

Kazakhstan: Banning and suspension of media outlets is politically motivated censorship

ARTICLE 19 is concerned by the Court decision on 4 December 2012 to ban the news website *Stan.tv* for “extremist propaganda” in relation to their critical reporting of a series of strikes in Zhanaozen in 2011. We are also concerned about the threat to close three other media outlets for the same reason. ARTICLE 19 calls on the Kazakh government to comply with its international obligations to protect and promote the right to freedom of expression, particularly by protecting media independence and pluralism.

On 4 December 2012 the Bostandyk District Court in Almaty banned *Stan.tv* and prohibited all media, including online outlets, from distributing its content, the same decision was made in the case against the TV station *K+*. On 6 December, proceedings were also initiated against the newspaper *Respublika*, as well as against the newspaper *Vzglyad*. All four media outlets have been suspended since 22 November, two days after the Almaty Prosecutor’s Office sought their closure for “extremist propaganda” because of their reporting of the Zhanaozen strikes which had been critical of the government.

Government crackdown on dissent since 2011

This harassment of media outlets is part of a government crackdown on dissent following the 2011 Zhanaozen oil workers strikes, leading up to violent clashes between police and protesters on 16 December 2011.

- In October 2012, Vladimir Kozlov, the leader of the Kazakh opposition movement Alga!, was sentenced to 7.5 years in prison on charges of violence during the strikes. The verdict against Kozlov named various media outlets, describing them as “extremist”. The newspaper *Respublika* petitioned the Court to remove this reference from the verdict but was unsuccessful.
- On 20 November 2012, the Almaty Prosecutor’s Office in Kazakhstan requested that the Almaty City Court ban four independent media outlets for reporting “extremist propaganda”. The outlets concerned were the online news portal *Stan.tv*, the TV station *K+*, and the newspapers, *Respublika* and *Vzglyad*.
- On 22 November 2012, the Medeu District Court in Almaty suspended all four media outlets from publishing pending Court proceedings to determine their fate. Internet sites containing content from these media outlets have also been blocked, including Facebook pages.

It is alleged that these media “incited social hatred” and “called for the violent overthrow of constitutional order”, by:

- Disseminating information, including leaflets and other printed materials
- Making speeches to striking oil workers leading up to the violent clashes between police and protesters in Zhanaozen in 2011.

At least one of the affected media outlets, *Respublika*, only found out about the Prosecutor’s request for them to be closed down as a result of news coverage.

ARTICLE 19 believes that the suspension of these four media outlets, the banning of *Stan.tv* and *K+*, the initiation of proceedings against *Respublika* and *Vzglyad*, and the outstanding request by the Prosecutor for bans against two other media entities, are all politically motivated. These measures clearly violate international standards on the right to freedom of expression and seriously threaten to erode further the independence and plurality of the media in Kazakhstan.

The obligation to respect the freedom of the media

ARTICLE 19 notes that media coverage is vital in times of political unrest. As a State party to the International Covenant on Civil and Political Rights (ICCPR), Kazakhstan should strive to ensure that freedom of expression and freedom of information are protected in times of crisis. This should be done through dialogue and cooperation.

Although freedom of expression may be restricted under specific circumstances, Kazakhstan should not restrict public access to information in times of crisis beyond the limitations allowed by Article 19(3) of the ICCPR, known as the three-part test:

1. Any restriction of free expression must be provided for by law. This means that:
 - There must be a piece of legislation enacted by a competent body
 - The law must be as clear and as precise as reasonably possible, so that citizens know in advance exactly which expressions are prohibited.
2. Any restriction must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive and includes:
 - Respect of the rights or reputations of others
 - Protection of national security, public order, or of public health or morals.
3. The restriction must be *necessary* in order to secure one of these aims. The word 'necessary' in Article 19(3) is understood to have a number of implications. To justify any measure which interferes with free speech:
 - A government must be acting in response to a pressing social need, not merely out of political convenience
 - The restriction must impair the right as little as possible and in particular, must not be overly broad or restrict legitimate speech
 - The impact of the restriction must also be proportionate. The harm to freedom of expression must not be greater than the benefit to the interest which is being protected.

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information set out the standards concerning limitations of freedom of expression on national security grounds. They permit restrictions only if the government can establish that:

- The expression is intended or likely to incite imminent violence
- There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

ARTICLE 19 believes that the Kazakh extremism law and the criminal offences of violent overthrow of the constitutional order and incitement to social hatred - to which the Prosecutors refer in their request for the closure of the media outlets and for the banning of the political parties - fail to meet the requirements of the three-part test.

ARTICLE 19 also believes that these laws are being applied in a manner which will inevitably and undoubtedly lead to challenges under the ICCPR.

Restrictive legislation

The extremism law and the criminal law provisions for incitement to social hatred are vague and overly broad. It is unclear what is meant by "social hatred" because, unlike race, nation, or religion, social hatred can mean anything to do with individuals or groups. The laws do not give clear and precise information about what is prohibited, which leaves them open to arbitrary interpretation and potential abuse.

International law requires States to consider the necessity of restrictions on the right to freedom of expression. It also sets out a test for examining the legitimacy of any restriction on the grounds of protecting national security and public order. The Kazakh criminal law provisions, which criminalise incitement to social hatred and calls for the violent overthrow of the government, do not include such safeguards for freedom of expression.

In conflict with the Johannesburg Principles, judges and state authorities in Kazakhstan are not obliged to consider whether:

- The defendants intended to incite immediate violence
- They were likely to incite such violence
- There was a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Misusing the law to harass the media

ARTICLE 19 believes that the manner in which the prosecution initiated these proceedings was politically motivated and is a violation of the rule of law.

The rule of law requires that prosecutors exercise their powers:

- Reasonably
- In good faith
- Fairly
- For the purpose for which the powers were conferred
- Without exceeding the limits of those powers.

ARTICLE 19 considers that it is an abuse of the Prosecutors' powers to initiate proceedings to ban media outlets in connection with articles which were published and broadcast a year ago. Had there been evidence of extremism and incitement to social hatred by the media outlets, the Prosecutors should have acted immediately. They should not have used a Court decision which is unrelated to the activities of the media outlets. ARTICLE 19 believes that there is no social need to restrict the freedom of the media in this case.

ARTICLE 19 also believes that the Prosecutor is requesting disproportionate restrictions. A ban is severe and should be used only in the most serious of circumstances – that is, when other less restrictive measures have failed to protect the rights of others, or national security and public order. The closure of media outlets for the defamation of public officials is a grossly disproportionate response.

Conclusions

ARTICLE 19 considers that the ban on *Stan.tv* and *K+* and the proceedings to ban the other two media outlets, *Respublika* and *Vzglyad* by courts in Almaty violate Kazakhstan's obligations under Article 19(3) of the ICCPR. We therefore call on the Courts to give full consideration to international human rights law when they consider these cases and issue their decisions.

In addition, ARTICLE 19 views the prosecution's decision to request the banning of the four media outlets as an act of political control over the Kazakh media. ARTICLE 19 is concerned that this action aims to scare the media and that it will:

- Lead to self-censorship
- Decrease media pluralism
- Restrict the free flow of information