measure.

Further, it is also possible to deprive a journalist of a previously issued press card due to non-compliance by the journalist with the terms of the employment contract, without any specifics, which also allows this provision to be applied arbitrarily.

Thus, the draft Law “On Mass Media” firstly establishes conditions for segregation and endows certain journalists with special privileges through the accreditation and press card issuance procedure.

Secondly, it creates conditions under which both obtaining accreditation and press cards and depriving them of the latter and, as a result, the loss of privileges, both on extremely legally undefined and discriminatory grounds.

It follows from this that the Draft Law “On mass media”, as well as the Doctrine at the conceptual level, looks extremely contradictory, which will definitely create problems in the future at the level of law enforcement practice in the field of freedom of speech.

In turn, the Draft Law “On mass media” is still under consideration in the Mazhilis of the Parliament.

Based on this, there is still a possibility that the draft law will be amended to clarify several concepts, as well as to eliminate the vagueness of the wording in terms of the principle of legal certainty.

26 <https://adilet.zan.kz/rus/docs/K1400000226>

Law “On Online Platforms”

The Law on Online Platforms was signed by the head of state on July 10, 2023, and will come into force on September 10, 2023.

The Law “On Online Platforms” is essentially a logical continuation of the implementation of the provisions of the Doctrine in parts related to concerns about the politicization of a number of social media, as well as the spread of misinformation.

First of all, the Law “On Online Platforms” introduces the main and most interesting in terms of the implementation of freedom of speech and expression in the network of concepts.

The most interesting concepts include:

- account – a personal page of an online platform user, which is created after registration on the online platform (clause 1, article 1 of the Law “On Online Platforms”);
- false information - information that does not correspond to reality or contains significant distortions of facts, creating a false impression about persons, objects, events, phenomena and processes, recorded in any form (clause 3, article 1 of the Law “On Online Platforms”);
- influencer (blogger) - a user of an online platform who publishes information on an online platform addressed to an indefinite circle of persons for the purposes of entrepreneurial activity (paragraph 6, article 1 of the Law “On Online Platforms”);
- online platform - an Internet resource and (or) software operating on the Internet, and (or) instant messaging service, intended for receiving, production and (or) placement, and (or) distribution, and (or) storage content on the online platform by the user of the online platform through the account he created, the public community, with the exception of an Internet resource and (or) software operating on the Internet, and (or) instant messaging service intended for the provision of financial services and electronic commerce (paragraph 10, article 1 of the Law “On Online Platforms”);
- the owner of the online platform - an individual and (or) legal entity that has the right to own the online platform (paragraph 12, article 1 of the Law “On Online Platforms”);
- user of the online platform (hereinafter referred to as the user) is a natural and (or) legal entity that has registered and (or) provided its

personal data, and (or) has been identified on the online platform (paragraph 14, article 1 of the Law “On Online Platforms”).

Further, it is important to note that “fighting” in the form of preventing so-called illegal content is one of the goals of the law (subparagraph 3, paragraph 2 of the Law “On Online Platforms”).

In particular, users of online platforms are obliged not to publish or distribute illegal content, and in case of publication, immediately delete it (subparagraphs 5, 6, paragraph 2, article 16 of the Law on Online Platforms).

Moreover, owners and/or other legal representatives of online platforms are required to:

- take measures to counter the spread of illegal content (subparagraph 1, paragraph 4, article 9 of the Law on Online Platforms);
- inform the authorized body about measures to counter illegal content (subparagraph 6, paragraph 4, article 9 of the Law “On Online Platforms”)
- suspend the activities of accounts in the territory of the Republic of Kazakhstan that host and distribute illegal content (subparagraph 10, paragraph 4, article 9 of the Law “On Online Platforms”).

Proceeding from the fact that preventing the publication and dissemination of false information is one of the key tasks of the legislator.

It is essential to understand what information can be categorized as unlawful content.

