



Summary of Concerns

on

Proposed Amendments to Kazakhstan's
Media Law

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



London
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1. SUMMARY OF CONCERNS

This Note summarises our concerns about a set of proposed amendments to Kazakhstan's Media Law, as received by ARTICLE 19 in June 2006.

The proposals consist of various amendments to existing legislation, falling in two areas: one set of amendments deal with registration of mass media outlets; and the second set of amendments deals with the use of State and other languages in the broadcast media. This Note first quotes the amendments, and then provides our comments and analysis:

1.1. Registration

The Amendments propose the following new provision to be inserted in the Code of Administrative Offences:

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

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

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

2. ...

3. ...

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

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

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

The following amendment is proposed to the Tax Code:

Article 425-1. General provisions

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

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

Article 425-2. Fee payers

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

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

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

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

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

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

The following amendment is proposed to the Law on Licensing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Analysis

Essentially, the amendments propose that every mass media outlet in Kazakhstan must be registered, with the exception of internet media. The registration fee will be set by the Government, and the registration scheme will be administered by an "authorised agency". The independence of this agency is not guaranteed. Registration may be denied on various grounds, including if the editor of the proposed outlet previously owned or edited an outlet that has been prohibited, if the name is confusingly similar to another mass media outlet. Stiff fines are proposed for publishing or distributing unregistered media.

ARTICLE 19 views all registration requirements for the media, with the exception of broadcast media, with great suspicion.¹ We have commented on several versions of Kazakhstan's media laws before, and on the media laws of other countries in the region, and each time we have recommended the abolition of registration regimes as they are open to abuse on political grounds. Kazakhstan's current registration laws are roundly abused to repress media freedom. The media freedom NGO Adil Soz recently reported that two newspapers, *Aina Plus* and *Alma-ata info*, received three-month suspensions for having changed their thematic focus, following a lawsuit instigated by Almaty Akimat's Internal Politics Department. The department sent a similar warning to another newspaper, *Gorod 326*.² Adil Soz suggested that the requirement to register a publication's main thematic scope was censorship in disguise. In other countries in the region, registration laws are abused to silence critical voices, too. Notably in Uzbekistan, we have now received real and indisputable evidence of the abuse of media and NGO registration laws – even those laws that, on their face, are purely technical in nature. We have brought two communications before the United Nations Human Rights Committee arguing that these laws are in clear violation of the right to freedom of expression. The UN Human Rights Committee has already ruled that imposing registration requirements on media outlets with a print run as low as 200 constituted a violation of the right to freedom of expression.³

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

¹ The rationale for accepting registration of broadcast media is that the usable spectrum for broadcasting is a limited public resource; licensing is therefore universally accepted as necessary. This 'limited airwaves' argument does not, however, apply with regard to the print media. Democratic countries therefore do not require print media to be licensed, or even registered.

² See Adil Soz's press release of 24 April 2006, as reported on the International Freedom of Expression Exchange (IFEX): <http://www.ifex.org/en/content/view/full/73961>.

³ *Laptsevich v. Belarus*, 20 March 2000, Communication No. 780/1997.

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Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.⁴

Our overriding recommendation is, therefore, that the registration scheme be abandoned. We oppose it in principle, because of its potential for abuse; as well as in practice, to the extent that it illegitimately restricts the rights of various individuals to set up publications (including, for example, the editors and owners of previously banned media). We would also point to the heavy fines; the high likely registration and other administrative fees; the lack of a grace period in which to notify the authorities of small matters such as a change of address or change in personnel; and the severe ramifications of non-compliance with the regime as evidence that the purpose of the proposed new scheme is to control the media.

Finally, we would like to remind the Kazakhstan government of its recent ratification of the *International Covenant on Civil and Political Rights*,⁵ and its legally binding obligation to promote press freedom, under Article 19 of that treaty. The UN Human Rights Committee decision against media registration referred to above⁶ forms an integral part of those obligations.

Recommendations:

- The proposed registration scheme will act as a deterrent on media freedom. It cannot be considered 'necessary' in a democratic society and should be abandoned. Instead, the Kazakhstan government should make a public commitment to uphold the freedom of expression standards recommended by the OSCE Representative on Freedom of the Media, and developed under the *International Covenant on Civil and Political Rights*, and take immediate steps to promote a pluralistic and independent media, including by abolishing illegitimate criminal law restrictions on freedom of expression.

1.2. Language of Broadcasting

The Amendments propose the following new provision to be inserted in the Code of Administrative Offences:

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

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

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

⁴ Joint Declaration, December 2003.

⁵ UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

⁶ In note 3.

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

Analysis

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

A State may choose one or more official languages, but may not exclude, outside the spheres of public life the freedom to express oneself in the language of one's choice.⁷

In a case interpreting a restriction similar to the one proposed in Kazakhstan, the Latvian Constitutional Court held that given the current widespread use of non-State languages in the broadcast media, in particular Russian, a limitation on the use of these languages "cannot be regarded as socially needed in the democratic society."⁸ The reasoning of the Latvian Constitutional Court relied heavily on Article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, which is substantively similar to Article 19 of the *International Covenant on Civil and Political Rights*. We believe that the rationale for its decision can be extended to the restriction proposed here; and conclude that it cannot be justified as "necessary" in a democratic society.

We would also point to the recently adopted OSCE "Guidelines on the Use of Minority Languages in the Broadcast Media",⁹ which state:

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

We do not believe that the proposed restrictions can be reconciled with these Guidelines.

⁷ *Ballantyne and Others v. Canada*, 31 March 1993, Communication Nos. 359/1989 & 385/1989.

⁸ *The Republic of Latvia – Constitutional Court*, Case No. 2003-12-01-06, Judgment of June 5, 2003. Available at: [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106\(03\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106(03).htm).

⁹ October 2003: Office of the High Commissioner on National Minorities.

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Recommendations:

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