The list of information that can be classified as illegal content is specified in paragraph 1, article 14 of the Law on Online Platforms.

Such information encompasses calls, propaganda, or advocacy for violent alterations to the constitutional system, acts that threaten the territorial integrity of the Republic of Kazakhstan, actions that undermine state security, warfare, promotion of social, racial, national, religious, class, or clan superiority, glorification of cruelty and violence, suicide, pornography, narcotic drugs, psychotropic substances, their analogues, and precursors, ideas promoting separatism, fraud, content that fosters the disruption of interethnic and interfaith harmony, statements challenging the statehood and territorial integrity of the Republic of Kazakhstan, disclosures of state secrets or other legally protected secrets, and any other information prohibited by the laws of the Republic of Kazakhstan.

At the same time, the provisions of the above article related to statements questioning statehood are of particular interest.

As noted by Baikenzheev A.S., in the article “Development of statehood and the legal system of Kazakhstan: past, present, future”, Statehood is a form of society in a particular historical time, a **qualitative characteristic of its elements and institutions**, which constitutes the main content and a certain feature of society and states²⁷.

Based on the assumption that state institutions, including the legislative, executive and judicial branches, are elements of statehood.

Then any information of a critical nature, for example, statements about violations by election commissions in the counting of votes in local or national elections, all other things being equal, can be interpreted by the authorized body as distribution of illegal content.

It is important to note, suspension, termination of posting and distribution of illegal content are carried out in accordance with **Article 41-1** of the Law of the Republic of Kazakhstan “On Communications”.

The above article assumes an out-of-court procedure for suspending the operation (blocking) of networks, means of communication and Internet resources, which can be initiated by the prosecutor’s office, the national security committee, or the authorized body in the field of mass media based on a relevant request or instruction.

We draw special attention to the fact that the statistics of extrajudicial restrictions on content and Internet resources by the authorized body are impressive.

So, based on the data provided by the Internet resource Freedom Kazakhstan²⁸ limited as of August 2023 **8,361** Internet resources on the following grounds:

- Propaganda of the cult of cruelty and violence, suicide, and pornography - 1280.
- Propaganda of ideas of terrorism and extremism - 175.
- Propaganda of narcotic drugs - 281.
- Provision of online casino services, violation of gambling legislation - 2,283.
- Violation of the legislation on advertising and copyright - 219.
- **Dissemination of information that offends the honor and dignity of another person** - 110

- Facts of fraud - 3,723.
- **Dissemination of deliberately false information** - 290.

In turn, if a request or order is received from an authorized body, for example, with the suspension of certain accounts, the owners and/or legal representatives of online platforms will be obliged to carry out such blocking (subparagraph 10, paragraph 4, article 9 of the Law “On Online Platforms”).

Considering that, according to legislative provisions, virtually anything can be classified as information that may be deemed unlawful content, such legal regulation can lead to censorship or self-censorship.

In turn, if a request or order is received from an authorized body, for example, with the suspension of certain accounts, the owners and/or legal representatives of online platforms will be obliged to carry out such blocking (subparagraph 10, paragraph 4, article 9 of the Law “On Online Platforms”).

Considering that, according to legislative provisions, virtually anything can be classified as information that may be deemed unlawful content, such legal regulation can lead to censorship or self-censorship.

The next important element in creating an atmosphere of censorship or self-censorship on the web is the dissemination of so-called false information.

Article 15 of the Law “On Online Platforms” stipulates that a person in respect of whom false information has been disseminated has the right to contact the owner of the online platform with a request to remove the false information. If the owner of the online platform refuses to remove false information, the person has the right to go to court.

At the same time, Law of the Republic of Kazakhstan dated July 10, 2023, No. 20-VIII “On amendments and additions to the Code of the Republic of Kazakhstan on administrative offenses” it is proposed to add Article 456-2 “Placement, dissemination of false information”²⁹.

Article 456-2 provides for bringing to administrative responsibility for the dissemination of false information in the media on an online platform, by individual accounts, as well as bloggers (influencers).

²⁷ <https://bulletin-law.kaznu.kz/index.php/journal/article/view/360/356>

²⁸ <https://ifkz.org/ru/restriction/statistics>

²⁹ https://online.zakon.kz/Document/?doc_id=32070992&pos=1;-16#pos=1;-16

At the same time, protocols on administrative cases within the framework of Article 456-2 will be drawn up by representatives of the internal affairs bodies.

Further, the prosecutor will be able to independently make a decision to initiate proceedings under the above article.

Moreover, individuals can independently apply for the restoration of violated rights under Article 456-2 to the court.

Article 456-2 contrasts sharply with Article 73-3 on defamation, in which cases are initiated solely at the request of the victim (Part 1, Article 64 of the Code of Administrative Offenses of the Republic of Kazakhstan).

Therefore, Article 15 of the Law on Online Platforms, in combination with Article 456-2 of the Code of Administrative Offenses of the Republic of Kazakhstan can become an additional repressive tool against the media, online platforms, bloggers.

Further, it is important to note some features of the legal regulation of online platforms.

Thus, Article 9 of the Law “On Online Platforms” provides for the following legal regime for the functioning of online platforms.

One of the key elements of operation involves the so-called “landing” of online platforms.

According to this law, if the number of Kazakhstani users of an online platform exceeds 100,000 per day for a month, then the platform is obliged to appoint a legal representative with an authorized body. In cases where more than 100,000 (one hundred thousand) Kazakhstani users per day for a month become users of the online platform. Such online platforms are required to appoint their legal representative for interaction with the authorized body (clause 1, article 9, of the Law “On Online Platforms”).

It is also important to note that the owners and/or legal representatives of online platforms will be required to provide information about users requested by the authorized body based on judicial acts, requests from law enforcement or special government bodies of the Republic of Kazakhstan (subparagraph 9, paragraph 4, article 9 of the Law “On Online Platforms”).

At the same time, users of online platforms will have to leave their personal data when registering.

In turn, subparagraph 9, paragraph 4, article 9 of the Law “On Online Platforms” does not explain on the basis of what kind of requests and to what extent from law enforcement or special state bodies of the Republic of Kazakhstan, the owners of online platforms must provide personal data of users.

In the absence of clear legal regulation, subparagraph 9, paragraph 4, article 9 of the Law “On Online Platforms” can become a tool for the arbitrary collection of personal data of users of online platforms.

In conclusion, it should be noted that control over compliance with legislation on online platforms will be carried out by an authorized state body in the form of preventive control without visiting the subject (object) of control in accordance with the Entrepreneurial Code of the Republic of Kazakhstan and this Law (clause 2, article 6 of the Law “On Online advertising”).

The goals of preventive control are to prevent and suppress possible violations.

In turn, the object of preventive control is the activity of online platforms; the subject is the moderators of public communities.

If violations are detected, the authorized body sends a corresponding recommendation to eliminate the violations.

The recommendation to eliminate violations identified because of preventive control must be executed within **three** business days from the day following the day it was delivered (paragraph 7, article 6 of the Law “On Online Advertising”).

However, in accordance with paragraph 8, Article 124-10 of the RK PC, a recommendation to eliminate violations identified because of preventive control must be executed within **ten** working days from the day following the day of its delivery³⁰.

Thus, we believe it is important to bring the norms of legislation on online advertising in terms of implementation of recommendations of authorized bodies in accordance with the EC of the Republic of Kazakhstan.

30 <https://adilet.zan.kz/rus/docs/K1500000375>



Challenges

Freedom of speech and expression in the country is limited by law, which was discussed in the previous chapters of the study and in its sociological part.

One of the most noticeable elements of the restriction of freedom of speech and expression in the country is the presence in the Criminal Code of the Republic of Kazakhstan and the Code of Administrative Offenses of the Republic of Kazakhstan of articles that allow bringing to administrative and criminal liability for the dissemination of information.

In particular, such articles as “Slander” and “Insult”.

In General Comment No. 34 to Article 19 of the ICCPR, the UN Committee speaks negatively about the practice of criminal prosecution for so-called slander.

In particular, paragraph 47 of General Comment No. 34 states “States Parties should consider removing defamation as a crime³¹, but in any case, criminal law should apply only to the most serious cases and deprivation of liberty should under no circumstances be considered appropriate punishment.

In turn, in 2019, the President of the country, during his speech at the second meeting of the National Council of Public Trust, announced the procedure for “decriminalization” of Article 130 of the Criminal Code of the Republic of Kazakhstan “Slander”³².

In June 2020, the Code of Administrative Offenses of the Republic of Kazakhstan was supplemented with Article 73-3 “Slander”³³.

Thus, the article “Slander” was transferred from the category of criminal offenses to the category of administrative offenses.

The above article assumes the imposition of serious administrative fines, ranging from 160 to 750 MCI and more, as well as the possibility of being under administrative arrest for a period of 20 to 30 days.

In absolute terms, this is from 552,000 tenge to 2,587,500 tenge, respectively³⁴.

31 Concluding observations on Italy (CCPR/C/ITA/CO/5); concluding observations on the former Yugoslav Republic of Macedonia (CCPR/C/MKD/CO/2).

32 https://www.akorda.kz/ru/speeches/internal_political_affairs/in_speeches_and_addresses/vystuplenie-glavy-gosudarstva-k-tokaeva-na-vtorom-zasedanii-nacionalnogo-soveta-obshchestvennogo-doveriya

33 <http://adilet.zan.kz/rus/docs/K1400000235>

34 MCI for 2023 - 3 450 tenge

Based on the data of the Portal of legal statistics bodies and special records³⁵, as of August 2023, 323 administrative cases were registered under Article 73-3 of the Code of Administrative Offenses of the Republic of Kazakhstan, of which 184 were considered by the court and 45 were considered by the authorized body.

Moreover, after the entry into force by a court decision in a case of an administrative offense, it is not proved again when considering a case on the civil consequences of the same offense committed by this person (paragraph 5, article 76 of the Code of Civil Procedure of the Republic of Kazakhstan)³⁶.

The above means that in addition to paying an administrative fine or actually serving an administrative arrest, for a person found guilty of an administrative offense, there is a prospect of being a defendant in a civil court in a claim for compensation for moral damage.

At the same time, it is not necessary to prove to the plaintiff the fact of slander against himself in the framework of civil proceedings, based on the prejudicial value of the court decision that has entered into legal force in the case of an administrative offense.

In turn, moral damage is compensated in cash (paragraph 2, article 952 of the Civil Code of the Republic of Kazakhstan). The amount of compensation is determined by the court independently based on a subjective assessment and objective data.

Thus, a person found guilty under Article 73-3 of the Code of Administrative Offenses of the Republic of Kazakhstan is obliged to pay a significant administrative fine or serve a term of administrative arrest determined by the court, but also in the future be liable under generally established civil law.

It follows that the presence and application of Article 73-3 of the Code of Administrative Offenses of the Republic of Kazakhstan in practice, especially in relation to journalists, gives rise to "Fear also gives rise to self-censorship in journalism, when the editor and journalist avoid working on certain topics, with people, events, facts, stories and documents, taboo topics"³⁷.

"Despite the fact that ordinary citizens are most often brought to trial and criminally liable under articles on slander and insult, cases against journalists are the most resonant"³⁸. The confirmation of the above thesis can be another case of the editor-in-chief of the newspaper "Saryagash inform" Amangeldy Batyrbekov.

On July 3, the Specialized Administrative Court of the Saryagash region found Batyrbekov guilty under article 73-3 "Slander"³⁹.

A similar situation is developing with Article 131 of the Criminal Code of the Republic of Kazakhstan "Insult" and 174 of the Criminal Code of the Republic of Kazakhstan "Inciting social, national, tribal, racial, class or religious hatred", which involve significant fines, involvement in public works, restriction and even imprisonment.

It should be noted that Article 131 of the Criminal Code of the Republic of Kazakhstan "Insult", based on the data from the Portal of legal statistics and special records⁴⁰, in any case, as of August 2023, has not been applied even once.

In turn, the presence article 174 of the Criminal Code of the Republic of Kazakhstan, causes incessant criticism of both the national human rights community and international experts.

In particular, according to the UN Special Rapporteur on freedom of assembly and association:

"The existence of Article 174 in the Criminal Code of the Republic of Kazakhstan has significantly deterred political activities, seemingly offering an ineffective and counterproductive approach to addressing real extremism. The dissolution of political groups or the legal action taken against their members based on vague criteria mentioned above exposes any opposition political party or its members, who aim to compete with the ruling party, to the risk of facing criminal charges like incitement of hatred, "spreading false information," or "slander"⁴¹.

35 <https://qamqor.gov.kz/>

36 <https://adilet.zan.kz/rus/docs/K1500000377>

37 "Decriminalization of libel in Kazakhstan: background, consequences, and potential difficulties" - PF Legal Policy Research Center (LPRC), January 2020.

38 Ibid.

39 <https://rus.azattyq.org/a/32516462.html>

40 <https://qamqor.gov.kz/>

41 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/126/66/PDF/G1512666.pdf?OpenElement>

In contrast to Article 131 of the Criminal Code of the Republic of Kazakhstan, as of August 2023, according to the portal of legal statistics and special records, 45⁴² cases were initiated under Article 174 of the Criminal Code of the Republic of Kazakhstan, of which 11 are considered completed.

Thus, the presence in the criminal and administrative legislation of articles which provide for criminal and administrative liability for incitement of any kind of hatred, dissemination of false information and slander, are criticized due to insufficient clarity and certainty of wording in accordance with the principles of legal certainty.

According to [the statistics](#) of violations of freedom of expression in Kazakhstan for 2022, collected by the International Foundation for the Defense of Freedom of Speech “Adil Soz”, 11 people (journalists and bloggers) were charged administratively under the article “Slander”, 5 of them in court, and two were sentenced to 20 days in an administrative order.

In turn, one public figure from the city of Uralsk was convicted under the article “Insult” in 2022; he was acquitted for lack of corpus delicti (absence of the event of a crime). However, there is a more detailed article about “insulting a representative of the authorities” according to which three times as many representatives of the media were involved. One of them was acquitted with the possibility of damages in connection with illegal prosecution, and the other [was found guilty of insulting a government official using social networks](#). He was fined 20 MCI (61,260 tenge).

Articles of the Criminal Code of the Republic of Kazakhstan “Inciting social, national, tribal, racial, class or religious hatred” and “Dissemination of deliberately false information” still allow the authorities to deprive independent journalists, bloggers, and activists of freedom. Thus, out of the two cases initiated under the first mentioned article, only one was considered in court, with subsequent reclassification as a violation of the article on “Dissemination of deliberately false information” and a sentence for a group of eco-activists to one year of restriction of freedom.

“In connection with the announced amnesty, by a court decision, environmental activists were released from criminal punishment. The court laid the costs of proceedings on the state.”

However, in general, under the second article, respectively, in 2022, 7 cases were opened, and one was considered in court, when the activist was found guilty, sentenced to 1 year of restriction of freedom, followed by parole.

The next challenge is the gradual introduction of the institute of foreign agents into the Republic of Kazakhstan.

Currently, the country has created a legislative basis for the formation of a register of physical and legal entities receiving foreign funding (foreign agents).

The Tax Code of the Republic of Kazakhstan contains [Article 29](#)⁴³, directly related to potential “foreign agents”: **“Responsibilities of a person and (or) structural divisions of a legal entity when receiving, spending money and (or) other property from foreign states, international and foreign organizations, foreigners, stateless persons in certain cases.”**

This article regulates the obligation of individuals and legal entities to notify the tax authorities in the event that the latter receive money and (or) other property from foreign states, international and foreign organizations, foreigners, stateless persons aimed at the following activities:

- provision of legal assistance, including legal information, protection and representation of the interests of citizens and organizations, as well as their advice;
- studying and conducting public opinion polls, sociological polls, with the exception of public opinion polls and sociological polls conducted for commercial purposes, as well as disseminating and posting their results;
- of cases when the specified activity is carried out for commercial purposes (subparagraph 1 of paragraph 1 of article 29 of the Tax Code of the Republic of Kazakhstan).

The recipient of the aforementioned funding is required to provide information to the tax authority regarding the receipt and allocation of funds and/or other assets received from foreign states, international and foreign organizations, foreigners, stateless individuals, in accordance with the procedures, timelines, and formats stipulated by the authorized body (subparagraph 2, paragraph 1, article 29 of the Tax Code of the Republic of Kazakhstan).

42 <https://qamqor.gov.kz/>

43 <https://adilet.zan.kz/rus/docs/K1700000120#z29>

Administrative responsibility

The tax authority forms and publishes a register of individuals and legal entities receiving foreign funding on its Internet resource (paragraph 3 of article 29 of the Tax Code of the Republic of Kazakhstan). To maintain compliance with the law by persons receiving foreign funding, the legislation contains special provisions of the Code of Administrative Offenses of the Republic of Kazakhstan.

Thus, [Article 460-1 of the Code of Administrative Offenses](#)⁴⁴ for violation of the procedure for submitting information about the receipt of money and (or) other property from foreign states, international and foreign organizations, foreigners, stateless persons or their spending, depending on the circumstances, implies a sanction in the form of a fine between 50 and 1,000 monthly calculation indices, as well as a possible prohibition of activities for legal entities.

In absolute terms, for 2023, these are 172,500 tenge and 3,450,000 tenge, respectively.

[Article 460-2 of the Code of Administrative Offenses](#) is provided for violation of the procedure for publishing, distributing and (or) posting materials by persons receiving money and (or) other property from foreign states, international and foreign organizations, foreigners, stateless persons, depending on the circumstances, entail a warning or a sanction in the form of a fine in the amount of 25 monthly calculation indices.⁴⁵

In absolute terms, for 2023, this is 86,250 tenge.

On February 20, 2018, the Minister of Finance of the Republic of Kazakhstan issued an [order](#) “On approval of the Rules for maintaining a database on persons who received and spent money and (or) other property received from foreign states, international and foreign organizations, foreigners, stateless persons, as well as their inclusions and exclusions from the database.”⁴⁶

Paragraph 8 of the Order assumed that the information (on persons receiving foreign funding, author’s note) contained in the database is posted on the Internet resource of the authorized body at: www.kgd.gov.kz.

In turn, in 2023, some changes were made to the Order.⁴⁷ Changes to the [Order](#) were [registered](#)⁴⁸ with the Ministry of Justice of the Republic of Kazakhstan on March 14, 2023 under No. 32059 and have now entered into force.

Regarding the changes made, paragraph 8 of the Order currently looks like this:

“The information contained in the database is placed in the form “Register of persons receiving money and (or) other property from foreign states, international and foreign organizations, foreigners, stateless persons subject to publication” (hereinafter referred to as the Register), according to the appendix to these Rules, based on the results of the six months no later than the 20th day following the reporting month on the Internet resource of the authorized body at the address: www.kgd.gov.kz.”

It is assumed that the Register will contain the following elements, which also include personal data:

No.	BIN/IIN	Name
1	2	3

For general access, personal data of limited access, such as an individual identification number (IIN), will be distributed.

The Law of the Republic of Kazakhstan “On Personal Data”⁴⁹ assumes that the procedure for the dissemination and publication of personal data should be carried out only with the consent of the subject (Article 7 of the Law “On Personal Data”).

44 <https://adilet.zan.kz/rus/docs/K1400000235#z3435>

45 <https://adilet.zan.kz/rus/docs/K1400000235>

46 <https://adilet.zan.kz/rus/docs/V1800016507>

47 <https://legalacts.egov.kz/npa/view?id=14393078>

48 <https://adilet.zan.kz/rus/docs/V2300032059#z11>

49 <https://adilet.zan.kz/rus/archive/docs/Z1300000094/19.04.2023>

The law provides for the possibility of collecting and processing (not publishing and distributing, author's note) without the consent of the subject in the case of "receipt by state revenue bodies for tax (customs) administration and (or) control of information from individuals and legal entities in accordance with the laws of the Republic of Kazakhstan" (Clause 9-1 of Article 9 of the Law "On Personal Data")⁵⁰.

However, the above provision of the Law "On Personal Data" does not provide for the possibility of publishing personal data in publicly available sources of information and, as a consequence, distributing it to an unlimited number of third parties without the consent of the subject of personal data who has received the status of a foreign agent.

In this regard, we believe that the publication of the Register in the form established by the Order is a violation of the Law "On Personal Data" and the constitutional right to privacy (paragraph 1 article 18 of the Constitution) and theoretically could lead to negative consequences for the persons indicated in the Register.

It is important to note that as of July 2023, the website www.kgd.gov.kz does not yet contain a link to the Register in any of its sections and, as a result, has not yet been published. Based on the provisions of the Order, the Register will in the future be compiled and posted on Internet resources, which will be a clear step towards the approval of the institution of foreign agents in the country.

⁵⁰ <https://drfl.kz/ru/inostrannye-agenty>



Recommendations

1

Full decriminalization of Articles 73-3 of the Code of Administrative Offenses of the Republic of Kazakhstan, which pertains to “Slander,” and Article 131 of the Criminal Code of the Republic of Kazakhstan, which concerns “Insult.” Disputes related to the protection of personal non-property rights (such as honor, dignity, and reputation) should only be addressed through civil proceedings.

2

Refuse to supplement the Code of Administrative Offenses of the Republic of Kazakhstan to become related to Article 456-2 “Placement, dissemination of false information.”

3

Reconsider the decision to introduce a register of “foreign agents,” taking into account the relevant legislation on the protection of personal data, as well as discriminatory provisions for maintaining and recording such a register.

4

Republic of Kazakhstan “On Communications” in terms of the extrajudicial procedure for suspension (blocking) of the operation of communication networks/ means.

5

Refuse vague and discriminatory grounds for obtaining and withdrawing previously received accreditations and press cards for journalists.

6

Reject extremely vague grounds for classifying information as illegal content.

7

Bring the norms of the Law “On Online Platforms” in terms of conducting preventive control by the authorized body with the norms specified in the EC of the RK.

8

Establish a well-defined legislative framework, including the criteria and extent, for the potential transfer of user personal data on online platforms upon request by the authorized body, as well as law enforcement and special agencies of the Republic of Kazakhstan.

9

Continue systematic work aimed at improving the situation in the field of exercising the right to freedom of speech and expression, including raising awareness of the laws being adopted and involving the professional community in the legislative process, as well as carrying out reforms, developing democratic institutions and civil society.

10

The draft Law "On mass media" it is necessary to include provisions related to the guarantee of the safety of journalists, as well as internationally recognized principles of the primacy of freedom of speech.

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LEGAL REVIEW

Features of legal regulation and law enforcement practice of the right to freedom of speech and expression in the Republic of Kazakhstan

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